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NEW ZEALAND INSTITUTE OF VALUERS

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Contents

Corporate Plan, or ...

Twelve months ago Council of The Institute and their Executive were fired up to produce a'Corporate Plan'. Everybody else it seemed was preparing one complete with Mission Statements, Statements of Objectives and Structures.

Quite surprisingly among the participants there was a general acceptance of a need for diversification ... broadening the horizons ... a "we can do anything" attitude. In retrospect this may have been little more than a knee-jerk reaction to the changing commercial scene, the dismantling of professional organisations, practices and a fear of competition.

Twelve months on the fire has died down to a glimmer. After all are we not `The Valuers?' There are plenty of opportunities at the moment for Valuers to enter a wider arena if they choose to do so, in response to public demand for the qualifications and expertise required to be an expert in the property field.

Probably things have never been so good, at least in the major metropolitan areas.

Only eight members attended the Auckland Branch Meeting to discuss the N.Z.I.V. Corporate Plan, and this appears to have been a typical reaction around the country to something supposedly momentous in the history of the Institute. The eight members who met appear to have reached much the same conclusion as Ken Christiansen who, in his letter says, (not for the first time) - "property valuation, appraisal, management, development, investment and marketing are all part and parcel of the same thing and too inter-dependent to be fragmented into self-contained and isolated compartments".

Rather than all of the separate land-related professions attempting to become experts at everything, perhaps there should be a recognition that some individuals are good Valuers, some sell property well, others manage it, and by holding hands we will all be better at what we do best. It would also be easier. As an example the best Valuers tend to be those who are best informed and contrary to the views of some you don't gain a whole lot of recent market evidence by talking to Valuers. Valuers must have access to up-to-the minute market evidence, and should be aware of transactions as they occur.

As a graphic illustration of this point, Valuers have long had difficulty obtaining up-to-the-minute sales evidence on house transactions. How many valuers know that this evidence now exists in an acceptable form? But it is confidential to Real Estate Agents who participate in a particular scheme. This may be understandable but it is not of great help to those Valuers whose knowledge would be enhanced, or to those agents whose sale may be in doubt because the valuer cannot get sufficient up-to-the-minute evidence in a rapidly moving market.

If we must think of Corporate Plans then let us also look sideways at information we can share with others. There are likely to be benefits we can obtain in return.

betters to the Editor

Sir,

Re: Articles on `Discounted Cash Flow'

I read with interest in your June 1987 issue, the letter from Dr Kevin J. Johnston in which he suggested that the Valuer's Journal be very selective in publishing further articles on `Discounted Cash Flow'.

The letter referred in particular to C. H. H. Clarke's article published in your March 1987 issue, and described it as "extremely poorly researched, incorrect and misleading ...".

While I am not prepared to debate the question of the correctness or otherwise of this article, I think there is a more important underlying issue.

That is, that Mr Clarke is entitled to have his say, just as Dr Johnston is entitled to express his disagreement. Mr Clarke also has the right to be wrong, and whether he is or is not is a matter of opinion.

It will be a sad, bad day for the profession when articles submitted for publication have first to be referred to an `academic' for approval. Heaven help the profession if it is to become the sanctified territory of the academics.

The N.Z. Valuers Journal is a fine professional publication. But it is not a textbook, and I do not think it pretends to be. Certainly it has a reputation to maintain, but not I would hope by means of the narrow confines of academic censorship.

I thank Mr Clarke for his article, and I also thank Dr Johnston for his comments. We are witnessing freedom of speech, and journalism at its best. Let it continue.

Yours faithfully

Duncan M. Rose F.A.I.V.
Adelaide

Sir,

May I both commend, and comment on, the Editorial by Mr A. P. Laing in your March 1987 issue?

There are three universities in New Zealand educating valuers for registration - Lincoln, Massey and Auckland. In none has the property discipline, to the best of my knowledge, yet achieved departmental status in its own right.

Speaking for my own university - Auckland - it has been formally recognised that we shall do so in due course within the Faculty of Architecture, Property and Planning. That is something; at the moment we lack sufficient resources in both staff and accommodation to achieve this status. These or the funds for these, are allocated, for all the universities, by the University Grants Committee in Wellington.

None of the degrees available is a degree solely in valuation though all give appropriate emphasis to valuation as an important and, indeed, essential component of property education. What we are talking about in terms of overseas English language qualifications are variously known as estate management, land management, land economy, land economics and the like.

Valuation is a core subject at Auckland. The University of Auckland was the first university to teach urban valuation. It has a tradition of pre-eminence in this area dating back to 1939. It is my belief that Auckland, situated as it is in the midst of the largest metropolitan region in New Zealand, should and will maintain this leadership based on the excellence of course, staff, students and graduates. As an indication of demand, enrolment in the introductory paper in valuation has increased from 25 in 1981 to 130 in 1987!

With respect, I would submit that what is also needed in New Zealand is a recognition that property valuation, appraisal, management, development, investment and marketing are all part and parcel of the same thing and too interdependent to be fragmented into self-contained and isolated compartments.

It is precisely this fragmentation which has allowed us to be divided and ruled by others and is perhaps the main reason why we do not yet have, anywhere, our own university department doing the things Mr Laing (and the rest of us) want it to be doing.

After attending the Second World Valuation Congress in Vancouver this May (which itself went far beyond purely valuation content) I visited four seats of tertiary education where property is taught.

These were the College of Estate Management, the University of Reading, the City University in London, and the National University of Singapore. They all educate valuers; they all do so within the context of total property courses. There are no alternatives.

As far as I know they serve the valuation profession very well, including the research area. The sooner the professions of the land here, and their respective institutes and registration and licensing boards, can *all* get together to promote the interests that Mr Laing is quite rightly advocating, the sooner we are likely to achieve his objective.

Union is strength: together we will stand, apart we are lfoundering. Let us pool our visions and our resources for the common good of this property owning democracy of ours.

Yours faithfully

W. K. S. Christiansen
Associate Professor of Property Administration

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Mr T. J. Short
Mr G. B. Veitch
Mr M. R. Wist
Mr J. E. Wotton

Deceased

Mr H. M. Caselberg	Central Districts

NEWS RELEASE

Quantity Surveyors' President Re-Elected

Mr Delvin G. Hogg, a partner in Holmes Cook Hogg & Cardiff, has been re-elected as President of the New Zealand Institute of Quantity Surveyors. He has also been selected as a Fellow of the Institute.

Mr Hogg began his career as a quantity surveyor with the Ministry of Works and Development in 1956, then entered private practice in 1962 as a partner in Hogg & Cardiff. That partnership merged with Holmes Cook & Co in 1977, to form the national practice of Holmes Cook Hogg & Cardiff.

He has been involved with the Institute since 1960, when he was Wellington Branch Secretary. Between 1976 and 1983 he served as a Wellington Branch Board Member, spending the final three years as chairman. In 1984, he was a Wellington Council Member.

Between 1981 and 1984, he also served on both the national Executive and Finance Sub-committees. He was selected Vice-President in 1985, and President in 1986.

Publications Received and Noted

By the Assistant Editor - David F. Paton

Valuers and Professional Negligence

The Australian Valuer Vol.29 No.6, April 1987. An article written by Lindsay Joyce, looking at valuers' liability to clients and third parties. Quotes some cases of interest and observations as to how valuers may avoid claims being made upon them.

Rural Commercial Centres and their Future

The Australian Valuer Vol.29 No.6, April 1987. A paper presented by Bill Richardson, on successful commercial/retail developments in Dubbo.

Supply and Demand for Rural Real Estate

New Zealand Farmer, May 28 1987. Written by Howard Morley, New Zealand General Manager, Wrightson Dalgety Real Estate, discussing volumes and sales price of various farm leases.

Grim Forecast from a Hypothetical Farm

New Zealand Farmer, June 25 1987. An article by Ralph Latta based on MAF predictions for a `typical' Taranaki dairy farm during the 1987/88 year.

Is the Glamour Justified?

New Zealand Farmer, June 25 1987. Written by Geoff Lawson and Peter Jarvis, MAF consultant and MAF economist. A look at the expected rates of return for investment in deer farming.

Special Partnerships

New Zealand Farmer, June 25 1987. K. D. Kilgour comments on changes in taxation, law regarding special partnerships.

The Appraisal of Race Tracks

Mr Alfred Schimmel discusses valuation techniques for race-tracks in the American Assessment Digest Vol.9 No.2.

A New Use For Trees

By Piers McLaren. New Zealand Farmer, July 9 1987. A new means of sewerage disposal using a forest to detoxify and filter sewerage and wastes.

Recent Changes to the Public Taking of Land

By Squire L. Speedy

Squire Speedy is the author of a number of text books and articles on valuation and land valuation related matters, including the Publication `Land Compensation' available through the New Zealand Institute of Valuers.

Squire is a member of the N.Z. Valuers' Journal Editorial Board. He is a recognised expert in the field of Financial Appraisal (valuation) and Land Compensation.

Although the valuation principles are not in any way changed by the passing of the Public Works Amendment (No.2) Act 1987, the powers of central and local government to take land have been considerably widened. But the right to take land has not fully returned to the pre-1981 position. The amendment has, however, clarified the basis of fixing compensation in `voluntary' negotiations, and there are various consequential amendments.

The previous provision of the compulsory powers of acquiring authorities being restricted to a narrow list of `essential' works has been greatly widened by s.22 in the use of the term `public' works. This is redefined but generally means any (reasonably necessary) authorised Government work or work of a local authority. However, there is an important proviso to the power to take land. The acquiring authority must now justify the taking of the land before the Planning Tribunal if required by an objecting owner.

Where the whole or part of an owner's land is to be taken, the Planning Tribunal must ascertain the objectives of the acquiring authority and enquire into the adequacy of the consideration given to alternative sites, routes, or other methods of achieving those objectives. This provision will give an owner the opportunity to have a say in the matter. The Planning Tribunal has the discretion to send the matter back for further consideration in the light of any directions it may give. It must also decide whether in its opinion, it would be fair, sound, and *reasonably necessary* for achieving the objectives of the acquiring authority for the land of the objector to be taken. The key point of an appeal is that the report and findings of the Planning Tribunal are binding on the Minister and local authorities, and of course, the owner.

Any negotiations for a settlement of compensation for land taken or acquired by agreement between the parties may now come under the concept of `full' compensation with the dispossessed owner being entitled to claim for injurious affection, statutory disturbance losses and the other allowances provided for in the PWA in addition to the market value. The use of the term full *consideration* in s.17 has been repealed. Accordingly, an agreement to sell land to the Crown or to a local authority may specify the full compensation to be paid, or state that the compensation is to be determined under the compensation provisions of the PWA.

CORRECTIONS TO:

Land Compensation by Squire L. Speedy

Published by the New Zealand Institute of Valuers (Inc.)

Following the passing of the Public Works Act 1987 wherein the term `essential work' has been repealed and the term `public work' substituted, the following amendments to *Land Compensation* should be made.

1.	Page xi	Index: Delete 4(1) & (2).
2.	pp. 10, 11	Delete para. (2) Essential Work.
3.	p. 21	Delete last sentence of first paragraph.
4.	p. 124	Delete para. (2) Agreement for Non-essential Work.
5.		Amend the reprinted sections of the Public Works Act 1981 by deleting the word 'essential' and substituting the word `public' in the following sections: Sections 18, 40, 60, 64 to 68; 71 to 75.
6.		Delete s.17(3).
7.		Delete s.17(7)(b).
8.		Delete s.22.

Managed Funds

Sharemarket Performance

By Frank S. Pearson

Mr Pearson was born in Manchester, England in 1944 and received his education at an independent grammar school in Middlesex. From 1965 to 1970 he attended Keele University and completed a BA (Hons) there and a further year at Reed College in Oregon, USA. He gained an honours degree in Economics and Amercian Studies. In 1970 he returned to the UK to work as a shipping analyst for the stockbroking firm of Simon and Coates and his employment there extended through to the late part of 1975. In 1976 Mr Pearson came to New Zealand and once here he worked for a year with the Transport Ministry as transport economist. From there he moved to a three year term as investment officer for New Zealand Prudential Insurance. In 1980 he entered the Government Life Insurance Company advancing to Assistant General Manager, Investments. On the 1 April 1985 Frank Pearson established Funds Performance Limited with the Government Life Corporation. Funds Performance Limited is a specialist investment management operation handling negotiable paper assets for Government Life. On July 15 1986 Mr Pearson was appointed director of the BNZ and in April 1987 was appointed executive director of Fay, Richwhite Investment Management.

This paper was delivered to the Nelson Seminar of The New Zealand Institute of Valuers in April 1987.

I feel a little bit sensitive that I'm the one speaker who is out of your field - property, valuation, trusts and top developer Mr Peter Menzies, whereas I'm talking on a bit of an offside subject for you - managed funds and the sharemarket performances of the last few years. I guess I'd make a connection to perhaps make it all a little bit more immediate for you, namely the fact that property funds are being attached to the managed funds business in New Zealand bringing the unit trust and property markets together.

NZI started a property fund about 5-6 months ago; more recently Tower Investment Services have attached a property fund and of course most recently the Mace Developments Trust. There may be even one or two others that I'm not aware of. So a property fund is getting attached to the sharemarket managed funds business, distinctly different from the way things occur in the United States or in Britain. They have distinct groups doing the two different things. I guess it's a carry over from Australia for us, property trusts having such a high profile over there. Kiwis are conversant with Australian markets, therefore we've got property trusts alongside the rest of our share trusts. Property has done so well traditionally in New Zealand, it's an easy thing to sell.

So to an extent managed funds and property are very connected in our country but it's a pretty arbitrary process and it just happens to be particularly the case in New Zealand.

Why talk about managed fund? Because a whole lot of organisations are bombarding you with them and it's no longer just directly through the newspapers. Sharebrokers are also promoting them. The reasons for this? Partly I'd suggest the fact that clients with a few thousand dollars aren't commercial for brokers for direct market purchases, as well as the fact that managed funds offer anything from 3 to 5% commissions at the front-end.

My recent connection with the business has been through the Government Life Corporation. I saw unit trusts in Britain in the early 70's. People thought it was a mature business then and it's grown about a thousandfold since, so there's obviously huge potential in New Zealand.

Now for a little history of managed funds in New Zealand. I define them by the way, as excluding money market funds. Firstly it's a very recent New Zealand phenomenon. Sixteen months ago NZI and Tower Trust put products on the market. The timing was excellent for Australasian sharemarkets and of course both funds got off to a roaring start. I just make a point with you that one can get anything off to a roaring start if you start with a small product but also manage big funds. So it's never surprising that big players get small products away with a hiss and a roar.

Secondly there are now two or three others in the field as well. National Insurance and National Mutual for sure and AMP I would think are just on the sidelines and will be coming into the market. The two big Life Companies certainly made a big presence in the 12 months after they started in Australia, most especially National Mutual, the latter office in Australia having a very effective investment operation. Thirdly, you'll see an extension in the number of funds by the major players, in other words they're all going to increase the `menu' that you are offered as a prospective purchaser, so that if a fund salesman comes across a prospective client and they talk to that buyer in a kind of financial planning sense of the word, whatever the philosophy or whatever the attitudes of the client at that moment, the salesman will have a product for that buyer. And that's the way it operates overseas and that's the way it will develop over here. And the buyers increasingly will walk away from the people who've only got one or two funds in favour of a smorgasbord of products. A plain vanilla product will increasingly become passe.

The next development that's occurring and the one that I'm associated with is the introduction of closed-end funds like for instance the Capital Investment Trust that Fay, Richwhite have just floated ($37 million fund) and that's just closed. That, for instance, differs from existing managed funds in New Zealand. All other existing funds are open-ended funds where you put your money in and you can take your money out of the actual fund whenever you want to and the size of the fund varies correspondingly. A closed-end fund raises money through the sharebrokers or public issue and once the money's in, the only way people can get their money out is by selling their unit to somebody else, through a sharebroker.

The fifth development which you're seeing already is that overseas investment fund managers are increasingly offering their products in New Zealand and I think that's something you, as a prospective buyer ought to take seriously. These people have been managing money around the world for dozens of years. For a start they'll have a longer track record that you can check out and it's not unreasonable to believe that they might actually be able to do a better job by being in Hong Kong, New York or London than someone sitting in Wellington could do, so I think they are very very pertinent competitors. However you need to be very careful of the fee structures that are involved. I think there are many of these overseas management companies that need to be taken seriously; I talk about the Jardine Flemings of this world, Rothchilds, Kleinworts and Hambros etc; they're all excellent firms and getting pretty good results. But there's no substitute for satisfying yourself as to particular track records.

And finally, the next development which will happen quite soon will be that more sophisticated Kiwis will increasingly go direct to overseas sharemarkets to buy closed-end funds. I've told you that Capital Investment Trust is now going to be quoted on the sharemarket in a couple of weeks time and whilst initial subscribers are in, you people if you want to have part of that portfolio must buy shares off someone who's already got them. What the situation overseas is that there are a whole lot of these funds and they've tended to go to a discount to their asset value over time. The ones that are poorly managed go to big discounts, the ones that are well managed have gone to more modest discounts. Whilst I was in New York the week before last I became aware of three characters who floated closed-end funds late last year, Messrs Zweig, Garbelli and Reik and they're three very very smart characters, take my word for it. They each floated their funds in an effort to defy gravity - in other words they were going to be the first people who didn't have an investment trust or closed-end fund that didn't go to a discount on assets? That was their mission but today all three funds are standing at a discount to assets and they're all scratching their heads and telling me the reasons why they think it happened. I must mention to you that the reason they think it happened is that they actually let brokers sell them for them and they've decided brokers don't sufficiently target truly long term holders.

Stock inevitably ends up with subscribers who don't understand the long term nature of the product, dump the shares when no stag gain appears, when actually buyers ought to be in say, for five years. So the lesson seems to be to actually direct market to people who you suspect identify with what you do and who therefore are prepared to take a medium term view and not expect magic.

Why are managed funds suddenly big time? They're big time in New Zealand because they're new, but they're also big time all around the world. Well it could be that it's a classic sign of a top of a bull market. I just mention to you as valuers that I saw some figures once from the USA that

the price of land and the price of shares as inversely related.

showed the price of land and the price of shares as inversely related. There's a long term correlation over about 80/90 years in the USA showing a very strong inverse correlation between the price of US farmland and the price of shares. I suspect sharemarkets around the globe have probably got another bouyant 6-9 months at least in them. That's not for very good reasons, rather because the Japanese with their huge trade surplus have got tons of money that they have to put into markets, so it's a kind of greater fools theory. On the farmland side of the equation there are signs in Iowa (USA) at the moment that the price of Iowa farmland is beginning to flick up - that's after falling for 6 and a half-7 years. The downturn started over there in 1980. The level of debt of the farmers is falling now, the returns are rising and there are basic signs that they've bottomed out. I think it's 50/50 whether it's bottomed out or not over here. But it seems to me that if it took six years to work its way through America and they've got a very quickly responding system.

They actually get on and adjust and it took six years to adjust over there. I have a little bit of trouble thinking that we can adjust in 2-3 years and that it's going to be as easy as that. There's a side of me that says that we haven't probably seen the bottom of that rural land market yet. Enough of that sidetrack.

we haven't probably seen the bottom of that rural land market yet.

So managed funds are big business because there's been a bull market in shares for at least 3-4 years around the world. Secondly they're big business because they've got lucrative front-end fee structures involving up to 5, 6, 7% for the people who sell them. Also good fees for investment managers if you can build up to a critical mass of money. Thirdly, there seems to be some kind of secular trend; a secular trend is not one that's particularly endorsed by the church, by a secular trend I mean it's distinct from a cyclical trend. There appears to be a trend for people to hold more of their savings in the form of participatory and active investments as distinct from passive bank deposits. Remember I'm not saying more of a trend to hold their money in shares, some people say that. I've been around too long to know that that's the way it is. I actually think that you can take it another layer down and say that what people want now are participatory investments, alive investments. They happen to be shares that they want at the moment but I think it could be anything. It might be, I suspect that in two years time when this bull market has peaked people will look at it slighly differently. The other factor of course is the one I referred to earlier, sharebrokers not wanting to handle small share parcels nowadays. Thus more people are getting forced into mutual funds and it's also part of a whole globalisation of capital market that's going on. People are actually looking wider than they have ever looked before.

A professionally managed product enables people to actually own shares in Germany or Japan. So I think managed funds is a movement of our time. I'm not going to pretend it's unique to shares, I think it could be a big part of the property scene in future years and I guess you folks here will be some of the people who determine whether that is so.

I think there's going to be a rising menu, a smorgasbord of funds for you to choose from. There's also going to be much more communication with the clients, involving the clients understanding more of what the investment managers' philosophy and approach is so they can identify and relate to that.

What would I buy? I guess I'd buy one of two sorts of funds. In practice I wouldn't buy anything because I like doing my own thing outside of the areas that I'm involved in professionally, but I'd buy probably a new fund, a small new fund that's been started by some people who've got an established track record with larger funds, I think that's a good point to get into the business. The track record of those kinds of operations is that new little funds get away from the blocks very well with established fund managers. If I was in the USA at the moment I would buy a sector which is unfashionable. Some sectors are popular one moment, then they're unpopular. I'd probably buy into the worst sector, for instance capital goods, building factories - very unpopular at the moment. I'd buy the best performing fund in the worst sector. That way you know you are buying a relative performer. Ultimately when that sector turns up you're likely to be with the best performing fund in that sector.

Questions

Q. Townsend, Waikato

Mr Menzies mentioned the lowering of inflation rates in talking about capitalisation rates. What are the panel's thoughts on the speed of the likely change of inflation rates. The history of say the last 10 years encompasses forecasts of single figure inflation, none of which have come to fruit?

A. Frank
At the end of the day it comes down to who you believe when you listen to them. I'm quite confident we're going into a low inflation era in New Zealand. I would put a time horizon of 3-4 years on that era lasting at this stage. I don't think there's any point in even going out further than that. Couldn't with any credibility. I'm working on an average inflation rate of about 8% for the years beginning quite soon. At the moment we're all dealing with silly figures because of GST. Seems to me that whoever wins the next election we're going to get 1507o rate GST after the next elections so you're obviously going to have a little bubble there in the inflation rate but as an ongoing inflation rate I reckon somewhere around 6 or 8% is a fair working basis for New Zealnad. These kind of economic policies implemented anywhere else in the world have produced low inflation. I don't think we're such a special people that it won't happen here. High interest rates produce low inflation. It's a very direct relationship even though the actual mechanisms in between aren't properly understood. Stands to common sense doesn't it; if you price money high, people are going to want to borrow less of it. If they want to borrow less of it there's going to be less money chasing the same amount of goods etc., etc. You know all the arguments by now.

The South American inflation has been based on low interest rate policies and populist kind of attitudes. That's where we were going until 1984. Just happened that the reaction times in New Zealand are slower than they have been in Britain, America and all the other countries that implemented these kinds of policies because our heads were so skewed. People's attitudes have taken longer to change here than they did in the other places. We were as a nation somewhat economically illiterate. The reasons for that are not particularly personal to anybody, they just stemmed from the fact that we didn't have economics taught in our schooling systems until very recently and we became miseducated over quite a long period. That's not an emotive or a political statement. What I mean is for instance that the famous comment that, "low interest rates will cement in low inflation". That is absolute mumbo jumbo but it was said with such conviction and so repeatedly that people who didn't have any basis for believing otherwise actually accepted it. It takes some time for these attitudes to be reversed and people to actually get to think and understand properly some simple economic relationships.

Q. Young, Auckland
Mr Pearson you made a comment that we were able to borrow large amounts of money offshore because we don't speak Spanish. Does it or does it not frighten you to think of what might happen when a lot of this money is taken out of the economy and the repercussions of that event?

A. Pearson
When the money is taken out of the country, all that happens mechanistically is that with a freely floating exchange rate, if some overseas holder of dollars wishes to sell his or her Kiwi dollars then they have to find somebody else who will buy the Kiwi dollars. That's all that happens when money is `taken out of the economy' so it's not taken out of the economy at all.

The amount of money in the economy stays exactly the same. The Kiwi dollars just go to another holder. All that happens is that the seller of the Kiwi dollars has to keep dropping the price of the Kiwi dollars that they're asking for to persuade someone else to buy the Kiwi dollars.

Now I actually find that a very satisfying situation. The fact that these overseas people are holding all these dollars represents the best discipline on economic management in New Zealand that we could wish for. The economic problems we grew around here all occurred when we didn't have a freely floating exchange rate and in fact there weren't any market mechanisms that could reflect themselves in price structures that would throw signals up to the electorate when in fact all was not well. So if you actually look at the history of that 1980 to 1984 period you actually see it as a suppression, one by one, of warning price signals. So in fact most of the New Zealand population were not aware of the damage that was being done because there were no warning bells, like a falling exchange rate for instance. So if any politician now did something stupid, the exchange rate would fall out of bed very promptly because people overseas understand how economics work, they understand what good economics and bad economic policy is and they would mark us down very promptly. Now we'd all love it if we didn't owe that money overseas, I know we would, and we'd all love it if in fact we didn't have any debt. The reality of the situation is that we've got ourselves in the debt, we voted to get ourselves in the debt and that's the reality of the situation. We got there cumulatively over about 3 or 4 elections, we decided to get into debt. Having got into debt, yes I think there are many positive aspects to having overseas people holding debt and ensuring that we have sound economic policy here compared to having suppressed prices and no warning signals. Does that answer it clearly?

Q.
But what are the economic repercussions of say a drop in exchange rates in the event of overseas lenders wanting out?

A. Frank
The exchange rate will ultimately drop - that will follow like night follows day if the economy doesn't adjust to produce the overseas earnings to service this overseas debt. If it doesn't drop, then the only reason it won't drop will be because we've got so many tourists coming here instantly that we're actually earning the foreign exchange that doesn't require the Kiwi to drop. There is an essential poetry about the market mechanism and the final outcome, only the timing is uncertain.

Commercial and Industrial Property Investment

By Peter Menzies

Peter Menzies is the Managing Director of Mainzeal Group Limited, the parent company for the Mainzeal Group, involved extensively in property development in Auckland, and more recently in Wellington. Peter Menzies is also involved in Mainzeal Property Ltd, a property owning company which obtained a listing on the stock exchange in 1986.

He has had a long involvement with property development and is highly regarded for his development expertise.

The following paper was delivered to the Seminar following the 47th A.G.M.. of the New Zealand Institute of Valuers at Nelson in April 1987.

Today I wish to present a summary of rental and capital growth achieved with various commercial and industrial investment properties in Auckland and Wellington over the past two years. In addition I will present some results for the last six years.

Rental growth is the engine-room of property investment.

Rental growth is the engine-room of property investment. While re-development offers the prospect of significant capital growth this in reality can only be realised if the rental growth from a new building warrants the new capital investment.

I have prepared graphs to illustrate the following:

1. Changes over the past two years in Auckland Industrial property rents.
2. Changes over the past two years in Wellington (Lower Hutt) Industrial property rents.
3. From a selection of commercial C.B.D. properties in Auckland and Wellington a chart showing the annual growth in capital value and the net cash flow associated with these properties.
4. A summary of the total investment performance of commercial and industrial properties in Auckland, Wellington and Christchurch over the last five years.
5. Finally a comparison in graphical form of commercial and industrial property values with the sharemarket index and C.P.I.

1. Notes concerning Auckland Industrial Properties

The `Old' are properties where office space was a low cost adjunct to the warehouse/manufacturing. The `New' have separate office buildings constructed to a suburban office standard.

Note the `old' and `new' factory rates have stayed together. The office rates are significantly up for `new' industrial complexes.

It is important to recognise the skill of staff and need for quality offices in `new' industrial buildings.

2.

In Wellington note the fall off (relatively) of `old' warehouse/ factory space. This could be attributable to the drift to Auckland. Note how the office rents have not followed the Auckland trend where `new' office rents increased at a sharply greater rate than the old. Again this may reflect the low growth of modern industrial premises in Wellington.

3.

The buildings are all C.B.D. and about 10 years old. They show how in Wellington the actual cash flow increase was negative in 1982/83 and static in 1983/84. Substantial growth then followed (in cash flow).

The reason for giving you this chart is that the buildings selected produced this unusual negative growth for the following reasons.

1. Rental growth was slow in Wellington during the early 1980's but costs increased sharply.
2. Major rent reviews were achieved in 1984/85 and 1985/86.
3. The general market trend is represented on this chart by the growth in capital values. You will note that this shows a lower percentage increase in 1984/85 but very substantial increases in 1985/86.
4. This table sets out a rigorous analysis of the investment performance of a variety of building types in Auckland, Wellington and Christchurch over a five year period.
5. Commercial and industrial graphs are from the Valuation Department and tend to favour smaller properties since few large properties change hands.

Development Margins

You will have seen from the information presented that rentals for both industrial and commercial property have increased sharply over the last two years. The rate of increase is significantly faster than inflation. I would like to comment on what effect this has on development margins.

In budgeting a project it is usual for a developer to apply a margin which reflects a return on funds invested and a profit and risk margin. The return on funds can be reduced to a simple interest factor assuming all funds expended during the development phase are required to earn interest equal to that available on the open market. With this arrangement the profit and risk elements are strongly influenced by three further factors namely total construction cost, risk of securing budgeted income and the source of long-term equity. Let me illustrate this with examples.

The market over the past two years has experienced significant rental growth and for developers who held land ahead of these increases there has been windfall profits (example of rental increase of 40%). In particular this has been accompanied by a significant depth of demand for office space which signalled continuing rental growth and a falling initial rate of return available to investors wishing to purchase completed properties.

This again added further to the developer's margin (exam-

ple of return moving from 7'/a% to 6'/a%).

Naturally all of these profit windfalls did not elude other developers or those who listened to developers boasting over port after dinner. Competition for sites developed and land prices in central Auckland increased six-fold in three years.

Using this increase in land value and looking at the example you will note that the development margin associated with a 40% increase in rent equates approximately with the new land value. One is drawn to the conclusion that the developer could have earned almost as much profit by holding land. This is a common occurrence in a sharply rising commercial market.

The other conclusion that can be drawn from this table is the problems that arise when a bull market stops. In this situation we have the developer paying top prices for land incurring construction costs which probably have risen due to high demand and possibly facing a rental income 20% below budget. Reference to our table will show the problems faced by a developer in such a situation. Problems compound if interest rates are high and long term equity is difficult to find. This is the situation where failures occur.

In summary, the view on developer's margins is never static and prudent developers ensure long term finance is available limiting their risk to the cost elements of construction, funding interest and limited rental support periods. This philosophy followed consistently will not produce spectacular profits but ensures longevity for the participants. Developers and Merchant Banks who have not experienced a bear market could be excused for finding my remarks rather conservative.

The Forward View

We have spent a little time today reviewing trends in the past for some sectors of our industry and giving examples of how development margins can vary. I would like to spend some time discussing how a developer looks at the future.

Developers to some degree must have a different view of the industry to valuers.

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Developers to some degree must have a different view of the industry to valuers. Your profession must have a detailed knowledge of what has happened in the past and give advice within prudent limits. Developers must be able to sense how the market is changing and plan accordingly.

A developer who stays in business over a long period will do so because he has been able to look into the future and supply a product that meets the market. Because the future market is different than the past, there is inherent risk and hence appropriate profits are essential. The risks can be summarised as follows:

1. Demand in simple volume terms
2. Location
3. Quality and style of accommodation
4. Availability of long term equity funding
5. Control of cost elements during development.

In assessing the value of a property your profession has to deal with the `here and now' aided by a knowledge of the past. To put a heavy emphasis in favour of what might happen in the future with an optimistic bias would prejudice a market transaction. The skilled developer equips himself to minimise risks in a number of ways.

Overseas trends particularly in the area of technology are of vital importance today.

Market knowledge of tenant demand is obvious as are the means of obtaining such knowledge. You will understand that there is still a great deal of guesswork since most companies only look for new space when the need is urgent.

Overseas trends particularly in the area of technology are of vital importance today. Office work practices are changing with new equipment and communication systems. There is a strong trend to open space and working as a team. This requires office areas with large column free floors, full air conditioning, under-floor or in-ceiling services, vertical ducts for communication plus all the other features of good office space. New Zealand is similar to all markets in that one cannot exactly duplicate what is done somewhere else and expect it to succeed here.

By applying overseas technology to the New Zealand market, developers can offer tenants facilities which on occasions are sufficiently attractive to induce them to leave what they had thought were satisfactory premises. This obsolescence of existing buildings is a strong trend in the marketplace.

In the industrial development market a shift from small scale manufacturing has been evident for several years. The so called Hi-tech industrial development is in essence building office space on industrial zoned land. This has come about as a result of employment growth in the computer field.

Large scale paper processing associated with the finance industry is a modern form of industrial activity. The premises required are modest standard offices and the staff can be trained from the general work force.

In addition to paper processing industry today uses computers for a large variety of activities, all of which make a business cost efficient.

`Just on time' manufacturing requires planning and controls only possible with computers. All of this has resulted in industrial activities requiring greater office space and the ratio can be as high as 60% office to 400I6 warehouse or light assembly.

Real estate areas change in popularity according to market factors. In Auckland, Parnell was popular for office space when Saturday trading drew large crowds to Parnell and Auckland city had severe restrictions on car parking. Today Parnell is a very low key office area and has been overtaken by Newmarket. Similar remarks apply to Manukau Road and Great South Road and to Auckland Central.

Finally the competent developer controls the cost elements in the development process through knowledge. Today building construction is similar to manufacturing and a developer who cannot control in total the creation of investment will not produce products that remain competitive long term.

Buildings with poor quality finishes and poor construction will not maintain rental growth.

Buildings with poor quality finishes and poor construction will not maintain rental growth.

In summary the development industry operates under the influence of a series of opposing forces. Vendors seeking maximum land prices, financiers seeking maximum interest and fees, builders and sub-contractors seeking maximum profits, tenants seeking minimum rents and inducements to occupy space and owners requiring large investment returns with minimum effort. Your profession are required to advise all participants at different times and it is to your credit that consistently all of those parties come to you for advice.

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Tilt-Up Construction Enjoys a New Wave of Popularity

By Mr Derek Lawley

This paper entitled `Tilt- Up Construction Enjoys a New Wave of Popularity' was presented to a combined Auckland/Northland Branch field-day held at Warkworth on Thursday 6 August 1987.

This address plus a following video was given to our members prior to dinner and at the conclusion of afield day part of which included the inspection of a recently completed industrial development constructed using the `Tilt-Up Slab' construction technique.

This paper and video were presented by Mr Derek Lawley a registered structural engineer of PO. Box 60-112, Titirangi, Auckland. Mr Lawley is a director of Alan H. Reid Engineering Ltd who are an import/export company specialising in developing and supplying innovative construction techniques and materials as well as construction equipment.

He has asked that an acknowledgement be given to a paper presented to the `New Zealand Power Crane Association' Conference in 1986 by Dr Alan M. Reay, consulting engineer of Christchurch. Dr Reay is heavily involved in these construction techniques in the Christchurch region.

The author of this paper Mr Derek Lawley is happy for members to contact him-at PO. Box 60-112, Titirangi, Auckland 7 if they require additional information.

Designers, developers and building contractors in the northern North Island are now becoming aware of the tremendous benefits available to them with tilt-up construction methods.

Further south, their counterparts in Wellington and Christchurch are already aware of the advantages of tilt-up. In Christchurch the use of tilt panels has virtually eliminated the use of blockwork in industrial buildings and has substantially reduced its use in commercial buildings. The system is even being used to a limited extent for residential flats and domestic housing.

In Australia tilt-up construction is also experiencing a dramatic upsurge in popularity despite the fact that relative costs of concrete and masonry in that country make tilt-up wall panels initially 50%10 more expensive than an equivalent masonary wall. Hence visiting Australian designers have of course been amazed that the use of tilt-up is only now starting to `take off' here - where tilt-up panels can be produced and erected for a lower cost than blockwork.

The fact that tilt-up construction provides a faster and more economic building solution has been demonstrated recently on two major Auckland building sites by newly formed sub-contracting company Swiftlift Construction Ltd. This company has been established to provide a specialist sub-contracting service to building contractors by carrying out as much of the tilt-up panel work as required - from supply of lifting inserts, hardware, bondbreakers, props through to a total propped in place price for the panels. Building contractors Project Construction Ltd and MacRennie Construction Ltd have both commended this new service which has enabled them to make construction cost savings and also to keep their building projects on schedule despite adverse weather conditions.

Benefits of Tilt-up Construction

The benefits of tilt-up construction can be considered in three categories:

Benefits to: the owner/developer
the building contractor
the designer.

1. Lower cost
2. Speed of construction
3. Versatility in design and appearance
4. Robust, damage resistant wall, which has excellent weather resistant properties
5. Shapes are easily created
6. The panels are readily relocatable
7. The panels have an inherent fire resistance.

Considering these benefits in more detail, we firstly note that concrete is a relatively strong, rugged material that is abrasion resistant. This means that the heavy use imposed by warehousing and manufacturing industries should not cause significant damage to the material, thus reducing maintenance costs. The tilt-up panels also offer added security against vandalism and breaking and entry. The panels can be easily designed to provide Ito 4 hour fire ratings. Protection against fire losses is a major advantage that the concrete construction offers. This allows maximum use of a building site in that buildings can be located close to property boundaries. And of course it reduces fire insurance rates.

The owner is able to achieve a variation of aesthetic treatments for all panels. These include variations in colour, texture, pattern, shape etc., and may include the use of exposed aggregate walls, texture walls, or a combination of various surface finishes.

Tilt wall panels significantly reduce the rapid changes in temperature which can occur in metal clad buildings. The concrete mass acts as a heat sink as well as slowing down heat lfow and thus it reduces heating and cooling costs.

Tilt-up panels have proved to be more weather resistant than block-work walls. Prior to the extensive use of tilt-up construction more industrial buildings were constructed with single skinned masonry and there have been continuing problems with water penetration of these masonry walls in adverse weather. In contrast, however, tilt panels have given virtually no problems whatsoever in this regard.

Tilt-up construction means savings in cost.

Tilt-up construction means savings in cost. It is important, however, that cost comparisons are based on the total in-place cost of all the components and not by comparing individual elements. As a general rule, the higher the building goes, the greater are the savings by using tilt-up.

Tilt-up buildings can generally be constructed faster than other construction methods resulting in the owner obtaining the earliest occupancy. When business growth requires the extension of the building then the tilt-up panels can be lifted out and re-used. This does, however, require the design of connections at the initial design stage to ensure that this is simply done at a later date.

Benefits to the Building Contractor

There are several features of tilt-construction that make this building method particularly attractive to building contractors and developers.

Tilt-up panels can save construction time, labour and materials, there is less reliance on sub-contractors and, if effectively designed, and the site properly organised this will result in increased profits for the contractor. The work is generally carried out at ground level and is flat work. It is far more easy to construct, finish and cure the concrete than it would be if the work was carried out above ground.

The system offers flexibility in construction practice in that the walls can be constructed prior to the foundations being installed. If the building contractor elects to do the work himself rather than use a specialist sub-constractor it can generally be done by semi-skilled and unskilled labour. The other advantage which the system offers to builders is the requirement of a minimal capital outlay. This system does not require the use of expensive scaffolding, formwork and hoisting equipment. The only requirement for expensive equipment is the use of cranes, which can be hired.

There is less reliance on sub-contractors which in turn should produce a more uniform workload for the contractor.

Benefits to the Designer

The benefits to the owner and contractor discussed above are of course benefits to the designer too. But in addition tilt-up construction offers the designer a greater freedom of choice of size and shape of panels that other materials do not normally allow, with unlimited variations in colour, texture and pattern. There are also advantages to be gained in the structural performance using tilt panels. Their use will often reduce the requirement of secondary structural elements such as roof supporting members and shear diaphragms.

Building with tilt-up panels may reduce significantly the foundation requirements and can be designed to support roofs and lateral loads without needing columns or portal legs. Tilt panels may also be used as bearing walls for multi-storey buildings.

General Building Considerations

There is no direct limit to the size or shape, upper or lower bound of the building types and uses that are suitable for tilt-up. Smaller buildings have successfully been constructed using it right down to domestic garages. The only factors which will tend to limit its uses are such things as crane access, suitability of casting beds, and the general structural requirements. The system requires a supply of structural grade of concrete and the availability of adequate cranage. Even the latter may not pose a problem as buildings have been erected using drag lines or hiab trucks.

Regarding the building design, experienced designers to tilt-up buildings fully detail the panels to ensure that the placing, erection and fixing of the panels is carried out in an efficient manner. Less experienced designers, however can utilise the free advisory services offered by specialist companies such as Swiftlift Construction Ltd whose registered engineers will provide advice on panel detailing and overall building design. The design of the building and its panels should preferably be carried out by an engineer and architect specialising in the field. For a tilt-up project to be successful it is essential that it is considered as a system designed as such and not as individual tilt panel elements simply replacing elements of another material. Thus the design should integrate the tile panels into the earliest stage of the preliminary design in order to obtain the maximum benefits. Some aspects of the design are of particular significance to the crane operator, and it is worth considering these briefly:

1. The floor system

The floor ideally should be adequate to support crane loads. This includes the wheel load of the crane and the outrigger loads. Industrial buildings normally require substantial floors for the use for which they are to be put, and therefore, a lfoor which is suitable for crane loadings is usually not an additional requirement. Generally a 125mm floor slab on a well compacted subgrade is desirable, although many panels have been lifted from 100mm thick floor slabs. A good surface finish is also required on the floor as the finish on the panel is going to directly reflect the floor surface on which it is cast. This requirement will again ensure that the floor finish is of a suitable standard f6r the final use of the floor.

2. Lifting Points and Systems

Lifting points must be built into the panels at the time of construction to enable them to be lifted into place later. A recent development has been the introduction of the Swiftlift Lifting System which has dramatically improved crane efficiency during the lifting operation. On one Auckland project 400 tonnes (1000m2) of panels were lifted and propped in one day using this system.

The load on the lifting point and the stress in the panel must be within specified limits, and to achieve this various numbers and arrangements of lifting points are used.

3. Formwork

The use of specially designed formwork can achieve considerable savings on a tilt-up project. Traditional methods using timber boxing are time consuming and often cause problems with timber warping and twisting. Companies such as Swiftlift Construction have aluminium reusable boxing sections that are available for hire. These enable a builder to box and pour a reasonable sized building in the same day.

Propping

Many building contractors are unaware of the tremendous lateral force that can be placed on a temporarily supported wall panel by a gust of wind. For example, a typical 10m high by 6m wide panel in an exposed area may require a horizontal force of about 3 tonnes at mid panel height to prevent the panel falling in storm conditions. If the panel is supported with two angle braces each brace is subjected to an axial compressive force of approximately 2.5 tonnes in order to provide this restraint.

Until recently the standard of temporary propping of both tilt-up and large blockwork walls throughout New Zealand has been extremely haphazard with walls commonly being supported by lengths of timber, water pipe and even by two Acrow props joined end to end.

Fortunately specially designed Swiftbrace props are now readily available for hire in all major centres through branches of Alan H. Reid Engineering Ltd and Acrow Carpenter Ltd.

Summary

To conclude, tilt-up construction, when correctly co-ordinated and designed offer the building industry an opportunity to dramatically reduce costs and improve efficiency. When ongoing costs such as maintenance, insurance premiums, interest rates, depreciation and eventual resale value are also considered it is not unusual for tilt-up buildings to show a 30% cost advantage over buildings constructed in concrete block masonry.

This address was given to the Seminar of the Council of Land Related Professions April 1987. The theme of the conference was "Future Shock for the Land Related Professions".

Editor

Creating Professional Opportunities - Lawlink

By Bruce D'Young

Bruce D'Young is a partner in the Tauranga legal practice of Sharp Tudhope & Co.

Mr D'Young has practised in Tauranga and has been active in community affairs there since 1970. He has represented the Bay of Plenty for three terms on the Council of the Auckland District Law Society.

In 1985, Mr D'Young conceived the idea of linking together a number of legal firms into one organisation, and over a period nine months was instrumental is bringing together the 20 legal firms who now comprise the Law-Link Group.

Law-link was officially launched in June 1986 and Mr D'Young is currently chairman of the group.

The Background

Creating professional opportunities in today's more competitive and consumer orientated society demands significant changes in attitude from those who have enjoyed a comfortable, even privileged, professional environment, not only for many years, but in the case of my own profession, probably for generations.

While changes are taking place in all areas of legal practice, I shall, within the context of this conference, generally restrict my comments to the conveyancing area. That may tend to produce a strictly commercial view - which would lack balance - and it should be remembered that there are wider aspects of legal practice than those covered here.

Traditionally, legal practice has not been particularly business orientated.

Traditionally, legal practice has not been particularly business orientated. The guaranteed supply of routine conveyancing business has in the past been a disincentive to many lawyers to extend the scope of their practices. With the conveyancing "monopoly" at risk and other areas, once the sole preserve of lawyers being eroded, many firms have had to reassess their priorities and to reorganise themselves on a more businesslike basis.

At the same time, other disciplines have taken the oportunity to capitalise on areas of work which the lawyer once thought of as his own, but which were unprotected by any form of legislative monopoly. Consequently, there is an increasing blurring of the lines of demarcation between various professions.

It is a reasonable assumption that New Zealand will continue to be a socially mobile property owning democracy, and, despite pressure to deregulate the conveyancing market, it remains likely that lawyers will continue to be involved in land transactions in one form or another. The role that we play, rehowever, may not be identical to our present position, and there may well be a number of other groups involved.

Those other groups could include government departments, lending institutions and some form of licenced institutions and some form of licenced conveyancers other than lawyers. These developments are, of course, quite separate from the increasing trend of institutions, departments and companies to establish their own in-house legal departments to handle a wide variety of their legal work. Already the position of private legal firms as the major employer of lawyers, has changed dramatically.

We have seen the Government coming into the field of public conveyancing with the establishment of the Housing Corporation conveyancing service. On an informal level it is not uncommon now for some lending institutions to undertake basic conveyancing - simple loan documents and the discharges or withdrawals of these instruments. Whether or not the experience of similar jurisdictions overseas, especially in England and Australia, will lead to increased pressure here for non-lawyer conveyancers to emerge we can but wait and see.

The most difficult scenario to predict is the impact of technology and the role of the state in such an arrangement. It has been suggested that our technology could become so sophisticated that conveyancing by the individual property owner could become a practical reality. In effect the conveyance of title, the funding and repaying of mortgages, the settling of transactions could all be done electronically. Lawyers as mechanics of the system could become superfluous. With the Government now considering the possibility of corportising or privatising the land transfer system, or parts of it, we could see in the future a system not dissimilar to some of the American escrow companies where a real estate agent would use one company who would arrange and secure the finance for the purchaser, effect the exchange of contracts or the conveyance of title and guarantee or insure the validity of that transaction for the home owner.

Those are some of the challenges currently being offered to the legal profession, but they are indicative of the challenges being offered to all of us. One would need to be extraordinarily naive to believe that any of us can expect to sit in our offices, continuing a pre-1980's approach to our professions, and remain main successful.

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Lawlink - How and Why

Private legal practices have in the past been rather like the

family farm - relatively small economic units. The harsher realities of the 1980's are causing all of us to look for economies of scale and a means of dealing with the more demanding markets we service.

For some, coping with change has meant restricting their services and opting to practise in a specialised area. For many, however, size has been seen as an essential part of their reorganisation. The object of this exercise has not been simply to grow big for the sake of size alone. There are very real efficiencies to be achieved and, more importantly, the larger size allows for areas of specialisation within the practice, and for the possibility of one or more members of the firm being able to develop an independent line of enquiry and to develop new activities for the practice. Within the larger centres this rationalisation has generally followed the merger path - the complete integration of resources. For those outside the main centres however the opportunities to gain a significant increase in resources is limited. The alternative therefore is the umbrella partnership, or federation, where the participants can pool their resources, and, while co-operating in a wide range of activities, retain much of their independence. This is the road the Lawlink firms have chosen to travel.

The reasons for our move, and indeed, for most other professional mergers that have taken place recently were neatly summed up by Australian accountant Anthony Kewin addressing the 23rd Australian Legal Convention. In his view the motivation for any professional firm seeking to integrate its activities with another should be:

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1. To match and beat competition - not for its own sake but, unless this happens you can be sure that someone else is providing better service capabilities than you are.
2. To provide special services, and a greater range of services (a one-stop shopping concept).
3. To provide better client services in a more timely fashion.
4. To provide client services where they are needed - better geographic coverage.
5. To provide specific industry expertise.
6. To provide more resources in the areas of office automation, information systems, computerised support services, libraries, training for partners and staff and knowledge generally.
7. To attract and retain quality staff and partners.
8. To protect and expand the client base.
9. To make themselves less vulnerable to client losses.
10. To obtain market niche."

Finally, he observed that although size itself does not guarantee success nor does it mean that the client is automatically better off, it does provide resources which can be available to the client's benefit. If its resources are well utilised a large firm or group of firms will generally fare better than smaller firms except for those at the extreme end of the range where there are one or two partners providing specialised services in a narrow field in the market place.

Effective market place regulation and true competition exists only when each market is served by a number of equally strong organisations acting independently of one another and competitively offering a similar range of services.

The member firms of Lawlink came together because we saw that failure to become competitive and better organised would lead to an erosion of our client base and a poorer level of service being offered to our clients. In looking at Lawlink's place in the legal services market it was apparent that the rush of mergers and re-organisation, particularly in Auckland and Wellington, over the past 5 years has created a number of very strong, competing firms, offering a growing range of services and depth of specialised skills, to an increasingly sophisticated corporate clientelle. However, on a national scale 95010 of the demand for legal services is in the general practice area, and for most of us the nature of our own communities ensures that we will remain as general practitioners for the foreseeable

However, on a national scale 9501o of the demand for legal services is in the general practice area,

future. It is in this section of the market that the Lawlink group sees its place, and an opportunity to achieve at that level, with economies of scale and increased resources, what the Auckland/Wellington mega-firms are achieving in the corporate area.

It was seen that opportunities existed for lifting the capabilities and performance of the individual firms through a group approach. The advance of modern technology especially in the communications field has made this feasible. I recently asked a Real Estate Agent why his firm had joined a national chain. His answer was simple - he said he that "he didn't want his firm to become like the corner grocer."

That is clearly the Lawlink attitude. While some corner stores may continue to exist, our view is that the professions will, like other sectors of the commercial world, come to be dominated by large, well organised firms or groupings that are perceived by the client to be able to pass on economies of scale and a superior range of services.

The Future

The temptation will be to diversify into areas of expertise that are not our own. It is easy to believe that someone else's job is relatively simple - because competent professionals will invariably make their tasks look easy. The same ends can be achieved more efficiently by co-operation, and the prospect of multi-discipline ventures will become a common reality in the near future. Already these developments have started with our colleagues in the surveying/engineering/architectural and planning professions integrating into single firms. I believe however that the medium term future may well belong to the joint venture approach.

It is only a matter of time before you will see a group establishing their own building which will house major legal and accounting firms, who will co-operate in areas such as taxation advice and estate planning, and be joined in the occupancy of that building by some form of banking presence and/or financial consultancy, real estate involvement whether as a full agency or a consultancy, developers, planners, property managers and the like. Such a building would in itself provide the participating professions with the opportunity for co-operative joint ventures which could not only take advantage of the local skills of the individual members but also of any national linkings that the participants may enjoy.

We are now getting away from the traditional concept of legal practice as a service orientated profession offering advice in reaction to client's needs. In this concept general legal practice is becoming a pro-active business anticipating and capitalising on opportunities, developing new services or products and marketing those new services perhaps to create a demand amongst their client base.

Can I give you three examples of such developments that my own Lawlink Group is currently pursuing.

Insurance

It has been common for many years for individual legal practices to hold one or more insurance agencies which they have used to write fire and general insurance cover for their clients. Often the major source of such business has been the mortgagor client seeking finance through the solicitor's nominee company. This has been a captive market and the solicitor has been able to insist on the placement of insurance through the agency in return for the provision of finance.

That practice is now frowned upon by the Commerce Commission, but in any event, solicitors must really question whether they are fulfilling their ethical responsibilities to their clients by inflicting on them an insurance cover which may be neither competitive nor adequate for the client's needs. The formation of the Lawlink group has, after negotiation with some of the insurance companies, allowed its individual members to take advantage of the agencies previously held by other members of the group so that the clients of each of our firms can now be offered a wider range of choice without affecting the commercial benefits accruing to the practices.

I still question though, whether or not we are competent to advise clients properly on insurance matters. Therefore, the next step, which is currently being undertaken, is to form an association with a major insurance broking house. Through the expertise and resources of the broker the individual firms are then able to maintain specific information on the products offered by each insurance company, including the cost of premiums, and offer to their clients far more detailed information about each policy, so the client can make a more selective and educated choice. In the commercial field and for more difficult types of insurances the broking firm undertakes the responsibility of dealing directly with the client and securing the best possible package for the client's needs.

This is an example of a genuine joint venture from which all sides derive benefit. The client is no longer trapped into a situation of having to accept an insurance cover he may not want simply because the solicitor is providing him with finance. He is also offered a wider range of choice, and information which is probably more detailed than he would obtain for himself, to enable that choice to be made intelligently. For the broking firm, they have access to a wider client base which is obviously advantageous to them. For the legal firm, we have the satisfaction of knowing that our clients are being properly advised in this area and are getting a genuine advantage, while at the same time we are retaining the income derived from insurance commissions.

That is one example of a joint venture which has positive advantages for all participants.

Beyond that the opportunity exists to develop entirely new products in related fields. The recent joint venture between Lawlink and ACL in producing the Lawcare legal fees insurance package is an example of that. While we have some way to go before we are in a position to fully market this scheme and have so far adopted a relatively low key approach, it is selling steadily and initial development problems have been overcome. We expect the marketing of it to be stepped up shortly. That is only one example of opportunities that are available in this type of joint venture.

Financial Services

In New Zealand lawyers have for many years been a point of first contact with clients wishing to invest money. Because most lawyers enjoy the trust and confidence of their clients, they have come to control a significant pool of investment funds. Within the Lawlink Group our firms currently control total nominee company funds of around $200 million and in addition are presently holding around $75 million on behalf of our clients in various interest bearing deposit accounts.

For the most part, funds are invested locally, through the vehicle of the nominee company, in short term mortgages of land. In past years with a highly regulated economy this has been a very popular source of mortgage funding and obviously one that has been profitable to the lawyer.

With the deregulation of our economy and the proliferation of financial services we must now question whether that type of mortgage funding still meets the needs of either borrowing or lending client. From the lending client's point of view is the maintenance of a single pool of funds to be invested locally a sufficient avenue for that client's investments? Are our traditional ways of handling nominee companies flexible enough to meet the requirements of either borrower or lender? What are the possibilities inherent in a national pool of funds?

The Law Society has been successful so far in keeping Nominee Companies subject to the control of our special legislation rather than having to meet the requirements of the Securities Act. Is this the right approach?

The Lawlink Group is currently looking at all of these questions and pursuing lines of enquiry that could well lead to some form of joint venture in the finance field with those who have an established expertise in this area. Whether such a move would bring us into conflict with current Law Society rules is hard to determine at this stage but certainly, it is not a factor that will prevent us from exploring possibilities in this area. The probability is that in the short term you will see at least a co-ordination of lending policies within the Lawlink Group, with our firms adopting common procedures, common forms, common policies and an exchange of information that will facilitate the use of a surplus in one area to help meet a shortfall in another. In the longer term there is every possibility of a more formal financial structure being developed, probably as a joint venture with some other organisation or institution.

Land Transactions

I have already touched on the moves towards deregulating conveyancing in this country and to a large extent many of those looking at the issue are influenced by developments in the United Kingdom. Most of you will be aware of the impact which recent legislation has had on conveyancing practice in England. Various institutions are now permitted to undertake a conveyancing service and the range is still being expanded. We have also seen legislation introduced to provide for licensed conveyancers who are not Solicitors.

The impact on many smaller practices in England has been quite serious. There, as in this country, conveyancing was responsible for a major part of their income. As a response to these developments English Solicitors have been forced to seek some way of protecting their conveyancing market and in some cities Solicitors have co-operated in forming and controlling property exchange centres. Members of the public buying a house through one of these property shops have the opportunity of paying commission at a lesser rate as an inducement to sell their property through that agency, and the conveyancing is carried out by one of a panel of contributing Solicitors.

English Solicitors have been forced to react after the event. You may have read articles that have appeared in a variety of publications over the last few months suggesting that in this country Solicitors should anticipate the change in events and take advantage of whatever lead time we have to protect our conveyancing market.

It has been suggested that Solicitors should emulate their English cousins by setting up Solicitors Property Exchange Centres and, if you think about it, that idea is quite feasible. Within the Lawlink Group the electronic mail and computer linking facilities that we are presently installing, coupled with the computerised data base we are establishing at our national office in Wellington, would make it quite easy for us to exchange property information. A Solicitor in one town advising a client who is about to move to another could draw on the data base to provide that client with details of all properties available in the next town. Through the electronic linking between Lawlink firms the solicitor's colleague in the other town could arrange an appointment for the client to inspect such properties, arrange for valuations, surveys, planning advice, finance, insurance and whatever else was needed to facilitate the transaction.

The big draw-back to this scenario is, once again, lawyers would be getting involved in areas outside their own field of expertise. I am not convinced that, at this stage, there is either the need or the desire for lawyers to acquire skills in these other areas when the co-operative or joint venture approach

can offer to the client the best of all possible worlds. One should not underestimate the difficulties, but nevertheless the picture I have just painted is I believe a logical extension of those developments which have already taken place in the real estate world. It is the one stop shop where a vendor or purchaser can receive comprehensive advice and assistance on all aspects of the particular transaction. With the sharing of expenses, say, for example, the use of common computer technology, the parties to such a venture should be able to offer such a service at a truly competitive cost.

It is the one stop shop where a vendor or purchaser can receive comprehensive advice and assistance on all aspects of the particular transaction.

Those are examples of three opportunities currently being pursued by my own Lawlink group. For our part we are well down the track with the insurance arrangements. We are part way down the track with the financial services package, and, we are currently exploring which track to follow with the real estate package. They are examples of just some of the opportunities which exist for all of us. The development of modern technology coupled with a more adventurous spirit resulting from changing attitudes in our communities and professional associations, means that the scope for professional firms to widen their horizons and to diversify into other activities is there for those willing to take them.

DEPTH TABLES

2. Application

By Munroe L. Graham

Munroe Graham Dip.UV, A.N.Z.I.V., A.R.E.I.N.Z. has been a contributor to the Institute Journal on a number of subjects in the past, including landlord tenant disputes, the Trustee Act and shop rental valuations. The subject article results from continuing research on the effects of both frontage and depth on land value.
Mr Graham is Senior Valuer for a public firm operating from central Auckland.

The following is the second of two articles. The first titled `Depth Tables Construction' was printed in the March issue of the Valuer.

Standard Depth

From my previous article it was demonstrated that for a wide range of mathematical depth tables the standard depth adopted has a direct effect on the gradient of the depth curve. The *Jerrett* formula and its various derivatives are examples where this effect occurs.

As a consequence it is no longer possible as some text books would have us believe, to adopt a standard depth merely because that particular standard is a typical site depth for the locality. What is all important is that the depth formula be correct for the class of property under consideration. If one of the *Jerrett* family of tables is adopted then it is a simple matter to convert the formula to suit any particular alternative standard depth and the adoption of any particular standard depth must be governed by the following criteria:

1. The system must be fully metric
2. The standard must be convenient in terms of mathematical utility and should therefore be a whole number multiple of 10 metres.
3. The standard should be such that it is reasonably easy to convert values from a frontage and depth basis to a land area basis. This would assist the general public to understand and relate to the methods being used by Valuers, particularly as prices are usually quoted on an area basis by most developers, real estate agents and the media. Every attempt should be made to streamline and simplify valuation methods and to adopt methods which are compatible with computer programming and processing.

The first requirement is self explanatory as New Zealand officially changed to the adoption of metric weights and measures in 1972. It will be recalled that the change occurred not only because the system is international but because, if used rationally, the system is far easier to use and understand than any non-metric system currently in use.

As far as the second criterion is concerned, it is clear that the standard depth must be 10, 20, 30, 50 or 100 metres and a gradual move in this direction has been made since the conversion to metric measure. For example there is now a widespread acceptance that shop rentals be analysed to a 10 metre standard while other standards have tended to be near equivalents of original imperial measurements of 100ft, 132ft, 150ft and 165ft.

As a result, central city commercial land is analysed to a 30 metre standard, residential land to a 40 metre standard (except by the large institutions which have tended to merely make a direct conversion of the old 150ft standard to 45.73 metres for initial administrative simplicity, but with subsequent substantial operational difficulty). Fifty metres is the usual standard for industrial land, although the well known amended *Jerrett* 50 Table is in fact *a Jerrett* 100 metre table converted to a 50 metre basis (see article one on halving and doubling the *Jerrett* Formula).

The third criterion of ease of utility for the valuer and ready understanding and acceptance by clients and the general public is, I submit, best arranged by the adoption of a 10 metre standard depth whereby the value per unit area to standard depth is exactly one tenth of the value per metre frontage to standard depth.

Currently practising valuers may rebel against the need to convert all existing depth tables (except 10 metre tables already used for rental purposes) because the transitional period will require street units throughout a locality to be completely revised. Nevertheless with property inflation within the country at a high level it is necessary to revise street units virtually on a month by month basis already and this should pose no long term difficulty.

The concept which I am proposing is not new, as it was first proposed by *Somers* in the early part of the century when he submitted the adoption of a depth standard of 100ft with division of that depth into 10ft zones. This allowed for the ready calculation of merge lines and the assessment of both triangular and irregular shaped sites on a zonal basis. However, although his depth table (contrived, non-mathematical) gained widespread use throughout America and the British Commonwealth, his zoning methods were never widely adopted, possibly because he never went the extra step in proposing the widespread adoption of a 100ft standard for all classes of urban land.

More recently in a series of articles to the New Zealand Valuer (see bibliography), I proposed the adoption of a 10 metre standard for shop rental Valuations and i am pleased to see that the advantages of that system have been accepted by the University system and its students, although as would be expected, many existing practitioners are slow to change

from the rituals of a past age.

The adoption of a 10 metre standard has a number of operational drawbacks, the first of which however would be seen as a drawback only by existing practitoners.

Firstly, there is unfamiliarity with the concept of dealing with initially different street units and unusually high depth factors by comparison with those currently in use.

As noted above however, time is the healer of this type of ill, although bearing in mind the lengthy period during which the change to metric has been embraced by the profession and public, a new generation of valuers will probably be required to effect a full conversion.

Secondly, apart from the case of shop rentals where 10 metres is clearly a convenient depth typically encountered in most commercial areas, it is an unusual depth for land transactions and in fact for virtually all classes of land the true value of the site at this particular depth is very much in doubt. Some might therefore question the adoption of such a standard depth in these circumstances. Historically, Valuers have been taught to adopt a standard depth as near as possible to the depth of a typical site in order that variations of value for shallower and deeper sites can be judged. Please note however, that a depth table is merely a mathematical tool and as with any tool, utility must be the main criterion for usage.

I would also mention that because land value at a depth of 10 metres is so much in doubt and a depth of 10 metres is far from an average site depth, it is difficult to judge the merits of one depth table against another without being able to compare deep and shallow sites with a site of average proportions. I have for example adopted a 30 metre standard depth in presenting by way of general comparison, Tables ,4 and 5 to illustrate that one particular table would be relevant in Auckland for residential purposes (see below). This is one instance where the adoption of a standard other than 10 metres gives practical benefits in presentation and understanding. Such a situation however has little to do with the application and use of a particular depth table once it has been decided upon and it is in the application of the system that I recommend the adoption of a 10 metre standard for the following reasons:

1. There is a clear and simple relationship of frontage value with site area value with value per metre frontage to standard depth, being ten times the value per square metre at that standard depth.
2. Value per square metre can be calculated exactly if the unit metre frontage rate is known and if site depth is known. Effectively therefore a depth table dealing with values per unit metre frontage is also an area table dealing with values per unit area.
3. As *Somers* discovered when he adopted a standard depth of 100ft and divided it into 10ft zones, the 10 metre table produces convenient 10 metre deep zones where value per unit area is easily calculated and this in turn assists greatly in calculating the value of irregularly shaped sites, for example triangular shapes and in calculating the position of merge lines where sites extend between two streets. I might also add that with *London* and *Jerrett* type formulae, merge lines could be calculated exactly if required.

The First 10 Metres

As noted above, there is often some doubt as to the value of the first 10 metres of a piece of land and there may be instances where it might be appropriate to adopt a reduced level of value either over this particular depth or over the distance back from the street frontage to any building line and to apply the depth table to land beyond the front building line. There are cases for and against the adoption of such an approach. Please note however that the value of the last 10 metres of depth can be transposed and given to the front 10 metres of depth, or values may be transposed for any particular shorter depth back from the street where low values might be thought to exist. Looked at in this light all sites could be said to have low value at the street frontage built into the depth table.

Tables 2 and 3 illustrate the concept of zoning and it will be readily apparent that there is a direct and easily understood relationship between frontage value and value per square metre overall.

Tables

Readers will recall that in Table 1 some of the infinite variety of possible *Jerrett* type tables were presented and of these some have been selected and presented as Tables 2 and 3 for application to various types of Auckland real estate and others can be adopted for use elsewhere in New Zealand. I set out below some brief comments concerning the tables which accompany this article.

Table 2

Two tables with direct application to shop rental assessment are presented under this heading, the first being the well known *London* table shown in 10 metre depth standard form, while the second is an alternative which would appear to be more appropriate for use in many parts of Auckland and elsewhere as it gives greater value at intermediate depth, being *Jerrett* 30 converted to a 10m standard.

Table 3

Again two separate tables are presented under this heading, the first being suitable for single residential application i.e. sites where value is to be ascertained on the basis of single household usage rather than on the basis of apartment development potential. The table is considered suitable for use in the Auckland suburban area and has been chosen from the *Jerrett* family because for sites between 30 metres and 60 metres in depth it gives values in line with market evidence, reasonably in line with other tables which have been adopted in the locality and reasonably in line with tables adopted for similar residential purposes in the United States of America (see tables 4 and 5).

The other table coming under this heading is the industrial table used within the main industrial estates in the Auckland area and it is also very similar to the industrial depth tables in use in the Wellington area. This table has been known in Auckland under the name *Amended Jerrett* 50 which is of course *a Jerrett* 100 table converted to a 50 metre depth standard. I have merely taken the *Jerrett* 100 metre table and converted it to a 10 metre depth standard.

Table 4

This table was developed in conjunction with Table 5 in order to develop a table suitable for the assessment of residential land in the Auckland area, as existing tables used by public institutions and private valuers currently all have serious short-comings. The tables are each headed by a letter from the alphabet which due to lack of space, corresponds with the name of the table in accordance with the following schedule:

A 4321 (40m std)
B Somers 30
C Jerrett 30
D McMahon (Pittsburgh)
E Lindsay Bernard
F London (Harper, Edgar, Reeves)
G Hoffman
H One Third, Two Thirds
I Hobbs (Muncie)
J Davies
K King
L Janssen
M Leenhout
N Chicago
O Illinois
P Millwauke
Q St Paul
R Newark
S Denver
T Los Angeles
U Cambridge

Tables N to U inclusive as well as some of the other tables are derived from basic originals including Tables A, B, C, F, G and H.

Table 5

It is an interesting fact that of the major institutions assessing land values in the Auckland area at the present time, all are pre-metric in their thinking and none have developed a post-metric depth table. Under this heading the first three tables presented, namely *Somers, London* and *Jerrett* are presented for general comparison and because they have been the basis for most American depth tables produced during the first half of the century. The table *N.Z.I.V* is the one published in the text book Urban Valuation in NZ (volume 1) Jefferies.

Many valuers and valuation firms in Auckland use this table or a near equivalent. The tables headed *AKI, AK2* and *AK3* have all been developed by the Government Valuation Department, the first two under the designations *Auckland number* 2 developed during the 1950's and late-1960's respectively while I have given the designation *AK3* to an experimental table being considered by the Government Valuation Department. *AK2* is the table published under the name of the University of Auckland which is currently in use by the Housing Corporation. The table headed *ACC* is the table currently in use by the Auckland City Council and is substantially the same and obviously derived from the original *AK1.*

Clearly, the major institutions in Auckland and most private valuers are in quite wide disagreement as to the level of values to apply to both moderately shallow and moderately deep sites within the 20 metre to 60 metre range. It is for this reason that I have undertaken some research drawing on my own market experience and taking account of comparable depth tables which have been used in the past in America in choosing one which was *a Jerrett* based table, in this case *Jerrett* 20 converted to a 30 metre standard and shown in the right hand column. By comparison it can be seen that the table fits easily within the extremes of value typical of the American tables, and as would be expected values are within the upper range up to 100% and within the lower range beyond 100%. Bear in mind that the table is for single residential use where backland is of limited value whereas some of the American tables have been used in apartment block localities.

The proposed *Auckland* residential table designated J20/10 or AJ10, this time converted to a 10 metre standard depth is shown in Table 3 in the form in which it would be typically used. This depth table could be used in higher value suburban areas in various other New Zealand cities and towns. It is likely however that an alternative giving less value at depth will need to be adopted in smaller townships, perhaps *J18/10* or *J15/10.*

A recent study of half site transactions and the requirements of undertaking strata title apportionments, shows that for depths below 30m the proposed *Auckland* table is more accurate than any of its predecessors. In assessments of this type it is most important to adopt a correct frontage reduction table. With narrow sites it is also necessary to consider the effects of side yard building lines, and as with all land, which is three dimensional in its development potential, it is necessary to consider height limits. In the case of apartment development sites it is necessary to superimpose one depth table on another ... but these matters are another story.

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Urban Land Appraisal (Welch)
Urban Valuation in NZ, Vol 1 (Jefferies)

Massey University
(Alive and Well)

The progress of property education at Massey University has led to a number of major changes that will take effect in the 1988 academic year.

The BBS course commenced in 1979 with only a handful of students and even less staff members. 1987 has seen some 270 students enrolled in second year papers and almost 100 at the third year and over level. These numbers include both internal and extramural students. In addition there are some fifty students studying Valuation in the B.Ag. and B.Ag.Sc. degrees.

The Business Studies Faculty has recently been restructured. This restructuring has divided the Faculty into six separate departments (previously it was two). One of the departments will be known as the Department of Valuation and Property Management. It wil consolidate the teaching resources of the Ag Hort and Sciences Faculty and the Business Studies Faculty into a single department that will be responsible for teaching Valuation and Property Management in the B.Ag., B.Ag.Sc. and BBS programmes.

Initially, staffing will comprise:

R. V. Hargreaves - Senior Lecturer
T. H. C. Taylor - Senior Lecturer (part-time)
P. M. R. Castle - Lecturer
C. Hawkey - Lecturer
1. McCarthy - Lecturer (part-time)
G. Dowse - Tutorial Assistant (part-time)

Further positions, including a Chair in Valuation and Property Management, are available and hopefully will be filled in the near future.

Currently Valuation and Property Management are separate majors (or concentrations) within the BBS degree. As from 1988 they will be combined into a single major. The BBS (Val and PM) will then comprise:

1. Eight core or introductory papers, including Accounting, Business Law, Computing Statistics, Business Studies, Marketing and Economics.
2. Ten required and compulsory papers:
   - 11.241 Real Estate Valuation and Management
   - 14.242 Applied Valuation I
   - 14.341 Property Management and Development
   - 14.342 Advanced Valuation
   - 14.343 Applied Valuation II
   - 14.215 or Valuation Law or
   - 14.212 Property Law
   - 38.213 Building Technology I
   - 38.313 Building Technology II
   - 45.231 Planning Studies
   - 77.212 Land Economics
3. Three elective papers to be chosen, individually, from any of the papers offered by the Faculty.

The University also offers an undergraduate Diploma in Business Studies with a Property Management endorsement. This diploma is available to persons who have work experience in the property section but do not have a `property' qualification. Students are required to undertake six papers from the list detailed above. More information on this diploma is available on request.

Staff of the new department believe that these are major and innovative changes that establish property education within the university system. They will allow a closer liaison with the industry and greater industry participation in the programme. In fact, with more emphasis on `user pays' principles, more direct industry involvement in education is looking like a necessity.

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Global Perspective of Property Investment And Australia's Position

By Idris Pearce

Idris Pearce is the United Kingdom Chairman of Richard Ellis. This paper was delivered at the PACRIM Conference in Perth in November 1986.

A Professor I know at a Scottish university starts off each series of his lectures with a prayer: "Lord, save me from intellectual arrogance, ... which, for your information means, .. .

Certainly, with the brief that I have today - that is, to talk about international property investment and Australia's position - there is a temptation to be arrogant, to be confident about global prospects, to pretend authority about investment in every cranny of the world in general and every nook of the Pacific Rim, and Australia in particular.

You will be pleased, and perhaps even relieved, to learn that I do not regard myself as especially well qualified to tell you very much that would be new to you about the markets you know well. Instead, I plan to offer you a few thoughts, one or two ideas, and some incidental facts and figures that might help you to decide how to tackle the property issues that will affect your Pacific Rim markets.

International Investments in Real Estate

ESTABLISHED PATTERNS OF INVESTMENT

As most of you will know, in my own country, the long-established tradition of property investment has gained in popularity since World War II. Over the past 40 years, the investors whom you and I know have become more sophisticated. In Britain, for example, they soon saw the value of diversifying their portfolios from equities into property. Then, once they had begun building up a portfolio of commercial office property investments, they decided to diversify further, into shops, shopping centres, industrial estates, hotels and leisure centres - and later geographically, into the EEC countries of Northern Europe, the USA and Canada, and other British Commonwealth countries, including Australia.

the investors whom you and I know have become more sophisticated.

FACTORS INFLUENCING INTERNATIONAL INVESTORS

The underlying motivations for property investment have been capital and income growth, and to create a hedge against inflation - that is to diversify investments as a means of spreading risk. Originally, British investment institutions were worried about economic prospects in the UK. (In passing, I can tell you that some of them still are!) Abroad, they were attracted by the strength and constancy of overseas currencies: and they looked for national economies where the rate of inflation was low and devaluations seemed unnecessary. By and large, investors were prepared to invest in countries that enjoyed political and economic stability.

Furthermore, the trustees and managers of investment institutions in Britain and elsewhere have always been keen on states where there is a favourable attitude towards overseas ownership of local land and buildings. Conversely, they have commonly avoided, or even quit, places where xenophobia has been translated into laws and regulations that are hostile to foreign owners. I have in mind, for example, the attempt in Oklahoma to legislate against unAmerican enterprise in the land market. Even here in Australia, your Government has at times made life difficult for investors from overseas.

In the past, institutions generally have been willing to move their real estate funds into a country that has a well-established construction industry, and a legal framework that will allow a sound property market to develop. These factors are still relevant. Similarly, when diversification is considered today, national economic and political strengths continue to be highly important in deciding where and when to make foreign investments.

However, institutions are now looking more critically and analytically at property investments. It is not enough to seek security in land, bricks and mortar. Investors are searching globally for places where local markets and regulations will allow them to choose the time to buy. They are influenced by the availability of financial instruments linked to property, and the ease with which they can realise the value of these instruments.

Investment managers and their masters have also accepted that the currencies in which their holdings are priced will be volatile and variable. This acceptance has led to pressurised decision-making - to an environment in which managers are duty bound to take every advantage of shifts in market values and foreign exchange parities - a trend that is likely to become more pronounced in the global investment and money markets of the 1980s, where clients will want to choose their moment carefully to repatriate their earnings, liquidate their assets, or transfer their capital from one country to another.

These factors are equally important to many clients in the corporate sector where property is increasingly seen as a keen resource. There, parallel changes have already produced a shift of primary responsibility for property holdings away from estates departments or company secretaries into the hands of treasurers or finance directors. Corporate estates departments or company secretaries remain in charge of the low-level routines of rent and rates payments, and upkeep. But, today, the chief finance officers have become concerned with what property interests the corporation owns; how its holdings (and improvements in them) are to be funded; and the steps that can be taken to enhance the performance of these fixed assets.

more corporate clients are now treating their properties as portfolios of financial assets,

In other words, more corporate clients are now treating their properties as portfolios of financial assets, the management of which can substantially improve the performance and

liquidity of operating divisions and the enterprise as a whole. So we are seeing a shift in emphasis among corporations and institutions towards sophisticated and strategic financial management of their international property assets.

THE AUSTRALIAN MARKET

Moving now to the Australian scene, I am reminded of a Chinese curse that I have been known to quote: "May you live in interesting times!" Certainly, Australia seems set to enter into interesting times. Tourism is about to become a national industry with substantial earnings, encouraged by the depreciation of the Australian dollar. And immigration is increasing. You will all have seen the figures which show that 37% of last year's 1.6% rise in the country's 16 million population was attibutable to an influx of people - helping to create large population centres that will sustain complex activities on a substantial scale. You will all be expecting that the numbers will go on rising, as families relocate from South Africa and other Pacific Rim countries.

In the Australian property market, one of the outstanding factors is your record of performance. Over the past six years, total returns achieved by investors have been 27%, compared with London, 14%, New York, 20%, and Tokyo, 8%. Over the past fifteen years, total returns have been 17.7% in Sydney, 18.7% in Melbourne and *x.x%* here in Perth, compared with 13% in London. As you will be aware, these figures approximate the total returns reported by major Australian funds on their portfolios of property investments.

On my visit here this week, I have been impressed by the way in which the America's Cup, and lately the PacRim conference, have stimulated a large programme of hotel building and refurbishment in this part of Australia. I have also been alerted to the major increases in public spending on your roads, the port railway, housing, telecommunications and the new yacht harbour.

Admittedly, this expenditure is modest compared with the amounts that countries such as South Korea are spending on facilities for hosting the 1988 Olympic Games in Seoul. Nevertheless, the changes in the local scene here are impressive. Given these changes, I suppose that the key issue will soon become - who will fill Perth's enlarged hotels and boost the local economy when the yachtsmen have sailed away. Maybe local spokesmen will be right and you will find that: "Many of these people will never have been to Western Australia before ... and will be pleasantly surprised". At any rate, Perth will be a centre that they know about and will surely want to visit again.

Globally, Japan is the country to watch. The Americans said it in October 1985, when the Real Estate Research Corporation showed, in a study prepared for the Equitable Real Estate Group, that foreign investment in US real estate - much of it from Japan - could reach US$10 billion by the end of 1986. Christopher Budden, one of my US partners, estimated that Japan's trading, investment, construction and insurance companies had committed more than US$1 billion to US real estate in the first seven months of 1985. This year, he tells me, they are spending at three times that rate.

There are several reasons why the Japanese are building up their portfolio investments abroad - for example:

- The Japanese economy boasts a huge dollar surplus, earned in export trade.
- The major institutions, following Japanse Ministry of Finance liberalisation of investment regulations, are turning to `capital investment', rather than redeploying all of their earnings in industrial growth.
- Land in Japan is in very short supply, and consequently very expensive.
- The cost of living is incredibly high - making it virtually impossible for some groups, such as retired people, to maintain a decent standard of living while residing in Japan.

For these reasons - in North America, Europe, and lately some parts of the Pacific Rim - we have been faced with the entry of major players from Japan into our real estate markets. To a degree, the moves reflect a drive to innovate. For example, some Japanese corporations are proposing to set up retirement villages for their emigre pensioners in low cost centres outside Japan - an enterprising solution to a social problem.

On the whole, the thrust into overseas property is new to Japan. Until about five years ago, Japanese institutions were forbidden to invest abroad. However, the Government, believing there is a need for Japan to win foreign exchange with the export of capital, has progressively lessened its controls, first on investments in securities and then property. At the same time, to pave their way abroad, the Japanese (in keeping with the policy of reciprocity) have removed restrictions on foreign companies investing in Japanese real estate.

Aware of these trends, professional advisers in North America, Europe and the Pacific Rim countries have fixed their eyes on the billions of dollars held in Japanese institutional coffers, waiting for an attractive home. It may be helpful to you to know that Japan's direct overseas investments in all sectors (including agriculture, fisheries and manufacturing) totalled US$12.2 billion in 1985 - up 20.3% over the previous year. Investments in real estate (excluding construction) rose 2.8 times. Thus, from a base level of US$430 million in the 1984, Japanese investment in real estate abroad went up to US$1.2 billion in 1985, and it is rapidly accelerating.

Over the past four years, the Japanese have pumped some of these billions into the US real estate market. But the focus of this investment is shifting. Many Japanese investors believe they have reached the point where they have enough money invested in America. They are ready to look at other markets, for diversification. While Australia could not sustain a buying spree on a comparably massive scale, my partners here tell me that the country is in need of more investment capital, not just for development projects but to create greater liquidity in the established investment market. Institutions with mega-sized holdings would not at present find it easy to realise the value locked up in their assets.

Fortunately, the emphasis in economic relations between Japan and Australia is shifting from trade to investment. In principle, both sides have much to contribute. Japan's energy-conserving, hitech-oriented industrial structure should combine powerfully with Australia's abundant natural resources. Clearly, the Federal Government is well aware of the possibilities; and I gather that your policy-makers are seeking to improve Australia's economy by taking advantage of the external pressures on Japan to invest abroad. In line with this trend, Japanese companies already in Australia are considering increasing their equity shares in local ventures.

I know that Japanese firms looking for real estate investments are being attracted by the well-established investment market in Australia and by its performance. In Australia you have, of course, property trusts such as Westfield, Schroders, Stockland and the General Property Trust. In recent months, I have observed that the ratios of price to net tangible assets have shown a widening gap between these major trusts and their smaller competitors. The leaders have recently sold on an average 6.5% premium to estimated net tangible assets, as compared to an 8% discount for smaller trusts. Strong foreign interest in the Australian property market could well produce the next impetus in the property trust index. On the construction front too, you will be aware that Kumagai Gumi and other Japanese corporations have been stepping up their operations in Australia. In Europe they have tended to start off with joint ventures before launching out on their own, once they have acquired enough local knowledge and experience.

Pacific Rim Markets

My brief this morning is also to put the Australian market into the PacRim context. The task of preparing this paper has made me more conscious of the Pacific Rim countries as areas of opportunity, even (from a European stand-point) as lands of missed opportunities. By concentrating on markets that have international status and known stability, many of us have, I feel, lost out on prospects in high growth economies like Taiwan, South Korea and Japan. I do not underestimate the difficulties of operating in such countries. They are formidable. But the rewards could have been commensurate with the risks. Given the continuing promise of the Pacific Rim, perhaps we in Europe should be more aggressive in attacking these markets in the future, for, when we do, I am sure we will find that Australians are there ahead of us!

As those of you who attended the main sessions may have heard, the Pacific Rim comprises 34 countries and 23 island states scattered across 70 million square miles, They contain between them approximately 2.4 billion people, more than half the world's population. Collectively, they produce almost half the world's total wealth. The region has been immensely helped by the development and increase of transport and communications. Today, four out of every five air flights in the world are either going to, or coming from, or are internal lfights within the area of the Pacific Rim. We are seeing the emergence of one of the richest and most dynamic regions on earth - one which is already beginning to shift the balance of world power.

As to the riches of the area: the Pacific Rim possesses 21% of the world's oil resources, 63% of its wool, 67% of its cotton; 87% of its natural rubber; and 94% of its natural silk. Since 1979, 13 Pacific countries - the United States, Canada, Japan, Australia, New Zealand, South Korea, Hong Kong and the six ASEAN partners of Malaysia, Singapore, Thailand, Indonesia, the Philippines and Brunei - have between them accounted for more than half the world's total economic growth. Taiwan is the fastest growing economy in the world and South Korea expects to be the fifteenth richest country by the year 2000.

If California alone was an independent country, instead of an American state, it would be the seventh richest country in the world. Los Angeles is on the verge of replacing New York City as the busiest port in the world. More than one million jobs in manufacturing, service industries and farming in California depend on keeping its overall Pacific trade healthy. The State's international trade has trebled since 1970, and today accounts for more than 18% of its gross product, compared with 9% a decade ago. Not surpisingly, 75% of its trade is with countries around the Pacific Rim; and, nowadays, more than $10 billion in wages, $4 billion in taxes and $5 billion in business revenue rely on California's trade with the Pacific countries.

Taking a long-term view, you can expect that Japanese research and development, Japanese sales drive and Chinese raw materials will all be backed by a labour force drawn from the population in the People's Republic of China, which will have risen by the end of the century to 1.2 billion people. No wonder the Pacific Rim exudes confidence in the future. No wonder this confidence is altering the skylines of financial centres throughout the region.

JAPAN

Property markets in countries around the Pacific Rim demonstrate this exuberance. In recent years, Tokyo has emerged as a major world financial centre, and the relaxation of rules has made it somewhat easier for foreign banks, investors and professional firms to consider moving into the traditionally difficult Japanese market. Certainly, the growth in the financial sector has made an impact on property markets there - although the obstacles to entry remain formidable. For example, in Tokyo, the National Land Agency's annual survey of land prices published earlier this year underscored once again why foreign firms find that the cost of doing business in Japan often defies comprehension by executives at the home office.

Commercial land in Tokyo rose in value by an average of 20% last year. The biggest one year increases in land value - more than 60% - were recorded in the Nihonbashi section, where the Tokyo Stock Exchange is located. The National Land Agency cited the recent influx of foreign firms as one of the causes of the drastic rise. In two years, the value of land in this area doubled; and Japan's National Land Agency has projected that, by the year 2000, at least 378 million square feet of new office space would be needed in Tokyo - the equivalent of 250 new 6-storey buildings - with no hope of finding available land for them. Lately, Shinji Fukakawa, the Vice Minister at the Japanese Ministry of International Trade and Industry (MITI) noted that the market price of all land in Japan, a country smaller than California, adds up to twice the value of all land in the United States.

NORTH AMERICA

Meanwhile, places as far away as Los Angeles are promoting themselves as `the financial capital of the Pacific Rim'. The city intends to entice foreign companies by smoothing obstacles in the planning process that drive foreign investors away, and by making sure that Asian firms know how to do business with the local government in Los Angeles. Many of you will know that some Australian institutions have heard the message and are themselves investing in California, or in places such as Vancouver which are also expanding.

CHINA

As I have already indicated, it is equally important to bear in mind the long term prospects of China, and the vast potential of some form of investment there. At present, these are limited by various problems. Chief among the headaches of foreign investors in China are the problems of dealing with a Byzantine bureaucracy - identifying the best department to deal with, arranging meetings. One commercial attache advised businessmen to request appointments one or two months in advance during the busy spring and autumn seasons. Furthermore, corporations which maintain expatriate staff in China are experiencing soaring costs. Monthly office rents in one of Peking's four major Western-style hotels - where most companies operate - are US$11.80 per square foot, more than double the rate in London.

You may also want to note that, despite China's recent efforts to publish commercial laws, businessmen still complain that Chinese partners cite binding `internal' restrictions without disclosing the specific rules in question. Nevertheless, as part of its financial reforms, the government freed Chinese enterprises to issue and sell stocks and bonds two years ago for the first time in China's post-revolutionary history. The policy was designed to encourage firms to use stock sales to raise capital, reducing the financial drain on state coffers and encouraging people to Save.

China plans to set up stock exchanges in a few of its major industrial cities, thus becoming the first Communist country with a Western-style exchange. Foreign bankers say the southern city of Canton, not far from one of Asia's most important money markets in Hong Kong, seems the most likely choice for China's stock market. China has authorised the sale of securities as an experiment in thirteen provinces and major cities, and set up regional centres to handle the sale of stocks and bonds. A secondary securities market has already appeared in the coastal city of Shanghai, where the nation's first dividend checks were issued to 18,000 stockholders earlier this year - a development that augurs well for the future of other capital investments in financial instruments and even real estate.

In line with this trend, you may care to note that, in July this year, the official Chinese newspaper, *Workers Daily,* reported the first factory bankruptcy since the 1949 Com-

munist revolution - an instruments factory in the north-eastern city of Shenyang was the first city in present-day China to pass bankruptcy regulations, in line with the economic reforms introduced since 1979 by the 82-year-old Chinese leader Deng Xiaoping, aimed at making firms responsible for their own profits and losses.

OTHER ASIAN CENTRES

Elsewhere in Asia, there are many other countries offering long-term growth opportunities, including Indonesia, Malaysia and the Philippines, as well as South Korea, Taiwan and the established financial centres of Singapore and Hong Kong. For the present, Singapore tends to be down-rated because of its economic problems. Malaysia suffers the difficulties of a divided community and dependence on commodities such as tin and rubber that are under pressure in world markets. And Hong Kong is faced with uncertainties after the lease of the New Territories expires in the late 1990s. But the resilience and the growth prospects of all these Pacific Rim economies will, in my view, merit the closest attention in the years to come.

AUSTRALIA'S OPPORTUNITIES IN PACIFIC RIM MARKETS

In Australia, there has been a combination of events which could attract foreign property investors - at any rate, those with nerve. The Australian dollar has been unstable and a declining currency; the end of July saw the introduction of new guidelines for foreign investment in property which virtually removed previous restrictions; and, in August, there was political acceptance that the sub-continent was in deep economic trouble. Perversely, the attractions of real estate stand out at a time like this: high yields; favourable exchange rates and the relaxation of the Foreign Investment Review Board guidelines will heighten foreign interest in Australian real estate.

The abolition of the Australian equity participation rule is already making an impact both on developments and on the built investment market, where foreign investors can now acquire a 50% interest in existing prime investments. The long term investor is being encouraged to buy, hold and introduce a substantial element of equity capital from overseas into Australian investments. Given these changes, Australia is well-placed to provide a Pacific Rim springboard for European investors and traders. The federal government has moved to develop export strategies designed to turn its geographical and cultural position in the region to economic advantage. From the standpoint of an outsider, the most important developments were the floating of Australia's national currency, allied with the relaxation of the FIRB rules and government action to break down the system of tariffs and quotas. If investors abroad perceive that these developments are accompanied by industrial peace, longer-term prospects will be greatly improved.

Given these circumstances, Australia should continue to receive the lion's share of investment by majority-owned foreign affiliates of US companies in the Asia-Pacific region. The 778 US subsidiaries in Australia are owned by 681 parents and represent an investment of US$9.2 billion (A$15.3 billion). There are 10,000 agency agreements and an estimated 2000 licensing agreements between US and Australian companies. Of the US$5712 million planned for investment by the end of 1986, Australia is to receive 29010, with Indonesia getting 23%, Japan 18%, Malaysia 7% and Hong Kong 6%. Australia will receive two thirds of the total increase in the amount invested.

FINANCIAL SERVICES

In the future, these various tenants, investors and developers can be expected to generate an increasing demand for real estate and for professional services not only in Australia but throughout the Pacific Rim. Over the same period, with Australia moving fast into mega-sized development schemes, their ownership will increasingly become carved up among a number of investors, as a single purchase would not only be too much money for most but would also tip the balance of many portfolios. I am also well aware that you are considering various forms of unitisation or securitisation here in Australia to deal with this liquidity problem. The recent easing of the FIRB rules should help this process and encourage innovation.

Prospects for such innovations need to be considered in the context of the growing sophistication of international investors - a sophistication that is emerging from the deregulation of securities markets thoughout the world. Deregulation, in my view, has been born of realism and nurtured to practical effect. As a result, we are now seeing the development of well thought out responses to the liberalisation of the world's financial markets. The new freedoms are linked to much greater mobility of capital, and already to fiercer rivalry between New York, London and Tokyo. Other Pacific Rim financial centres are gearing themselves up to compete day-to-day in the international marketplace.

To be specific financial knowledge and expertise are now being applied to investments in property and to the creation of new forms of instrument that suit the newly liberalised and internationalised financial markets. During the late 1970s and the early 1980s, attitudes towards property shifted in the United States, the UK and Australia. For institutional investors, the focus had been on performance. But developments were taking place in the corporate sector: innovative financial instruments were evolved that offered important advantages. Large-scale financing linked to real estate assets could be syndicated to minimise the exposure of any one institution. Borrowers could be offered useful cash flow and often tax benefits. And funders could make use of financial instruments designed to satisfy the key requirement of the decade - for liquidity.

financial knowledge and expertise are now being applied to investments in property

The transformation promises to be revolutionary. Traditionally, real estate has been illiquid - a long-term investment in physical assets. In today's markets, real estate is coming to be treated as a financial investment that can offer short-term liquidity of considerable potential. What the financiers see is not land or a building, but an asset backed by flows of income. Admittedly, the asset is a property interest rather than a quoted trading company. Nonetheless, when a real estate asset is acquired, what the investor buys are essentially income flows and an influence on the management that generates those flows. You might be personally impressed by the design of the building, or the quality of its location, or be attached sentimentally to the ownership of land, but basically you're in it for the money - and, if you're not, your bank is!

When you take this view of property, it seems entirely logical to create marketable, syndicated interests in a single asset (or part of an asset), and then to trade these equity interests in the form of securities. Many of you will be familiar with the securitisation of debt. The technique is well known of raising a mortage on a property and creating bonds (or debt interests) that can be linked to the financial benefits of the mortgage and then traded. This approach allows the owner of the property to retain a large part of its equity value. What we are now seeing is the creation of equity interests in single properties - an essentially more complex procedure, but one

that has already been tackled in Australia, circumvented in the United States, and is being developed in sophisticated forms in the UK.

Thus, the basic idea behind the various proposals for securitisation and unitisation is to introduce greater liquidity to the property investment market by breaking up lump investments into smaller pieces. The resulting securities would then be more saleable to investors and could be traded actively in a structured market. Clearly, caution is called for when innovating in this way. As you know, from time to time, narrowly-based property unit trusts and real estate invesment trusts have caused problems for their owners and operators. But the environment has changed with deregulation and liberalisation of financial markets. There are now fresh opportunities to bring to bear skills and know-how from the corporate finance market - a trend that will lead to far-reaching changes in the techniques and the technical resources employed by property professionals for whom it is both a threat and an opportunity. The concept of the surveyor and the merchant banker walking hand in hand and fighting tooth and nail is something we must learn to accept.

Some of the early devices have been prompted by a desire to do deals rather than a drive to develop a new and well-structured real estate market. For example, we have seen in the UK and the USA the funding of developments by a variety of financial instruments - novel forms of debenture and bonds; ingenious new methods of off-balance sheet financiing; raising of unsecured capital in the Eurobond market; and the layering of mortgages, deep discounted bonds, preference shares and ordinary shares as an efficient means of raising non-recourse capital. In the process, a whole new jargon has emerged, which we need to understand and be able to apply.

Underlying the tactical changes are strategic moves to securitise investments, to create financial instruments in real estate - moves that are being supported by the Stock Exchanges, which already have mechanisms to make markets, to regulate dealing, to manage procedures and settlements when securities are traded. In the UK, dealing in property income certificates, a form of security, will start on the London Stock Exchange early next year as the first step towards the creation of a new property financial market. Until recently, the Stock Exchange has resisted owning no more than one building. The notion of a solitary egg in a single basket was too much for the risk-averse folk in Throgmorton Street to contemplate. But not any more. Unitisation has become an acceptable solution to the illiquidity of large property holdings.

In practice, this new property financial market is likely to require a variety of different vehicles to cater for different investment needs - in the interests of providing this liquidity - and it is likely to be based not on property companies but on single buildings or developments, such as shopping malls or business parks.

I have already mentioned briefly the concept of property income certificates, known as PINCs, that have been devised by Richard Ellis with County Bank and ANZ Merchant Bank. Trading is expected to start next year. PINCs will be traded in the form of securities with two elements. The first is the certificate that entitles the holder to a portion of the rental income from the property. The second is a share in the management company created to control the single property open to investment, and to collect the rental income for distribution.

Overall, these new investments in the UK and other financial centres will bring a greater degree of liquidity to the property market generally if, as expected, PINCs and similar investments find a ready demand from end-investors. The vendor could then sell more in the market. The expectation is that by setting up a market that is well structured and organised, and introducing the magic ingredient of liquidity, the paper will trade at a lower yield (and thus a higher price) than the one implied by the initial placing price, which would be valued on a basis reflecting the poor marketability of oversized property. Some fear that the development of the market will be piecemeal rather than orderly and considered. Some critics are worried that the market will start too narrowly, on the basis of properties that are too few in number and too low in value. In reality, I can assure you that the assets in PINCs will be substantial properties of different types and yields, valued in the £30-50 million range; and it is likely that, within a year, the market will be based on perhaps 10 large property interests. In my view, it is essential for the market to grow in this way to encourage market makers, and to provide them with the opportunities and the prospects they find in other well structured Stock Exchange markets.

I might also remark, by the way, that the increasing scale of investment, which was one factor influencing the fresh interest in unitisation, also makes an impact on issues of professional liability. In many professions and walks of life, these issues have now reached the point where it is very difficult not only to predict liability losses, but even to separate fact from fiction in today's civil justice environment. For instance:

- A waiter in a prominent restaurant tells a customer who's undecided on his order: "I can't recommend anything, sir. I have a lawsuit on my hands right now."
- Another waiter in another restaurant insists that a customer who's about to depart with a doggie bag sign a form to absolve the restaurant from liability should the dog die.

Can you tell the difference - which is fact, which is fiction? The first incident is actually a cartoon in the *New Yorker* magazine. The second is now standard operating procedure at a Houston hotel.

Scale of activity also has an effect on other problems that arise, like fraud. I saw that, last year, an `entrepreneur' in the United States bilked 800 investors of US$1.8 million for property that included Caribbean swampland and real estate in Australia. He inflated the value of the property by almost 1500% to US$8 million and backed his claim with an `appraisal' from which he had deleted the most relevant information. Awareness of standards and care in checking out credentials are evidently becoming more important all over the world. I believe that we will require even more in the way of international standards, approved by the accounting and real estate professions, and implemented with the backing of strong bodies of opinion in every one of the world's financial centres.

Trends and Prospects for the Future

RESEARCH LEADING TO DECISIONS BY INVESTORS

Let me now turn briefly to other events and developments that are likely to make an impact. One I want to highlight is the growing demand for well-founded research on investments in property. The new international marketplace for financial services is attracting some very large players, many of whom have the analysts and technical resources to undertake sophisticated research. They have the capability to undertake forecasts for the property sector based on econometric models; and to carry out complex evaluations of financial instruments.

What they lack is the detailed technical knowledge and property market know-how that characterises the work of real estate professionals. But I see opportunities for our researchers to work with investment analysts in assessing prospects in the global money markets where technologies promise to annihilate space and time. Equally, I believe that we shall have to improve our information resources and our research capabilities to support proposals for the development of acquisition of property assets. Today's research scene

features databases, databanks and information management skills that can add new dimensions to our appraisals and our thinking.

Few professional firms in the real estate sector yet have the capability to carry out highly sophisticated industrial market analyses. But a fresh armoury of techniques will become more necessary and commonplace in the future. As you will recognise, these facilities depend on advances in information systems that will have an impact not only on the ways in which practices are run but also on buildings that clients seek to invest in, occupy or develop.

IMPACT OF TECHNOLOGY

You will also be aware of developments in technology. I have in mind the improvements in communications that have led some to liken today's scene to a global village. The more biblical are reminded of the text in *Daniel,* Chapter 12, verse 4, where it is written: *"Many shall run to and fro and knowledge shall be increased."* You will all have been told time upon time that financial markets are now free for all. You will all have seen row upon row of short-order yuppies taking their turn at their terminals. They gaze at their screens, jab at their keys, jabber down their 'phones; and they are keen to trade at a hectic pace as one market closes and another opens.

Millions of dollars have been piled upon more millions, so that it will all work. As a result, data should flow, without let or bar, from point of origin to point of use. Every electronic query should evoke an electronic reply (even if it is only *"Wait!".)* Anyone who wants the latest figure or an up-to-date fact should be able to have it with no delay. The main action is now in the biotech hives of the Exchanges. There, busy and angry bees buzz whenever they, or their systems, fail to produce the honey. They all hum like frantic Red Queens, who need to keep going as fast as ever they can - just to stay in the same place.

When you ask them what is new, they speak of bits and bytes and bauds; and they dream of buying and selling megabucks in nano-seconds. In spite of the sellotaped programmes and the technical hitches, many of the market makers have a touching faith in the new technology. You can see that the old order is passing. Lines have now been drawn up for a fresh battle. The massed forces of the new alliances are already struggling to build and defend a large share of their markets, while others are striving to find and hold their own niches in the same marketplace. We are entering an age in both financial and property markets when my byte will be my bond.

Of course, there are many views about this future. Some are sure that they can shape it to their liking, and want its coming to be soon. Some exalt it as a heaven, even if they do not want to reach it yet. Some claim to have been there already, and say that it does not work. A few - today, only a very few - see no need to worry for, if they close their ears and eyes, it will go away. And then there are the rest of us, we who feel that the years ahead could well be a time of change, a time of doubt, risk and fret, a time of future shock.

A GLOBAL PERSPECTIVE

I have been asked to offer you a global perspective. I have tried to do just that. To sum up, I believe that real estate professionals are facing a time of change, a time of shock, a time when there will be great risks but even greater opportunities. In the 1990s, we will see a continuing growth in the amounts of parched money looking for a temporary watering hole. The mobility of money and the internationalisation of investments will cause fund managers to switch and shift their assets overnight to gain fractions of a point. There wll be frauds and collapses that will threaten confidence. There will be a drive for liquidity that will change the face of property investment. There will be immense pressures to innovate. There will be pressures to provide hard information and qualitative research at speed; and we will be expected to deal with novel.instruments and emergent markets in time scales that, today, we would consider impossible.

In my view, the risks, the pressures and the market openings will be brought into sharp focus in the Pacific Rim countries, which represent the world's markets in a microcosm. Here are the lands of opportunity, the untapped markets, the prospects untrammelled by the shibboleths of outmoded professionalism. And Australia is perhaps best placed of all the Pacific Rim countries to seize and make the most of these opportunities.

At this point in a talk, I usually recall a client of a friend of mine who practises law. She was a 79-year-old lady, who wanted to divorce her husband aged 85. They had been married for more than 60 years. When asked why she wanted a divorce after all this time, she replied "Enough is enough".

Mr Chairman, Ladies and Gentlemen, enough is enough! Thank you.

Legal Decisions

CASES RECEIVED

Notice of cases received are given for members' information. They will be printed in The New Zealand Valuers' Journal as space permits and normally in date sequence.

CASES NOTED

Cases `noted' will not normally be published in The New Zealand Valuers' Journal.

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

THE VALUERS REGISTRATION BOARD

IN THE MATTER of an Inquiry pursuant to Section 32(2) of the Valuers' Act 1948

AND

IN THE MATTER of charges under Section 31(1)(c) of the Valuers' Act 1948 against WILLIAM RAYMOND WRIGHT

DECISION OF THE BOARD OF INQUIRY
OF THE VALUERS' REGISTRATION BOARD

Members of the Board:	Mr R. P. Young (Inquiry Chairman) Mr D. J. Armstrong Mr P. E. Tierney
Counsel:	Mr C. P. Browne for the Valuer-General Mr M. P. Reed and J. A. Langford for Mr Wright J. B. Stevenson Assisting the Board
Date of Hearing:	7 November 1986
Date of Decision:	20 February 1987

This inquiry arose from a complaint by Marac Financial Services Group in respect of a valuation made by Mr W. R. Wright, Registered Valuer, of a property at 40 Fielding Crescent, Pakuranga, Auckland. The Valuation Report is dated 13 November 1985.

The complaint was initially laid with the General Secretary, New Zealand Institute of Valuers and is dated 13 January 1986. The Institute's Professional Practice Committee and Executive Committee considered the complaint and referred it to the Registrar, Valuers Registration Board with the suggestion that it be forwarded to the Valuer-General for his investigation in terms of Section 32(1) of the Valuers Act 1948.

The Valuer-General investigated the complaint and reported thereon to the Board in a report dated 8 April 1986. Further information was supplied to the Board by the Valuer General on 10 June 1986. Havng considered the Valuer General's report, the Board decided that in terms of Section 32(2) of the Valuers Act an Inquiry should be held.

By notice dated 4 August 1986, Mr Wright was advised of the Board's decision, the charges against him and the Board's intention to hold an inquiry on 10 September 1986.

The date of the Hearing was subsequently deferred and took place on 7 November 1986 when the charges against Mr Wright were read before the Board as follows:

1. It is charged that you have, in terms of Section 3l(1)(c) of the Valuers Act 1948, been guilty of such incompetent conduct in the performance of your duties as a registered valuer as to render you liable to a penalty or other disposition provided by that Act in that you, in compiling a valuation report dated 13 November 1985 in respect of a property at 40 Fielding Crescent, Pakuranga, grossly overvalued that property.
2. It is charged that you have in terms of section 31(l)(c) of the Valuers Act 1948, been guilty of such incompetent conduct in the performance of your duties as a registered valuer as to render you liable to a penalty or other disposition provided by that Act in that you, in compiling the valuation report described in Charge 1 above made a recommendation that the property was suitable and of adequate security for a first mortgage advance of at least $140,000, which recommendation was grossly excessive.

When formerly charged at the Hearing, Mr Wright admitted the first charge and requested that the second charge be withdrawn and not prosecuted.

The Board heard submissions on this plea from Mr Browne and Mr Reed and requested assistance from Mr Stevenson. On hearing the submissions and advice, the Board granted the application for leave to withdraw the second charge but in doing so, made it clear that the Board was not accepting that the mortgage recommendation was correct or acceptable.

The prosecution placed the Valuer General's report before the board, placed no additional material before the Board and made no specific submission as to penalty.

The Valuer General's report shows that Mr Wright valued the property in question on 13 November 1985 at $217,000, whereas other Registered Valuers have valued the property as at about the same time, at figures of $136,000 and $127,000.

In making his submissions on behalf of Mr Wright, Mr Reed advised that the first charge was accepted and advised that the Valuer General's report is not disputed. He made certain submissions with regard to the penalty, the principal ones being as follows:

(a) Mr Wright is a Valuer from Otaki who specialises in the Valuation of rural property, a field which is within his competence. He was asked to expand his practice into the field of residential valuations in Auckland and the valuation undertaken on 40 Fielding Crescent, Pakuranga was intended to be part of an ongoing involvement and not a `one off' situation.
(b) Information supplied to him in Auckland by Real Estate Agents and others encouraged him to place a high value on the 40 Fielding Crescent property, particularly having regard to the attractive sea views enjoyed from that property. He was further advised that the property was being sold for $180,000. Mr Reed submitted that, in hindsight, it appears that Mr Wright may have been `duped' by a `high flyer'.
(c) Mr Wright made an honest mistake and this is something that any professional person can do.
(d) The charge which has been admitted makes no mention of deregistration but refers to alternative penalties available in terms of the Valuers Act.
(e) Mr Wright has worked as a Valuer since approximately 1949, having completed a Rural Field Cadetship prior to that year. He has been a Registered Valuer since 1964 specialising mainly in rural and residential valuations since that date. He wishes to continue his rural valuation practice in the Otaki area.

Mr Reed submitted that it is appropriate that the Board be lenient in imposing a penalty.

Having heard these submissions, the Board later delivered its verbal decision, imposing a fine of $750.00. The Board's verbal decision also covered the following points:

Charge Number 1 is admitted and correctly so, since there is a serious error in the valuation figure and in other portions of the report.

Charge Number 2 has been withdrawn.

The consequences of the mistake could have been serious and it is fortuitous that, as far as the Board is aware, no damage or financial loss has resulted.

The case highlights the dangers inherent in undertaking valuation work outside the scope of a valuer's training and experience. We draw Mr Wright's attention to the provisions of Clause 3 (3) of the Code of Ethics and note with approval Mr Wright's intention to confine his valuation work to his rural practice in Otaki.

The case also highlights the need for valuers to resist the influence of high pressure `confidence men'. In the course of their professional work, almost all valuers are subjected to strong pressures and influences designed to produce a valuation at a level desired by the client. We would expect a valuer of Mr Wright's experience to recognise and resist such influences. It is no defence to say, "I was duped and set up". One of the reasons why valuers exist in a business sense, is to protect the public and other business interests from the designs and influences of confidence men. Independence and objectivity must be developed at a very early stage in a valuer's career and Mr Wright must be well aware of that.

Mr Wright has admitted that he has made a mistake. The Board accepts that any professional person can make a mistake and we have taken into account the submissions made by Mr Reed, Mr Wright's past record, and the manner in which the charge is drawn.

However, all of the above must be balanced against the seriousness of the mistake, the fact that Mr Wright was working totally outside his field of experience, and the fact that the public is entitled to expect an adequate degree of competence from a person holding himself out to be an expert in the field of property valuation.

The Valuers Act places upon this Board certain duties and obligations.

Taking all facts into account we therefore severely reprimand Mr Wright and impose a fine of $750.00.

R. P. Young
Inquiry Chairman

Dated at Auckland this 20th day of February 1987.

THE VALUERS REGISTRATION BOARD
IN THE MATTER of an Inquiry pursuant to Section 32(2) of the Valuers' Act 1948

AND

IN THE MATTER of charges under Section 31(1)(c) of the Valuers' Act 1948 against BRUCE ALEXANDER HALLIBURTON

DECISION OF THE BOARD OF INQUIRY
OF THE VALUERS' REGISTRATION BOARD

Members of the Board:	Mr P.E. Tierney (Inquiry Chairman) Mr D. J. Armstrong Mr M. R. Hanna
Counsel:	Mr G. K. Panckhurst for the Valuer-General
	Mr R. De Goldi for Mr Halliburton.
Date of Hearing:	24-26 February 1987
Date of Decision:	8 June 1987

This inquiry arose from a complaint lodged by the Development Finance Corporation on 13 June 1986 to the Registrar of the Valuers' Registration Board.

The Corporation's complaint was in respect of a valuation made by Mr B. A. Halliburton for a Mr C. R. W. Johnson who owned several properties at Dunsandel which in total comprised a farm, known as Irvindale Holdings, of some 292 hectares. The complaint which was fairly shortly stated was to the effect that Mr Halliburton had made a valuation of Irvindale Holdings at $1,708,000 which compared adversely with a 1 July 1983 Government Valuation of:

C.V. $1,215,000 L.V. $813,000 Imps. $402,000

and that inquiries made of the Rural Bank, the Valuation Department and local Valuers led the Corporation to the conclusion that Mr Halliburton's valuation bore little relationship to current market reality.

This complaint was referred to the Valuer-General in terms of Section 32(1) of the Valuers Act and on the basis of the Valuer-General's subsequent report dated 9 September 1986 the Board decided that there appeared to be reasonable grounds for the complaint and that an Inquiry should be held. By notice dated 3 October 1986 Mr Halliburton was notified of the Board's intention to hold an Inquiry and of the charges against him. These were framed in the terms of Section 32(l)(c) of the Valuers Act as follows:

1. It is charged that you have, in terms of Section 31(1)(c) of the Valuers Act 1948, been guilty of such incompetent conduct in the performance of your duties as a Valuer as to render you liable to a penalty or other disposition provided by that Act in that you, in compiling a valuation report dated 10 June 1986 in respect of the properties described collectively by you therein as `Irvindale Holdings, Dunsandel', grossly over-valued the said properties.
2. It is charged that you have, in terms of Section 31(1)(c) of the Valuers Act 1948, been guilty of such incompetent conduct in the performance of your duties as a Valuer as to render you liable to a penalty or other disposition provided by that Act in that you, in compiling a valuation report dated 10 June 1986 in respect of the properties described collectively by you therein as `Irvindale Holdings, Dunsandel', made mortgage recommendations which were excessive.

During the hearing Mr Panckhurst called evidence from the Valuer-General, Mr S. W. A. Ralston, detailing the steps taken up to the Inquiry, and from Mr L. S. Campbell of the Development Finance Corporation who deposed as to the steps he had taken on receipt of Mr Halliburton's valuation.

Mr Panckhurst then called two Valuer witnesses, Mr Hagan and Mr Oldfield. Mr Hagan is a District Valuer with the Valuation Department whose district covers Irvindale Holdings. He is a Registered Valuer with experience in Canterbury since 1962.

He valued the property subsequent to but without knowledge of Mr Halliburton's figure at $925,000. The only point that Mr Hagan was prepared to concede during a searching cross examination from Mr De Goldi was that the presence of seven titles could add a small sum for which he had not allowed. He firmly disagreed that there was any horticultural potential attaching to Irvindale Holdings citing the distance from Christchurch and the availability of similar properties closer to the metropolitan area.

Mr Oldfield is a self employed Valuer, Farm Management Consultant and Farmer with extensive experience in Canterbury since 1948. He farms 170 hectares at Dunsandel within three kilometres of Irvindale Holdings. His valuation made subsequent to Mr Halliburton's but without knowledge of his figure or that of Mr Hagan was $980,000. Mr Oldfield had made an in-depth consideration of the sales he quoted and impressed the Board with his extensive local knowledge.

He, too, was subjected to a lengthy and searching cross examination by Mr De Goldi but refused to agree that there was a marked horticultural value component in Irvindale Holdings. He did not agree that the seven titles increased the value of Irvindale to any major degree quoting distance and lack of demand for small lots as the main reason.

Both Valuers had done budgets on the subject property and both considered it essential to understand the potential income flows before making a loan recommendation. Both were of the view that debt servicing had to be considered before the amount that could be safely lent could be calculated.

Mr De Goldi for Mr Halliburton called three witnesses; Mr A. W. Smith an expert in horticulture whose evidence we shall consider later, Mr A. J. Stewart a Registered Valuer and Mr Halliburton. Mr Stewart has been a Registered Valuer for approximately 12 years and his practice covers the central Canterbury region. Mr Stewart was aware that previous valuations had been made but was not aware of their contents. He valued the property at the relevant date at $1,291,950. He considered that the seven titles did increase the value of the property but did not specify by how much and appeared a little confused when questioned on this aspect by Board members. He considered that the horticultural value was not highly significant.

it would be convenient to describe the property at this juncture and we have summarised the following description from the four Valuers.

Mr Halliburton

`Irvindale Farm is a particularly well known intensive irrigation mixed cropping farm situated on first class cropping soils at Dunsandel ... undoubtedly the availability of irrigation water is essentially the life-

blood of the unit or the existence of such a productive well and the buried ring main allowing for future diversification as time and opportunity permits, with perhaps some form of horticultural development being undertaken by successive farming generations upon the property over what are essentially first class intensive mixed cropping soils with horticultural potential ..."

Mr Hagan
"This is a first class mixed cropping grazing and fattening unit under intensive management. Generally the land is in good order although parts of light land detract. The improvements in the main are very good and need little maintenance and further development has been minimised.

Well situated in an area where this property will survive the hardships of declining returns high cost and interest bills and would attract buyers under most economic conditions."

Mr Oldfield
"In the category of a combined intensive crop and stock unit this is a desirable property. The location and access is good. Overall Dunsandel is considered to be a dryish district somewhat exposed to the northerly winds during the summer which no doubt provide desirable conditions for harvest but if these conditions commence early they can reduce soil moisture levels where even the use of irrigation is unable to offset the resultant high evaporation rates.

The property contains a series of separate titles and in the past this could be a distinct advantage. Now however because of commuting distances there appear to be definite limits to the demand for small areas in this location; the strongest contender for this type of unit could well be someone with preference for size and scope thus providing the desirable base for an economic farming unit under present day conditions of lower income prices and increasing costs."

Mr Stewart
"The bulk of the property falls into the soil type general classification of Templeton silt loam which is a well known highly regarded medium cropping soil particularly responsive under irrigation ... The property is able to be used for a wide range of semi-intensive uses given the predominance of excellent quality mixed cropping soils associated with spray irrigation facilities and the near new deer unit recently installed."

With some variations the Board which has not had the benefit of inspecting the property is being asked to consider an attractive well managed cropping farm of medium to good soil class in a saleable area within 40 kilometres of Christchurch. Only one of the four Valuers, Mr Halliburton, made any reference to its potential for horticulture and this reference which is shown above is not, in the Board's view, a very positive statement of any great increase in value due to that potential. We shall examine this matter later.

The following table sets out the various values canvassed before the Board and they are put in order of the highest to the lowest:

Table I - Summary of valuations. Valuation date - 10 June 1986. Area - 292.5872 ha.
Note: Values rounded off. Templeton and Eyre soils expressed as $per ha. value:

Valuer	*Market Value* $	*Land Value* $	*Improvements* $	*Templeton* $	*Eyre* $
Halliburton	1,708,000	1,019,000	689,000	4000/3500	1750
Stewart	1,292,000	740,000	552,000	3500/2700	900
Oldfield	980,000	649,000	331,000	2500	1300
Hagan	925,000	545,000	380,000	2500	1200

Mr Halliburton's valuation of 10 June 1986 was the second valuation of the property he had made and really flows on from a report he submitted to Broadbank Corporation and Mr Johnson dated 18 and 19 June 1985. At that time he valued the combined property at $1,621,000. None of the other Valuers had made a valuation at the earlier date and Mr Halliburton's valuation and shorter report on 10 June 1986 is really a continuation of the report and valuation he made in June 1985.

In his 1986 valuation Mr Halliburton gave some information additional to his 1985 valuation. This was to the effect that a new deer park had been established and a header shed built since 1985 and that these together with other minor works had increased the value of Irvindale Holdings by $60,000.

He also mentioned that adjustments had been made in relation to light land values and slight adjustments to heavy land values. In the final result he increased the market value of Irvindale Holdings by $87,000. No mention was made of any horticultural potential.

Mr Halliburton quoted three sales in an attachment to the 1986 valuation, the only sales mentioned in either of his valuations. The three sales related to areas between 20 hectares and 46.4 hectares.

We do not propose to traverse in detail the values ascribed by the various Valuers to the improvements. It is sufficient to say that a part of the difference in the value of improvements between the four Valuers revolved around the amount that should be allowed for the irrigation system on the property. Messrs Oldfield and Hagan ascribed a value of $70,000 to this item while Mr Halliburton was at $205,000 and Mr Stewart somewhere in between but nearer Mr Halliburton's figure.

What became clear during cross examination and questions from the Board was that when Mr Halliburton and Mr Stewart analysed other sales they were prepared to adopt a value of improvement level almost identical with the Government Valuation of Improvements but when they valued the subject property they valued the improvements substantially higher than that.

We refer to Mr Halliburton's schedule accompanying his explanation to the Valuer-General dated 29 July 1986 where the two sales quoted are analysed using an `Estimated price paid for Improvements' almost identical with the existing Government Valuation of Improvements.

Similarly Mr Stewart used the same level when analysing the two major properties, sales 1 and 2 at page 14 of his evidence.

By way of illustration the 1 July 1983 G.V. of the improvements is $402,000 which Mr Halliburton now values at $689,000 and Mr Stewart at $552,000. This has the compounding effect of increasing the analysed land value of the comparable sale and then when applying a higher level of improvements to the subject property of increasing the market value of that property. Mr Oldfield and Mr Hagan on the other hand used a level of improvements both in the analysis and the subject property that appeared to the Board to be consistent.

There was a number of sales quoted by the witnesses, most of them smaller properties and many of these closer to Christchurch. Most had little probative value but it became evident that there was one sale that had a pronounced effect on the thinking of each of the Valuers appearing before the Board of Inquiry and it would be expedient to refer in some detail to that sale and the conclusions that each of the Valuers drew. Table II sets out the salient details:

Table II - analysed *land values* and *paddock values*
Parties Maw Estate to Hart Area 324 ha. Location Methven.
Date 2/12/85
Price $1,555,000 including chattels

Valuers' Analysis

	Halliburton	*Stewart*	*Oldfield*	*Hagan*
Purchase price	1,455,000	1,455,000	1,555,000	1,455,000
Less chattels	40,000	100,000	100,000	Not itemised
Less finance advantages		191,000	-	
Less improvements	335,000 (a)	333,500 (a)	311,000	
Analysed land value	1,180,000	930,500	1,134,000	
Per hectare	3,638	2,868	3,500	3,457
Time adjustment to 10/6/86	None	None (b)	-20%	Not itemised
By comparison subject	4,000	2,700	2,500	2,500
Add irrigation	900	575	290	290
Paddock value (c)	$4,900	$3,275	$2,790	$2,790

Notes: (a) Mr Stewart and Mr Halliburton used the existing Government Valuation (1985) as the correct level for sales analysis.

(b) Mr Stewart adopted the sale date as `early 1986' and made no adjustment under this heading.

(c) FOR CLARITY, ONLY THE RATE USED ON THE TEMPLETON SOIL IS COMPARED.

Table III - Comparison of the level of improvements other than irrigation on Irvindale Holdings and the level of market values expressed in $ per hectare. Figures rounded off.

	Halliburton	*Stewart*	*Oldfield*	*Hagan*
Improvements	2350	1880	1130	1300
Land Value	3480	2530	2215	1860
Market Value	5830	4410	3345	3160

There appeared to be little between the Valuers as to the analysed land value of the Maw Estate at around $3,500 to $3,600 per hectare but their paths diverged widely from this point. Both Mr Oldfield and Mr Hagan considered that the Maw Estate represented a sale at the peak of a market that declined sharply subsequent to the sale. The property concerned, while further from Christchurch, is in what is regarded as a highly saleable locality and produces crop yields consisently higher than the subject property and without excessive reliance on irrigation.

Accordingly they believed that the Johnson property at the date at which they made the valuation was less valuable than the Maw Estate property even though it was closer to Christchurch and had the benefit of an extensive irrigation system.

The impression the Board gained from Mr Stewart's evidence was that the market was moving dynamically and that he took the date of sale of the Maw Estate at early 1986 as an indication that the market during the early and middle 1986 period had not altered and that the Maw Estate sale represented the depressed level of sales. He made no time adjustment between the date of the Maw sale and the date of the Dunsandel valuation. In cross examination he agreed that the rural property market could have dropped by 20% between the middle of 1985 when the Maw Estate sale was first negotiated and the date of the Irvindale valuation in mid 1986.

Mr Stewart's opinion is that the Irvindale property is worth roughly the same level of land value, $2868 at Methven and $3275 at Dunsandel. See Table II. The major difference between the two properties is the allowance for irrigation.

None of the three Valuers whose evidence we have so far discussed considered that the Dunsandel property had any great potential for horticultural use. Mr Stewart was prepared to give a greater weight to the number of titles into which the Dunsandel property is subdivided as representing a valuable consideration. While neither Messrs Oldfield or Hagan had made an allowance for this in their valuation Mr Hagan was prepared to concede in cross-examination that his valuation could be increased having regard to this factor.

We now come to the point where we consider Mr Halliburton's evidence.

Mr Halliburton's evidence as to market conditions at the middle of 1986 was that there was very little or no evidence of any drop in market values for good quality soils but there was a drop in values for light land soils. He considered the Dunsandel property came within the first category.

Mr Halliburton considered that the Maw Estate sale was one of the most important sales but distinguished the Dunsandel property as being closer to town, having the benefits of a guaranteed irrigation system, capable of being sold in several titles and having a potential for horticulture.

The latter aspect, i.e. that of horticultural potential, was canvassed at considerable length before the Board and the Board is indebted to Mr A. W. Smith of the NZ Horticultural Advisory Service Limited whose expertise and knowledge of the horticultural field impressed the Board. He gave evidence that the Templeton soils on the subject property were eminently suitable for horticultural crops and that he would advise prospective investors that this was a suitable type property. He did not express an opinion as to its value or a price he expected clients might have to pay. He had not discussed its potential for horticulture with the current owner.

While the Board considers that on all the evidence it has heard the Dunsandel property may well have had some horticultural potential it gains the firm opinion that while this was mentioned as a long term potential by Mr Halliburton in his 1985 valuation at the relevant date it did not form a major valuation consideration. Certainly the 1986 valuation made no mention of any increased horticultural potential.

The wording of the 1985 report which we have itemised above did not support the conclusion that the property was eminently ready for horticulture and that a potential, a substantial potential at that, existed above the level of the current cropping farm market which would place this property at a level of value considerably in excess of, for example, the Maw sale.

Judged on the evidence of the four Valuers placed before the Board it is of the opinion that the market value of the Dunsandel property at the relevant date was in the vicinity of $1 million. The Board prefers the valuation of Mr Oldfield to the other witnesses. Mr Stewart had too many inconsistencies in his evidence for the Board to adopt a level higher than that of Mr Oldfield. Even had the Board been persuaded to accept Mr Stewart's figure of $1,292,000 as the upper limit of value for the property there is still a huge gap between it and the $1,708,000 figure of Mr Halliburton. It was clearly established that the property market in July 1986 was weakening and there were uncertainties in the arable farming industry. Despite this Mr Halliburton increased his 1985 valuation of $1,621,000 to $1,708,000. To support this figure, he drew, in the Board's opinion, incorrect conclusions as to the relativity of the subject property and the sale properties quoted.

Mr De Goldi for Mr Halliburton submitted that the Court's decision with reference to the Valuers' Appeal Board versus Harcourt made it clear that the Board had to be satisfied beyond all reasonable doubt that the charges laid were proven. He submitted that the standard of proof must be so high that the provisions of Section 31 (l)(c) of the Valuers Act require deregistration if the findings of the charges were proven. He submitted that the standard of proof required was the standard of a criminal charge and that gross overvalue itself did not establish incompetence.

Mr Halliburton had, Mr De Goldi submitted, followed all procedcures and applied the results of his investigations to the best of his ability and that as the burden of proof is beyond all reasonable doubt it was an impossible burden of proof to show that Mr Halliburton was incompetent. He had acted correctly in all matters approaching and dealing with the valuation of the Johnson property.

To these submissions Mr Panckhurst agreed but submitted that Mr Halliburton's valuation which was approximately 50010 higher than the next highest Valuer of the four called indicated itself that this was a form of incompetence.

The dilemma facing the Board is one frequently met in disciplinary hearings. The defendant pleads that he or she has done everything correctly even if he or she arrived at an absolutely absurd figure.

In the Board's opinion it is not an answer to a case of negligence or incompetence to say that it was merely an error of judgment. The craft of the Valuer has so much individual judgment that if it was accepted it would be possible to answer almost any case by plezid-ing an error of judgment.

The Board is also aware of the much quoted *Baxter* vs. F. *W. Gapp & Co Ltd* (1939) 2 All E.R. 752 at 758, where His Lordship said:

> "It is, of course, quite clear that the mere fact that there is an over-valuation does not of itself show negligence. Gross over-valuation, unless explained, may be strong evidence either of negligence or of incompetence."

While the Board may be inclined to accept that Mr Halliburton followed the correct technical procedures, in the final analysis the Board considers that Mr Halliburton adopted a value level completely unsupported by the evidence available. To this degree it cannot accept that Mr Halliburton acted in a competent manner. It finds him guilty of incompetent conduct in terms of Charge No.l.

The second charge is often considered as a linked charge. Linked in respect that the mortgage recommendation is frequently expressed as a percentage of the Capital or Market value of the property. The Trustee Act 1956 in fact limits advances to a fixed percentage of the property's value.

Mr Halliburton did not do an income budget for the property but tagged his recommendation to the effect that it was made subject to the lender assuring himself of the property and borrower's financial viability.

This situation is frequently met under commercial conditions and while the Board considers it desirable to obtain financial details if they are available it cannot accept that Mr Halliburton acted incompetently by not undertaking such a study. He alerted the lender to the necessity of considering this aspect. Mr Halliburton also limited his recommendation to 50% of his estimate of the value of Irvindale Holdings. His total recommendation of $854,000 is less than the June 1986 market value.

For these reasons we find Mr Halliburton not guilty of Charge No.2.

It is with some regret that the Board finds Mr Halliburton guilty of the principal charge.

The rural property market in Canterbury during 1986 was described by all Valuer witnesses as extremely difficult to interpret. Mr Hagan thought the last two years to be the worst in his long career. It is therefore surprising to find a Valuer of Mr Halliburton's experience maintaining and even increasing the market value of a Dunsandel property between 1985 and 1986.

Mr Halliburton has an exemplary record in the rural valuation field and is well regarded and spoken of by all the Valuer witnesses called. This is his first appearance before this Board.

The Board is prepared to give considerable weight to these attributes and in the circumstances admonishes Mr Halliburton and fines him the sum of One Hundred Dollars ($100).

P. E. Tierney
Inquiry Chairman

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

C.P. No. 158/86

UNDER: the Arbitration Act 1908

BETWEEN: RICHARD ANTHONY DAWSON-WELSH and DINAH MARY DAWSON-WELSH

Plaintiffs

AND

HINO DISTRIBUTORS NZ LIMITED

Defendant

Hearing: 19 May 1987

Counsel: J. J. McGrath for Plaintiffs
C. P. Somerville for Defendant

Judgment: 3 June 1987

JUDGMENT OF QUILLIAM J.

The plaintiffs seek an order remitting the award of an umpire to him for fresh determination on the basis that he has made an error of law in arriving at his decision.

The plaintiffs are the owners of a property at Lower Hutt comprising a workshop and office complex and the defendant is the lessee of that property. The lease, which was originally between the predecessors in title of the present parties, was for a term of 15 years from 30 September 1984. That part of the lease which is relevant for present purposes provides that the property is leased -

> at a yearly rent calculated at the rate of Nine Dollars ($9.00) per centum per annum on the capital value from time to time which capital value at the date of commencement of this lease is TWO HUNDRED AND FORTY-FOUR THOUSAND DOLLARS ($244,000.00) and thereafter for the purposes of calculating such rent -
>
> (a) `Capital Value' or words to that effect shall mean the higher of:
> (i) the Total Capital Outlay as certified at any time and from time to time by the Lessor's Auditor, and
> (ii) the valuation of the demised premises obtained as at each revaluation date at the Lessor's request in the manner more particularly referred to in paragraph (c) hereof
>
> (b) `Revaluation Date' means the commencing day of the sixth year and the eleventh year of the term hereby created
> (c) The valuation of the demised premises shall be on the basis of a cash sale with vacant possession being given on settlement within sixty days thereof and shall be made by a valuer appointed by the parties hereto ..."

In order to determine the capital value of the property in terms of the lease as at 30 September 1985, which was the commencing date of the eleventh year of the term, the parties appointed Mr M. A. J. Sellars, a registered valuer, as their umpire. The umpire received written submissions from valuers engaged by each party and on 1 August 1985 delivered a written award in which he gave his reasons. He determined that the capital value of the property for the purposes of the lease was $637,000. The plaintiffs contend that, in arriving at this value, the umpire erred in law as to the basis upon which he should consider the matter.

In order to resolve that question it is necessary to set out the relevant parts of the award, namely:

> 2) Mr Smith assessed the capital value of the property on two bases; at $815,454 on a capitalisation of rental basis and at $855,740 on a replacement cost less depreciation approach. Mr Holmes also assessed the capital value on two bases; at $589,000 by his principal method of capitalising the net rental value and at $589,500 by his alternative method of assessing the replacement value (rather than cost less depreciation) of the land (as an occupied rather than vacant site) and buildings.
>
> 3) The Lease refers to the'. .. `Capital Value' or words to that effect shall mean ... the valuation of the demised premises ... on the basis of a cash sale with vacant possession being given on settlement within sixty days thereof . . .'. Not a specific definition. After careful consideration and having regard to the evidence, I have interpreted the `Capital Value' to be the best price at which the property would sell as at 30 September 1984, if offered on the open market either with vacant possession or immediately let to a secure tenant for a medium to long term at market rental value, on terms and conditions normally agreed for such premises at the time. I have therefore given little weight to Mr Smith's replacement cost less depreciation approach of Mr Holmes' alternative approach (replacement value). I consider the value of the property would be governed by its value as an investment for producing rental income. I have assessed the rental value of the property, deducted outgoings which would normally be the responsibility of the lessor, and capitalised the nett rental value at an appropriate rate of return. Messrs Smith and Holmes have applied similar methods of valuation although Mr Smith has not allowed for any lessor's expenses. Mr Smith has explained his reasons for not making such deductions. Messrs Smith and Holmes disagree on the rental value, lessor's outgoings and capitalisation rate."

The present issue arises from the fact that the umpire has made his own interpretation of the meaning to be given to the expression `capital value' as "the best price at which the property would sell as at 30 September 1984, if offered on the open market either with vacant possession or immediately let to a secure tenant for a medium to long term at market rental value ..."

Counsel were agreed as to the principles of law which apply and so I can state them briefly. For present purposes it is sufficient to refer to the observations of North P in *Wellington City* vs. *National Bank of New Zealand Properties Ltd* [1970] NZLR 660. That was the case of an arbitration for the fixing of a rental on the renewal of a lease. The facts are of no present relevance but the principle involved was stated by North P, at p.669, in this way:

> "Now it is perfectly plain, if I have correctly understood the authorities, that the Courts have consistently declined to be drawn into considering principles of valuation save in so far as they depend on purely legal considerations. Of course if a lease, for example, contains a formula for fixing a rent, the arbitrators or the umpire must comply with the directions given to them in the instrument. But short of anything like that, the method of valuation which finds favour with the arbitrators or the umpire is essentially a matter for them."

The argument for the plaintiffs was that the umpire failed to comply with the directions given in the lease and, in particular, that the principle of valuation, based upon the capitalisation of rental where the property is notionally leased immediately on a medium to long term to a secure tenant at a market rental value, is the antithesis of a principle of valuation that stipulates vacant possession on settlement as a basis. It was argued, further, that the words of the lease are intended to be restrictive in that they indicate the valuer does not have a free hand in choosing any basis of valuation from those reasonably available. Valuing the property on an occupied basis was said to impose no restriction at all.

The contrary argument for the defendant was that the extra words which the umpire has added are not in conflict with the directions in the lease but merely give the umpire additional scope in arriving at a valuation on the basis of a cash sale. Attention was drawn to the word `immediately' as an indication that the umpire was contemplating a cash sale in which the purchaser was in the position of having available at once a tenancy on a favourable basis. It was accordingly said that the umpire's interpretation was not in conflict with the directions in the lease but was simply a way of giving himself access to a wider range of valuing principles.

It was, I think, unfortunate that the umpire should have departed

at all from the precise words of the lease. While it was no doubt the intention of the original lessor to choose a formula which was likely to produce as high a capital value for rental purposes as possible, the real reasons for the words used can only remain a matter of speculation. It may be that strict aherence to the formula used could have a limiting effect so as to result in a lower value than might otherwise be assessed, but such a result would not relieve a valuer from applying the formula.

What has happened in this case is that the umpire has considered two principles of valuation as put to him by the respective valuers and has rejected both in favour of the principle of capitalisation of rental. It was contended by Mr McGrath, for the plaintiffs, that this has resulted from the umpire's interpretation of the lease and that it has meant he has in that way wrongly confined himself to a single method of valuation.

I consider the umpire has erred as a matter of law in his approach to the assessment of the capital value. It is apparent that he found difficulty in confining himself to the concept of a cash sale with vacant possession and so he has expanded that expression into something he found more acceptable. In so doing he stepped outside the words of the lease. I am unable to say whether, upon a reconsideration and adhering strictly to the words of the lease, there will be any different result, and I recognise that it is possible there may not be, but I feel bound to hold that there has been an error of law. If strict adherence to the lease makes the valuer's task any harder then that is something which must be accepted. It may also mean that alternative methods of valuation need to be given closer consideration. I do not think that vacant possession is necessarily the same thing as immediate letting and this in itself is sufficient for the plaintiffs to be able to succeed.

I should mention that Mr McGrath advanced a further argument to the effect that the umpire had really given no weight at all to any alternative methods of valuation. I have a good deal of hesitation over that argument but in the circumstances I do not need to pursue it further.

For the reasons I have given there will be an order that the award be remitted to the umpire for a fresh determination in accordance with the principles of law to which I have referred.

The plaintiffs are entitled to their costs which I fix at $500 and disbursements as fixed by the Registrar.

Solicitors: Shanahan Partners, WELLINGTON, for Plaintiffs

Fitzherbert Abraham, PALMERSTON NORTH, for Defendant

Arbitration Case

The following is an Award of Rodney Jefferies given by way of a case stated together with his `Annex to Award' and the High Court decision of Barker J. Rodney comments as follows:

> *`Actually, in my view, I think the judgement is a fair one in terms of equity and that it seems unfair for a lessee to pay a rental on the improvements he paid for and was not reimbursed from the lessor. It seems to me as a layman that the result of the Judge's decision is that in effect, the lease which allowed only for a certain amount of reimbursement to the lessee, now by virtue of a reduced rental continues to give a form of reimbursement to the lessee for his excess expenditure which the intention of the lease was against! Nevertheless, unless the matter goes to Appeal the judgement must stand as it is."*

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY COMMERCIAL LIST

No.

IN THE MATTER of the Arbitration Act 1908

AND

IN THE MATTER of Section 11 of the Arbitration Amendment Act 1938

AND

IN THE MATTER of an Agreement to Lease dated 22nd April 1982

BETWEEN: RODNEY LYNN JEFFERIES of Auckland, Registered Valuer

Applicant (Arbitrator)

AND

R. C. DIMOCK LIMITED a duly incorporated company having its registered office at Auckland and carrying on business as shop and office fitting suppliers

First Respondent (Landlord)

AND

GILTRAP GROUP HOLDINGS LIMITED a duly incorporated company having its registered office at Hamilton and carrying on business as vehicle retailer

Second Respondent (Tenant)

AWARD OF ARBITRATOR BY WAY OF CASE STATED

This is the award stated in the form of a special case stated for the decision of the High Court at Auckland of Rodney Lynn Jefferies, Registered Valuer of Auckland, the Arbitrator to whom there was referred for decision the fixing of a rent under the aforementioned Agreement to Lease for a three (3) year rental review from 28th May 1985 for the premises owned by the Landlord situated at 103 Great North Road, Auckland who now states, finds and awards as follows:

1. The circumstances leading to this award by way of case stated are as follows:

   The first respondent (hereinafter referred to as `the Landlord') negotiated for the purchase of the said premises in July 1981 and almost immediately was involved in negotiations with the second respondent (hereinafter referred to as `the Tenant) who wished to take a lease of the property but modified for their use. By November 1981 the proposals were sufficiently advanced for detailed lease negotiations to take place and a preliminary document was prepared in December 1981 recording the intentions of the parties to enter into a formal lease document.

   The negotiations were conducted on the basis that the Tenant required modifications to the building and the Landlord would not accept liability for the cost of modifications beyond a figure of $200,000.00. The proposal involved partial demolition of the existing building and re-building of a motor vehicle dealership showroom and forecourt with the retention of existing warehouse basement space and rear on-site parking to be formed. The first $200,000.00 of that expenditure was initially to be met by the Tenant with the Landlord repaying that amound over a three-year period after the fourth year of the tenancy had elapsed.

   A formal Agreement to Lease was executed on 22nd April 1982 for a term of 21 years commencing from the 28th May 1982 at an annual rental of $75,000.00 per annum for the first three years, and incorporating specific covenants relating to the obligation of the Tenant to partially demolish and reconstruct the building and to pay for the same and providing for the Landlord to refund the cost of such work not exceeding $200,000.00 without interest by equal monthly instalments during the fourth, fifth and sixth years of the tenancy created. The rent was to rebate according to an agreed formula during this second period of three years. There were certain delays in obtaining possession of the building and the date of practical completion of the reconstruction and modifications was 31st March 1984.

   The Tenant's expenditure of the said recontruction and modifications amounted to $479,222.00, an excess Tenant expenditure of $279,222.00 above the $200,000.00 which the Landlord had agreed to reimburse to the Tenant.

   The Agreement to Lease provided for three-year rent reviews in accordance with clause 3.13 the first review to apply from 28th May 1985. The Landlord and Tenant commissioned valuation reports from registered valuers but were unable to agree on a review rent in accordance with the Agreement to Lease and I was appointed sole Arbitrator by the Landlord and Tenant in Letters of Appointment dated 27th and 16th December 1985 respectively (in accordance with clauses 3.13 and 3.08).

   A date for the hearing was fixed initially for 28th January 1986 but was altered to Tuesday, 4th February 1986 and the hearing commenced on that date (hereinafter referred to as the first hearing). Counsel for the Landlord sought an adjournment because some witnesses were not available but it was agreed that the hearing should proceed and I should hear submissions from counsel in respect of the interpretation of the lease, and evidence from the two valuers for the Landlord and Tenant respectively as to how they intepreted the lease in the execution of their valuations (which had been submitted to me for perusal prior to the hearing). I issued an interim decision on these interpretative matters in the hope that agreement could be reached between the parties without the need for a further hearing.

   I issued my interim decision on 5th February 1986 in favour of the Landlord's contention that in interpreting the rent review clause 3.13 under the Agreement to Lease no allowance should be made by way of deduction for the excess costs of the Landlord's improvements which were paid for by the Tenant. I invited the parties to resolve the valuation matters between them on the basis of the interim decision. (A subsequent legal argument between counsel has arisen as to whether my interim award is binding on the parties. In my opinion this is not relevant to this award and case stated as the issue is now to be determined by the Court).

The parties were unable to agree on the appropriate reviewed rent after the interim decision and requested me to proceed with a second hearing which was then set down for 21st April 1986 but adjourned to 4th June 1986 at which I heard counsel and witnesses on behalf of the Landlord and Tenant.

2. The facts relevant to this award by way of case stated are set out herein and in copies of the following documents which are annexed hereto:

(i) The preliminary Agreement to Lease (undated) and covering letter from the landlord dated 9th December 1981.
(ii) The Agreement to Lease dated 22nd April 1982.
(iii) My interim decision following the first hearing and copy of my letter to the parties dated 5th February 1986.
(iv) List of the Tenant's expenditure on improvements to the building amounting to $479,222.00.
(v) A verbatim record of the second hearing including all submissions made by the counsel for the Landlord and Tenant, and notes of evidence given (save for expert valuation evidence).

3. Contentions of the parties:

(a) At both the first and second hearings counsel on behalf of the Landlord contended generally, as set out in more detail in the interim decision and verbatim record of the second hearing, that no deduction should be made in fixing the rent for the excess expenditure by the Tenant on the improvements to the building because of the specific provisions in the lease limiting the maximum reimbursement by the Landlord to the sum of $200,000.00.

(b) At both the first and second hearings counsel on behalf of the Tenant contended generally as set out in more detail in the interim decision and verbatim record of the second hearing that there is no reference to the rental necessarily being fixed by reference to the demised premises and that the rental should be fixed subjectively having regard to the decision in *Thomas Bates & Son Limited* vs. *Wyndhams (Lingerie) Limited* [1981] 1 All ER 1077 and thus take into account the circumstances whereby the Tenant had paid for excess expenditure on the Landlord's improvements.

SPECIAL CASE STATED

4. I have been requested by counsel for the Landlord and Tenant and have agreed to state my award in the form of a special case stated for the decision of the High Court upon the following question of law:

Was I correct in my interim decision in interpreting the rent review provisions of the Agreement to Lease on the basis that in assessing the rent for the rent review under clause 3.13 no allowance should be made by way of a deduction for the excess costs of the Landlord's improvements which were paid for by the Tenant? If not, how should the said rent review provisions be interpreted and the rent be assessed?

5. I further find on the facts on my own motion that the Landlord and Tenant when entering into the Agreement to Lease considered the likelihood that the costs of the re-construction of the building could exceed $200,000.00 and the terms and conditions of the Agreement to Lease were framed with this possibility specifically provided for.

6. I further set out in the annex to this award briefly the valuations submitted to me on behalf of the Landlord and Tenant and setting out my valuations for the purpose of this award.

AWARD

7. In the event of the court deciding that my interim decision was correct at law then I AWARD as follows:

(i) That the annual rental for the three (3) year term of the Agreement to Lease from 28th May 1985 is ONE HUNDRED AND EIGHTY NINE THOUSAND FOUR HUNDRED DOLLARS ($189,400.00).
(ii) That the total value of the demised premises fixed by the valuation upon which the rental for the three (3) year term commencing 28th May 1985 is established in accordance with clause 3.13 (b) of the lease is ONE MILLION EIGHT HUNDRED AND NINETY FOUR THOUSAND DOLLARS ($1,894,000.00).

8. In the event of the court deciding that my interim decision was wrong at law then if the correct view is that in assessing the rent for the rent review under clause 3.13 an allowance should be made and consideration should be taken of the Tenant's expenditure on Landlord's improvement then I AWARD as follows:

(i) That the annual rental for the three (3) year review in terms of the Agreement to Lease from 28th May 1985 is ONE HUNDRED AND SIXTY TWO THOUSAND NINE HUNDRED DOLLARS ($162,900.00).
(ii) That the total value of the demised premises fixed by the valuation upon which the rent for the three (3) year term commencing on 28th May 1985 is established in accordance with clause 3.13 (b) of the lease is ONE MILLION SIX HUNDRED AND TWENTY NINE THOUSAND DOLLARS ($1,629,000.00).

9. 1 ALSO AWARD that the Landlord and Tenant shall pay one-half of my costs to date of the arbitration and preparing this award including the legal costs of my counsel in submitting this for filing at the High Court in the amount of $11,656.00 (inclusive of GST).

And that parties shall pay such fees and costs upon release of this award and prior to the filing of this award in the High Court.

Further, the landlord and the tenant shall meet my further costs and my legal costs incurred hereafter in the conduct of an presentation of this award by way of Case Stated to the High Court at Auckland in equal shares, unless the Court otherwise directs.

Dated: 23rd December 1986.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY COMMERCIAL LIST

No.

IN THE MATTER of the Arbitration Act 1908

AND

IN THE MATTER of Section 11 of the Arbitration Amendment Act 1938

AND

IN THE MATTER of an Agreement to Lease dated 22nd April 1982

BETWEEN: RODNEY LYNN JEFFERIES

Applicant (Arbitrator)

AND

R. C. DIMOCK LIMITED a duly incorporated company having its registered office at Auckland and carrying on business as shop and office fitting suppliers

First Respondent (Landlord)

AND

GILTRAP GROUP HOLDINGS LIMITED

Second Respondent (Tenant)

AWARD OF ARBITRATOR BY WAY OF CASE STATED

ANNEX TO AWARD

1. Evidence submitted on behalf of the Lessor:

The Lessor called Mr J. W. Charters, Registered Valuer, who submitted a rental valuation of $226,151 per annum and a total value of the demised premises of $2,261,000, as set out in more detail in the Appendix attached.

He supported his assessment by market evidence of land sales and rental evidence of warehouse/showroom/office rentals together with particularly rentals for the forecourts of car sales yards.

He included additional submissions relative to the number of cars that can be potentially accommodated on the forecourt and while originally including 50 car spaces (requiring stacking of the cars) at $31.50 per week he submitted an alternative valuation of

45 cars which could be more readily accommodated on the forecourt at a rental rate of $35 per week to give the same forecourt rental of $81,900 per annum.

The Lessor also called Mr V. A. Tait, Managing Director of R. C. Dimock Limited who gave evidence relating to the preliminary discussions and Agreement to Lease and the basis of the $200,000 which was the amount up to which Dimock's would accept liability for the modifications of the building. He submitted in evidence that negotiations were conducted on the basis that the modifications would cost substantially more than $200,000. He was closely cross examined by Mr Carter particularly on this point. Mr Tait submitted that the initial rental was modest in the light of market conditions and that the deal was designed to ease the financial pathway for Giltraps during the first three years and that both parties recognised that the modifications proposed would add to the value of the building.

It was therefore made clear in the Lease document that those improvements belonged to Dimocks.

2. Evidence submitted on behalf of the Lessee:

The Lessee called Mr E. B. Smithies, Registered Valuer, who submitted a rental valuation in terms of the Lease of $161,136 per annum including a deduction of $34,584 per annum from his full assessed market rental value of the demised premises of $195,720 (a deduction of 17.67010) as set out in the attached Appendix.

Mr Smithies also supported his valuation by evidence of comparable market rentals including specifically rentals of car yard forecourts.

In making a deduction for the excess value of the tenant's expenditure on the improvements he relied upon the legal interpretation of the Lease as instructed by the Lessor's Counsel and arrived his deduction by reference to his estimated value of the premises at practical completion at 31 March 1984 of $1,580,000 as set out in the Appendix, relating the additional tenant expenditure of $279,222 as a percentage of this figure being 17.67%. He adopted this percentage as the appropriate reduction in the market rental for the review due 28 May 1985.

The Lessee also called Mr C. J. Giltrap, the Managing Director of Giltrap Group Holdings Limited, who submitted evidence as to the background to the original negotiations, the building alterations and submitted a list of the resulting tenant's expenditure amounting to $479,222 as set out in the attached copy of Exhibit 7. (Subject to certain deletions).

He submitted that based upon sketch plans Dimocks provided an estimate for the alterations including internal partitioning of $200,000. He submitted in evidence that it was clear that this was an estimate and that the final price might slightly exceed this figure; he claims that Dimocks represented that the all-up cost including partitions would not exceed $250,000 at the very outside.

As Dimocks did not have the funds to carry out the alterations Giltraps accepted that they would fund the alterations and take over payment of contractors and sub-contractors. The Lessor terminated the instructions to the architect who provided the original sketch plans and employed a different architect and provided the builder who did the alterations on a labour-only basis. A Director of the Lessor company, Mr R. Dimock, personally supervised the alterations.

Though the Lessee was due to obtain occupation of the premises in May 1982, actual possession was delayed until February 1983 with alterations taking place from that time until practical completion in 1984, the resulting cost exceeding the amount included to be reimbursed by the Lessor by a total expenditure of $479,222.

The fact that the Lessee is liable under the terms of the Agreement for this excess cost has led to some acrimony between the parties resulting, in part, in the inability for the parties to agree upon the rental for the first three year rent review.

3. The Main Area of Dispute to be Determined by me as Arbitrator:

(i) The main area of valuation dispute arises from the number of vehicles that can be accommodated on the forecourt and the rental rate to be applied thereto.

(ii) The second area of dispute is over the interpretation of the Lease as to whether allowance should be made for the excess expenditure by the Lessee.

(iii) The third area of difference to be determined is which items, if any, contained in the list of tenant expenditure are to be excluded from the excess cost should such an allowance under (ii) above be made.

I now turn to each of these items.

(i) Number of vehicles and rental rate to apply:

The main dispute lies in the number of vehicles which can be accommodated on the forecourt, Mr Charters originally valuing 50 spaces or alternatively 45 spaces while Mr Smithies has adopted 30 spaces. In addition there is a minor difference in respect of the customer carparks, Mr Charters adopting 15 spaces and Mr Smithies adopting 14 spaces.

I have carefully examined the evidence submitted by the Valuers on this point and have inspected the comparable rentals quoted which were substantially common to both Valuers in respect of the comparable forecourt rentals submitted.

I am satisfied that the rental evidence relates to carparking rentals on a non-stacked basis and having regard to the position on the various sites of the carparking spaces whether to the main Great North Road frontage, or a side road frontage or an internal site location, that a fair market rental as at the relevant date and for the three year term is $31.50 per week.

As to the number of cars which can be accommodated this should be related to those which can be accommodated, in my assessment, on a non-stacked basis to be consistent with the bulk of the evidence and having inspected the forecourt and having counted the number of spaces which can be accommodated on this basis find that 30 spaces can be accommodated.

In respect of the customer car parks at the rear of the building at the basement level I have counted these and in fact only 13 cars are accommodated within the title boundaries, one of these being a small car space at the MacKelvie Street end, and therefore make my Award on the basis of 13 spaces. As to the rental rate Mr Charters adopted $10 per week and Mr Smithies $8 per week and having regard to the other rental evidence in respect of parking in associated with warehouse/office/showroom developments in the side street locations I fix a rental at $10 per week per car space.

I therefore set out hereunder my assessment of the fair market rental of the building, forecourt and parking having regard to the quality of the building including partitioning where appropriate but excluding those items of the tenant's improvements as set out later in this Annex.

In respect of the building rental rates there was very little difference between Mr Charters and Mr Smithies and, having regard to the quality of the building, particularly the basement level which includes some varying stud heights and part wooden flooring, make my findings as hereunder:

Fair Market Rental of the demised premises as at 28 May 1985:

Warehouse (basement level):	1,405m2 @ $41.00/m2=	$57,605 p.a.
Showrooms (incl. partitionings, excl. floor coverings):	604m2 @ $100.00/m2=	$60,400 p.a.
Office (incl. partitioning, excl. floor coverings):	172m2 @ $90.00/m2=	$15,480 p.a.
Total Rental for Building Portion:		$133,485 p.a.
Forecourt:	30 spaces @ $31.50 per week =	$49,140 p.a.
Customer Car Pks:	13 spaces @ $10.00 per week =	$6,760 p.a.
Full Fair Market Rental:		$189,385 p.a.
	Round to:	$189,400 p.a.

Total Value of demised premises:

Above fair market rental capitalised @ 10.0% p.a. = $1,894,000

(ii) Second, whether any allowance should be made for the excess expenditure on the improvements by the Tenant:

This question was dealt with in my interim Award where I found in favour of the Lessor's contention that no allowance should be made.

Notwithstanding the legal principle determined in *Lear and Another* vs. *Blizzard* [1983] 3 All ER 662 and my agreement to state the attached Award in the form of a Case Stated to the Court for decision on this legal question, I do not concede that my Interim Decision was wrong.

In my view the preliminary agreement was quite explicit in as much as only $200,000 of the alteration work was to be reimbursed by the Lessor; this expenditure was to be made on capital improvements not decorating or furnishings; and that the expenditure becomes the property of the owner. The Agreement clearly says any amount of excess of the $200,000 referred to will be met by the Lessee and not be payable by the owner.

If a deduction from the fair rental value of the demised premises is made for the excess expenditure then this will have the effect of repaying to the Lessee an additional amount of these excess costs by virtue of the reduction in the rental value that would otherwise apply. This would, in my view, be contrary to the Agreement to Lease and not intended by the parties when signing that document.

Further, in the Agreement to Lease following that preliminary Agreement, Clause 1.17 clearly set out the responsibilities and requirements on the Tenant in respect of the alteration work and the agreement to refund up to $200,000 of that cost only. It is noted that the wording is slightly different in as much as the work shall include electrical and plumbing services painting and decorating and the formation and paving of the forecourt. However the completed structure is defined as including partitioning, fencing, the electrical fittings but not including carpets and drapes. Under Clause 3.12 the Tenant is responsible for carrying out painting to the exterior and interior of the building i.e. decorating.

In Clause 3.13 of the Lease Sub-Clauses (a) to (c) is a formula whereby the actual rental paid is to be reduced in relationship to the total value of the demised premises for the three years commencing (incorrectly in the Lease 20th April 1985) agreed as at 20th May 1985; and applied to the rental for the demised premises established by this valuation. This rent abatement formula was included in the Agreement to Lease as a result of the Landlord's and Tenant's accountants formulating this provision as a rebate to reflect the progressive repayment of the $200,000 over the three year period. There is no dispute between the parties as to the operation or calculation of this rebate.

Mr Carter submitted that there can be different values to be applied in the establishment of the rental to be agreed upon by the Landlord and the Tenant and that determined later under the same Clause under Sub-Sections (a), (b) and (c), (see pages 8, 9 and 10 of the verbatim record of the proceedings at the second Hearing).

In my view the same total value should apply to the calculation of the fair rent to be agreed between the parties and to be applied to the calculation of the rebate under these Sub-Sections to apply for this concurrent three yearly period.

Thus, consequent upon the decision of the Court as to the validity or otherwise of making any deduction for the excess expenditure by the Tenant on the Landlord's improvements I set out in my attached Award rental values and total values on both

basis.

(iii) Items to be included in the excess expenditure by the Tenant on the Landlord's improvements:

Should the Court determine that my Interim Decision is wrong then I am required to make a deduction for these excess expenditures and to examine the items contained in the list shown in Schedule 7 as to which should be excluded in terms of the Preliminary Agreement and in terms of Clause 1.17 of the Agreement to Lease.

For the reasons set out in the foregoing argument I exclude the following items:

Painting:	$9,543	
Vinyl:	$230	
Reception Module:	$2,794	
Cork Flooring:	$12,520	
Cork Flooring:	$12,554	
Storage Cupboard	$1,758	
Storage Cupboard	$932	
Lockers:	$2,000	
Shelving:	$2,000	
Blinds:	$1,823	
Total Items to be Excluded:		$46,.154

Thus the total Tenant's excess expenditure, if to be allowed is therefore reduced to:

Total Tenant expenditure as per Schedule 7:	$479,222
Less: Amount to be refunded by Lessor:	$200,000
	$279,222
Less: Items to be Excluded:	$46,154
Effective Excess Tenant Expenditure:	$233,068
Round off to:	$233,000

The amount of reduction in the fair market rental which would therefore result needs to take into account that $233,000 was spent by the Lessee which was included in the added value of the improvements as at the date of practical completion in 1984. However, this excess expenditure related primarily to the building content and not the forecourt which was to have been altered in accordance with the preliminary plans the resulting excess expenditure relating primarily to the workshop, showroom and office portion of the premises.

Adopting Mr Smithies approach a percentage reduction based on $233,000 divided by $1,580,000 or 14.75%a of the total value would apply. Therefore on this basis the deduction would be:

$189,385 per annumxl4.75%= $27,934 p.a.

Alternatively, relating the excess expenditure only to the rental value of the improvements gives a deduction of $233,000 divided by $697,500 or 33.4% of the improvements value. As over the years the relationship between the land value and improvement value is likely to differ the appropriate percentage deduction to reflect the diminishing added value of the excess expenditure by the Tenant on the Landlord's improvements, may require the probable re-determination of this resulting deduction if applied to the total rental value, at each rent review. I am of the view that a more appropriate deduction would relate this to the added value of the improvements as part of the total value of the demised premises at each rent review. Thus applying this approach to be consistent to Mr Smithies land and buildings value at the effective rent review date follows:

33.4%ax $815,324 divided by $1,960,637
x $189,385 p.a. = $26,304 p.a.

This represents a deduction of 13.8% on the total rental assessed.

Thus I find, if the Court determines that an allowance for the Tenant's excess expenditure should be made, that as at commencement of the three year term from 25 May 1985 an appropriate deduction would be 14% of the total rental value as follows:

Full fair market rental value of demised premises:	$189,385 p.a.
Less: Allowance for excess expenditure by Tenant on Lessor's improvements 1407o _	$26,514 p.a.
	$162,871 p.a.
Round off to:	$162,900 p.a.
Capitalised @ 10.0%_	$1,629,000 p.a.

To be the total value on which the rent is to be based in terms of Clause 3.13 (c) of the Lease.

R. L. Jefferies
Sole Arbitrator

APPENDIX TO AWARD
COMPARISON OF VALUATIONS

(Shown in metric, with imperial rental rate equivalents)

Item	(i) Mr Charters			(ii) Mr Smithies		
Warehouse:	1,404.90m2	@ $43.00/m2 = (= $4.00/sq.ft.)	$60,411	1,400.05m2 15,070sq.ft	@ $40.90/m2= @ $3.80/sq.ft.)	$57,266
Showrooms:	604.22m2	@$100.00/M2= (= $9.29/sq.ft.)	$60,522	606.50m2 6,528sq.ft	@ $102.25/m2= @ $9.50/sq.ft.)	$62,016
Offices:	172.42m2	@ $90.00/m2 = (= $8.36/sq.ft.)	$15,518	175.03m2 1,884sq.ft	@ $91.49/m2 = @ $8.50/sq.ft.)	$16,014
Sub-Total:			$136,451			$135,296
Customer Carparks:	15 spaces	@ $10.00 p.w.	$7,800	14 spaces	@ $8.00 P.W.	$5,824
Forecourt:	50 spaces (Alternatively 45	@ $31.50 p.w. @ $35.00 p.w.)	$81,900	30 spaces	@ $35.00 p.w.	$54,600
TOTAL RENTAL:			$226,151			$195,720
Less Allowance For Owner's Expenses:						
Management - 3 ½ % Total Rent =			$7,915			
Land Tax:			$3,440			
Net Income:			$214,896			
Capitalisation:			@9.5%			(= 9.98% gross on Capital Value below)
= CAPITAL VALUE:			$2,261,000			
Deduction for Excess Expenditure by Tenant on Building Improvements:						
		Rental:				$34,584
		Value:				$346,444 (= 17.67%)
Replacement Valuation: (at Lease Review Date)						
Land Value:			$796,740			$1,145,313
Improvements:			$1,333,792			$815,324
Capital Value:			$2,130,532			$1,960,637
Valuation @ Date of Practical Coml. (31 March 1984)			N/A	Land:		$875,000
				Improvements:		$697,500
				Capital Value:		$1,572,500
				Market Rental:		$154,000
				Capitalised Value	@ 9.75%=	$1,580,000

IMPROVEMENTS TO DIMOCK BUILDING

Wages and J. B. Clark Contrator		110,053	
Materials and installation : Wood		29,544	
	Concrete	17,608	
	Steel	22,443	
	Boards	23,442	
	Sundry	12,721	
Windows		41,139	
Hireage Equipment		18,097	
Plumbing		42,625	
Electrical		10,140	
Plastering		11,097	
Architects Fees		36,599	
Licence Fees		2,064	
Fire Equipment Installations		975	
Fencing of Forecourt		3,647	
Ceiling Spraying in Small Showroom		400	
Staircases and Installations		4,861	
Painting		9,543	
Vinyl Laying		230	
Forecourt Coating		8,987	
Cartage		373	
Kerb Crossing		1,800	
Demolition		19,011	
Sundry Expenses		339	
		427,738	427,738

PARTITIONS AND OTHER TENANTS IMPROVEMENTS

Office Partitioning	Showroom GM	2,038	
Office Partitioning	Showroom GM	2,038	
Office Partitioning	Admin Mezz	1,358	
Office Partitioning	Admin Mezz	1,358	
Reception Module	Showroom	2,794	
Office Partitioning	Showroom	1,700	
Office Partitioning	Showroom	1,700	
Cork Flooring	Showroom	12,520	
Cork Flooring	Showroom	12,554	
Air Conditioning	Admin Mezz	2,700	
Storage Cupboard	Showroom	1,758	
Storage Cupboard	Admin Mezz	932	
Staff Lockers	Lunch Room	2,000	
Perm Shelving	Basement	2,000	
Office Partition	Showroom	2,211	
Blinds		1,823	
		51,484	51,484
TOTAL			$479,222

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY COMMERCIAL LIST
C.L. No. 2/87

BETWEEN: R. L. JEFFERIES

Applicant

AND

R. C. DIMOCK LTD

First Respondent

AND

GILTRAP GROUP HOLDINGS LIMITED

Second Respondent

Hearing: 2 June, 1987

Counsel: H. C. Keyte for Applicant
P. M. Salmon Q.C. for first Respondent
N. J. Carter for second Respondent

Judgment: 16th June, 1987

JUDGMENT OF BARKER J.

This judgment on a case stated by an Arbitrator pursuant to Section 11 of the Arbitration Amendment Act 1939 represents the first occasion on which a proceeding entered in the Commercial List has reached a final hearing. The Commercial List was established at the Auckland Registry of this Court on 1 April 1987; these proceedings were filed on 2 April 1987.

At a directions hearing on 14 April 1987, counsel agreed that all relevant documents had been placed before the Court by the Arbitrator and that no interlocutory steps were required. On that occasion, Mr Keyte, who had prepared the case stated on behalf of the arbitrator, was given leave to withdraw; the dispute was clearly between the first respondent, R. C. Dimock Limited (the Landlord) and Giltrap Group Holdings Limited, the second respondent (the Tenant).

Section 24B(1)(b) of the Judicature Act 1908 includes, as a class of proceedings eligible for entry on a Commercial List, applications to the Court under the Arbitration Act 1908. This present dispute deals with the interpretation of a rent review clause for the rental of commercial premises; it is thus eminently suitable for inclusion in the Commercial List. Both counsel have been of considerable assistance in preparing detailed submissions and I record my gratitude to them.

The Arbitrator's case stated arises from a submission to arbitration under the terms of an agreement to lease, dated 22 April 1982, between the landlord and the tenant. The lease was of premises at 103 Great North Road, Auckland and the term was for 21 years. The rental payable for the first three years of the lease was fixed by agreement at $6,250 per annum (Editor's Note: error actually $75,000 per annum, see award), in accordance with the rent review clause (wihch will be quoted later) there had to be an arbitration in lieu of agreement to fix the rental to be paid for the second period, from 28 May 1985 to 27 May 1988.

The parties appointed Mr R. L. Jefferies registered valuer, as the sole arbitrator. He issued an interim award on 5 February, 1986 (details of which will be mentioned later); at a subsequent hearing on 4 June 1986, he was requested by counsel for the parties to state a case to this Court, which he did.

The clauses of the lease upon which the interpretation of the Court is sought are as follows:

> "1.17 NOTWITHSTANDING anything contained in clause 1.10 hereof, the tenant shall forthwith proceed with partial demolition and reconstruction of the building forming part of the demised premises in accordance with plans prepared by Sinclair Johns Consultants Limited and initialled by the parties hereto for the purposes of identification. The Tenant shall as soon as possible submit detailed plans and specifications to the Landlord for approval, such approval not to be unreasonably withheld. The Tenant shall have the work completed in a good and tradesman-like manner and in accordance with Auckland City Council By-Laws and Regulations. Such work shall include electrical and plumbing services, painting and decorating, and the formation and paving of the forecourt. The completed structure including partitioning fencing and electrical fittings but not including carpets and drapes shall be the property of the Landlord. The Landlord agrees to refund to the Tenant the cost of such work, not exceeding $200,000. Payment of such refund shall be made by the Landlord to the Tenant without interest by equal monthly instalments during the fourth, fifth and sixth years of the tenancy hereby created.
>
> 3.13 THE rental hereinbefore provided shall be the rental for the first three years of the term hereof. The rental hereunder shall be reviewed on the third anniversary of the commencement of the term and at every subsequent third anniversary thereof. The rental fixed at each review shall be such rental as is agreed upon by the Landlord and the Tenant and if they cannot agree to be determined by Arbitration in the manner herein provided but not in any case to be a rental less than the rental chargeable immediately prior to such review. During the fourth, fifth and sixth years of the term hereof, the rental payable each month shall be reduced by an amount calculated on the formula a/b x c where:
>
> (a) Is the amount to be refunded by the Landlord to the tenant in accordance with clause 1.17 hereof reduced by the amount actually paid in terms of that clause as at the rent date concerned.
> (b) Is the total value of the demised premises fixed by the valuation on which the rental for the three years commencing on 20 April 1985 established.
> (c) Is the rental for the demised premises as established by the foregoing valuation."

The Arbitrator heard evidence from both sides and counsel made submissions; he found that the landlord negotiated for the purchase of the premises in July 1981 and then almost immediately negotiated with the tenant who wished to take a lease of the property, modified for its own use. The tenant required extensive modifications; the landlord would not accept liability for the cost of modifications above $200,000.

A preliminary document was signed setting out heads of agreement; this was subsequently translated into the formal lease document. The tenant wished partial demolition of the existing structure and its rebuilding as a motor vehicle dealer's showroom and forecourt. The $200,000 expenditure which the landlord agreed to accept was initially to be met by the tenant with the landlord repaying that sum over a three year period, after the fourth year of the tenancy had elapsed. Repayment was to be by way of rent rebate; no argument arises as to the operation of the formula set out in the formal lease agreement.

The present difficulty has arisen because the tenant's expenditure on reconstruction and modifications amounted to $479,222; an excess expenditure of $279,222 over and above the $200,000 which the landlord had agreed to repay to the tenant.

The issue is whether, when fixing the rental for the renewed term, the Arbitrator should have taken into account

(a) the fact that the tenant had spent $279,222 on improvements for which it was to receive no reimbursement; and
(b) the fact that accordingly the tenant had paid for major improvements to the landlord's land but would in effect be paying rent on these improvements.

In his interim award, the Arbitrator considered that if, as was his view, the correct interpretation of the lease was that the excess expenditure by the tenant must be ignored in fixing the rental for the three year term, the annual rental would be $189,400. If, however, the tenant's contention were correct and the tenant's expenditure ought to be taken into account, then the annual rental would be $162,900. The parties agreed to accept these assessments. The only point in issue is which assessment should be adopted.

The Arbitrator also found:

(a) that the total value of the premises upon which rent was to be paid was $1,894,000;
(b) that when entering into the agreement to lease, the parties considered the likelihood that the costs of reconstruction of the building could exceed $200,000; and
(c) the terms of the agreement were framed with this possibility specifically provided for.

However, the arbitrator did not make any finding as to the amount by which the parties expected the $200,000 to be exceeded. In a case stated, reference to the evidence must be limited. However, for what it was worth, Mr Carter submitted that the modifications were completed substantially in accordance with plans attached to the original agreement and that the managing director of the landlord supervised the work under the direction of an architect. The managing director of the tenant stated in evidence that the landlord's architect had represented thatthe cast would be about $200,000. No contrary evidence was given by the landlord, although the Arbitrator made no finding on the point.

Mr Salmon pointed out, that in another clause of the agreement, there is an option to purchase given to the tenant as a right of first refusal; there is nothing in the clause which requires the landlord, when nominating a price at which he is prepared to sell, to give a discount to the tenant for improvements.

The crucial clause for interpretaton is clause 3.13; the words there refer to the rental fixed at each three yearly review i.e. "shall be such rental as is agreed upon by the landlord and the tenant and if they cannot agree to be determined by Arbitration". The clause makes no reference to market rental; it was Mr Carter's submission that the words did not import an objective market rental assessment by reference to the `demised premises'. He submitted that a subjective assessment of rental was required which took into account the improvements effected and paid for by the tenant which improvements became the property of the landlord. In other words, counsel's submission was that the rental should be assessed in the light of the surrounding circumstances in which the lease was negotiated.

Mr Salmon submitted that the present value of the premises was market related and not determined necessarily by the cost of alterations. It was not possible to identify the excess costs which were not represented by any particular item or improvement but which formed part of the overall costs of demolition and upgrading of the premises.

Counsel for the tenant relied on the decision of the English Court of Appeal in *Thomas Bates & Son Ltd* vs. *Wyndham's (Lingerie) Ltd,* (1981) 1 All E.R. 1077. There the lease referred to the rent to be determined when the first term expired as:

> "a rent to be agreed between the landlords and the tenants but in default of such agreement at a rent to be fixed by [an] arbitrator."

The English Court of Appeal, distinguishing *Ponsford* vs. *HMS Aerosols Ltd* (1979) A.C. 63, held that since the rent review clause referred to such rent "as shall have been agreed" between the parties, and not to the rent "agreed for the demised premises", the rent to be fixed by the arbitrator was to be the rent to which it would be reasonable for the particular parties to agree, having regard to all relevant circumstances (such as tenant's expenditure on improvements). The arbitrator was not to fix a rent, assessed objectively, on the basis of the market rent.

Delivering the principal judgment of the Court of Appeal, Buckley L. J. differentiated *Ponsford's* case. The relevant clause in *Ponsford's* case referred to rent "reasonable for the demised premises for the appropriate period". There the majority of the House of Lords (Lords Dilhorne, Fraser and Keith) held that the words pointed unambiguously to a reasonable rent, assessed on an objective basis, without reference to a particular tenant or a particular landlord or to the history of how the premises came to be built or paid for (see per Lord Fraser at p.83).

Lords Wilberforce and Salmon took a contrary view; they considered that what had had to be ascertained was what would be a reasonable rent between the particular parties. Buckley L. J., at p.1088 of the *Thomas Bates,* case considered that the clause in the *Ponsford* case was sufficiently different from the case before him in that the clause before him referred to nothing other than the rent to which the parties had agreed.

The *Thomas Bates* case was followed by Tudor Evans J. in *Lear* vs. *Blizzard,* (1983) 3 All E.R. 662. In that case, the rent review clause referred to "a rent to be agreed between the parties ... or in default of agreement at a rent to be determined by a single arbitrator". The learned Judge held that the true construction of the lease which the Arbitrator had to follow was to determine, subjectively, what would be a fair rent for the parties to agree in all the circumstances taking into account all the considerations which would have affected the minds of the parties if they had been negotiating the rent themselves. The question at issue there was that the tenant had paid for some improvements to the property and the extent to which those improvements should be taken into account.

At p.667, Tudor Evans J. referred to the distinction between the two kinds of clause in these words.

> "It is contended on behalf of the landlords that the words in cl 3(2)'a lease of the demised premises ... at a rent to be agreed between the parties hereto' are the same, in effect, as the language in the review clause in that case. But it seems to me that there are material differences between the language of the two clauses. The clause in *Ponsford* vs. *HMS Aerosols Ltd* did not contain any reference to an agreement between the parties.
>
> The importance of this distinction was emphasised in *Thomas Bates & Son Ltd* vs. *Wyndham's (Lingerie) Ltd* [19811 1 W.L.R. 505, on which the tenant relies. That case contained many points which are not relevant in the present case but the essential facts were there. Landlords let premises to predecessors of the tenants for seven years with an option for a further lease `of the demised premises ... at a rent to be agreed between the lessor and lessee'. There was provision for an arbitrator to fix the rent in default of agreement. In 1963 the option was exercised and a further lease was granted with an option in terms identical with the original lease. In 1970, when the tenant exercised the option, the landlords sought to introduce a review clause. A new lease was executed for 14 years with a review at the fifth and tenth years. By a mistake, the lease contained no provision for arbitration in default of agreement of the rent on review. The material language of the clause provided:
>
> > `Yielding and Paying therefore during the first Five Years of the said term unto the lessor the rent of Two Thousand Three Hundred and Fifty Pounds and for the next period of five years of the said term and the final period of four years of the said term such rents as shall have been agreed between the Lessor and the Lessee ...'
>
> In proceedings for rectification, the court ordered that language should be inserted into the clause providing for an arbitrator to determine the rent in default of agreement. On appeal, one of the questions which arose was: on the lease as rectified, by what measure was the arbitrator to fix the rent if the parties failed to agree? Buckley L. J., having referred to the language of the review clause in *Ponsford* vs *HMS Aerosols Ltd,* said:
>
> > `That form of clause, as it seems to me, focuses attention on what is there described as "a reasonable rent for the demised premises" for the appropriate period, and that expression is first used without any reference to agreement between the parties to the lease at all. It then goes on to provide that such assessment (that is to say, the fixing of the amount of the rent to be charged) shall be either agreed or, in default of agreement, arrived at by valuation by an independent surveyor. That form of wording, in my judgment, certainly affected the views of the majority of the House of Lords in that case.'
>
> Buckley L. J. then referred to passages in the majority opinions and continued:
>
> > `But it appears to me that the terms of the clause there under consideration were noticeably different in important respects from the clause which we have, which refers to nothing other than such rent as the parties shall have agreed . . . In my judgment, in default of agreement between the parties, the arbitrator would have to assess what rent it would be reasonable for these landlords and these tenants to have agreed under this lease having regard to all the circumstances relevant to any negotiations between them of a new rent from the review date.'
>
> Eveleigh L. J. expressed the same opinion [1981] 1 All E.R. 1077 at 1090, [1981] 1 W.L.R. 505 at 521)."

The Arbitrator held that the decision in the *Thomas Bates* case was distinguishable because that was primarily a case to rectify a lease and the provisions to arbitrate had been omitted by mistake. The case was not in his view on all fours. I agree that the facts of the *Thomas Bates* and *Lear* vs. *Blizzard* cases were different; but in respect of the essential point of the interpretation of this kind of rent review clause, the English Court of Appeal and Tudor Evans J. clearly support the submissions made on behalf of the tenant in the present case. The Arbitrator's distinction that *Thomas Bates* case was concerned with rectification is untenable. The relevant interpretation of the rent review clause applied to the lease as rectified.

I find that the clause in the present case is indistinguishable in any material way from the clauses under consideration in those two cases. I consider that the *Ponsford* case does not apply, for the reasons given

by the Court of Appeal and by Tudor Evans J; therefore, in my view the submission of the tenant must prevail.

Section 11 of the Arbitration Amendment Act 1939 provides:

"(1) An arbitrator or umpire may, and shall if so directed by the Court, state:

(a) Any question of law arising in the course of the reference; or

(b) An award or any part of an award - in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the Court under this secton shall be deemed to be a judgment of the Court within the meaning of Section 66 of the Judicature Act 1908 (which relates to the jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the Court), but no appeal shall lie from the decision of the Court on any case stated under paragraph (a) of subsection (1) of this section without the leave of the Court or of the Court of Appeal."

The Arbitrator has made his award in the alternative. Counsel have indicated that they can find no authority to suggest that the Arbitrator should not have proceeded in this way. The parties agreed that the Arbitrator should state a case in this form; counsel further agree that Section 11(1)(b) above applied; therefore the case stated should be translated into a judgment of the Court. In accordance with S.11(3) therefore I determine, as a judgment of the Court, that the rental to be paid for the period under consideration should be $162,900 per annum.

I direct that the costs of the Arbitrator in respect of the case stated be paid by the landlord, with reference to me if counsel cannot agree as to quantum. The Arbitator's costs should be on a solicitor and client basis. I also award costs of $1,500 to the tenant in respect of proceedings before me.

The Arbitrator apparently decided that each party pay its own costs of the actual arbitration hearing and should share equally his costs. That decision seems to have been part of the award which was not part of the case stated. The Arbitrator ruled that the landlord and tenant should meet his own further costs and his legal costs incurred in the presentation of this award by way of case stated to the High Court in equal shares unless the Court otherwise ordered. I have already indicated what should happen to the Arbitrator's costs in the case stated.

I do not think I have jurisdiction to interfere with that part of his award dealing with the costs of the arbitration hearing and therefore decline to do so. The question of costs of the hearing for the Arbitrator was a matter for him. If it is alleged he has made an error of law, then the tenant has other remedies.

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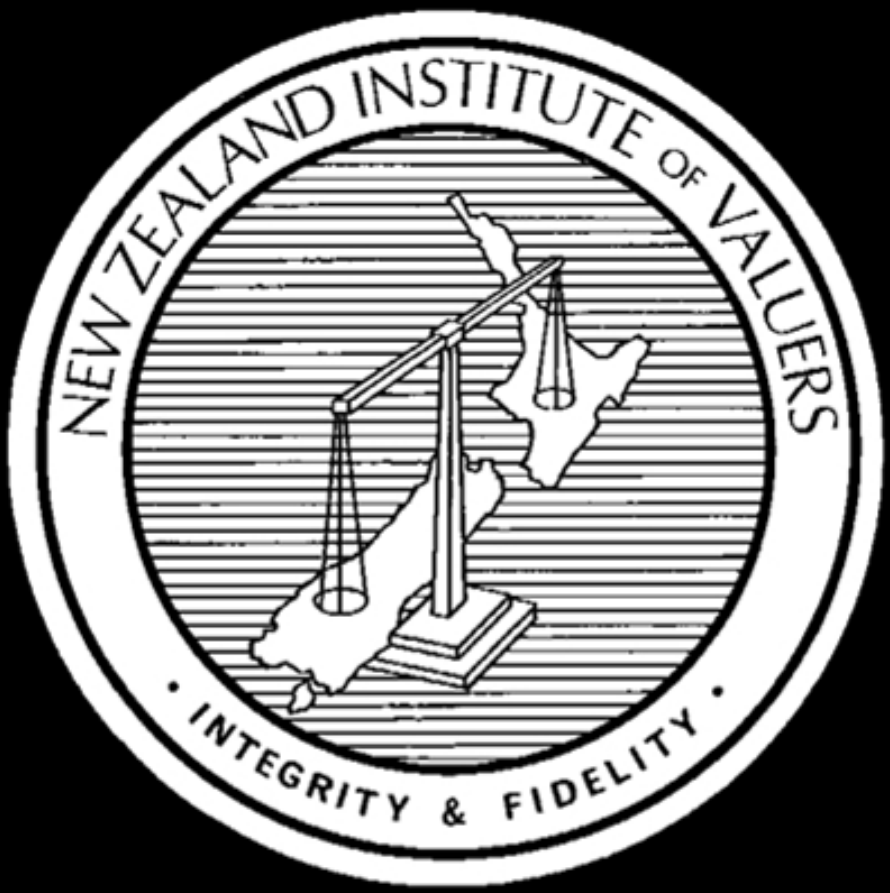
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