

VALUERS' JOURNAL

SEPTEMBER 1989

NEW ZEALAND INSTITUTE OF VALUERS

Incorporated by Act of Parliament

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The New Zealand VALUERS' JOURNAL

SEPTEMBER 1989

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50th Jubilee Group Photograph

The group photograph overleaf was taken at the commencement of the 50th Jubilee celebrations of the New Zealand Institute of Valuers held at Wellington on Monday 10 April 1989.

Some people in the photograph have not been identified or may be wrongly identified. If you are able to provide identification, please advise the General Secretary giving the appropriate identifying number and name of the person.

1. Bill Cleghom *Rotorua*
2. Roger Hallinan (*President NZIV*) *Canterbury! Westland*
3. Greg McNamara (*President AIVLA*)
4. Rodney Jefferies (*President Elect NZIV*) *Auckland*
5. J Bruce Brown (*Life & Foundation Member*) *Wellington*
- 6.
- 7.
8. Warwick Tiller *Wellington*
9. Graham Foster *Gisborne*
10. Iain Gribble *Auckland*
11. Ross Calderwood *Wellington*
12. Dennis Bearsley *Wellington*
13. Alex Laing *Otago*
- 14.
15. Chris Orchard *Nelson/Marlborough*
- 16.
17. Bob Hawke *Auckland*
18. Gray Townshend *Waikato*
19. Brent Spicer *Lower Hutt*
20. Peter McKenna *Masterton*
- 21.
- 22.
- 23.
- 24.
25. Warwick Quinn *Wellington*
- 26.
- 27.
28. Ted Fitzgerald *Timaru*
29. Adrian Brady *Wellington*
- 30.
- 31.
32. John Gibson *Wellington*
33. Tony Gowans *Nelson*
34. Evan Gamby *Auckland*
- 35.
36. Tony Cular *Auckland*
- 37.
38. Gerard Logan *Hastings*
- 39.
- 40.
- 41.
- 42.
43. Michael Beatson *Timaru*
44. John Beauchamp *Christchurch*
45. Bob McLachlan (*Life & Foundation Member*) *Wellington*
46. Joanne Erik *Wellington*
47. Rex Wood *Masterton*
- 48.
49. Mike O'Sullivan *Wellington*
- 50.
- 51.
- 52.
53. Guy Scholefield *Warkworth*
- 54.
- 55.
- 56.
57. Kelvin Cooper *Wellington*
- 58.
- 59.
- 60.
- 61.
62. Squire Speedy *Auckland*
63. Richard Arlidge *Wellington*
- 64.
- 65.
66. Gwendoline Jansen *Wellington*
67. Bob Hargreaves *Palmerston North*
68. Cedric Croft *Lincoln College*
69. Graham Bums *Dunedin*
- 70.
- 71.
- 72.
73. Warren Glassey *Christchurch*
74. Morley Donaldson *Christchurch*
75. Tim Truebridge *Wellington*
- 76.
77. Ken Parker *Hawkes Bay*
- 78.
- 79.
80. Earl Gordon *Wellington*
81. Derek Barratt-Boyes *Auckland*
- 82.
83. David Finnis *Wellington*
84. Mike Horsley *Wellington*
85. Peter Young *Auckland*
86. Bob Albrecht *Auckland*
87. Bill Burgess *Northland*
- 88.
89. Graham Cowley *President NZ Law Society*
- 90.
- 91.
92. Brenda Bough *Wellington*
93. Stewart Littlejohn *Wellington*
94. Hamish McDonald *Wellington*
95. Peter Cook *Christchurch*
96. Jack Charters *Auckland*
97. Tom Rennerswall *Wellington*
98. Graham Dodge *Wellington*
- 99.
100. John Wall *Wellington*
101. Leonie Freeman *Auckland*
102. Grant Ancell *Christchurch*
- 103.
104. Graeme Horsley *Wellington*
- 105.
106. Peter O'Brien *Wellington*
107. Bill Smith *Wellington*
108. John Larmer *New Plymouth*
109. Lindsay McAlister *Wellington*
110. Graeme Kirkcaldie *Wellington*
111. Milton Bevin *Wellington*
112. Grant Algie *Whangarei*
- 113.
114. Brian Robertson *Wellington*
- 115.
116. Steve Baker *Whangarei*
- 117.
- 118.
119. Wayne Nyberg *Wellington*
120. Kevin Allan *Wellington*
- 121.
- 122.
- 123.
- 124.
125. Allan Pegler *Wellington*
- 126.
127. Bob McGough *Auckland*
128. Tim Bemau *Hamilton*

Name the faces...

...at the 50th Jubilee

By Woolf Photography

September 1989

Councillors and invited guests at the 50th Jubilee conference and council meeting April 1989

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Rear: Wade Briscoe (Southland); Graham Foster (Gisborne), Morley Donaldson (Valuer-General's Nominee); Tim Bemau (Waikato); Bill Cleghorn (Rotorua/Bay of Plenty).
Centre: Ted Fitzgerald (South Canterbury); Ken Parker (Hawkes Bay); Tony Gowans (Nelson/Marlborough); Bob Hargreaves (Central Districts); Earl Gordon (Executive); John Gibson (General Secretary).
Front: Bill Burgess (Northland); Kevin Allan (Executive); John Larmer (Taranaki); Rodney Jefferies (President Elect, Auckland); Roger Hallinan (President, Canterbury/Westland); Alex Laing (Otago); Greg McNamara (President AIVLA) Graeme Kirkcaldie (Wellington).
Absent: John Wall (Executive); Kelvin Cooper (Executive); Graeme Horsley (Immediate Past President) Trevor Croot (*Editor New Zealand Valuers' Journal.*)
(Photo by Woolf Photography)

NZ Institute of Valuers Presidential Trio

PRESIDENT

Rodney L Jefferies BCA, Dip Urban Valuation, FNZIV, MPMI.

Rodney Jefferies has been active with the institute for more than 20 years, having been chairman of the Auckland Branch Committee, and an Auckland Branch Councillor since 1984. He was made a Fellow of the Institute in 1979 and was also presented with the Harcourt Memorial Award in that year for his outstanding contribution to the Valuing profession particularly in the literary field. Rod is a former editor of the *Valuers' Journal* and has been on the Editorial Board of the Journal since 1985. He is the author of many published articles on valuation and property management. He wrote the first volume of the standard valuation text book *Urban Valuation in New Zealand* and he is currently writing and editing the second volume. Rod is Senior lecturer in Valuation at the University of Auckland and is consultant to his former public valuation practice.

VICE PRESIDENT (Senior)

Alex P Laing B Com, Dip Ag, Dip VFM, FNZIV, ACA.

Alex Laing is a public valuer and chartered accountant practicing in Dunedin and is a Director of Roberston Young Telfer (Otago Southland) Ltd. He specialises in rural, compensation and mineral valuations.

P

Alex has been a member of the Otago Branch Committee since 1979, serving terms as Chairman and Vice Chairman. He has organised and chaired seminars at local and national levels on a wide range of topics. He was made a Fellow of the Institute in 1982 and he is the immediate past Chairman of the Education Board FNZIV and of the Editorial Board of The *New Zealand Valuers Journal.*

VICE PRESIDENT (Junior)

John P Larmer Dip Ag, Dip VFM, FNZIV, MNZSFM

John Larmer is the principal of Larmers registered valuers and property consultants in New Plymouth. He has served terms as Chairman and Vice Chairman of the Branch Committee and has been a rural examiner for the Institute. John was made a Fellow of the Institute in 1984. He has chaired the Institute's GST Sub-Committee and was the Institute's nominee on the government appointed Committee of Enquiry into gas pipeline compensation in 1983.

Editorial Comment

Valuation Report Formats and the Code of Ethics

The apparent growing trend for valuation instructions which carry a request for only a brief report is a matter of concern for many valuers.

The Code of Ethics of the New Zealand Institute of Valuers sets out under 17a comprehensive requirements for the content of a valuation report and, although there is specific provision for these standards not to be adhered to by specific agreement with the clients and at their request, many valuers would prefer to continue to report in full to their clients so that a high degree of professionalism is displayed.

However the growing volume of requests for brief or verbal reports appears to be based on cost saving by the client who naturally assumes that the time saved by the valuer through not preparing a full report, or not preparing a report at all, should result in a lesser fee. Most valuers have responded to this demand but often as a result have unwittingly lowered their professional standards. The difficulty is that very often the valuer has no knowledge of where the brief valuation report is going to be finally presented. Had the valuer been informed that the brief report would be conveyed to other parties there may have been much greater reluctance on the valuer's part to comply with the original request. The client in many circumstances requests the brief report only to save cost and has no knowledge or even concern that such a report may not be satisfactory for the purpose that it is intended to be used for. But by complying with the client's specific instructions, the valuer may ultimately be considerably reducing his or her professional standard in the eyes of a further recipient of the report. It does not so much matter that the report as prepared turns out to be inadequate for the purpose that it is offered by the client, but it matters a great deal that the subsequent recipient gains an impression of an inadequate standard of work and professional standards of the valuer.

It would seem to be essential that valuers make thorough enquiry of their clients as to what the purpose of the brief report is when one is requested and before agreeing to complete such a report that the valuer is satisfied that such a format is going to be entirely satisfactory for the intended purpose, both from a practical point of view and from the likely effect on the valuer's professional standards as viewed by others.

In order that the recipient of a brief report is left in no doubt that such a reporting format was at the specific request of the client, the valuer should make clear statements setting out the purpose for which the valuation has been completed and that the brief format has been used at the specific request of the client. A further statement should probably be made that a full report on

the property will be completed by the valuer on request (and at extra cost) from his client. This should prevent the recipient of the report gaining the impression that the valuer reduced his professional standards through either being too lazy or in too great a haste to complete an acceptably full report.

The unfortunate impression that is gained from a brief or short report is that the whole valuation procedure has been short circuited. It is imperative that valuers prevent this impression being gained by indicating even in the brief report the bases on which the valuation has been made.

While the Code of Ethics is quite specific on the information that should be included in a valuation report, the Code is almost silent on the procedures that should be adopted in identifying and inspecting the property, the basis and assessment of value and the depth of research that should be undertaken for any particular assignment. The Code refers in broad terms only "to practice his profession with devotion to high ideals of integrity" and "order their conduct so as to uphold the reputation of the Institute and the dignity of the profession". The most direct reference to the proper performance of a valuation task is in Section 17: "His Counsel constitutes professional advice which he should render only after having ascertained and weighted the facts."

Where a full written report is required to be completed, the requirements under Section 17a will at least necessitate the valuer to inspect the property and to search the title or at least obtain a legal description so that those details can be included in the report. But if a written report is specifically not requested by the client there is little in the Code of Ethics which sets a guideline to the minimum of work and research which must be put into a valuation.

None of this is to suggest that valuation standards are falling as a result of the increase in brief report formats, or that the Code of Ethics has not adequately set sufficient standards for professional conduct, but rather it is to point to a possibility that a change in emphasis in the Code of Ethics may prevent any possible deterioration in professional standards in the future.

The Institute has already published and made available to members Guidance Notes for specific types of valuations. It is envisaged that these could be expanded to cover most types of valuations and then specific reference made to those Guidance Notes in the Code of Ethics. *Trevor Croot*

Membership Variations

Intermediate Status		Dwyer Christopher E	Auckland
Alexander Peter J	Auckland	Ferguson Shane L	Auckland
Anderson Kenneth B	Auckland	Gill Andrew C	Auckland
Chittock Neil M	Auckland	Henderson Daniel M	Auckland
Clarke Richard A	Otago	Hill Elizabeth M	Auckland
Chung Richard	Wellington	Moore Julie M	Auckland
Dick Lisa M	Wellington	Roche Christopher J	Wellington
Evans Paul S J	Central Districts	Rundle Gerald A	Auckland
Good Jane E	Auckland	Stewart Georgina L	Auckland
Goulter David W	Canterbury/Westland	Sutcliffe John	Auckland
Graham Michael A	Auckland	Talbot Andrea	Auckland
List Sandra J	Central Districts	Whalley Brett L	Auckland
Locke Joanna M	Hawkes Bay	Young Grant R	Auckland
Martin Gregory J	Auckland		
Matthews Lyndon W	Nelson/Marlborough	Affiliate Member	
McGruddy Maureen A	Central Districts	Boyd Terrence P	Canterbury/Westland
Nash Jeffery M	Northland		
Noble Andrew	Auckland	Advancement to Associate Status	
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Olsen Elena M	Auckland	Brown Christopher M	Auckland
Peacock Grant A	Auckland	Everiss David C	Auckland
Pearce Trevor M	Central Districts	Gadsby Derek J	Central Districts
Pelham Murray M	Auckland	Hickmott Mark T	Auckland
Regal David J	Auckland	Khan Yaqub	Auckland
Settle Berwick J	Waikato	Leijh Deborah A	Overseas
Slade Mark	Canterbury/Westland	McKeown Keith G	Auckland
Slatter Derek J	Auckland	Pawson Kenneth D	Central Districts
Sutherland Ian P	Wellington	Peters Richard O	Auckland
Tay Siew San	Overseas	Tay Siew San	Overseas
Taylor Andrew R	Otago	Walshaw Andrew W	Central Districts
Tooman Nth Ga ew	ucanAkl d	Woodhouse Simon O	Auckland
Wilde Simon W	Auckland		
Wist Mark R	Auckland	Retired Status	
		Alexander Eoin (14.1)	Canterbury/Westland
		Brand James J (142)	Waikato
Re Admission as Intermediate			
Crean Philip P	Canterbury/Westland	Resignation	
Fechney Brian R H	Canterbury/Westland	Simpson G L	Overseas
Std t M buen emers			
Dawson Rodney A	Auckland	Dec d (Ntd ithease oe w regret)	
Drum Stephen P	Auckland	Besley H M	Rotoru/Baof Plenty y
		Jones L G	Canterbury/Westland
		Thornton G H	Canterbury/Westland.

GST Increase: Impact on Valuers' Registration Board Fees

With the increase of GST to 12 1/2 per cent on 1 July 1989, please note that there will be a consequent increase in all Valuers' Registration Board fees from that date as follows:

Registration	\$100 plus \$12.50 GST
Restoration to the Register	\$100 plus \$12.50 GST
1989 Annual practising Certificate	\$70 plus \$8.75 GST

Australian Institute of Valuers and Land Administrators

The General Registrar of AIVLA has advised the recent election of the following officer bearers:

FEDERAL PRESIDENT
G J Martin (SA)
SENIOR VICE PRESIDENT -
P S Meeking (Vic)
JUNIOR VICE PRESIDENT
K P Norris (NSW)

Spotlight on the Jubilee Banquet

The Institute's 50th Jubilee Banquet was held in the Plaza International Hotel banquet room on Monday 10 April 1989 and was attended by 185 delegates and guests.

Present at the Banquet was the President of the Australian Institute of Valuers and his wife, Mr and Mrs Greg McNamara. During the course of the dinner Mr McNamara presented the NZ Institute of Valuers with a memorial plaque celebrating its 50th Jubilee on behalf of his own Institute. The plaque features an engraved medallion and inscribed plate recording the occasion.

Present at the dinner were NZ Institute of Valuers' Life and Foundation members, J Bruce Brown and R J Maclachlan. Also present were six former Presidents: Messrs R J Maclachlan (1955-57), P E Tierney (1979-1981), R M McGough (1981-1983), R M Donaldson (1983-1985), G J Horsley (1985-1987) and R E Hallinan (1987-1989).

Guests were welcomed to the function by current NZIV President, Mr Rodney Jefferies and Mrs Jefferies and the Wellington Branch Chairman, Mr Warwick J Tiller and Mrs Tiller.

During the course of the evening the loyal toast was proposed by Master of Ceremonies, Morley Donaldson.

Bob Mclachlan proposed a toast to the NZ Institute of Valuers which was responded to by the retiring President, Roger Hallinan who then conveyed to guests the congratulatory messages to the Institute which had been received.

Concluding the formal part of the ceremony, Stan Ralston, compiler of the Institute's History, formally presented an inscribed copy of the History to the President.

John Gibson, General Secretary.

President Rod Jefferies receives the celebratory plaque from Greg McNamara, President Australian Institute of Valuers and Land Administrators, at the Jubilee Banquet. (By Woolf Photography)

Stan Ralston, the author of the History of NZIV presents the volume to President Rod Jefferies at the Jubilee Banquet. (By Woolf Photography)

Above: President Rod Jefferies and Immediate Past President Roger Hallinan welcome the Hon Peter Tapsell, Minister in charge of Valuation as guest speaker to the Jubilee Seminar. (By Woolf Photography)

Left: Past Presidents of NZIV at the Jubilee Banquet. From left to right: Peter Tierney, Morley Donaldson, Bob Maclachlan, Graeme Horsley, Roger Hallinan, Bob McGough. (By Woolf Photography)

The Institute at Present

by Roger E Hallinan

Introduction

The past 50 years of the Institute of Valuers have recently been extremely well documented in two publications. The jubilee issue of *theNZValuersJournal*, edited by Evan Gamby, Rodney Jefferies and John Gibson, does much to track the development of the Institute over the years.

The second publication, *History of the New Zealand Institute of Valuers* edited by Stan Ralston assisted by John Gibson, is the culmination of many months of research, inquiry and hard work. The result is an authoritative booklet which faithfully records events leading up to the Institute's formation in 1948 and notable milestones over the last 50 years. I recommend both of these Institute publications should be read and retained for reference purposes by all members.

On this occasion of the Institute's 50th Jubilee it is fitting to salute former members. Quite remarkably membership of the Institute is maintained by 24 foundation members, two of whom are now 88 years old. I am not aware they are still practicing valuation.

During its 50 years, there have been 29 Presidents of the Institute and numerous members have served on the Council representing their Branch.

Also, over the 50 years, members have conferred Life Membership status on 21 members. This status is the ultimate pinnacle in the Institute. We currently have nine life members.

Also we have nine Honorary Members – people who are not valuers but who have been identified as having made a significant contribution to the Institute.

The majority of us however enjoy somewhat lesser status within the Institute as fellows, associates, intermediates or as retired members. Furthermore, the Institute accommodates students and affiliates. Without the whole of this membership the Institute would not be where it is today in my view.

It is interesting to note that in our 50th Jubilee year, membership of the Institute has for the first time surpassed the 2000 member mark. At the end of 1988 the number stood at 2025. In addition a further 192 students and affiliates, although not technically members, nevertheless choose to be associated with the Institute. A grand total currently of 2217 men and women.

The Past under compulsory membership

The vast majority of the Institute's membership are registered as valuers, but this figure includes those who have retired and yet have retained their name on the register because it has been free of cost to do so. It also would include some people who may wish to practise at some time in the future.

Unfortunately, accurate statistics are not held, but essentially those who have to maintain their registration are restricted to those who practise and are therefore required to hold an Annual Practising Certificate (some 840 people); those who are required to maintain registration as a condition of employment; and those who may intend to do either of the above in future. I estimate that less than 50% of our membership are required to maintain their registration. Apart from those in the "retired" category (some 160 members), it is clear that the balance retain their registration, not because they have to, but because of their

Roger Hallinan FNZJV is the Immediate Past Chairman of the New Zealand Institute of Valuers. He is a public valuer practicing in Christchurch specialising in commercial and industrial properties and is a Director of Roberston Young Telfer (Southern) Ltd. An address given to the 50th Jubilee Seminar NZIV at Wellington on 10 April 1989.

voluntary desire to retain access to the benefits and services provided by the Institute.

Let us briefly examine whether compulsory membership of the Institute by registered valuers has been beneficial. For very many years the Institute had a large part to play in the education of students until about seven years ago when student education was handed over to the Universities exclusively. I suggest that if these students had not been compulsorily required to be members of the Institute upon registration then student education by the Institute may not have existed. Clearly the Institute's involvement in student education has been extremely beneficial to the valuing profession.

Likewise, the role of the Institute in printing and publishing textbooks and technical publications has been substantial. It has benefitted all members and equipped them better to perform their task. The community is undoubtedly the better for it. Furthermore, by way of seminars, workshops and national and branch meetings (the majority of which have been promoted by the Institute), the continuing education of valuers has been achieved albeit by voluntary attendance. Those members who avail themselves of these member services are better equipped professionals, once again benefitting the community generally. Because numerically we are a relatively small professional group, the fact that compulsory membership was required enabled the Institute to economically provide continuing education programmes on a nationwide basis.

The valuing profession has also benefitted from the institute's initiatives in a whole range of other member services including the provision of sales data (virtually the tools of our trade); the development and adoption of internationally recognised valuation standards; the development and enforcement of rules of conduct and codes of ethics which provide for the enhancement of the profession ultimately; the development of association with other valuation bodies internationally; the development of associations with other professional groups in New Zealand; the promotion of the profession by producing publicity material and undertaking public relations campaigns; the development of an effective professional indemnity insurance scheme; the representations to government, commissions and working groups in the area of legislation and regulations; the provision of statistical data; and more recently, the development and commissioning of computer programmes to suit the needs of the professional valuer.

The institute may not have survived under voluntary membership...

I very much doubt whether many of these member services would have been developed without compulsory membership of the Institute. Indeed, during our formative years the Institute may not even have survived under a voluntary membership situation.

The Institute has also developed and refined advancement criteria and rules in respect of each of the categories of membership, It has also developed Post-Graduate Awards and also an Award to recognise outstanding service to the profession. This is the John M Harcourt Memorial Award named after an energetic member of the Wellington Branch and a Past President of the Institute. Since 1975 this Award has been conferred on seven members. I am pleased to advise that at the Annual General Meeting later this afternoon a further Harcourt Memorial Award will be made in this our Jubilee year.

Most assuredly members of the profession have benefitted by their association with the Institute. They have obtained services from the Institute which have equipped them to perform the valuation of land and buildings to a very high professional standard. I have no doubt the profession of valuation in New Zealand would not be developed to the extent it is today if membership had not been compulsory over the past 40 years. At the end of the day however, it is the whole community which is the beneficiary of the enhanced competency of the professional valuer.

The role of the Valuers Registration Board.

The Valuers Registration Board has had a very significant role to play in the development and enhancement of the profession. By statute they are required to develop and maintain education standards and registration standards, and enforce disciplinary controls for the profession. I believe these tasks have been very ably performed by V.R.B. members over the years. To those who believe the V.R.B. is unnecessary I ask you to ponder the fact that if the profession did not have the V.R.B. it would be necessary for the Institute to perform all these functions. If this situation were the case there is no doubt subscription levels would be considerably higher than at present.

The situation today

I want to look now at where we are today as a professional association. I have already referred to the extensive services and benefits the Institute is providing for its members.

Internationally I believe our Institute has come of age and is justifiably capable of holding its head high. In addition to hosting a most successful Pan Pacific Real Estate Appraisers, Valuers and Counsellors Congress during 1988, the Institute has been accorded the distinction of having one of its members, the Immediate Past President, Graeme Horsley, appointed chairman of the International Asset Valuation Standards Committee (TIAVSC). Also, the New Zealand Institute, with the VRB have moved a long way towards putting in place reciprocity agreements with the Appraisal Institute of Canada and the Royal Institution of Chartered Surveyors. I noted recently the Australian Institute of Valuers and Land Administrators is also discussing reciprocity with several of our Asian neighbours and realistically we could shortly be doing the same. The Fourth World Valuation Congress is planned for New Zealand in 1991, another example of the shrinking world and the international compatibility of the valuation profession. The Institute will

continue to bring key speakers to New Zealand as it proposes to do next September with Dr R T M Whipple from Australia.

The ANCERTA-Trade in Services Agreement, between New Zealand and Australia, offers some exciting future prospects as between our own Institute and our Australian counterparts. In the meantime the existing reciprocity agreement with Australia is in the process of being "tidied up". It is most appropriate that Greg McNamara should be at our Jubilee celebrations as President of the Australian Institute of Valuers and Land Administrators to tell us about his Institute. Further cementing of our relationship could quite realistically see us amalgamating to form an Australasian Institute one day. There could be some substantial benefits accruing.

On the domestic front the Institute has been a party to examining unification with other land-based professions in New Zealand. The Working Party has prepared a report outlining, in a preliminary manner, how unification could be achieved. As with the other institutes involved, our Institute now has to examine the working party report and determine whether it wishes to proceed further along the unification track.

The Institute has been closely examining whether we should

The Institute has been examining whether the membership bases should be broadened

continue to restrict our membership to valuers of land and buildings or whether we should broaden our base to include valuers of other real and personal assets. This issue will be pursued during 1989. My personal view is that we should and will broaden our base to accommodate within the Institute such people as chattels valuers, plant and machinery valuers etc. What has to be determined is the appropriate form of identity or category of membership to apply, and education and admission standards for those categories of membership. In the meantime, affiliate status within the Institute is available to those wishing an earlier association.

Over the past two years, planning has continued to the current point where the Institute has undertaken to financially assist resource funding at the three valuation universities. In return for a significant contribution from the Real Estate Institute, Property Management Institute and our own Institute, the property professions achieve enhanced academic status, increased lecturing strengths, access to research materials and greater university involvement in continuing education for members. The establishment of professorial chairs this year at Lincoln College and Massey University is a major step forward for the property professions.

I imagine few would argue against the dismantling of some of the advertising constraints in view of modern thinking. The Commerce Act and Fair Trading Act obligates us to do so in any event. We shall be looking at this matter at the Annual General Meeting.

In 1984 the Government imposed on the Institute to dismantle its minimum scale of charges. Generally this move was well accepted by valuers. However, it is my view that the resultant "price war" amongst those valuers undertaking residential valuation work in some centres has regrettably brought about a reduction in reporting standards. By this I do not mean a reduction in the standards of the preparation of the actual valuation but a reduction in the standard and presentation of the

report. I see this development as regrettable from a professional viewpoint notwithstanding the claim that a lowered standard of reporting is all that is required by the client. I believe if we are to maintain our professional ranking there is no room to allow any reduction in reporting standards.

The Valuers Act Review

For 40 years we have been subject to the influence of the Valuers Act 1948. For the past seven years the Valuers Registration Board, the Valuer-General and the Institute have been attempting to have a review of the Act carried out to bring about various desired amendments.

The type and nature of the amendments could, in my view, only be beneficial to the community. For instance the review proposes updating penalty provisions available to the VRB, widening of the membership of the VRB and various other proposals, many of which were suggested by the Institute. I believe none of the proposals could be interpreted as giving the registered valuer a monopoly to undertake valuations, nor does it foster a "closed shop" detrimental to society.

When the draft Bill was completed by the law draughtsmen in 1987, it essentially maintained the status quo with the 1948 Act in that the Registration Board was retained and it was a requirement that all registered valuers be members of the Institute of Valuers, other than for exemption on grounds of conscientious objection.

Re-regulation and the voluntary membership issue

While the draft Review of the Valuers Act was awaiting presentation to Parliament, the Government released its Economic Statement on 17 December 1987. Amongst other matters the Economic Statement proposed an Inquiry into Occupational Regulation of the Professions. The inquiry seeks to establish whether regulation of professions is currently relevant, or whether de-regulation may not be more appropriate.

Secondly, it seeks to establish whether compulsory membership of an association or body such as the Institute of Valuers is necessary. The Institute made extensive submissions to the Occupational Regulation Working Group early in 1988. To date the Working Group has not publicly released a report on these matters to Government. In a significant sense the current situ-

ation is frustrating to the Institute, the Valuer-General, the VRB and indeed to the entire profession.

From my personal observations, I believe the Government, rather than de-regulating, is most likely to re-regulate the valuing profession so that we are more professional and accountable to a registration (licensing) authority and therefore to the public.

However, voluntary association remains a very real prospect. In other words registered valuers will most likely be required to maintain a Licence of Annual Registration but need not maintain membership of the Institute.

The prospect of this situation evolving is a reflection of changing attitudes in society on a world-wide basis, rather than a Labour Government action. Indeed, while the National Government was last in power they too were closely examining the regulation/compulsory membership issues.

The Institute of Valuers has been facing the prospect of voluntary membership for a number of years now. Over that period the Council and its committees have been continually asking "What more can the Institute do for its members?" or "What further services do members want from the Institute?" Within monetary constraints I believe recent years have seen the progressive expansion of benefits to members, a process that has continued for the entire 50 years the Institute has been in existence. The aim of the Council of the Institute since voluntary membership became a prospect has been to place the Institute in such a position that all members would choose to remain members when voluntary membership becomes a reality because of the benefits and services available. I believe we are well poised for that eventuality.

Over recent times, the Institute has been promoting Institute and membership of the Institute, rather than promoting the "registered valuer" in anticipation of voluntary membership. In addition, the Institute has been addressing the implications voluntary membership would have on the Code of Ethics and the Rules of the Institute.

Whether membership is compulsory or voluntary in the future, I believe the Institute is more than ready to progress into the next 50 years, consolidating and building on its past achievements and being ready and willing to adapt to change as and when necessary. A

The Future of The Institute,

by Rodney L Jefferies

Rod Jefferies FNZIV was elected Chairman of the New Zealand Institute of Valuers in April 1989,

The following is his address to the 50th Jubilee Seminar NZIV at Wellington on 10 April 1989.

Introduction

In celebrating the 50th Jubilee of the Institute, we are concentrating on a somewhat introspective look at the past- where we came from, how we started, how we got here, who influenced us on our way, and where we are today.

I am very honoured to take up the mantle of a long line of dedicated Presidents who have led our Institute to this milestone in our professional development. You and I can look back and be proud of the significant achievements of the last 50 years and stand tall where we are now.

The two historic publications, the *March Journal* and the *History*, aptly show how much the profession has grown both in its standing in the community and in the development of the principles and practices applied in our vocation.

1 The views and predictions expressed in this paper are entirely the writer's and have not all been discussed with nor are endorsed by or represent the policy of the Council of the NZ Institute of Valuers.

Our incumbent President, Roger Hallinan, has just presented the current scene and this evening Stan Ralston, recently retired Valuer-General and Chairman of the Valuers Registration Board, will present the past history.

Their tasks, though onerous in time and thought as they have been in preparing their papers, I regard as easy by comparison to my task which is to take you from tomorrow forward into the future. They have reported on and interpreted facts, whereas I must predict the future, which is daunting to say the least.

At the outset, in preparing this paper, I looked for some inspiration in old journals and writings of others for some guidance or for the application of an immutable "law: upon which I could rely. Alas, the only one which kept popping into my mind was Murphy's Law: *What can go wrong will go wrong*. That certainly applied to my efforts to write and produce this paper on computer. However, nothing I found helped me in my task of prediction.

Devoid of external help, I sought from within my own experience what I have found to be a truism when making future valuation estimates and other market predictions or value levels, which I coin *Jefferies' Law: Whatever you predictis more likely to be wrong than right*.

Having now got my principles right, and knowing the integrity and fidelity of the author of the above law, I can safely proceed! In 50 years time when someone digs out this paper from an old *Valuers' Journal* and says: *Well, he couldn't have been more wrong*, I will be able to laser beam a letter to the Editor from my galactic retirement village and say: *You've just proved Jefferies' Law*.

Scenario 1: Tomorrow

The immediate changes which are likely to come about are already in progress. The incorporation of Plant and Machinery Valuers under the NZIV will go ahead and be the first step towards widening our base to include all valuers of assets in accordance with our Corporate Plan.

Re-regulation or deregulation and voluntary membership is an immediate prospect, and we must get on with preparing for the inevitable.

Closer *Trans-Tasman ties* are inevitable and desirable, and we will explore the possibilities of moving closer together with our Australian counterparts.

The Institute will put immediate effort into providing a sound administrative base to improve the *services to members* it offers, so that all who choose to practice valuation will want to voluntarily belong and enjoy the benefits of being members of the *Valuers' Institute*.

These topical and similar issues were also covered by the respective representatives of our kindred professions earlier in the seminar proceedings. Roger Hallinan previously covered how they currently affect our Institute, and I'm sure will also be covered by Greg McNamara the President of the Australian Institute of Valuers and Land Administrators to follow.

Unification of the property based profession is not, in my view, likely to be achieved in the short term, although I am generally an advocate of it. There may well be some moving closer together of the PMI, REINZ and NZIV but full integration is currently unlikely to be acceptable to the majority of our members, judging by the recent negative reaction by a significant number to widening our base to include plant and machinery valuers.

Unfortunately the benefits of unification are not sufficiently cogent or persuasive in the joint CLRP working party report to bring rapid change in this area. Unification of the land based

profession in New Zealand may well die a death if only because of personal prejudices ingrained in our older members. Property students and graduates, however, see no merit in belonging to three separate organisations for which they have a single qualification. No wonder we are not attracting many recent graduates into membership until forced to at registration by the compulsory membership requirement. When the latter goes there will be a renewed interest in unification.

For myself I don't want to make any more prediction about the next two years in case you demand I deliver as your President on my promises! I want to concentrate on the longer term change which will in my view and scenarios, impact on the valuation profession and in particular the Institute of tomorrow.

Scenario 2: The Next Five to Ten Years.

The identity crisis over what we call ourselves and what we adopt as a logo/trademark will have come and gone and will have used up too much precious Council's and others' time, as well as funds in publicity and promotion.

My pick is: **Utz** va&flu

Deregulation/Discipline

Deregulation (or Re-Regulation) will be a fact and we will be able to get on with concentrating on developing a raft of member services to attract and retain membership.

It will be the best thing that can happen to us despite the advantages of compulsory membership of the past. We are now an Institute which at 50 years should be mature enough to stand on its own feet and in my view bite the bullet and take on board the implications including discipline and policing of the professional standards of its own members².

I am conscious I am not joined in my personal views by the majority of Council in this matter. The official policy of the Institute is to seek continued status-quo statutory regulation and discipline.

Data Bases

The most beneficial member service will be on-line data bases for sales, costs, rents and other statistical information. This will be so successful that it will begin to eat up the Institute members funds as working capital and require considerable staffing. Once found to be viable and potentially profitable, in the face of other competing commercial operations, we will first corporatise the operation and then privatise it (nothing unfamiliar about that!). It will most likely end up being merged with one of the opposition data bases, so as to remain viable.

Premises

From the proceeds of the sale of its data base operation the Institute will be able to afford new permanent premises (in Auckland).

Continuing Education

The other main thrust of member services will be in the area of in-service and continuing education for practitioners. These will take the form of initially a series of video courses and then electronic data (by disc or on-line telecommunication) operations that can be brought upon one's own PC or terminal (video or computer) either to assist in solving a particular subject/property problem, or in modules of a structured course.

Compulsory Certification

The above continuing education programme will enable the

2. This is a long held view of mine and expressed before, see: Editorial, *The Future Role of the Registration Board* (1971) NZ Val.p360; and *The Licensing of Appraisers: A Problem or a Solution, The Real Estate Appraiser* Nov-Dec 1971.

Institute to bring in compulsory re-certification based on the logged in hours (or returned discs) and achievement based on computer standardised tests of knowledge, skill, and proficiency.

Software Programmes

There will, alongside the above, be a rapid development of software programmes particularly valuation 'template' type outlines for a wide range of every day valuation tasks to run on standard over the counter spreadsheet, data base, word-processor and desk top publishing packages.

Valuation Standards

The above programmes will incorporate the Valuation Standards set down by T.I.A.V.A.C. by means of prompts and checks built into the programs or as audit programmes.

Basic Research

Basic research for the above advances will be developed primarily by the Real Estate Valuation and Property Management Education Foundation Trust funded academics at our three state Universities (and possibly new private ones), and also by recent masters and doctorate graduates either on contract to the Institute or privately and marketed through the Institute. The latter in fact is already starting to happen.

Educational Syllabi

Educational institutions will greatly extend and develop common syllabi, particularly at intermediate level, and will also extend this to an Australasia wide basis, with greater emphasis on interchange of staff and students.

Four-year degrees will become the norm to be able to teach the required content of knowledge for the property professional of tomorrow.

Post Graduate Study

The current rapid growth of post-graduate study will takeoff and towards the end of this 10-year period a minimum of a master's degree will be the norm expected by employers of graduates, with bachelor only degree holders being disadvantaged in employment opportunities.

University Appointments

The Universities will only employ those holding Doctorates even for Lecturer positions and there will be an expansion of staffing at all levels including Professorial Chairs, Associate Professors and a good complement of Senior Lecturers at all the property teaching institutions.

Advancement to the higher positions will be more from among New Zealanders, many with New Zealand degrees and possibly overseas post-graduate degrees and or with professional practice experience.

The professions of the land will demand a greater share of the educational vote and also be prepared to fund research. Salaries will be competitive with private enterprise to allow the movement in and out of academia to the benefit of both the Universities and the Institute and other property based professions.

Professional Practices

Continued and even greater change will be experienced in professional practices, especially with the dominance, by the end of 10 years, of the market by national and international firms of valuers and multi-disciplinary practices.

Trans-Tasman & Beyond

An extension of Trans-Tasman practices followed by Australasian/Asian practices and by new and more international firms, will occur.

Corporate Membership

The preponderance of distinctive "small or individual valuation" firms of the past 10-15 years will pass and there will be the need for the Institute to have new forms and levels of both corporate and individual membership.

There will be incentives for individuals to belong, as well as their firms.

Council Representation

The Council of the Institute will become dominated by members of these larger firms who see the benefits of subsidising the time involvement and status of employees or principals in such Institute office, and have the 'numbers' to ensure their election. The Institute will need to change the rules to ensure minority membership views and concerns are heard, such as proportional representation.

Specialisation

The "small or individual valuation" firms will become more specialised both in locations and type of client/work.

Sole consultancies

There will be a small but growing 'elite' number of sole practitioner specialists or consultants who may group together (like barristers) for administrative purposes only.

These will consist of those who are disenchanting with the large corporate firm structures and who desire a more individual professional reputation and work style, some of whom may 'service' the larger firms in specialist areas and/or have a select clientele.

Corporatisation/privatisation of VNZ

The Government Valuation Department (Valuation New Zealand) will be fully corporatised and probably privatised also, within the 10-year period.

This will impact on the entrenched private/government dichotomy of the traditional membership and support of membership both at Branch and Council representation within the Institute. Coupled with deregulation (or re-regulation) there will no longer be justification for a 'special' VG's representative on Council.

Methodology

The basic methods of valuation will remain, but with a greater reliance on comparative sales and investment approaches utilising the modern technologies referred to above.

Judicial Valuation

The decline in recent years in legal valuation cases and precedents will continue, as more use will be made of negotiation, conciliation and arbitration procedures and the resolution of disputes under leases and contracts by "experts". Leading awards will supplant court decisions as precedents are set increasingly by "experts".

In many ways this will be regrettable as it is the honing experience of preparing for and being examined and cross examined in a formal court hearing that a valuer reaches full maturity, and the judicial valuations that result have provided the profession with sound precedents to follow.

Professional Responsibility

Impartiality, experience, honesty and technical know how will remain the hallmarks of the competent valuer of tomorrow who need have no fear. Some of the changes referred to here will allow the professional to be more "accurate" in valuation predictions, or at least to attach probabilities as to future outcomes, and thus improve the usefulness of valuations.

Unfortunately there will always be some who by design or accident fail to make reasonably competent valuations, but they will be found out sooner and it will be easier and less expensive for investors and lenders etc, to obtain accurate property data to check the valuers assumptions and for the employment of reviewers who would provide that service. Professional ethics should allow and encourage opinions to be checked and audited as to bona-fides and reliability.

Technological Change

In addition to the changes mentioned above there will be a

speeding up of technology available at affordable cost which will impact progressively on the way practices operate and the equipment they use. Virtually all valuation practices will be fully computerised for data management and communications/reporting.

The Institute will continue to be at the leading edge of these developments, both in its own operation and in encouraging members to gain knowledge, experience and confidence in computerisation and other developments resulting from micro-chip, laser beam, and optical recording and transmission devices.

The Economic Environment

Consumerism will increase coupled with rapid economic recovery sometime in the 1990-1993 period with at least one more boom/bust/recovery property cycle in the next 10 years.

The Political Environment

Local government reorganisation will result in increased efficiencies and local property controls in the latter half of the decade.

Central government as compared to local government will take a lessening role in peoples' lives and in affecting the work of property professions.

However political policies and fortunes will be more volatile and there will be a strong influence from indigenous interest groups, which will come to a head within the 10-year period. Private property rights will be under increasing control from local government 'police powers'.

Scenario 3: *Ten to Fifty Years (and beyond)*

A new broad based "Institute" will have emerged of "property" professionals, probably organised on world wide "umbrella" basis, possibly a development from T.I.A.V.S.C. and C.A.S.L.E., with country/regional structure and branches at local level. It will have specialist divisions, of which valuation and/or consultancy will be a key one to which we will belong.

There will be a proliferation of small and localised subsidiary (or competing) organisations, with local or sector interests in common.

Deregulation/Discipline

The new "Institute" will be totally voluntary, without statutory incorporation and will be self-disciplining.

Member Services

These will be limited to professional organisation and advancement, including setting, monitoring and policing of standards. The "Institute" will be concerned with granting membership, affording personal status, ensuring that undergraduate and graduate degrees meet acceptable levels of pre-entry standards; and funding research.

Other member services will be handled either by local branches to suit specific needs, or available from the industry itself on a user pay basis.

Data Bases

These will be both extensive and international with rapid and cost-effective access from the practitioner's desk, car (or other vehicle) or in the field on the job, through hand held, pocket sized receivers/controls. It will be a largely paper-less environment, with the valuer never more than a button or voice controlled command away from most information or services required.

Premises

The Auckland offices purchased about 1999 will become obsolete and be sold as part of a new mega-city redevelopment, the "Institute" moving its administration to new Asia/Pacific head-

quarters in Sydney, and linked to the American Continent office in Chicago and to the Europe/Africa/Middle East and International Headquarters in Brussels.

Continuing Education

A 10-minute daily, half-hourly, weekly, and one-hour monthly self-operated terminal facilities will keep members up-to-date with techniques, trends and methodologies. Full day and live-in courses will still be undertaken largely for personal interchange and social reasons.

Compulsory Re-Certification

This will be an ongoing monitored system based on members' participation in the above described continuing education programme. Failure to keep up will not only lead to loss of membership, but loss of ability to operate the databases and technologies essential for practice.³

Software Programmes

These will become progressively cheaper and standardised for valuation and other property professional use. Terminal access to data bases and their associated programmes will largely take over the need for a practitioner to have expensive electronic systems of their own.

The PCs of today will be as forgotten as the slide rules which I and probably many of you were trained on or used in the 1950's and 1960's, prior to the availability of electronic hand held calculators.

Valuation Standards

These will be part and parcel of the above systems, but with the flexibility for personal interpretation and formatting. Much discussion will take place on their appropriateness and towards the end of the 50-year period there will be a move to replace these with "criteria parameters" with more flexibility for individual interpretation and opinion.

A renaissance will begin in which practitioners will want to be unshackled from the structures of internationalism and global inflicted constraints causing de-personalisation of professional opinion and responsibility.

Basic Research

The continuation of University based research will form the backbone of the development of methodologies well into the next century, with growing industry applications and cooperation. The role of *Real Estate Research Centres* attached to or jointly staffed by the Universities and secondments from industry, will form the structures, funded by the "Institute", "Foundations" and directly by industry.

Educational Syllabi

The "Institute" will be influential in ensuring that there is a largely world-wide common intermediate/undergraduate syllabi, with different institutions offering speciality post-graduate degrees and diplomas.

Post Graduate Study

The minimum educational entry to professional membership status will be a basic undergraduate degree together with a minimum of a post-graduate masters degree, diploma, or doctorate qualification in a property discipline. New Zealand students will be going overseas to gain qualifications in larger numbers and there is likely to be some centralisation of university teaching in property, with a reduction in the number of separate teaching institutions, coupled with specialisation in subject areas.

University Appointments

A doctorate will become the universal minimum academic

3. Retirement will be a gracious way of not keeping up, there being a swag of retirements about 2002-2005 when most of you and I finally accept we can't keep up with the younger switched on challengers.

qualification for all research and teaching positions, with world wide standards applying. An even greater career and vocational interchange will take place between industry and the teaching institutions.

Professional Practices

There will be a consolidation of international firms into "mega-firms", coupled with the re-emergence of small "boutique" firms as specialist consultants at the other end of the scale.

Trans-Tasman and Beyond

The full integration of "Institute" activities Trans-Tasman will be in effect toward the beginning of this period, and rapidly progress to an international umbrella and then a fully integrated international organisation.

Corporate Membership

Both corporate and individual membership will remain though the latter will decline and be an area in which subsidies will have to be given to retain members of high personal standing and repute, who may be attracted to join smaller rival specialist groupings.

Council representation

A form of proportional representation for corporate members based on employee involvement will evolve, and individual members will by comparison be given disproportional representation to ensure minority views and interests are heard and to counteract division and break-away groupings.

Specialisation

The specialisation will take place in terms of-

- (i) Property types
- (ii) Disciplines: Valuation/Appraisal
Management
Development
Consultancy
- (iii) Regional: local
national
international
interplanetary and space

Sole consultancies

These will continue but not be large in number or effect until well into the period when disenchantment with the "mega-firms" will cause a proliferation of small "boutique" firms and individuals specialising in some of the above specialisations.

Corporatisation/Privatisation of VNZ

There will be no state involvement in the industry, privatisation will be complete and the large and "mega-firms" will carry out on contract all valuations for taxation and other local, central and international government purposes world wide.

Methodology

New methodologies will emerge largely based on multi parameter predictive technologies and improved databases. These will also open the way for professionals to exercise greater degrees of sophistication in appraisal of alternatives using simulation techniques and modelling.

Large mass appraisal work will still occur, some on an international basis, as well as national and local jurisdictions.

Judicial Valuation

International disputes will be largely by a form of conciliation/auditing procedures and lengthy court cases and judicial valuations will be largely left to the commercial arena of development and management.

The role of the "expert" will be enhanced and many sole and

"boutique" firms will be active in this area of practice.

Technological Change

High tech impact will increase and the use of laser beams, fibre optics, scientific telepathy, coupled with new discoveries in energy and matter transfer will revolutionise all aspects of business life.

New forms of technological assets will require to be valued, including "space", "ocean depth", "underground space" and the improvements, resources and plant/equipment associated therewith.

Possibly within the 50 years some interplanetary travel may require valuations of assets involved in the colonisation of other than earth bound locations.

Imagine, if you will, a valuer receiving instructions via tele-video screen from the Board of Management of a deep sea mining camp in the Mid-Tasman ocean, to prepare a market valuation of the enterprise.

How will he/she go about it? Will there be a title and survey available? Can a recent GV be brought up on screen? Can transport be arranged with in a fusion powered mini-sub? Can inspection be made and measured up by a laser beam measuring device?

Can a report be made from portable hand held dicta-printer that outputs the data on a mini screen and records it back at the office? etc? WHAT will be the technological environment in which the valuer of tomorrow works?

We could paint a similar scene for an orbiting space transport station, or an underground retirement village, a chemical plant on the moon, or an office complex under Wellington Harbour or under the Tinakori Hills.

The economic environment

Economies will be increasing in world-wide responsiveness, with local and national economies far more controlled or predictable. Business and building cycles will be controlled and economic stimulation or slow down will be far more controlled.

The Political Environment

Political "ideologies" will find resurgence in waves of mounting pressures, particularly from the merging new rich nations and those coming out of third world status. There will be further mounting racial and religious tensions.

Conclusion

Barring the end of the world we will still have an "Institute" in 50 years' time but it will be unrecognisable from what we belong to today.

Some speaker at the "Institute's" 100th Jubilee celebrations of the founding of the NZIV (if they remember and have one) will undoubtedly trace the progression of valuation and valuers over the next 50 years. I would love to be around to listen, and plan to be.

In my view the future of the Institute will be well served by those current and future members who bring a real sense of vocation to their daily work and to collective activity to achieve the very best out of the undoubted opportunities that exist now and will open up in the future.

The dramatic change of the last 25 years that I have experienced and enjoyed have made every day a busy and exciting one. I do not regret that I took up valuation as my vocation and I expect to enjoy it even more over the next 25 years, before I bow out to today's students.

The students of today will be the ones who will experience the full stretch of the possible scenarios I have described.

I believe the future events and situations are quite probable, and will provide an exciting future for those who continue in or take up valuation as their chosen vocations. A

Working Party on Unification of Land Based Professions

Report by the General Secretary John Gibson

In 1988 your Executive authorised the President of the NZ Institute of Valuers to participate in a Council of Land Related Professions working party, established to consider the possibility of the land related professions uniting to form a federation of property institutes. The working party reported in December 1988 and the Council considered the topic at its meeting in April 1989. Copies of the report have been circulated to all Councillors, and are available from the office of the General Secretary of the NZ Institute of Valuers. I called for submissions on this topic in my newsletter of 6 June 1989.

The Council of Land-Related Professions (CLRP) had its beginnings on 22 July 1980, as a combined committee of the Institute of Valuers, Institute of Surveyors and the Property Management Institute. Following a special meeting of the committee on 29 April 1981, the representation was enlarged to include the Institute of Quantity Surveyors, and the Real Estate Institute. The founding members of CLRP saw the development of closer relations as being both to the mutual advantage of the members and in the public interest.

In 1983 the Council of the NZ Institute of Valuers endorsed "the establishment of a formal structure which allows each Institute to retain its independence but allows a commonvoice when required in areas of mutual concern". Delegates from the NZ Institute of Valuers regularly attend the CLRP meetings.

To better acquaint members with the issues involved regarding unification, the following article is an edited version of the full report. Any members wishing to obtain a copy of the full report may do so by contacting the General Secretary.

Any member wishing to comment on the proposal may do so in writing to:-

Roger Hallinan,
PO Box 2532, Christchurch.
John Larmer,
PO Box 713,
New Plymouth.
Alex Laing,
POBox 587,
Dunedin.

Council of Land Related Professions Working Party on Unification Report

Members of the working party comprised:

Mr R A Hewitt	President	REINZ
Mr P J Cook	Past President	REINZ
Mr D Keys	President	PMI
Mr E Harris	Sen.Vice President	PMI
Mr B M Shute	President	NZIS
Mr R E Hallinan	President	NZIV
Mr P Waterhouse	President	NZIQS
Secretary		
Mr E S M Keys		REINZ

The objective of the report has been to identify, analyse and recommend a structure and methodology for the merging or unification of the professions of the land.

Largely because of legislative constraints for four out of five of the member professions of CLRP, the report proposed a two-stage implementation of the process of unification.

Discussions have been held during the preparation of this report with the President and Secretary-General of the Royal Institution of Chartered Surveyors. These discussions have materially assisted the Working Party in focusing on and solving issues related to possible unification of the land related professions in New Zealand.

Objective

The objective set by the Working Party is:

To achieve an effective, beneficial and workable structural and administrative integration of the professions of the land in New Zealand.

The case for unification

The first issue which the Working Party has addressed, and which will be clearly of prime relevance to members of individual professions is "Why seek unification?" The Working Party has identified a number of advantages which will arise from unification of the land related professions. These are:

- Enhancement of the professional image of the land related professions.

- Extending and improving the scope and quality of services available to members.
- Efficiencies of administrative scale particularly in medium to long term.
- Expansion of the strength of the "voice" of the professions in dealing with Government, the media and the public at large.

Against this the Working Party has sought to identify and accommodate any potential disadvantages in unification. Two disadvantages have been identified but accommodated within the recommendations of the working party.

- The perception of loss of individual professional identity by members of the existing institutes.
- The potential disadvantage of ultimate financial merging of the assets of the individual professions.

Present situation

The five professional institutes of the land who comprise the Council of Land related Professions (CLRP) are, with the exception of PMI, subject to registration control through statutory boards. Details are as follows:

Institute	Legislation	Statutory Board
NZ Institute of Quantity Surveyors	Quantity Surveyors Act 1968	Quantity Surveyors Registration Board
NZ Institute of Surveyors	Survey Act 1986	Survey Board
Real Estate Institute of New Zealand	Real Estate Agents Act 1976	Real Estate Agents Licensing Board
NZ Institute of Valuers	Valuers Act 1948	Valuers Registration Board

The proposed structure and in particular the suggested staging recognises the present legislative status of member bodies of CLRP and also recognises the need for legislative change before the ultimate structure could be implemented.

Proposed Structure

It is proposed that the five institutes, presently members of CLRP, should form a federation with the suggested name of the Federation of Property Institutes (FPI). The ultimate objective is to form a single professional institute, when or if appropriate. General Council

The controlling authority of FPI would be a GENERAL COUNCIL which would be responsible for the formation of policy at the highest level. Its role could be defined briefly as:

- a. Determining the overall organisation of the Federation.
- b. Determining policies which affect the Federation as a whole.
- c. Approving FPI objectives, policies, plans and budgets.
- d. Acting as a forum for debating matters affecting the future of the property professions.
- e. Serving as a means of communication with divisional councils, operating committees and regional structure.

Executive Committee

Executive control of FPI would rest with an EXECUTIVE COMMITTEE which would be responsible to the General Council for advising on corporate objectives, policies, plans and budgets and for co-ordinating and monitoring the implementation of plans. The EXECUTIVE COMMITTEE would exercise delegated powers on behalf of the General Council and would have the power to co-opt for operational sub-committees.

Operational Sub-Committees

Operating functions of FPI would be controlled by the Executive Committee possibly through a series of operation Sub-Committees.

The areas of special interest could initially comprise:

- a. Education
- b. Membership
- c. Legislation
- d. Professional Practice
- e. Public Affairs
- f. Publications

The function of each Operational Sub-Committee would be to deal with specialist defined areas of operation of FPI and to recommend policy to the Executive Committee and the General Council.

Secretariat

The Secretariat would service the administration of the Federation. The Secretariat would comprise a General Secretary and other staff appointed by the Executive Committee.

Divisional Councils

The interests of each occupational group, currently comprising a separate Institute, would be achieved through the separate divisional councils. The initial divisions would be:

- a. Property Management
- b. Quantity Surveying
- c. Real Estate
- d. Surveying
- e. Valuation

Each Divisional Council would comprise representatives elected by members of each division and would deal with the special interests of each division of the profession.

Regional Committees

A Regional Committee's functions will be to co-ordinate and administer regional activities.

Regions of FPI as follows:

- a. Northern North Island
- b. Central North Island
- c. Southern North Island
- d. Northern South Island
- e. Southern South Island

Districts/branches of "FPI" and/or the divisions would be established throughout each of the five regions.

Administration

As the working party views it, there are defined areas of administration which must be controlled:

- Membership/Finance/General Administration
- Education
- Professional Practice/Public Relations
- Legislation
- Statistics
- Publications

In the transitional period the working party suggests that each Institute retains its own administration and assumes responsibility for the overall control of one or more of the above areas. The exact delineation to be dependent on staff and expertise available at that Institute's offices.

The control of the overall administration would rest with a Secretary-general and secretariat.

The Institutes would initially retain their original codes of ethics but a code of ethics covering all parties will be required ultimately. Each division would then determine whether a separate code of practice was required for that division.

Membership of the FPI would be common to all divisions, as would a set of rules, but there may be a need for specific individual rules to be inserted for specific divisions.

Financial

When considering the finances of such a structure as proposed, it should be borne in mind that the ultimate objective of the exercise is to achieve a stronger body which improves the services provided to members. This body may not be cheaper, and some bodies could be required to pay higher fees than currently, however, such increases should be acceptable provided members are aware of the increased benefits both tangible and intangible that they receive for extra cost.

Functional Objectives

The major functional/operational areas of activity of FPI have been identified under operational sub-committees above. The objectives identified by the Working Party which would need to be the subject of analysis and endorsement by the General Council of FPI are:

- Education
- Membership Objectives for FPI
- Legislation
- Professional Practice Committee
- Publications
- Public Affairs

Programme and Staging

The Working Party has carefully considered the staging of implementation of recommendations set out in this report.

Stage One:

It is clear that the legislative or statutory set up or constraints in respect of four member institutes of CLRP will prevent complete initial integration.

The working party considers that aspects of the structure and administration that can be implemented at the first stage will include:

- a. Formation of FPI
- b. The establishment of a General Council and Executive Committee

Professionalism in Valuation Reports

by R T Sowry

The Land Professional Mutual Society (inc) was incorporated in 1976 primarily for the purpose of arranging Professional Indemnity (PI) Insurance for land surveyors.

The membership was expanded in 1983 to include valuers and more recently planners, farm management consultants, quantity surveyors and other kindred professions. Our Society is similar to that set up originally by engineers in New Zealand. Today Australian engineers and surveyors and New Zealand architects, lawyers, customs agents and accountants all have similar Societies. Our Society is a non profit organisation that provides PI and other insurances for its members on a group basis. Any surplus from our year's activities is returned to the members in the form of a profit share rebate or the like. We are not insurers and we have no sales people to whom we pay commissions. We keep overheads to a minimum consistent with maintaining the quality of service to our members. The NZ Institute of Valuers appoints one member, and three other valuers are elected members of the eight member executive. One hundred and thirty six valuer firms in private practice in New Zealand are currently members of the Society.

We believe that the existence of our Society, and indeed of the other societies mentioned, results in two significant benefits for the professions involved.

Firstly, they help to provide relative stability in the marketplace. PI insurance costs are subject to cyclic fluctuations on an international level which are primarily driven by the laws of supply and demand; too much business and not enough underwriting capital and vice versa. These changes affect New Zealand professionals regardless of their own claims experience. The existence of the Societies with their significant uninsured layers funded by members help to even out and reduce the overall cost of PI insurance. The Society's costs and hence members PI insurance costs are much more closely linked to the New Zealand claims experience.

Unification working party-continued

- c. The establishment of a Secretariat
- d. The establishment of a regional structure.

Stage Two:

Stage Two would depend on legislative amendments and/or endorsement and would involve:

- a. The formal merging of the legal entities of each institute in FPI.
- b. The financial merging of the Institutes into FPI.
- c. The set up of Divisional Councils to replace the previous structure of individual institutes.

Recommendation

The working party recommends:

- a. That CLRP endorse and adopt this Working Party report.
- b. That each member body of CLRP be asked to actively consider the recommendations in the Working Party Report in accordance with the programme set out under Programme & Staging.
- c. That the Working Party be authorised and instructed to continue with detailed investigations of aspects of implementation of the Party Report. A

Rob Sowry is a registered surveyor and partner of Odzn Sowry & Co, consulting engineers and surveyors of Lower Hutt whose specialist field is public health engineering. He is a corporate member of the NZ Institute of Surveyors and a member of the Consultant's Division of that Institute. He has been Chairman of the Wellington Branch of NZ Institute of Surveyors. Rob is chairman of Land Professionals Mutual Society Incorporated, a position he has held since the incorporation of the society in 1976, and he has been involved with all claims during this period.

Secondly, the Society keeps control of the handling of members' claims. As a result we are able to recognise trends which have an adverse affect on our members' claims experience, to take steps to rectify any shortcomings in our members' activities which may lead to claims and generally to be more sympathetic to the interests of our members. We believe that this can be compared with the solely commercial approach of insurers who simply increase the cost of PI insurance to cover their own costs and to provide a profit. They have little interest in reducing the overall exposure of a profession to the risk of claims for professional negligence. I have personally been involved with all of our members' claims since the Society began operations.

It is against that background that I address you about valuers' professionalism or perhaps I should say evidence of lack of professionalism. My comments are confined to those aspects of the activities of valuers in private practice which create potential liability for claims for professional negligence. Claims in this sense include everything that is notified in terms of the contract of PI insurance. Many of the claims received are classified as alerts; that is there has been no formal claim for damages but only some specific indications that a claim for damages is possible. All claims have one thing in common a disgruntled or unscrupulous client or other person who may have been entitled to rely on the advice of the valuer and who may have suffered a loss.

The end product of a valuer's work is his report

The end product of a valuer's work is his report. The valuer is judged on the quality of that report; from the words and figures that he uses, or does not use, can rise an allegation of negligence like a phoenix from the ashes of the dreams and aspirations of someone who allegedly relied on the contents of that report.

In a legal sense two broad classes of people are entitled to

rely on the contents of valuers' reports. Firstly, there are the clients who engaged the valuers to prepare the reports and secondly, there are the "others", being persons whom valuers might reasonably expect to rely upon the contents of those reports. In the execution of his professional duties the valuer owes both of these classes of people a duty of care.

When a client engages a valuer to carry out a valuation, a contract is created between the valuer and the client. Subject to the express terms of that contract, it will be an implied condition that the work involved in that contract be carried out with reasonable skill and care, that is, the skill and care to be expected of a reasonably competent valuer practising in the fields concerned. If there is to be any limitation of that general obligation, then it must be incorporated into the contract. The contract has been entered into before the valuation report is prepared, so that it is not possible, in the valuation report, to impose some limitation on the liability which otherwise exists under the contract. If it is desired to limit the valuer's liability to the client in some way, then that must be done at the time the engagement is entered into, not at the time the report is prepared.

With regard to the "others" who are entitled to rely on valuers' reports, under the tort of negligence, a valuer will be liable if he fails to take reasonable care to avoid actions which may cause harm to persons whom he might reasonably expect to be affected by his actions. Where a valuer, being one whose skill or judgement might reasonably be relied upon in the matter concerned, makes a statement (typically in a report), that valuer is under a legal duty to exercise reasonable skill and care in making that statement. The valuer will be liable for failure to exercise such reasonable skill and care to any person who might reasonably be expected to rely upon the statement.

So where does professionalism fit in with these legal obligations? Let us examine the valuer's duty to his client.

The valuer has a legal and professional obligation to provide the client with the professional service which he has contracted to provide. This service will have many components most of which are beyond the scope of this address. What is essential is that the valuer ascertains, at the time of accepting the commission, that is at the time of entering into the contract with a client, precisely what the client wants. The valuer should then provide his client with exactly what has been requested *but not more*.

The reports should start by confirming the instructions received. This information will include who the valuation is for and the purpose for which it has been prepared together with any other information supplied by the client and upon which the valuation relies or is dependent.

If a client in his instructions makes special requirements which he does not want mentioned in the report, but which affect the contents of the report, then professionally the valuer must ask himself whether he can live with that situation. I suggest that the truly professional valuer will decline to accept such a commission on those terms.

The report should also clearly state what it is not; this should never be a standard statement. Having completed the valuation, the truly professional valuer will consider the limitations on the scope of the report and these limitations (that is, what the report is not) should be clearly and precisely stated in the report when appropriate.

Over the years I have often heard discussions by valuers on the undesirability of "watering down" reports. This sentiment appears to me to arise from a desire on the part of the valuer for his report to be all things to all people. Perhaps, I suggest, the perfect universal report? I believe that striving for perfection is for this world but the attainment of true perfection is for other worlds.

A report can never be all things to all people. The truly professional valuer will provide his client with precisely what he wants. Neither more nor less. Nothing superfluous or additional should be included. This can lead to apparent contradictions or confusions in the layman's mind or can be misconstrued and used in evidence in an allegation of negligence. When I was very young, an elderly Scotsman whom I am told was an excellent salesman said to me: *Young Robbie, the secret of being a successful salesman is to know when you have made a sale and to stop talking*. Maybe we can learn something from old Scotty. I believe that as professionals we are all guilty at times of saying too much. We attempt to oversell our brand of logic or our professional opinions.

What about the valuer's professional duty to the "others". I have already mentioned the legal obligation. These "others" fall into two categories. There are those whom the client and the valuer have in particular contemplation when the valuation is prepared. Probably the most common situation arises when the valuation of a property for a potential purchaser (the client) includes a mortgage valuation which it is intended will be relied upon by potential mortgagees at the time the property is being investigated for purchase. In such cases the report should clearly state that it has been prepared for that purpose and that those persons, (the potential mortgagees) are entitled to rely upon it. There are undoubtedly numerous other similar situations where it is intended that other persons are entitled to rely upon the contents of a report. In every case those facts should be clearly stated in the report.

As for the rest of the "others" I do not believe that professionally the valuer has an obligation to them. To negate the legal liability, the report should incorporate a disclaimer of liability to such persons. The omission of such a disclaimer is a danger to all, especially those "other" persons who may misuse a report and suffer a loss. Precise professional legal advice is available on the wording of effective disclaimers. Disclaimers should not be tagged on the end of a report like a sore thumb but can readily be incorporated in a report together with any other matters that advise what the report "is not".

..* the majority of problems arising from valuers' reports involve a mortgage.

In my experience, the majority of problems arising from valuers' reports involve a mortgage. Often money has been advanced on the basis, inter alia, of a valuation report that was not specifically prepared for that purpose, nor indeed even included a mortgage valuation or recommendation of any description. Several different problems with valuation reports being used for mortgage security purposes have become apparent.

A mortgagee contemplating lending money should consider several matters relating to the proposed mortgagor only one of which relates to security for the mortgage monies. Of primary importance must be the ability of the mortgagor to service the mortgage including repayment of the capital. Too frequently mortgagors default on payments almost immediately and the valuer often becomes involved in the resulting litigation. The normal valuation service does not include an assessment of the mortgagor's ability to service a mortgage. This fact should be spelt out in the valuation report perhaps with an additional statement that any potential mortgagee is responsible for mak-

ing his own assessment of the mortgagor's ability to pay. A truly professional valuer will address this question and include any necessary statement in his report.

Valuations often include an analysis that relies on the future performance (economic, managerial or otherwise) of some enterprise associated with the subject of the valuation. In these circumstances there is an inherent assumption by the valuer that the mortgagor or those associated with the enterprise will perform as predicted. I suspect that this assumption is usually made without any special enquiry, consideration or assessment. In these cases it should be spelt out in the report that such an assessment is not part of the valuer's service; the potential mortgagee should make his own assessment. A truly professional valuer will address this question and include any necessary statement in his report.

We are all aware of the problems of the rising market/falling market cycle. What valuers may not appreciate fully is that they are probably the experts on this subject. Not historically, but now. With hindsight, most lay people can look back and identify the property market booms and recessions. I believe that valuers have the tools and experience to know within reasonable parameters, where the market is at any given time. It follows that valuers should be mindful of the market's position in this boom/bust cycle when making valuations and mortgage valuations in particular. A competent accurate assessment of value made near the peak of a sharply rising market is not much comfort to a client who is in trouble some months later after a period of sharply falling values. Where appropriate, valuers should consider the effects of time and the cyclic effects of the market on the valuation and on the purpose for which the report is prepared. A truly professional valuer will address this question and include any necessary statement in his report.

Mortgage recommendations included in valuation reports frequently include the words "the normal two-thirds of our assessed value" or similar. Why "normal"? Is this fraction the result of a well researched and considered assessment of the value of the property as security for a mortgage? Or is it some "rule of thumb" applied with little if any forethought? My understanding of the practicality of the matter is that the value for mortgage security purposes should reflect a reasonable estimate of what may be realised at a mortgagee sale at some indeterminate time in the future when a mortgagor has defaulted in terms of the mortgage. Experience has shown that more often than not this coincides with a period of economic recession. This act, combined with the very human instinct to seek out a bargain, often results in the property being sold for a lot less than the mortgage valuation. In such cases, the valuation report is inevitably called into question and frequently results in a demand from the mortgagee to the valuer to "please send us a cheque for the difference". Valuers should be extremely careful to consider these matters, particularly when valuing on a rising market. If the market is "above average", valuers may well have a duty to disclose this fact to potential mortgagees or to modify the mortgage valuation to take account of this fact. A truly professional valuer will address this question and include any necessary statement in his report.

Valuers are often asked to confirm a valuation that they prepared some time previously or they are asked if some rule of thumb percentage can be applied to their valuation for mortgage purposes. A "knee jerk" response to these requests can be disastrous. In many cases a new inspection of the property should be an absolute prerequisite. I know of several instances where the property had become run down or the improvements which were listed in the original report "to be completed" never had been completed. In such cases a quick ill-considered letter

which merely makes reference to the original report and confirms the valuation is negligent to say the least. The property in reality is different from that described in the original report the value is in fact for a different property.

Sometimes the original report contains vital and unusual qualifications which have a profound effect on the valuation. In such cases these qualifications should be reiterated in any letter confirming that valuation.

If time had the effect of rendering the original report inaccurate in any way, the truly professional valuer will decline to confirm it and will seek instructions to prepare a new report.

There exists in New Zealand a class of plaintiff in professional negligence litigation whom I describe as expertplaintiffs. They are often the people who lend money, sometimes at what I have heard described as "unusual or onerous terms and at excessive rates of interest" or as "usurious". The claims are invariably in tort and quite often against a valuer. These plaintiffs have the skill and resources to properly consider applications for funds from potential mortgagors. They are able to assess the potential mortgagor's ability to service the mortgage and they have a thorough understanding of valuation reports. I have seen a case where it seems that the mortgagor had no realistic chance of servicing the mortgage from the beginning. The mortgagor defaulted within threemonths of mortgaging the property concerned. The mortgagee then disposed of the property at a mortgagee sale and sued a valuer for the difference between the proceeds from the mortgagee sale and the amount owing in terms of the mortgage (including all of the penalty interest and other costs). This valuer had previously prepared a valuation report on the property for some other purpose. In this case the mortgagee/plaintiff exploited weaknesses in the wording of the valuation report. It was all very unjust but the plain facts are that writs, once served, simply will not go away. After a very competent defence, the allegations were successfully defended but the fact remains that this expensive exercise could have been avoided by an appropriately worded valuation report which included a disclaimer of liability against the "others". A truly professional valuer will be aware of these pitfalls and will ensure that his reports are written in a way that will minimise their misuse by others.

A truly professional valuer will prepare his reports in a way that will minimise their misuse by others

I am aware of instances where all of the evidence suggests that the client's main objective in commissioning a valuation was to borrow the maximum possible amount of money. Valuers were asked to value properties on the basis of some hypothetical future use on the assumption that there was a guaranteed demand for that use.

The resulting values had no readily identifiable relationship to the properties' real values at the date of the valuations. Because of a combination of less than perfect report writing and unscrupulous clients, the reports were presented as current valuations to potential mortgagees. Funds were advanced with these properties as mortgage security and the mortgagors fell into arrears.

Now the mortgagees are looking to the valuers for their potential losses. As in the case of the expert plaintiff, the truly professional valuer will be aware of these pitfalls relating to

unscrupulous clients and will ensure that his reports are written in a way that will minimise their misuse by others.

Where the client requests a mortgage valuation it should be specifically included in the report. Except in those circumstances I see no reason why the use of reports by others for determining mortgage valuations should not be specifically debarred by a statement to that effect in the body of the report.

Valuers sometimes prepare valuation for clients which I think of as projected valuations. That is they are valuations of things that do not yet exist or which are on the basis of various conditions all of which have not been met at the time the valuation is made. Typical examples are the value "when the building is completed" or "when the zoning is changed to.." or "on the basis of 80% occupancy". In my opinion, because these valuations are subject to an unfulfilled condition, it is essential that they are identified as not being a valuation of the property as it exists on the day the valuation is made. The truly professional valuer will ensure that his report is worded in such a way that it is obvious to those who may be entitled to rely upon it that the report is subject to the unfulfilled condition(s) being satisfied.

The formats of valuation reports are as numerous and as varied as the valuers who write them. Reports often say too much. Occasionally they are "padded out" with a lot of subjective twaddle. Sometimes vital conditions or limitations on the use or interpretation of the report are buried in the middle of verbiage. Frequently it is not clear for whom or for what purpose the report has been prepared.

Perhaps the valuation profession should give some thought

to standardising terminology? Valuation reports can relate to three broad categories of time:

Historical, Current, Projected (or future)

They can be for several different purposes.

- Market value - willing buyer/willing seller or some special value commissioned by a buyer or seller who holds a special position of advantage. •

Mortgage value for mortgage security •

Rental value

- Potential value when certain unfulfilled conditions are met
- Other value

Readers of this know much more about this subject and the variety of reports than I will ever know. The fact remains however, that when I pick up a valuation report it often takes me some considerable time before I can form an opinion as to what the valuer is valuing and on what basis and for what purpose.

These are some of the problems and pitfalls facing the valuer who is striving to achieve a degree of professionalism that is beyond reproach. I have had the easier task of describing, with the benefit of hindsight, some of the problems as I see them. The much harder task of pursuing the goal of perfect report writing lies with the members of your profession.

In conclusion I would like to say that some people believe that it is unprofessional to be apparently running for cover by including disclaimers of liability and other limitations in valuation reports. I am telling you that it is totally unprofessional not to say what you mean clearly and precisely and to not properly define the limits of the advice you give.

Professionalism in Practice

byRPYoung

The theme is *Professionalism*. I have been asked to address this theme on the basis of my experience as a member of the Valuers Registration Board, a position I have held since 1 May 1979.

The word profession has its origins in the profession of faith made upon entering a religious order. At one time there was only one profession and that was within the church. By medieval times law and medicine had attained professional status and even to this day divinity, law and medicine are referred to as the learned professions.

We do not require our members to make a profession of faith or to swear allegiance to the Code of Ethics or Rules of the Institute. However, professional status still requires and demands a very high level of personal integrity (meaning wholeness, soundness, uprightness, honesty) and technical competence.

The true meaning of professionalism appears to have changed little since the ancient "profession of faith" concept. If we look at Section 10 of the Valuers Act (Functions of the Institute), Clause 3 of the Rules of the NZIV (Objects of the Institute) and peruse the Code of Ethics, the following words and phrases are repeated almost to the point of monotony:

- Encourage proper conduct
- Preserve and maintain integrity and status
- Protect and promote the interests of the public in relation to valuations of land.
- The highest standard of service to the public.

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The following is an address given to the 50th Jubilee Seminar NZIV at Wellington. on 10 April 1989.

- Proper conduct.
 - Render service... with absolute fidelity.
 - High ideals of integrity, honesty, and courtesy. •
- In a spirit of fairness.
- The dignity of the profession.

The new Valuers' Act does not propose any watering down or amendment to these ideals.

Since 1981 the Board has conducted over 30 disciplinary inquiries each of which has involved a hearing which generally

lasts for a full day and which sometimes extends into two or more full days. At the conclusion of many of these hearings I often find myself wondering whether the above quoted extracts from the Act, Rules, and Code of Ethics were written on another planet, for use on that planet. This is because they appear to have little to do with a good deal of the evidence and submissions which the Board of Inquiry has just been listening to.

A profession is not an association of people with a common occupation, who band together with the object of gaining benefits for the individual members. To attain professional status that group must have among its main objectives the dissemination of knowledge, the fostering of ethics and the furnishing of impartial and unbiased service to the community.

In expressing these views I am not saying anything that is new or revolutionary. The recently published Jubilee Issue of the *New Zealand Valuers' Journal* contains a reprint of the editorial to the *New Zealand Valuers Bulletin* of December 1945 written by the well known W G Boswell. In this editorial Mr Boswell calls upon *the utmost integrity on the part of valuers*, and points out that *honesty is the foundation stone upon which the future structure of our society depends...* Bad practices, such as the making of valuations to order and advocacy, are severely criticised in the editorial, which also makes the following profound statement: *With the search light of public opinion enforced directly upon our activities, it behoves members to ensure at all times that the picture revealed is a thoroughly worthy one.*

The question clearly being asked today, on our 50th birthday, is: *Have our members achieved these standards and expectations?* The answer is equally clear: some have and some have not!

In distinguishing the functions of the Registration Board and those of the Institute, I have often heard the opinion expressed that the function of the Board is to protect the public at large while the function of the Institute is to protect the interests of its members. This view is contradictory to the functions of the Institute as set out in Section 10 of the Valuers Act and the objects of the Institute as contained in its rules. More importantly, however, I believe that if this view becomes very widely held then the theme of this seminar "*The Future Profession*" will very soon require some radical rewording. The profession may not have a future.

I have been told by some particularly well known people in the profession that an advocacy role in valuation disputes is, in their view, not only quite acceptable but is virtually a requirement of modern practice. This approach is surely self destructive since the only thing we have to sell to the public and business community is our unbiased opinion. Once that opinion loses credibility then what service can we offer to which a valuable consideration may attach?

The New Zealand Institute of Valuers has succeeded over the past 50 years because a majority of its members have displayed a high level of integrity and a more than adequate level of technical competence. However, we all know that throughout the past 50 years a percentage of members have produced work of an unacceptable or incompetent standard. This continues to be the case today.

In this respect we are of course not unique. Representatives of the Law Society and the Law Disciplinary Tribunal have recently called for, or announced, reviews of the machinery whereby ethical standards can be improved and upheld, and the medical and accountancy professions have received a high level of adverse public comment and scrutiny in recent years. This of course is no excuse for the conduct of some of our members. It highlights the fact that the public at large is now more prepared

to put into practice the requirement for accountability which has always existed in theory.

As a member of the Valuers' Registration Board, one of the most striking conclusions I have come to over the years is that a surprisingly large percentage of our membership, including many in the "competent and honest" majority, do not fully grasp the implications of working in a profession which carries the label of "*Expert*". The horrors of assuming this label are extreme and far reaching. I am quite sure that many of our members do not dwell upon the attendant responsibilities when going about the day-to-day activities in their professional capacity. Because we hold ourselves out to be "experts" we can be called to account for every statement we make and every opinion we proffer.

We can all make mistakes, but potentially an expert can be called to account for his or her mistakes and this accountability is an integral part of our membership within the profession. Some of our members appear to believe that a fairly stringent level of accountability is unacceptable and if you are one of them I would strongly suggest that you are in the wrong occupation. Accountability comes with the job whether you like it or not.

Most Institute members have some knowledge of the disciplinary powers of the Registration Board. These powers endow the Board with the rather onerous responsibility of being one of the final arbiters as to acceptable standards of "professionalism". In his decision on one of the very few appeals from a Valuers Registration Board decision, Judge J D Bathgate noted that proof of a charge requires a high degree of standard of proof before a member can be found guilty of professional misconduct. As a matter of interest, the judge went on to determine that the standard of proof required is higher than in a civil case, which is on a balance of probability, and that the standard is more akin to the criminal standard of proof which is proof beyond a reasonable doubt.

Board members are very conscious of the responsibility placed upon them in the performance of the Board's disciplinary functions. The writing of decisions on disciplinary enquiries is certainly the most onerous task which we have to perform. These decisions have the potential to set standards of professionalism. They must reflect the standards required by society at large and in particular that sector of society which relies upon the expert opinions of registered valuers.

Given the importance of professional standards to existing and future members of the Institute, Board members are somewhat surprised and disturbed at the criticisms which have emanated from the profession and from Institute committees, relating to some recent disciplinary decisions.

The surprise and concern does not arise from the criticisms as such but from the fact that they are made by people who can have only a scant knowledge of the large volume of evidence and submissions which formed the basis of the decision.

As has already been noted, most disciplinary hearings will last a full day and some extend into two or three days. It is impossible to summarise all of the evidence in the written decision and I would strongly suggest that a valid criticism of the decision cannot be made by someone who has not heard all of the evidence.

Apart from persons directly involved in disciplinary cases, almost no Institute members have ever taken the trouble to sit through an entire disciplinary hearing in order to obtain some appreciation of the very difficult task faced by Board members in coming to a conclusion on the matter and writing a decision. Of more than 30 decisions brought down by the Board in the past eight years, only three or four have been taken to appeal. Board members believe that that is an extremely good record particu-

larly given the fact that in almost all cases defendants are represented by very experienced and capable barristers.

Some years ago when few complaints were lodged and the Board conducted few disciplinary enquiries, the feedback I received from Institute members was that our decisions were far too lenient. "A slap on the back of the hand with a wetbus ticket" was the way one well known senior member of the profession (and branch councillor) put it to me at the time. As the number of complaints has increased quite dramatically, and the number of decisions has increased correspondingly, we are receiving feedback to the effect that our decisions are now too severe. From the Board's point of view, we believe that our decisions have always been consistent and uniform, and we go to some pains to ensure that this is the case.

It would appear that as the number of complaints has escalated year by year over the past five or six years, more and more registered valuers are experiencing a sense of vulnerability. This is neither surprising nor comforting and the prospect of a complaint being lodged against any of us is part of the risk and obligation we accept when we enter this profession.

I am aware that, in this 50th Jubilee year, the Institute is interested in promoting the term "Registered Valuer". It is quite clear that the public does not sufficiently appreciate the distinction between a registered and non-registered valuer and that the public should be informed of the high professional training and standards of registered valuers.

Quite clearly, one of the major distinctions between a registered valuer and a non-registered valuer is that the former is accountable by being subject to the disciplinary provisions of the Valuer's Act. It is also likely that in any civil action taken against a valuer, a registered valuer would clearly be seen by the courts as holding himself or herself out to be an "expert". A non-registered valuer may be able to avoid civil action by putting forward the defence that as a non-registered person he or she could not be construed by the public at large as holding himself or herself out to be a "expert".

The fact that a registered valuer has undergone professional training and that high professional standards are required of that valuer, should certainly be publicised. It does however, render even more confusing the recent decision of the Executive Committee of NZIV to withdraw its support for the publications of disciplinary decisions, and its recently expressed concern at the alleged severity of the Board's decisions. If there are legal impediments to the publication in the *New Zealand Valuers' Journal* then it may be necessary to find another way of disseminating the information to Institute members.

It is interesting to note in a recent editorial which appeared in one of the Auckland daily's, the editor's criticism of the Auckland District Law Society. The editor perceived that the Society was not taking seriously the public concern on ethical standards, The editorial notes *it is this sort of professional complacency which has profoundly irritated the public about the legal and medical professions in recent years and further it will be unfortunate if the legal profession ignores the call of a major inquiry. Statistically, and in the public mind the problem of dishonesty will not be solved by self interest and PR handouts.*

I am quite convinced that the Valuers' Institute should re-examine its attitude towards the publication of disciplinary decisions and its sensitivity to the adverse publicity which the valuing profession has received in recent years. Surely it is better to let the public know that registered valuers are indeed accountable and that both the Valuers' Institute and the Valuers' Registration Board are taking all possible steps necessary to get this profession's house in order.

Because of the nature of our occupation, the valuing profes-

sion faces severe problems in convincing society at large that a high level of professional integrity has been achieved. This would be so even if 100% of our members scored full marks on integrity and technical competence. There are several reasons for this and I will summarize the main ones.

Firstly, the problem arises because of the nature of the work. A valuation is in essence, an economic prediction. The making of economic predictions is an extremely hazardous occupation, as the events of the last few years have graphically demonstrated.

The boom/bust business cycle experienced in our major urban centres over the past four years has made valuation work (economic forecasting) extremely difficult. However, even prior to that period it must be realised that the New Zealand economy experienced double digit inflation in almost every year from 1973 onwards, with inflation in more than half of those years exceeding 15%. It is sobering to reflect that for most of us in this room today, over 50% of our working life has been in a climate dominated by very high inflation. I personally believe that this has had a significant influence both economically and psychologically over the past 18 years.

It often strikes me as rather ironical that in spite of a paucity of reliable market evidence, and the unpredictable or volatile nature of the economy at large, valuers are expected to assess the market value of major assets and to do so with a high degree of accuracy and confidence. In doing so valuers are totally accountable for these assessments. On the other hand, share-brokers, investment analysts and other financial commentators have made forecasts and predictions which have proved to be outrageously inaccurate, and can do so with total impunity.

The second reason is that the analysis and application of the statistical data (mainly market evidence) which is used in the valuation process, requires the exercise of judgement and opinion. The scope for legitimate differences of opinion can therefore be quite great and differing conclusions can quite honestly be drawn from the same raw market data.

The third reason is that the valuer is expected to possess skills and knowledge ranging over an extremely wide field. We are expected to be right up to date in planning matters, property law, building construction, buildings services, macro and micro economic forces, analysis of accounts, recent legislation, statistical analysis (computer assisted) plus the numerous political and economic forces influencing the supply and demand for numerous different categories of property. Clearly, it is impossible for any one person to be an expert in all these fields and the opportunity for mistakes to arise is quite apparent.

In order to achieve continuing higher standards of professional practice there are several areas which I believe we must all address. These are summarised as follows:

1. A higher degree of specialization is required. The day when any one valuer can claim to value all classes of urban or rural property anywhere in New Zealand has long gone. To competently value all classes of urban property in a major city is now impossible and we must be prepared to decline work where we have any doubts as to our experience or competence.
2. Our university courses need to be expanded from three year to four year courses so as to cover wider fields, particularly in the areas of statistical analysis, computer applications and economics.
3. We need to get the message across very clearly to the element within the profession which has been causing so much concern in recent years. This message is that you are very accountable and very vulnerable.
4. A requirement for compulsory continuing education

will, sooner or later, have to be implemented. The mechanics will no doubt pose some difficulty but the Institute is already conducting a comprehensive continuing education programme. Unfortunately, many of the members who most need the service are failing to participate.

5. A periodic independent audit of each member's work is worthy of consideration. The concept is rather radical but probably no more so than is a recent announcement from the New Zealand Society of Accountants, suggesting a prison sentence for persons who do not comply with compulsory use of Standards of Accounting Practice.
6. Compulsory professional negligence insurance should also be implemented. Ideally, this would need to be ac-

companied by the implementation of a no claims bonus in favour of those members who maintain a clean record.

7. The identification and discouragement of a growing tendency towards a "fees factory" mentality. We all like to earn adequate fees but there is some evidence which suggests that this may be becoming the dominant motive, at the expense of adequate research and care.

The search light of public opinion mentioned by W G Boswell in December 1945, is still focussed upon our activities. The Institute has achieved much over the past 50 years, because of the unselfish, positive contributions made by Mr Boswell and many others. The health and status of the future profession is entirely dependent upon this and future generations of members comprising more givers than takers. A

Current Problems in the Valuation of Hotels in New Zealand.

by Rodney L Jefferies

I assume you are all aware of the basics of hotel and going-concern valuation theory or practice and that you are all familiar with the principles and practice of the three-fold approaches normally used in such assignments which are:

1. Depreciated Replacement Value
(Land, Buildings & Improvements, Chattels/Plant [FF&E])
2. Capitalisation of Estimated Maintainable Profits
(Normally based on Est.Net Cash Flow for next 12 mths.)
3. Sales Comparison
(Normally analysed on a \$/Room unit of comparison basis)

There are many *problems* associated with the normal components of these standard methods of hotel valuation and there is considerable room for differences of opinion as to the correct techniques or applications that are appropriate. However many of these are typical problems, not peculiar to the current market scene, and always with us (such as whether the land value should include a premium or special value reflecting the hotel licence).

I want, however, to direct your attention to those problems which are particularly pertinent to current conditions, and are in some cases critical to the reliability of current hotel valuations.

Problems

(i) WHAT PROFIT?

After a period of significant growth generally in profitability in 1985/87, many hotels outside the "gateway" centres have been facing reduced occupancies and more volatile gross and net operating profit results.

Auckland hotels seem to be faring best, Wellington and Christchurch hotels are being affected by a shift in business resulting from an increased number of rooms becoming available for the relatively static overall predominantly "business" market, and most tourist destinations are suffering from a downturn in tourist numbers, where the local market being more sensitive to "price" with the ability of some hotels to "buy occupancy" by dropping tariffs.

The impact of these recent market forces has resulted in generally *inconsistent trends in profitability*, except in the most secure market positions.

Some hotels have suffered dropping profitability and many are performing below anticipated budget levels set when the aftermath of the share-market crash had not fully worked its way

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into any stable business pattern. Corporate hotel management usually seem to be optimistic in budget expectations, in my experience, often if only to keep local hotel managers on their toes and not resign themselves to taking what comes.

The valuation exercise is one of prediction, with the estimation of future profitability of paramount importance, and most difficult in these current times of uncertainty in the industry.

This is especially so where:

• *There have been recent changes in local management*, and where accounting records may be incomplete, unreliable or affected by changes in accounting methods or balance dates, and also where there are considerable variations from past trends and/or in income/expense ratios.

• *The hotel has been trading at an operating loss*, not infrequently during initial years of establishment, often well below predicted budget figures upon which the initial feasibility and the decision to invest was made.

• *A new "turn-key" operation is being valued* where there is no track record and often optimistic budgets prepared and supplied to the valuer, which cannot be objectively tested, and where the valuer may regard himself less skilled in making future predictions, and tempted to simply adopt the developer's marketing/management consultant's "expert" view.

• *In a trade up period* when the hotel operation is growing towards profitability. This usually requires a time series future

prediction, anticipating future growth in occupancy, tariffs and profitability until a relatively stable situation is assumed to be reached. Valuation then requires the application of discounted cash flow techniques.,

• *When a new owner is or is about to take over* or a change in name or management is about to (or presumed to) take place. Past trading accounts and profitability may be of purely historical record and no help where a new operation, particularly involving major upgrading, is involved.

It is imperative that the valuer has all the most up to date trading records and statistics about the hotel, and makes an *independent* assessment of future profitability, based upon all the information available for *the purpose of the valuation*, for which different projections could well be justified, such as for mortgage finance, proposed purchase advice, asset valuation, or statutory (taxation) purposes.

A far more conservative approach would, in my opinion, be required if undertaking a valuation for financing purposes than for sale/purchase purposes, especially for a new or about to be upgraded hotel. In the latter case there will be a considerable impact on profitability during upgrading, especially if the hotel is going to continue trading (usually on a reduced scale) during such work.

Every item in the budget should be checked as to its realism and by means of *ratios to total sales* and also on a *per occupied room basis*.² Allowance needs to be made for property expenses, adequate maintenance and FF&E replacement provision, and for the impact of any management agreement, if to be valued subject to such, is also extremely important. Such budgeting work is the key to a defensible hotel valuation, and demands execution by valuers knowledgeable about the industry and experienced in this field. Failure to exercise independence and searching inquiry coupled with detailed analysis at this juncture will render all other subsequent capitalisation or sales comparison techniques incapable of bringing accuracy or reliability to the valuation.

(ii) WHICH CAPITALISATION RATE

There is a great deal of difference of opinion as to the appropriate rates of capitalisation³ to apply to hotels in the current climate and market. Rates indicated from some deals and investments are as low as 8%pa for new and top class hotels in high growth potential situations. On the other hand some established older hotels are on the market and others have sold in the 12%pa to 16%pa range of returns. Some of this range arises from differences in market position, age, location and quality/type of hotel.

However when dealing with the major and better quality *established tourist hotels*, the capitalisation rates being applied in current valuations appears to lie in the 9 %pa to 13%pa range. These differences of opinion, even when based upon the same assumptions as to profitability, give rise to unacceptable differences in resulting hotel valuations. When coupled with different levels of optimism and assumptions about future profitability, they can widen the credibility gap even further, especially if low capitalisation rates are used with the most optimistic assumptions and *vice-versa*.

The reasons for these differences arise from:

• *Lack of or limited hotel sales evidence* coupled with unproven profitability (or unavailability of detailed trading or budget figures) from which then to analyze capitalisation rates.

• *The influence of some "Asian" investors* who, used to lower yields in overseas markets, have made some investments with long term investment horizons (and possibly other motives/considerations) which would indicate low yields in some selective properties or hotel chains.

• *Yields on initial investment in new hotels are generally quite low*, until they have traded up to good occupancies and thus profitability, but frequently they are heavily geared and if fail financially and are sold, the resale is frequently at less than cost, with the second purchaser requiring a yield more commensurate with the risk.

• *Sales of hotels in New Zealand to domestic investors have generally involved established hotels*, often when they are moving out of the top quality market into the business or group tour market due to elements of physical or economic obsolescence, ageing or coming due for refurbishing. Yields for these are usually in the higher 12%-16%pa range based on existing profitability, except in special cases where a particular location and physical structure makes them highly suitable for upgrading to a high quality hotel at a cost less than the alternative of building a new hotel.

• *Some sales which have taken place include potential for expansion*, or include additional properties, spare land, or assets which can be sold off separately developed to enhance the net yield from the hotel operation.

• *Some valuers justify their "low rates" because that is the only way their valuations have been able to line up with various offers and deals* that have been negotiated between apparently knowledgeable vendors and investors in the market place, i.e. "It wouldn't stack up any other way".

• *Hotels are considered a cash flow business*, which is anticipated to provide constantly increasing cash returns, compared to other forms of property investment which generally have two, three, or five- year or more rent review periods over which income is static.

• *Some new hotels have been encouraged to be built by tax incentives or subsidies* (such as first year special depreciation allowances) and could significantly offset apparent losses or initial low yields when considered on an after tax basis.

There have been no recent judicial precedents where the value of hotels have been tested in court in modern times in New Zealand. The only *arbitrated* "current market valuation" I am aware of involved the Auckland Airport Travelodge last year, for the purpose of determining the minimum return under a management agreement, the Umpire, Mr J N B Wall, adopting a 12.25%pa capitalisation rate, where the valuers who gave evidence for the owner and the managers had used 11.5 %pa and 13%pa respectively.

In my opinion, hotel investment is basically a business investment in which the prudent investor must have regard to the substantial assets involved in the realty, chattels and plant, which require a significant allowance for maintenance and recapture of the investment before being made obsolete and/or requiring replacement or upgrading.

Hotels are also very labour intensive and highly sensitive to external risks from the economy and tourist trends. They have the potential in good times of high occupancies and high tariff increases to show excellent profits, but are very susceptible to rapid changes of fortune due to new competition and poor marketing or management.

1. Experience shows that almost invariably a hotel is completed in quite different economic and tourist/market conditions than when the project was conceived and the investment decisions made. Budgets made then and even revised at pre-opening date are almost universally optimistic in my experience. Only those that open in "boom" conditions enjoy initially high occupancies and are thus at or above budget profitability.

2. The use of computer spreadsheet analysis is very helpful as a tool for such analysis which is otherwise extremely tedious to do manually.

3. Whether as an overall cash flow capitalisation rate or as an internal rate of return in a Discounted Cash Flow technique.

Capitalisation rates which do not recognise these inherent factors, peculiar to the industry, will result in hotel valuations which, while stacking up to a known deal, will be found wanting when that deal turns sour and economic or political conditions change so that only domestic investors wanting returns commensurate with the risks are players in the market.

I would be therefore highly suspicious of any tourist hotel valuation where the cash flow yield, before debt servicing is based on a yield *less than* 11%-12%pa, unless special circumstances apply which distinguish the hotel as having more than normal potential.

Most evidence of hotel capitalisation rates are based on factual data of sales prices and actual performance. However the latter is historical, whereas valuations are usually based on estimates of future performance. Capitalisation rates based on past performance and not on similar projections for the hotel(s) sold, will lead to possible erroneous application, unless *like is compared to like*.

Where hotels are in an *increasing* profitability phase, past performance will indicate low capitalisation rates, and *vice versa*. The most dangerous evidence, in my view, is where capitalisation rate evidence is based on the owner/managers budget, which is not independently checked with the same care and accuracy as is being applied in valuing the hotel to which such evidence is used.

In practice a valuer only gets very detailed information about the hotel *actually being valued* and struggles to get data on comparable sales, often having to rely on secondhand analysis, unless having been involved personally in valuing the hotels which sold.

Where such hotels subsequently sell at a premium (compared to valuation), for any number of reasons, the analysis of the sale, based on that valuer's budget prediction will indicate that the capitalisation rate should be lower than that adopted by the valuer, and the temptation is to drop the rate on the next job, so it will stack up! It is too easy for valuers to get too close to a limited number of special purpose sales, or those which may not meet the *open market*, and *arm's length* negotiation test and be caught in an apparent spiral of declining capitalisation rates! Objectivity is a skill that must be exercised very carefully in any area of specialisation, and applies particularly in this current hotel market scenario.

(iii) WHERE ARE THE COMPARABLE SALES?

Despite there being a lot of hotels, both individually and as part or all of a chain, being on the market over the last two years, there have been very few hotel transactions in recent times. I would venture to say only one or two sales which have taken place would meet the test of an *"open market arm's length transaction"*.

Some of the sales have been corporate share transactions where little, if any, actual cash has been transferred outside the inter-company arrangements that they have facilitated. Some buy-outs have been to resolve conflicts of interests between management companies and hotel owning companies resulting from takeovers, while others have been designed to make paper profits for the vendor companies after takeovers and mergers.

Unless one has inside and detailed knowledge of the intricacies of these deals, (valuers are rarely made privy to such information) then such sales are of no help in establishing true market values. Some of these deals are public knowledge and may be supported by valuations, but in some of these I would not rely on them as market sales also for the reservations indicated above.

Some of the sales have been for whole chains or partial interests in hotel chains, and include a mix of freehold, lease-

hold, and management agreements, as well as additional properties held for expansion or staff housing etc. Without detailed knowledge of the properties etc, and the financial arrangements attached to the share transactions, not a great deal of help can be obtained from these sales to assist in establishing either capitalisation rates or per room sales values to apply to other hotels.

(iv) IS IT CHAINED OR UNCHAINED?

A particular hotel could have different values if being valued on the assumption that it is *part of* an established chain, or *as a separate unit* for sale as an independent hotel, or *sale to* a chain of hotels, depending on the circumstances.

In many cases a hotel which is in an important location to complete a chain on a tourist circuit, but which does not experience a particularly high all round occupancy or profitability, may have a special value to the chain which it forms part of but would have a lesser value independent of it. If the main competitive chains were adequately represented at that location it would be likely to have limited demand.

In other situations, a hotel which is independent of a chain but holds a favourable position by way of location in a tightly held market, may have a premium value to a chain which does not have a hotel there, or where the chain is poorly represented by way of style, quality or location of their existing hotel in the same city or tourist destination.

Some recent hotel sales have been influenced by these factors. The question is, from a valuation point of view, what allowance should be made for these factors, particularly when analysing the sale to derive a capitalisation rate or a value per room, before applying such analyses to another otherwise comparable hotel?

Further, what allowance should be made when valuing a hotel, which is part of an established chain when being sold off from the chain, when the only reliable trading records and statistics are based on its performance as part of that chain?

(v) HOW IS IT MANAGED?

Owner managed hotels are becoming less common, and some transactions involve the sale from owner/managers to investors and a management agreement back to the previous owner.

Most managed hotels are on a "turn key" basis, i.e. where the owner provides all the chattels, plant and equipment, the manager simply walking in, providing the management and hiring staff, and *turning the key on the operation*.

These management agreements take many forms, some are tied in and the owner can only break the agreement for poor performance, while others are determinable on reasonable notice, or on the sale of the hotel.

They are invariably performance based, usually based on a percentage of gross sales together with a percentage of gross operating or net operating profit, frequently with special provisions for refurbishing allowances and sometimes with a minimum base return to the owner before net operating profit sharing.

When valuing a hotel which is subject to a management agreement, it is essential that the full terms of the agreement and its implications are taken into account, or if specifically ignoring it, such a basis needs to be made very clear in the valuation, as the effect of the management agreement on the profitability to the owner and thus the value of the owner's interest can be very significant.

In cases where the management agreement is fixed for along term and can only be broken in special circumstances, and depending on the level of profit sharing involved, the management agreement itself can have a significant value, creating an interest in the property itself, even though not registered like a lease on the title.

Thus a different value for the same hotel can arise if the valuation is to be carried out with or without the management agreement.⁴

Some sales, where they are made with a minimum guaranteed return to the owners coupled with a management agreement back to the vendor, can result in the risk for the investor being reduced, and can significantly affect the price paid. Knowledge of such arrangements can be very difficult to become aware of, and if present in a transaction very difficult to allow for. Such arrangements may well have given rise to some of the "low rates" of return indicated by some sales to (non manager) hotel investors in recent years.

In these cases some of the risk may be carried by the manager rather than the investor.

To expand their management business some hotel operators act as developers to put hotel developments together so as to take up a position in the market, with the investor wanting a minimum secure return, and after that a profit share. Inevitably that yield will be less than that which would be enjoyed by the same manager if also the owner! This may explain why some yields appear low.⁶

(vi) DOES IT NEED REFURBISHING?

The chattels in a modern hotel not only wear out but styles and fashions change.

Some hotels which are five years old are beginning refurbishing programmes, and generally carpets and common area furnishings are showing wear before 10 years use in normal situations.

Some of this cost may be able to be written off for tax purposes as maintenance or "revenue upgrading", while some expenditure, such as installation of new services and finishes of substantially better quality than previously (wall and ceiling linings, bathroom fittings or air-conditioning etc.) may be regarded as capital items.

The degree to which such major refurbishing is required, will depend on many factors including the market the hotel management wishes to target and serve as well as the standard offered by the competition in the local market, or the image or standard required by being part of an international or national chain.

Where such major refurbishing is due or overdue, allowance needs to be made in the valuation. This may be by way of a special annualised allowance, which is deducted from the estimated cash flow and thus reflected in the overall capitalised value.

Alternatively a lump sum deduction based on current cost for all the space due for refurbishing may be deducted from the value derived before such an allowance, even though the work may, for practical purposes, need to be spread over a number of years on a cyclical basis.⁸

However, if such work is of such a nature that will *upgrade*⁹ the hotel to a better overall standard than before, it may allow a

substantial increase in tariffs and thus profitability, which should be reflected in the budget adopted. Thus the value of the hotel would, in these circumstances, be estimated upon completion of upgrading, from which the costs of the work and other holding costs and disturbance allowances to trading during reconstruction need to be fully allowed for.¹⁰

In such cases some element of risk and contingency needs to be also allowed for and possibly a profit and risk allowance. It is usually very hard to make an objectively based future budget in such circumstances, particularly as the hotel, after upgrading, may cater for a different market segment and all previous occupancy and profit ratios will be irrelevant. There may also be a new trading up period involved as the hotel seeks to establish clientele in a different market segment.

In practice, most valuations will reflect the current owner's plans in this respect when valuing for asset purposes or mortgage purposes, but when establishing a value for sale/or purchase purposes, attention is required to this aspect as to how the property might be perceived by potential buyers. It may be reflected in a lower capitalisation rate based on existing profitability, if such a proposal will enhance the value by more than estimated cost.

Where hotels have sold and the new owners have immediately launched into a major refurbishing programme, some doubt must be placed on the analysis of capitalisation rates based on pre-sale profitability, and extreme care needs to be exercised in using such a sale price per room to compare to other hotels unless they are in the same pre-sale condition and market segment, unless adequate allowance is made for differences in condition and standard of fixtures, fittings and equipment (FF&E).

(vii) WHO'S THE BUYER, WHO'S THE SELLER?

I have already drawn your attention to the implications both of sale prices and valuations when sales are to or from hotel chains, as compared to the independent owner/operator.

In the current "*post-sharemarket crash*" environment, and in the "*asset selling to balance the books*" government policies, a number of hotels are on the market or available for sale, where the vendors may not meet the normal test of being a "*willing seller*".

The vendors may be effectively directed by receivers or liquidators, or financiers putting pressure on repayment of corporate finance secured by debentures or other securities over the hotels or their operation.

The deal may involve purchase by a new company partly owned or indirectly owned by the previous owners or associated companies as part of a company reconstruction. Obtaining accurate information on the intricacies of such arrangements and then, if obtained, making suitable allowance for these *less than arm's length transactions* as evidence of open market value is a major current problem.

Are the Japanese and other Asian investors a new and

4. If for asset purposes, with a management agreement in place, the property may be worth less than for sale purposes where the agreement can be terminated, or renegotiated in that event.

5. Sometimes mistaken for a yield rate or capitalisation rate, but usually the owner does better than that from the resulting actual net profit after management deduction. I have been involved in a hotel valuation negotiation where a valuer had used a 8%pa capitalisation rate "according to the management deed minimum return to the owner of the market value"!

6. I am aware of a recent example where the net operating profit is shared 75%-25% between the owner and manager respectively, after an initial fee based on gross sales and a substantial FF&E replacement reserve fund allowance has been made on an annual basis. Adding back this 25% of net operating profit would have increased the overall yield on agreed open market value by approx 3%pa!

7. As distinct from a normal expense allowance for replacements and maintenance arising out of fair wear and tear.

8. The method adopted by the Umpire, Mr J N B Wall in the Auckland Airport Travelodge arbitration.

9. Such as redesign and installation of new public areas and restaurant/bars, and major replacements such as lifts and bathrooms, coupled with upgrading of other services such as air-conditioning, fire protection (sprinklers) etc.

10. This is only possible in practice when specific proposals including full plans, costings, and a refurbishing programme are available to the valuer, as speculation as to what a potential purchaser may do, could vary dramatically.

permanent force in the demand side of the equation? Do they see opportunities that are not recognised by domestic investors, reflected in what appear to be "low yields" compared to those traditionally expected in the tourist hotel industry?

Certainly at yield of less than 11%pa to 13%pa, where domestic finance is involved, the negative gearing resulting would make even the best of hotels produce losses on an after debt servicing basis.

Where equity investment and financing is sourced overseas, with equal impact of exchange rate fluctuations, and where foreign cost of capital is also very low compared to domestic interest rates, lower yields may be justified from such an investor's viewpoint.

The degree to which tourist hotels in New Zealand are in effect part of an international market and not a national market is the key to understanding and interpreting these low yielding initial investments.

(vii) WHAT IF IT IS MAKING LOSSES OR CLOSED UP?

Fortunately I have not had to grapple often with this problem in practice.

When I have it *has* often produced an almost insoluble problem for which no evidence of comparable sales exists, either of hotels in comparable situations nor of alternative uses.

The loss making situation frequently arises in some hotels which are new and seeking to trade up into profitability or obtain market share in the face of stiff competition.

A new hotel may offer a superior standard of accommodation and services to attract customers, but the existing hotels in the same local market may well buy occupancy by undercutting tariffs, a situation they can weather perhaps longer than a new hotel if the latter is highly geared.

The valuer's task, in these situations, is made extremely difficult as any budgets prepared at the time of development or opening are frequently optimistic and unless the hotel is showing good growth in total sales and gross operating income, the trend towards eventually reaching positive net operating profit may be in doubt.

The trends in these trading statistics must be very carefully studied and the valuer must make realistic predictions about future trading and profitability.

A carefully executed *discounted cash flow* approach to value is the only technique I know of to deal with these situations.

However, the assessment of a reversionary value is the most difficult part of such an exercise and usually has a critical impact on the present value., If the hotel is not clearly trending into substantial future cash flow profitability, even this technique is of little help.¹²

In some cases the depreciated cost replacement value is like to be quite inappropriate as any guide to value in these cases and an alternative use value¹³ if any, may be the fall back position for asset or market/mortgage value.

Where the hotel is closed, or only opened in a high tourist

season, largely as a holding cost recovery exercise, any reliance on an income approach is quite inappropriate. Alternative uses for hotels in such situations may be very difficult to conceive of, particularly where there are planning constraints.

Where there is no apparent viable alternative use, the value may lie in the removal value of the improvements, if any, and the use of the land for its underlying alternative use as likely to be approved by the planning scheme in force.

(ix) WHO TO VALUE?

There is some current debate as to who should value hotels. Accountants may claim that as they are essentially businesses they are the most appropriate ones to do it. I dispute that as the business cannot be valued apart from the real estate, and in cases of low or no net profitability the accountant will have no profit basis upon which to value.

Some national and international firms of valuers have developed a reputation and experience in this field, which often irks the local valuer when someone from out of town¹⁴ breezes in to do the local hotel on their patch!

Having raised a hornet's nest, I may be well advised to end here and allow the topic to be further discussed.

May I say that it is my practice when valuing hotels outside of Auckland, to rely most heavily on local valuer input to the land and building components of the depreciated replacement approach to the value of the realty.

Knowledge of the local market is essential also in interpreting sales of hotels and assessing their comparability, not only in the same location, but on a national and even international market.

Conclusion

The valuation of hotels is highly specialised, and should only be attempted by valuers well experienced and knowledgeable in the field.

The market for hotels is a national one, and in the tourist hotel market becoming an international one.

We, who claim experience in this area of practice, won't be around for ever and we started by valuing our first hotel once when we were inexperienced!

For those of you who want to become involved in this challenging and changing area of valuation practice should have either been enthused by the speakers at this Seminar to become associated with valuers involved in this area of work, or be scared off to keep to that which you know well and which won't test the adequacy of your professional indemnity cover!

For those of you wanting to take up this challenge, I wish you well, and trust that you now have a better insight into what may be in store for you!

I wish to acknowledge the assistance of Neil Darroch, of Darroch & Co. Auckland, for sharing his opinions and giving background information when discussing these current problems in the course of preparing this paper.

11. Normally a maximum five-year prediction is all that one can make with any confidence in this volatile hotel/tourist market, and the assumed hotel value at the end of the period is highly dependent on the assumed profitability at that future date capitalised into future value. An over-estimate at this point can impact significantly on discounted present value!

12. It is often a salutary experience to go back over such estimates later, and with hindsight see how accurate or otherwise such predictions have been! This is especially so when having to update such valuations, and especially when carrying out asset valuations, to have to reduce asset values even *where there has been profit* growth, but not up to the level previously expected and relied on!

13. Conversion to office use in a city location may be possible, or to apartments in a fringe or residential location.

14. Or from overseas! In a corporate deal in which I was engaged to do some hotel valuations for one party, the other party engaged an overseas international firm who flew an expert in hotel valuations in from overseas who, I believe, didn't take local valuation advice but valued the chain purely upon profitability and budgets prepared by the hotel management company, and comparisons to sales of hotels on the international market, including Australia and Hawaii!

Assessing Fair Market Rentals for Motels

by Gordon Jones

During the time it has taken to write this article, market forces themselves have started the corrections required to ensure the long term survival of the motel industry. This is no thanks to valuers, who I believe have compounded the difficulties experienced by moteliere, and have generally given our profession a poor profile in this sector.

Most valuers will have had commissions to value motels, and have no doubt carried out the exercise diligently and successfully, a simple undertaking when the market is on the upward move.

However the circumstances have changed so dramatically, a far greater understanding of the industry is now necessary to arrive at the correct answer. I will endeavour to show in this article that no two motel complexes are identical, refining my observations to cover such points as how the type of client has a direct bearing on the overall design, which in turn influences the potential income and related expenses and the importance of situation to occupancy rates. Income and expenses can be readily checked to ensure the income statements are factual and finally arriving at a method to give a fair market rental, remembering that rent is a product of surplus. You will note I will not cover the problems of equity to debt, likewise the problems of motel leasing, both of which are separate issues, but are now being questioned closely.

To assess the fair market rent...the valuer must be familiar with the industry

Before one can begin to assess the fair market rent, it is a must that the valuer be familiar with the industry. It is important to understand fully the factors which affect the business, the running thereof and the clients. No two motels are identical, and to think otherwise is not to understand the implications, which can be disastrous to the economics of the complex in question.

Motels are in a state of transition and are now catering for a niche in the overall accommodation market. Historically the major components in the industry were camping grounds, motels and hotels. Recently there have been refinements such as motor lodges, while today motels can be seen to be catering for a different mix of clients. Clearly the main body of users falls into the following group.

1. Casuals usually New Zealand families travelling for a given reason such as sport, weddings, or recreation.
2. Business Reps travellers.
3. Overseas Tourists these can be independent travellers, or under the guidance of a tour operator. The latter tend to have a set route with pre-arranged bookings.

Coming to terms with the type of clients is important, as the tariff rate varies. For instance casuals usually are a larger group, sporting body, or family and, until recently, accepted without question the base rate for the complex plus all the extras, such as when there are more than two people. In such instances if the base rate is \$65.00 plus three children, a tariff of around \$95.00 could be expected per unit. Business reps on the other hand command discounts, as they tend to be regular income, less

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trouble and longer stayers. Overseas tourists in the majority are organised by chains such as "Best Western" who pre-arrange accommodation and discounting is the order of the day. Vouchers are also used which results in a lower tariff.

Having established that there are different types of clients, it is now necessary to clarify that the demands on the units are also different. A Kiwi family seeks full kitchen facilities and two-plus bedrooms. Business reps usually opt for smaller single units but require more technology such as separate direct dialing phones or fax machines, while the overseas tourist accepts the bedsitter type unit with only the minimum of cooking facilities.

The design and size of each complex can vary dramatically. The older motel complexes tend to be all the same, one or two bedrooms with full kitchens and bathrooms, but more recent complexes have a mixture of designs in order to cover the market. A bedsitter sleeps one couple but would be unacceptable for a New Zealand family of five. This is where good management can maximise the income by letting different units to suit the requirements of the client. There are exceptions, for instance where motels cater for bus tours.

It can be established that a motel has an economic life of 10 years maximum, before full revamping is necessary. This factor was overlooked in the boom time up to 1986, when demand for accommodation outstripped supply. Today, with the economy on the downswing, and the international tourists not staying as long, competition is fierce amongst moteliere. Worst affected are the old units which do not meet the requirements and standards of the international tourist and business rep. No longer is there a uniform tariff across the board, and substandard motels are expected to charge less, with variations between weekdays and weekends, and in some instances time of the day affects tariffs, as moteliere seek to fill their last units late in the day.

If presentation and appearance are important, then of para-

Of paramount value
is situation

mount value is situation. This basically is the deciding factor in the type of user, apart from pre-booked tourists. Location on a prime inroad assists in gaining casual tourists as does adjoining a major institution, tourist attraction or sporting complex, while a centrally positioned complex attracts reps.

After a complex has been in operation for a given period, a pattern of regular patronage develops, but the casuals who top up the numbers are still important. The complex in a poor situation does not enjoy this advantage.

One final major consideration is the cost of running the complex. There are four types of costs involved.

1. Fixed Costs - ACC levies, accounting, advertising, general expenses, insurance, legal fees, rates, repairs and maintenance, stationery, subscriptions, TV rentals, motor expenses, valuation fees and waste disposal.
2. Variable Costs (depending on occupancy) - heating and lighting, laundry supplies, telephone and telex rentals and wages.
3. Provision for replacement of chattels.
4. Debt servicing.

The first three are important in the setting of rent, while the fourth point affects the operator's profit.

Instantly it is clear great variations can occur. The rates differ from central city locations to suburbs, land value rating to capital rating.

As far as fixed costs are concerned, insurance depends on age, value and construction of the complex together with the type of insurance cover (replacement or indemnity), while the variables vary in direct relationship to the occupancy rate. There is less cleaning when there is a low occupancy rate than a higher one and there is also a difference between the type of occupier. A sales representative staying for five days may only receive two changes of linen, and the unit is superficially tidied, while for a one-night stay there is a change of linen and a thorough cleaning.

The next hurdle to overcome must be philosophical. One of the basic foundation rules of valuation is assessing "the highest and best use approach".

There are a number of rulings covering this point which have been thrashed out in legal decisions, the basic principal being if a level of rent is established, then it must be uniform throughout with adjustments where necessary to cover such factors as location, type and age.

Clear ground rules have been established in assessing rent in industrial, commercial and residential accommodation on the direct comparison basis, but where direct comparisons cannot be found variables are the order of the day to reflect situation, type of lease, age of premises.

The actual lessee is disregarded, as it is assumed there is someone else to fill the breach. A haberdashery shop located in a prime position can be converted into a clothing shop if it is seen to be more profitable, and if necessary it can be converted for bank premises.

It is assumed there is always a viable alternative, but with motels this is not the case. They are built with one purpose in mind, and any other use must be inferior, and therefore of lesser value.

An extreme example would be residential housing attached to a limeworks in a rural area where once the raw material runs out and the plant is closed, the houses would command a lesser rent. The same principles in motels must apply.

Clearly as a motel complex ages, ability to generate income must be affected and ultimately its "ability to pay" is reduced. The basic principle of the ability to pay is in fact being practiced today in setting motel rents under the guise of the land agent's

The basic principle of the ability to pay is being practiced

one-third rule. But when "ability to pay" is incorporated into the framework of a "prudent manager", a different understanding is gained.

Having now established the "business", and the design and location of the units is of paramount importance in the assessment of rent, the next problem one must establish is can the income and expenses be trusted? It can be inferred the lessee is the only party who determines turnover, and there is always the chance that the accounts do not properly reflect the true position. It always must be considered that cash received is not being properly recorded, and while the accounts are produced for tax purposes it can be argued the obvious intent is to ensure the bottom line is as small as possible.

I am not suggesting that such problems do not exist, but all lessees are in the business to make a profit, and are fully aware that if the books are rigged, then the value of their business is severely affected, the goodwill factor reduced and the chance of selling is less likely. It is therefore in the lessee's interest to ensure the records are kept honestly. This far outweighs a lessee rigging the till. Besides, after the analysis of numerous motel books together with occupancy charges, it becomes very obvious if there is foul play.

Turning now to the methods of assessing the rent. I will endeavour to outline the weaknesses of the historic approach.

1. Return on capital

It is obviously in the lessor's interest to obtain the maximum return on his investment, but with changing economic circumstances this may not be obtainable. Just because a certain sum was paid for a motel complex, it does not mean a percentage return is automatic.

2. Direct Comparison

Under this approach a rental per unit is established, for example if the rent is \$80,000 for 10 units, then the rate per unit is \$8,000. Such information is obtained from searching the title and once the number of units is established, a rate per unit is gained. This should be good evidence, but detailed analysis of Dunedin shows that rates vary from \$3,500 per unit to \$6,400 per unit. Why the difference? It is because each complex has varying occupancy rates, tariffs and expenses. If this approach is adopted, then adjustments must be made for all the variations, but this is impossible to establish with accuracy, unless a complete knowledge of each particular motel operation is obtained.

3. The One-Third Rule

A basic rule-of-thumb method of assessing a rental. Here the gross turnover is divided three ways. One-third for rent, one-third for expenses and one-third for lessee's profit and recapture factor. This approach assumes the costs are in proportion directly with the income, but as will be shown this is not the case. It is not uncommon to find an inexperienced lessee paying rent on GST and recoverables such as toll bills. It is worth remembering however that this is an unrefined rough rule which can give an indication of rental, but little more.

4. Return as an alternative rental investment

The lowest level of rent should be as rental apartments. This is an interesting exercise as in some instances the high costs do not warrant the effort to continue running the complex as motels.

Approaches 2 and 3 have been used in setting rents unquestioned until the present crisis in the industry. In recent years with inflation at 20% plus, and a growing economy, the fine tuning

had been overlooked and it has come as a revelation to many that some complexes, especially the old ones, are no longer profitable.

It must be agreed that no two motels are the same, but there is a common thread in that they do produce an income and have expenses. The income generated reflects all the variables previously mentioned from the type of complex to age and services provided all being reflected in the tariff charged, while the location factor has a direct bearing on the occupancy rate and ultimately the amount of money generated. It then becomes a case of verification to see if the complex ties in with other motels. The expenses likewise can be checked on the basis of hard core costs such as rates, insurance, while cleaning, linen etc. are directly related to occupancy. If executed methodically it is surprising how exact a pattern emerges, and instantly one has to check on the management and its performance. Also any padding of accounts are instantly recognisable.

Having established that the income is in keeping with other complexes on a unit basis, and that the occupancy rate as a percentage also aligns with the overall pattern, then there cannot be any deviation. Expenses can be verified as actual or calculated, as in the case of linen cleaning, heating and power. By adopting the checked income and expenses and making variations where necessary to the figures, all the variables of location, occupancy, expenses and the like must therefore be accounted for. Unlike the one-third rule actual expenses are taken into account, which is an important refinement.

What then happens to the balance of the cashflow? Recognition of the lessee's input by way of wages and recapture plus a return on chattels must be made, while the balance is apportioned to the lessee's profit on his capital, and the remaining is the rent he is capable of paying. A lessor may argue that the rent should come before lessee's wages and a return and recapture on chattels. But, having established the use as a motel as the highest and best one, not to maintain the units in top condition will ultimately work to the disadvantage of the total value.

The amount of rent which can be paid is the excess income over the cost of production

One final point is the definition of rent. David Ricardo, a 19th Century economist, drew attention to the fact that rent arose out of surplus. Although he was talking of a subsistence agricultural economy which was based on the tenant farmer, the principle is sound and everlasting. The amount of rent which can be paid is the excess income over the cost of production, after the tenant has made a basic living. From that factrental value in economic terms arose.

It is therefore common sense that before the lessor can enjoy rent, a lessee must make a basic living, but until the lessor has been paid a fair level of rent then the lessee cannot expect any goodwill factor, as this is created at the end of the income stream. The poor indifferent "Mr Average Efficient" is the one on trial. A lessor cannot be expected to accept a rent less than that which would be paid by "Mr Average Efficient", nor could he expect more than "Mr Average Efficient" can show as a trading surplus. In other words the lessee should not be expected to pay a lesser rent than normal, but conversely cannot expect excessive rent because of the lessee's efficiency.

It is important to have as much factual evidence as possible, especially certified accounts and management day books and sheets.

A close scrutiny of the income must be undertaken. Bank statements of records are necessary, but all bankings of separate income not associated with the motel land and buildings GST tax, income associated with running sidelines such as breakfasts, souvenirs and recoverables which include items the operator claims back such as toll bills or drycleaning must be excluded. The importance of these should not be under-estimated. A typical example can read as follows:

Total annual income as per bank statements or accounts	\$ 235,000
1. GST 1/11 of above	\$ 21,363
2. Income received from breakfasts	5,000
3. Recoverables	
a. Toll accounts/fax	\$ 12,000
b. Drycleaning	1,500
	13,500
4. Shop sales	1,500
Balance must be income received from motels or gross income	<u>190,000</u>
	\$ 235,000

When working on the fair rent the income should be based on \$190,000, not the \$235,000 as is sometimes taken. Why should a lessee pay rent on GST and other recoverables?

Having established the gross income, further checks are necessary to gain the validity of such income, and to ensure the full income is being recorded.

Two important figures must be obtained, the first is the occupancy rate and the second is the rate per occupied unit in dollar terms.

1. Occupancy Rate: This is gained by ascertaining the number of motel units available over a period month or year divided by the actual units available.

$$\frac{\text{Motel Units used}}{\text{Total Motel Units x days}} = \% \text{ occupancy rate}$$

2. Dollar rate per occupied unit : This is gained as under:

$$\frac{\text{Total income}}{(\text{Total units used p.a.})} = \text{No units x days x \% occupancy rate}$$

Once a number of complexes have been analysed on this basis, it becomes possible to carry out basic checks. There will be variations which can be explained by the type of clientele or discounting for travellers, but if the books are being cooked, then the variations are obvious. For instance if the occupancy rate is normal for the location, but the unit rate is low, then some income is not being recorded.

Having completed these exercises and showed that the variations can be explained logically, then it is fair to state the income is justified.

Expenses are divided into hardcore costs, variable costs and financial costs

Now turning to expenses. These can be expressed in three major categories, hard core costs, variable costs and financial costs. It must be clearly understood this is not a bookkeeping exercise practised by accountants for tax purposes, but the cost

that a prudently run operation would encounter given normal circumstances, without taking into account the occupier's equity or that the property may be leasehold. By doing so the business's "ability to pay" is not clouded by a debt factor which can vary dramatically. It is assumed good business practice is adopted. In other words the motels are well maintained, there is a chattels renewal programme, a depreciation allowance is made, and fair remuneration is given to the manager/operator.

The major expenses encountered are:

1. ACC Level This varies depending on the wage bill and owner's income. This figure is normally accepted as a hard core cost.
2. Accountant's Fees Varies also, but usually in proportion to the gross turnover of the business, but may be higher where monthly receipts and payment of accounts are done by the account hard core cost.
3. Advertising Check what this includes. Excessive newspaper and radio advertising not usually warranted hard core cost.
4. Heating and Lighting This is a variable figure related to occupancy. After a number of analyses, a rate per unit is obtained and the quoted figure is able to be checked. Remember the larger the units the greater the cost to heat variable cost.
5. General Expenses- Bank fees. Watch for padding here- hard core cost.
6. Insurance This is factual, but check with current rates as there is fierce competition among insurers today hard core cost.
7. Laundry This is a variable cost depending on occupancy rates. Depending on size, laundry has historically been tendered out. Once again a cross check can be made on so much per unit using the national average of 2.2 persons per unit. A variable cost. (There is a growing tendency for lessees to undertake this operation on-site to cut costs. However I believe the outside cost should be adopted, as it is a straight lessee's benefit if any savings are made. The lessee must be rewarded for his extra labour and plant costs. Often it is still cheaper to send laundry out when these facts are taken into account.)
8. Legal Costs This may not register on a yearly basis, but is a cost often encountered in stamping of leases etc hard core cost.
9. Rates Direct hard core cost.
10. Repairs and Maintenance If units are not maintained, business must suffer as presentation is all important. Assuming decor and equipment has a life expectancy of approximately 10 years, then at least paint and paper is necessary (chattels taken care of elsewhere) of one unit per 10 plus a basic rate for plumbing, electrical repair hard'core cost.
11. Replacements This is for breakages and renewals. Taken care of under a sinking fund factor.
12. Stationery/Postage A cost per unit hard core cost.
13. Supplies/Cleaning fluids etc If income for breakfasts has been removed from income, then the costs of providing these must also be removed here. Watch for owner's padding. Cleaning fluids, toilet paper soon add up, while milk, papers, tea, coffee are very costly. This is a variable cost, but can be checked with an occupancy variable.
14. Subscriptions AA, Jasons, various chain organisations, standard costs hard core cost.
15. Telephone/Telex/Fax - Can be very expensive. If recoverables have been removed from income, then remove

from expenses. Rental of modern switch gear for a reasonable size complex is very expensive. Further costs are involved with new automatic charging fees a hard core cost after recoverables are removed.

16. Television Historically most are rented also licenses are expensive. Hard core cost on rental basis.
17. Motor Expenses Watch for padding. Most smaller complexes have private car use only hard core on this basis.
18. Wages Only cleaning costs in this instance. Figures can be checked on the basis of say half an hour per unit at dollar rate per unit x occupancy. A variable cost.
19. Valuation Fees - May not show up annually, but rent reviews can be expensive. A lessee must have the right to have the rent checked and if necessary determined by arbitration. A hard core cost.
20. Waste Disposal Can be expensive, and if not hired out time consuming. A legitimate expense hard core.

Having established the varying costs as either hard core or variable costs, after cross-checking with the total expenses a fair average must be gained and adopted.

The next set of costs are management related and include management wages and a return and recapture on chattels. Management wages must be market orientated and allowance must be made for residential accommodation being provided and often power, buried in the running costs. A fair going rate in Dunedin is \$20,000 including house, but this is for only management services, not for extras such as cleaning the actual units, linen washing, which reduces the wage bill and increases the bottom line profit. A contentious issue is the return on and recapture of chattels. Once again it is necessary to use market figures rather than book figures, as the latter could have been padded at purchase. The important factor to register is that chattels do have to be replaced at least every 10 years, and that a return must be obtained from this outlay. The amount of return must be related to the cost of borrowing and not in relation to a return a lessor may expect from land and buildings. I adopt 20% to which a sinking fund factor is added over a 10-year period. In reality this money is not put aside and may not be spent each year on chattels replacement, but is reinvested in the business. It is however a hard core cost which must be recognised over the duration of any lease in order to protect the basic business.

At this point the workings show up along the following lines:

Income before expenses		\$190,000
Expenses		
ACC, Accountant's Fees,		
Advertising etc		
Waste Disposal	\$75,000	
Manager's Wages	\$20,000	
Return and recapture		
on chattels		
return	.2000	
write off 10 years	.0385	
\$100,000 @	.2385	<u>\$23,850</u>
		<u>\$118,850</u>
NET INCOME		\$71,150

Having arrived at net income figure, we must look back to David Ricardo.

The lessee is in business to make a profit as well as a living wage, but if cashflow is poor in bad times both parties suffer: lessee's profit is reduced, landlord's rent likewise must suffer.

continued on next page

50 Years of Education at the University of Auckland

by Ken Christiansen

It is exciting to celebrate two jubilees in the same year: the New Zealand Institute of Valuers (NZIV) and property education course at Auckland University are both sharing their fiftieth anniversaries in 1989.

The origins of the valuation course at Auckland were researched at the time of the University's centenary in 1983 and an article published in what was then the *New Zealand Valuer* in the June 1983 issue.

As stated in 1983, the urban valuation course was approved and first offered in 1939, but this only happened after more than two years of investigation and discussion prior to 1939.

A lot has happened in the university context since the 1983 article was written, not enough, but a lot nevertheless. The principal event that year was the institution of the three-year full time bachelor's degree which enabled it to be offered at the beginning of the next academic year.

Reaching the approval stage was a lengthy, arduous and often frustrating process. Hitting on a name for the degree which offended no one was an intellectual feat in itself. But a degree of satisfaction may be claimed for the fact that it was during the University's hundredth anniversary year that this was achieved.

The regulations for the new degree contained transitional provisions which enabled students enrolled for the Diploma in Valuation (Dip Val) to transfer to the degree.

The first students for what finally came to be known as the

Motel rentals ..continued from page 35

Now comes the big question. What percentage of the net income should be the lessee's and what the lessor's? Here it is important to reflect what the market is doing by analysing existing rents on the same basis as outlined in this paper. I have found until recently there was a consistency on the basis of one-quarter lessee and three-quarters lessor basis.

No doubt this figure varies between regions and the country overall, but there will be a pattern.

Net Profit as above			\$71,150
1. Lessee's profit	25%	\$17,787	
2. Rent or debt servicing	75%	53,363	
			\$71,150

Today, with the industry in disarray, it is becoming clear lessees are disregarding good management principles and are not carrying out maintenance. They are cutting expenses dramatically by using the sum for chattels replacement to pay rent. This is a short term answer, but will result ultimately in the decline of standards, and the demise of the complex as mentioned early in this paper.

The wild inflationary expectation of the market in the last few years created abnormal conditions.

With a rapidly constricting market for beds, especially in the tourist centres, lessees have felt the pinch first, and with the lessors being divorced from the practicalities of the situation, there has been a lack of understanding. Both parties, and particularly the lessor, must understand the situation immediately.

A good lessee must be assisted by the lessor, as he is in fact an integral part in the lessor's investment. A

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Bachelor of Property Administration (BPA) enrolled at the beginning of 1984.

Enrolment for the degree has experienced dramatic growth. The subject which used to be called "Valuation I" had a class of 25 in 1981. The equivalent degree subject "Introduction to Property" had, by 1987, an enrolment of 130.

A limitation of 40 students for the first professional year has been in place since 1978, but it was not until 1986 that there were more applicants than places. This has been the situation now for four years. In 1988 a limitation of 100 needed to be imposed on enrolment for "Introduction to Property" in the Intermediate year. These limitations are not welcomed by the staff, but the shortage of funds restricts the availability of resources in the shape of staff and accommodation.

The number of BPA students graduating each year has not yet reached the 40 mark, but it will no doubt reach close to this as the course settles down to a steady intake of 40 each year. The numbers completing their degree studies have been eight in 1984; 26 in 1985; 30 in 1986; 27 in 1987; and 24 in 1988.

Another encouraging growth indicator has been the enrolment for the masters degree (MPA). This was first available in 1986 and the first three enrolments were in 1987. In 1988 there were 10 post-graduate enrolments. The first master's thesis was completed at the end of 1988. The subject was the real estate cycle in central Auckland and the author was Murray Jordan. The availability of the MPA enables post graduate studies up to doctoral level. The first Phd candidate has enrolled in 1989.

There have been some staff changes since 1983. The writer was promoted to Associate Professor in 1984: a new staff member Deborah Bookman (nee Levy) was recruited in 1986 from the United Kingdom, a graduate in land economy from the University of Aberdeen in Scotland. Dr Kevin Johnston was with us during 1986-88. He graduated in architecture and commerce at Auckland and gained his doctorate at the University of British Columbia in land economics. Robin Bell reduced his position to half time in 1986 and resigned in mid-1987. Rod Jefferies, who needs no introduction to New Zealand valuers, has returned to full time lecturing in all stages of valuation from 1989 after his return to public practice in 1976. Graeme Robertson, who taught construction to valuation students at Lincoln College before coming here in 1985, leads a team of architectural staff members in teaching building construction and technology

subjects. Considerable reliance is still placed on part-time staff for the teaching of several specialist subjects. Jan Leman still teaches Property Law 1 and 2; Allan Dickinson is responsible for Building Contracts; Leigh Houghton for Financial Appraisal; and David Stewart for Land Subdivision. Larry Johnson and Dr Brian Perry have started lecturing this year in Property Finance.

John Duthie taught Land Use Planning from 1986 to 1988; Penny Pirritt has taken over in 1989. Max Adams teaches Introduction to Rural Valuation and Management. Squire Speedy was apart-time lecturer in Financial Appraisal for some 20 years up to the end of 1984.

A fund raising campaign among property development companies during 1986 raised \$15,000 for the purchase of computers for student use. The companies which contributed \$5000 each were Chase Corporation, Kupe Investments and

Massey University Appointment

Smart Group (NZ). The number of prizes for student achievement, and the amount of each prize, have continued to grow. These are awarded for academic excellence in a variety of study areas. The prizes and value are Kupe Investments Prize (\$200), Mainzeal Construction Studies Prize (\$150), NZ Institute of Valuers Prize (\$100), FER Noble Memorial Prize (\$150), Property Management Institute Prizes (\$300 and \$200), Real Estate Institute Prize (\$250), Squire Speedy Prize (\$300) and Valuers' Registration Board Prize (\$100).

There are also University awarded Scholarships and prizes. There was a post graduate scholarship of \$5000 which was awarded once; the firm concerned was subsequently unable to allocate funds. This is an area of study where financial assistance for post-graduate study would be very useful.

An annual list of all the research material produced by staff and students is now available free, upon request. The latest edition contains over 260 items of research into a wide variety of property subjects. Jones Lang Wootton generously contributed the cost of title searching for the 1988 survey of new office accommodation in Auckland. This survey has been published annually for purchase for several years.

In 1987 in recognition of the growing importance of the property degree, the Faculty of Architecture and Town Planning was renamed the Faculty of Architecture, Property and Planning. There has been a significant increase in books dealing with all aspects of property in the Faculty library. There is regular liaison between the University and the professions by way of annual meetings between members of the department and representatives of the NZ Institute of Valuers and the Valuers' Registration Board; also with the Property Management Institute and the Real Estate Institute of New Zealand. A

Professor Stuart Locke joined Massey University as Head of the Department of Property Studies in early April this year. As the inaugural Professor of Property Studies, he brings to the University's Faculty of Business Studies a broad range of professional and academic experience.

Professor Locke was born in Melbourne, moved to Perth at an early age and completed his schooling in Western Australia. On winning a scholarship to the Australian National University, he completed an honours degree in Economics, and then studied accountancy. After a time in the Commonwealth Bank and Federal Treasury he embarked on an academic career.

After appointments at the Australian National University, Victoria University of Wellington, Lancaster University in England, and St Georges College in Jerusalem, he moved to specialise in Property Analysis and Finance, completing a doctorate in Real Estate Investment Analysis at the University of Tasmania.

His professional experience as director of the Tasmanian Property Data Bureau and consultant in computer modelling for investment analysis and management provides an interesting new dimension to the Department. Professor Locke's articles in international property journals reflect his expertise in property relating to investment analysis, portfolio management and financing.

Professor Locke believes the priorities for the Department, under his direction, are to expand the opportunities available for members of the community to benefit from property related education. This goal requires development of further papers within the degree and diploma syllabus of Massey University, expanded professional programmes for the industry, and the fostering of close relationships with professional bodies like the NZIV. A high priority is that teaching must be founded on both conceptual and applied research, ensuring a continuing advancement of knowledge and understanding. A

Compiled by Leonie Freeman

NZIV Board Computer Surve

As part of the formulation of the Computer Forum, the Editorial Board conducted a mail survey to all valuation firms in the country. The objective was to distinguish and segment the various computer users within the New Zealand Institute of Valuers.

It was intended to determine current utilisation of software and hardware, and areas of information which people were interested in, and would be useful for future decision making.

The results of the survey will help formulate areas of focus and the direction for future articles in the forum. The general results of the survey follow.

The questionnaire

The questionnaire was broadly divided into eight sections, with questions designed to obtain the following information:

Section A: Introduction

This section dealt with general details such as the name of the practice, type, location, numbers of registered and unregistered valuers and whether computers are currently used in any capacity within the firm.

Section B: Hardware

The type of computer hardware that each respondent is utilising and whether it is a stand-alone or network type system.

Section C: Software (programmes)

The types of software programmes currently utilised including database/sales retrieval systems, word processing, accounting, spreadsheets and any others not previously specified.

Section D: Customised Applications

What programmes/models have been developed for spreadsheet users and types of applications which respondents would like to utilise if more information or assistance was available.

Section E: Provides

How many respondents are using Provides, what is it utilised for and, for the relevant firms, is it under consideration for the future.

Section F: Areas of interest

Areas concerning computers which are of specific interest to the office and practice. These answers are likely to be topics for possible articles in the future.

Section G: Summary

The identification of interest in a potential NZIV Computer Users Group and interest in attending seminars organised by the Institute geared specifically for valuers and their use of computers.

Survey Analysis

Section A: Introduction

Location

A total of 119 responses were received, from practices throughout the country. The firms were located as follows: (Table 1)

Type of Practice

Responses came from a variety of practice types. These were identified as follows: (Table 2)

Number of valuers

Firms ranged in size from sole practices to large national firms. The total number of respondents included 440 registered valuers and 148 unregistered valuers.

Table 1

LOCATION OF RESPONDENTS

	number	
Auckland	23	19.5
Alexandra	2	1.7
Ashburton	2	1.7
Blenheim	1	0.8
Cambridge	1	0.8
Christchurch	17	14.4
Dunedin	6	5.1
Gisborne	3	2.5
Gore	1	0.8
Greymouth	1	0.8
Hamilton	8	6.8
Hastings		0.8
Invercargill	2	1.7
Kaitiaki	1	0.8
Manurewa	1	0.8
Masterton	1	0.8
Napier	5	4.2
Nelson	3	2.5
New Plymouth	3	2.5
Orewa		0.8
Pleasant Point	1	0.8
Palmerston North	4	3.4
Queenstown	1	0.8
Rangiora	2	1.7
Rotorua		2.5
Southland		0.8
Taupo	2	1.7
Tauranga		0.8
Te Awamutu		0.8
Timaru	3	2.5
Wanganui	2	1.7
Wellington	12	10.2
Whakatane		0.8
Whangarei	2	1.7
TOTAL	119	100.0

Table 2
TYPE OF PRACTICE

	number	
Valuation only	65	54.6
Valuation & Finance (eg Rural Bank)	16	13.5
Valuation and Real Estate	12	10.1
Farm Consultant & Valuation	8	6.7
Vain/Consultancy/Investment Analysis	6	5.1
Property Management & Consulting	4	3.4
University	2	1.7
Valuation/Architecture/Engineering	2	1.7
Bank	1	0.8
Real Estate Only	1	0.8
Plant & Machinery Valuation only	1	0.8
Property Development	1	0.8
TOTAL	119	100.0

Use of Computers

Of the total 119 respondents, 109 firms utilised computers in some capacity. The 10 respondents who did not currently use computers were all valuation only practices.

Section B to Section G were based on the answers provided by the 109 respondents who used computers in some capacity. Section H had the total sample of 119 included.

Section B: Hardware

There was a large variety of hardware types utilised by the respective firms. The most common was IBM used by 32 of the firms with the total number of computers being 113.

Sanyo was the next popular with 17 firms having that system, ICL 13 firms and Unisys (mainframe system) 11.

Exzel, Compaq and Bondwell were each used by six firms, Amstrad by five and Apple, NEC, and Commodore each adopted by three firms.

There were another 29 different hardware types used by the remainder of the respondents.

Of the 109 respondents who had some type of computer system, 26 (24%) operated a network system, 78 (71%) utilised stand-alone systems and five (5%) had some combination of the two.

Section C: Software

The types of software programmes currently utilised by respondents including database/sales retrieval systems, word processing, accounting, spreadsheets and any others not previously specified was covered in this section:

Database/sales retrieval

Valpak was the most common database/sales retrieval system with 78% of the firms utilising it. Valdat had eight users and Rentpak-2 had 11.

There were a number of other database systems used including Rentdat, MLB, RBase, In-house database systems, DBase III/IV, Paradox, Valpro, Q and A, and Hallensteins.

Less common systems utilised by the respective practices included Informix, Sco Retrieval, Dataflex, Realty Data Systems, Open Access, Relist and Property Management, Rapid File and Professional System.

Word Processing

Wordstar was the mostpopular word processing system with 37 firms using it. Microsoft Word, New Word, Multimate and Displaywrite followed a considerable distance behind being used by nine,eight,seven, and five firms respectively. Twenty-two respondents did not answer the question or did not utilise a word processing system, but the remaining firms used an additional 21 different types of word processing systems.

Accounting

Again, the responses from the survey indicated a wide variety of accounting systems being utilised. From the survey results some of the more popular systems included Profax, Recount, Attache General Ledger. There did not appear to be any one programme that was used significantly more than others, and a large number of respondents did not answer the question.

Spreadsheets

The mostpopular spreadsheet programme was Lotus utilised by 46 firms. This was followed by: Multiplan (25), Supercalc (11), Symphony (8) and Excel (6). Other programmes including Quattro, Open Access, VPPlanner, Logistix, 20 20, First Choice, Oracle, Ability, PC Calc Golden Gate and Farsight account for a small minority of users.

Other Software Programmes

Other types of software packages currently being utilised by the various respondents included a wide variety, the most common being Xtree, Fastback, DBase III/IV, Multiproject, Graphics and Insurance packages.

Section D: Customised Applications

This section concentrates on the various types of programmes/models that have been developed for spreadsheet users, by the respondents. Secondly the type of applications which respondents would like to utilise if more information and assistance was available.

Customised Applications developed by Respondents

	Number	
Budgets	27	25
Cash flow analysis	26	24
Insurance	22	20
Sales analysis	17	16
Valuation purposes	14	13
Rental analysis	13	12
IRR	12	11
Accounts analysis	11	10
House costing	9	8
Residual valuations/feasibility	8	7
Subdivisions	6	6
Graphics	6	6
Loan repayment/interest	6	6
Portfolio analysis	4	4
P & M calculation	4	4
In house records	4	4
Regression/statistics	4	4
In house management	4	4
Property management	3	3
Farm/orchard models	3	3
Lessees interest	3	3
Statistical applications	2	2
Job cost analysis	2	2
Gross margins	2	2
Machinery costings	1	
Property listings	1	
Forestry valuations	1	
Diary systems	1	
Client Lists	1	
Interest reviews	1	
Body corporate administration	1	
Bricks and mortar values	1	
Sensitivity analysis	1	1
Economic assessments	1	
Farm forecasts	1	

Other uses for computers if had more information

Computer assisted valuations	10
Expanded market analysis	9
In-house database	9
IRR/discounted cash flow analyses	7
Rental database	5
Templates for urban/commercial/ industrial/hotels	4
Graphic presentation	4
Insurance costings	4
Spreadsheet applications	4
Accounting procedures	3
House costing	2
Data manipulation	2
Word processing	2
Office automation	2
Sensitivity analysis	2
National and local statistics	2
Receive copies of CT's and transfers	
Subdivisions	
Statistical analysis	
Report Writer preparation of full reports using a report generator	1
Database with imagery	1
Everything	1
Regression analysis	1
File index	1
Rentpak	1

Section E: Provides

Twenty-one (20%) of the respondents said they utilised the Provides system within the office practice. Eighty (80%) did not. The majority of people used it for Sales, Property Searches and Government Valuations.

Of the 88 respondents who currently did not have the Provides system within their office, 31 (35%) confirmed that it was under consideration for the future; 57 (65%) said it was not being considered for the future.

Section G: Areas of Interest

Section G allowed for the detailing of areas concerning computers which were of specific interest to the respondents' offices or practices. This section was included with the thought that ideas for future articles could evolve (See Table 3).

Section H: Summary

This section allowed for any further comments about computer utilisation, the identification of interest in a potential NZIV Computer Users Group and interest in attending seminars organised by the Institute geared specifically for valuers and their use of computers.

Summary Comments about the respondents' current computer system and its utilisation.

The general comments centred around the fact that some systems were not used enough because of unfamiliarity. The computers were therefore not being utilised to their maximum potential.

Other comments included Provides was too slow, more information is required from Valpak and Rentpak. Some respondents were concerned about the obsolescence of their machines while others were concerned over the support and service they were obtaining.

Table 3: Interest Areas

i)	Hardware the various types of computers available and comparisons between them	51
ii)	Stand alone systems vs office networks	48
iii)	Types of software packages	67
	Comparison of spreadsheet packages	45
	Various types of word processing	45
	Accounting packages	50
	Database package	56
iv)	How to go about setting up a new computer system	27
v)	New computer technology applicable to Values and the profession	94
vi)	Customised valuation computer models	73
vii)	Comparisons of the types of operating systems e.g. DOS, UNIX/XENIX, Pick, C-Dos	41
viii)	Retrieval of data from database to spreadsheet to Word	1
ix)	Compatibility between various systems	1
x)	Education and use of computer	1
xi)	Economics of a computer ie cost efficiency	1
xii)	Spreadsheet Templates	2
xiii)	Storage Visual Images photos and maps	3
xiv)	Communications between offices and other practices	1
xv)	How to use Provides properly	1
xvi)	Ability and comparison of sales analysis/ retrieval systems and future development, comparison of costs	1
xvii)	Printers and details of latest hardware	1
xviii)	Artificial intelligence and application to valuation	1
xix)	Laser data storage disks	1
xx)	Comments from users of software who have experience of a product as opposed to the sellers' claims i.e. does the software system work effectively	1
xxi)	Sales data rural analysis	1
xxii)	Reviews of commercially available software packages	1
xxiii)	Computer linked to other disciplines such as LO & S Dept, TP Dept to enable easier retrieval of information eg plans maps etc (LINZ)	2
xxiv)	Linkage to outside source data financial, statistical	etc
1		
xxv)	Computerised Legislation: rapid search of statutes affecting valuation/other with facility for quick change related to changing legislation circularised data disk service with new and changed statutes	1
xxvi)	Standardisation of valuation practices using computer models	1
xxviii)	New applications to valuation and plant and machinery	1
xxix)	Software to assist with market analysis	1
xxx)	Backup systems and practice	1
xxxi)	Power failure/crash protection	
xxxii)	Portables comparison	1

National Computer Users Group

Respondents were asked as to their interests in a loose knit National Computer Users Group within the NZIV. Eighty (67%) respondents said they were interested, and 39 (33%) said no or did not answer the question.

Respondents were asked to comment on levels of expertise. Half provided no comment but the majority of the remainder ranked themselves as basic users while a small number classified themselves as experienced.

Computerisation - When, What and How?

by Simon Langlands

Over the past six to eight years the unthinkable has become the norm. What was a strange and wonderful box that tended to produce mountains of paper that was read by no one except accountants (apologies to accountants), has at last become a machine/tool which can be and increasingly is being used daily by all.

The questions regarding computerisation fit into five main headings:

1. When?
2. What Operating System?
3. What Software?
4. What hardware?
5. How?

When?

Unlike our predecessors, the question of "when should we computerise" has become paramount. Clients now like to see computers spread around like confetti. The "Boss" feels if it is on computer paper, it must be good/correct.

The real answer in the author's opinion is based on another question Why? To computerise for the sake of it is nonsense. To computerise because it is:

- a. Sound business sense
- b. Increases efficiency
- c. Increases productivity

are all supportable reasons, easily justified.

The crocodiles in the swamp start to appear through having decided yes. (For crocodiles read consultants and salespersons: I plead guilty to the second heading.)

The "yes" answer will be correct if:

- a. Your competitive edge can be maintained
- b. Your output will be better and more efficient.
- c. You will use less personnel to achieve the same output or the same people to achieve greater output.

What Operating System?

Back to the crocodiles. The largest single danger at present is that you may choose the wrong operating system (for 'operating system', read 'fuel'). The more time spent on the operating system choice, the less problems that will occur later. For example, it is pointless buying CNG if you are going to drive around the South Island. By the same virtue, it is useless to scream about lack of choice of software to run on your computer if you have chosen a computer that runs an operating system that no one has ever heard of. So choose well, talk to people who have

Computer Survey...continued

Computer Seminars

Respondents were questioned regarding their interest in attending seminars organised by the Institute geared specifically for valuers and their use of computers. Ninety-six (80%) of respondents answered yes and 23 (20%) said no or provided no answer.

Summary

The results of the survey have provided some indication as to possible direction for articles and information for the Computer Forum. On behalf of the Editorial Board, I thank everyone who participated in the survey for their assistance.

If anyone has any comments regarding the survey or the Computer Forum in general, please write care of the General Secretary, PO Box 27-146, Wellington. A

Simon Langlands, MA Cost E MBIM M Mkt 1, is presently Business Development Manager for both the Computer arm and Cost Engineering division of Rider Hunt Holmes Cook Ltd. He has been involved in Engineering and Construction in New Zealand, Australia, United Kingdom and Europe for some 15 years and has specialised in the use of computers in Cost Engineering and Project Control.

a similar operating system, find out the problems before you buy. Caveat Emptor.

What Software?

Having decided on the operating system, one of your reasons will hopefully have been because of the range of software to suit your need.

Please note :to date we have not even mentioned Hardware.

In choosing software work on the 80% Rule: do NOT expect to find a piece of software that addresses 100% of your needs. Do NOT try to buy an estimating package which has no logical fit with other aspects of the company. Try to think in terms of integration not solo solutions. Work out the interfaces, not how to snub the accountant.

Please note : to date no consultants.

What Hardware?

Forget the clone from Singapore that your brother-in-law brought back. The most important factor in hardware choice having found that it will run your choice of software is support after the "honeymoon" is over. Go to your local supplier, you may pay a few more dollars, but in real terms a lot of grief will be saved in years to come. Ask for references with regard to previous sales made, and telephone and speak to the people listed. Check how long the company has been in business. If you can, ask your bank manager to check and get a bank reference.

How?

So you now have software, hardware and it is all in boxes, you have no idea how to put the whole package together. At this point you have two choices: muddle through and learn something about the package you have just paid for or easier, and most probably safer, employ a "Project Manager" in the literal sense. He may be that cadet sitting in your alcove who is interested in computers or, alternatively, ask around and get an outside consultant to assist in installing, training and aiding you. Appoint a member of your own staff as the liaison person and expect to have a six to twelve month learning curve.

Summary

With all the best will in the world, all the above will not be painless. Too often horror stories abound of boxes arriving by courier and no one knowing how to make them work.

Computerise because you want to, not under duress from some salesman. Lastly, do not throw out the manual system until you are happy with the computerised version. A

VALUATION BOARD OF APPEAL
HELD AT WELLINGTON
IN THE MATTER of the Valuers Act 1948
AND

IN THE MATTER of an appeal from a decision of the
Valuers Registration Board by
DONALD DAVIS FERGUSON

Date of Hearing: 5 April 1989

Date of Decision: 30 May 1989

Appeal Board:

District Court Judge M Lee

Mr P R Holmes Assessor appointed to represent the Valuers
Registration Board

Mr M Sellars Assessor appointed to represent the Appellant
Counsel:

Mr M F McClelland for Appellant

Miss M Wallace for Valuer-General

Mr J B Stevenson for the Valuers Registration Board

DECISION OF BOARD OF APPEAL

This is an appeal pursuant to s.334(1) of the Valuers Act 1948 from a decision of the Valuers Registration Board (The Registration Board") of 23 November 1988. That decision followed an inquiry held by the Registration Board pursuant to s.32 of the Act on 21 September 1988. The charges against Mr Ferguson were:

(1) Section 31(1)(c) of the Valuers Act 1948: That you have been guilty of such incompetent conduct in the performance of your duties as a Valuer as renders you liable to a penalty provided by the Valuers Act 1948 IN THAT you in compiling a Valuation Report dated 11 March 1988 in respect of the property situated at 355 Willis Street, Wellington (being all land described in the Certificates of Title F3/1493,120/58 and 333/141 Wellington Registry) grossly over-valued the property.

(2) Section 31(1)(c) of the Valuers Act 1948: That you have been guilty of such incompetent conduct in the performance of your duties as a Valuer as renders you liable to a penalty provided by the Valuers Act 1948 IN THAT you in compiling a Valuation Report dated 11 March 1988 in respect of a property situated at 355 Willis Street, Wellington (being all the land described in the Certificates of Title F3/1493,120/58 and 333/141 Wellington Registry) made a mortgage recommendation that was excessive.

(3) Section 341(1)(c) of the Valuers Act 1948. That you have been guilty of such unethical conduct in the performance of your duties as a Valuer as renders you liable to a penalty provided by the Valuers Act 1948 IN THAT you prepared a Valuation Report dated 11 March 1988 in respect of a property situated at 355 Willis Street, Wellington (being all land described in the Certificates of Title F3/1493, 120/58 and 333/141 Wellington Registry) when you did not have adequate professional experience to enable you to undertake such work.

These charges arose as the result of a complaint dated 15 May 1988 lodged with the Registrar of the Registration Board by Mr A E O'Sullivan, Registered Valuer and a principal of Rolle Associates Ltd.

The subject of the complaint was a valuation report compiled by Mr Ferguson on 11 March 1988 in respect of the Quality

Inn Motor Hotel at 355 Willis Street, Wellington. Mr Ferguson valued the hotel as a 'going concern' at \$ 10,500,000 with a value for land and buildings of \$9,600,000. He made a mortgage recommendation against the security of that property at \$6,400,000.

At the inquiry before the Registration Board the only valuer called on behalf of the Valuer-General was Mr A D Beagley, Registered and employee of Rolle Associates Ltd. He valued the hotel as a 'going concern' at \$7,300,000 with a figure for land and buildings of \$6,300,036 and made a loan recommendation of \$4,424,000. The Government valuation of 1 July 1987 had a capital value for the property of \$6,000,000.

The Registration Board found Mr Ferguson guilty of all three charges. That Board ordered that Mr Ferguson's registration be suspended for six months and that he be fined \$1,000.

Mr McClelland told this Board that the appeal was based on legal grounds and not on the merits. In substance these grounds are that:

(1) The Board was wrong in convicting Mr Ferguson on all charges in reliance on Mr Beagley's evidence because

- Mr Beagley lacked experience and expertise in the field of hotel valuation;
- his evidence was 'inaccurate, misleading and in all respects unreliable';
- he had a vested interest in the outcome of the prosecution and therefore could not be relied on to give independent expert opinion.
- in relying on his report which the Registration Board described as 'reasonably thorough and convincing' the Board applied the wrong standard of proof.

(2) Because of these weaknesses, the charges have not been made out to the required standard, which is one close to beyond reasonable doubt. Apart from Mr Beagley's evidence there was not other evidence to support the convictions.

(3) Charge 3 has no legal basis.

Mr Beagley's evidence before the Registration Board was that after obtaining his academic qualifications he worked for the Rural Bank, spent some years overseas and from March 1985 worked in the Wellington/Horowhenua and Kapiti Coast area. Since July 1986 he had been involved in urban valuation work. Since October 1987 he had been employed with Rolle Associates Ltd where he specialised in hotel valuations under the guidance of Mr O'Sullivan. The Quality Inn valuation was the first hotel valuation he carried out on his own. Mr Beagley's report was a 38-page document, which, in the words of the Registration Board:

Covers all aspects which one would normally expect to be covered in the valuation of a city hotel, including a trading analysis and investigation into current and possible future profitability.

Mr Beagley used three methods of valuation. First he assessed the rental which the hotel would produce based on gross receipts from accommodation, food, beverage and 'other'. The figure obtained was then capitalised to produce a total market value of \$7,256,000.

Secondly, Mr Beagley valued the hotel as a 'going concern', by assessing a net cash flow figure on the basis of income and expenditure figures provided by the hotel. This net cash flow figure was capitalised at 10.3 per cent to reach a 'going concern'

valuation of \$7,300,000. Mr Beagley deducted an assessed value of \$644,000 for chattels, giving a value for the land and buildings and licence at \$6,636,000.

Thirdly, Mr Beagley analysed recent sales of the Travelodge, Shaw Savill, Beltara, and West Plaza hotels to obtain a sale price per room for each hotel. Mr Beagley also looked at the Burma Lodge Hotel which was under negotiation. Comparing the Quality Inn with these five hotels, with particular regard to the Travelodge which Mr Beagley regarded as the most comparable, Mr Beagley reached a figure of \$87,200 sale price per room, multiplied by 84 rooms to reach a rounded off figure of \$7,320,000 sale price for the Quality Inn.

From the three valuation figures produced by the different methods, Mr Beagley concluded that the property had a 'going concern' value of \$7,300,00 apportioned as follows:

Land- as licensed occupied site	\$1,860,000
Improvements 84 room hotel containing restaurant, conference facilities, gymnasium and pool	<u>\$4,776,000</u>
Realty value	\$6,636,000
Estimated value of chattels	\$664,000
Going concern value	\$7,300,000

Mr Beagley's report also referred to the following facts relating to the Quality Inn. The hotel was built originally as the YWCA in the early 1960's. It underwent substantial upgrading in 1983 and was converted to hotel use. It is located to the south of the Wellington Central Business District on land zoned Residential C 1, on which hotels are not a predominant or conditional use. The hotel is therefore an existing use which meant that if it should be destroyed it was likely that a specified departure application would be required for rebuilding. The Quality Inn was the only hotel in Wellington with conference facilities for 500 people. The car park for the hotel is on land leased for five years from the Wellington City Council. The lease allows the lessor to terminate the lease on giving 12 months' notice. Because the building was not a purpose built hotel, there were certain problems, including a lift and kitchen of insufficient capacity.

Mr Beagley accepted that the area containing the swimming pool, gymnasium, spa pool and recreational area could be reduced considerably and put to more economic use. He was aware that there had been some suggestion about building another 22 rooms on top of the main conference room for which he considered a specified departure application would be required. However, Mr Beagley did not take these matters into account in his valuation.

Mr Beagley confirmed that prior to compiling his May 1988 valuation of the Quality Inn he had had seven months' experience in valuing hotels. This was during his employment with Rolle Associates Ltd. He confirmed that Mr O'Sullivan was the principal under whose supervision he gained his experience in hotel valuations. His valuation report of 3 May 1988 was prepared on the instruction of a firm of solicitors on behalf of Mr Neil Patel, who was also the person on whose instructions Mr Ferguson produced his report two months earlier.

In the course of his evidence before the Valuers Registration Board it was revealed that there were some errors in Mr Beagley's calculations of the value of the hotel as a going concern. It was also revealed in evidence that although he included the Beltara Motel in his sales comparison, he was unable to say if it was licensed or whether it had swimming pool, restaurant or cooking facilities.

At the end of the Valuer-General's evidence before the Registration Board, Mr McClelland submitted to that Board that

there was no case to answer on the grounds that Mr Beagley lacked the requisite expertise, that his report contained inaccuracies and was unreliable, and that he could not be accepted as a disinterested expert witness. The Registration Board ruled that a prima facie case had been made out which required an answer. Mr Ferguson was then called to give evidence.

In his report dated 11 March 1988 addressed to Messrs Phillips Shayle-George, barristers and solicitors of Wellington, Mr Ferguson referred to the fact that the car park area was leased from the Wellington City Council for a term of five years but omitted to mention that the lease was subject to termination on 12 months notice by the lessor. He mentioned that the lease document had not been sighted. Mr Ferguson also said:

BUILDING POTENTIAL - It is understood from your client that in discussions with the relevant professionals, it has been indicated that an additional 22 rooms could be built over that part of the building that currently houses the Challenge Hall Conference Room.

Mr Ferguson's description of the manner in which he arrived at his valuation was skimpy and should be set out in full:

VALUATION APPROACHES - In carrying out this assessment, I have considered the value as indicated by depreciated replacement cost, market data as indicated by recent sales of the Travelodge in Oriental Bay, the Shaw Savill Hotel at Rongotai and the Abel Tasman Hotel in Lower Willis Street, and the value as indicated by its turnover profitability and the potential for increases in these factors in the immediate future.

The first method above in my opinion does not provide a reliable guide in this instance, replacement cost being in the region of \$24,000,000.

Analysis of the above sales, with the exception of the Abel Tasman, provides a guide whereby this type of hotel sells at a figure in excess of 2.2 times its gross turnover.

I consider with aggressive management and a realistic marketing plan a gross turnover of \$4,500,000 should be readily achievable in the 1988/89 financial year.

In concluding my assessment of the market value of this hotel of \$10,500,000 including chattels of \$900,000 I have drawn on the value as indicated by the last two approaches.

I consider that this assessment is fair and reasonable in view of all the above factors.

In evidence before the Registration Board Mr Ferguson said he had received instructions from Mr Neil Patel to carry out the valuation. This was the first hotel valuation he had attempted in Wellington. He arrived in Wellington on a Sunday and discussed the valuation with Mr Patel. Over the next three days he inspected the property, undertook the necessary research and spoke with a number of contacts knowledgeable in this field. Mr Ferguson searched the title, checked the zoning at the City Council offices and had discussions with hotel brokers and other people in the industry. He said he inspected other hotels recently sold, namely the Travelodge and Beltara. He said he intended to spend up to two weeks on the preparation and finalisation of his valuation report. However, on the Wednesday evening Mr Patel demanded that the report be ready the following day otherwise the purchase would collapse. Mr Ferguson told him it was impossible to meet this deadline but Mr Patel insisted. Mr Ferguson said that by that time he had formed an opinion as to the hotel's value and was reasonably confident the figure was correct. He was fully aware that his report and valuation would be relied upon. That night and the next day he wrote out the report and Mr Patel had it typed. He told the Registration Board that he was placed under considerable pressure to complete his report in a time frame that was, with hindsight, beyond reason. Mr Ferguson said he valued the Quality Inn as a going concern on the basis of three valuation approaches. Using the turnover approach he produced a figure of \$8.19 million on the basis of

the gross turnover for 19 87/88. The room rate approach based on comparable sales produced a figure of \$8.4 million. By capitalising the net profit for the five months to November 1987 extended over to the entire year, Mr Ferguson reached a figure of \$8.8 million.

The Registration Board canvassed with Mr Ferguson at some length how, on the basis of his analysis, he was able to arrive at a valuation of the hotel as a 'going concern' of \$10.5 million. According to the transcript of evidence, Mr Ferguson replied:

In exact words, no. I just considered that there was all this potential in the property which when it was realised would increase the property substantially in value and that some allowance should be made over and above the value as indicated by the turnover and that's the figure I decided on.

Mr Ferguson said that he had been led to believe by Mr Patel that there was potential to build an additional 22 rooms and that Mr Patel's architect had some preliminary discussions with the Council which suggested that it was likely the proposal would be accepted. Because of the rush he did not have any discussions with Mr Patel's architect nor with the Town Planning Division of the City Council. Mr Ferguson also did not make any inquiries as to the availability of alternative car parking, should the Council terminate the lease. Nor did he make inquiry with the Council as to how likely that eventuality might be.

Mr Ferguson's evidence about his work experience was that he was registered as a valuer in 1973. He worked for the Valuation Department in Wellington and later in Hokitika.

Since 1979 he had worked on his own account, first on the West Coast and since 1987 in Christchurch. Since his move to Christchurch his main source of work had been hotel valuations and advising property investors. He listed his experience in valuing hotels and said he considered himself experienced in hotel valuation.

Coming now to Mr McClelland's ground for appeal, we would agree that Mr Beagley's experience and expertise in hotel valuation was limited. We also agree that in assessing Mr Beagley's expertise the Board took into account the fact that he worked for a reputable firm which had a large practice in hotel valuation, forgetting that it was Mr Beagley who had to give evidence as an expert and not the firm. We do not agree that the inaccuracies and omission in Mr Beagley's report were fatal. The miscalculation related to the figures used in arriving at the net cash flow. In the event the difference was insignificant and had no effect on the end result. Mr Beagley's lack of knowledge about the Beltara Motel attracted the Registration Board's criticism but it was one of five hotel sales that Mr Beagley looked at in his sales comparison which in turn was one of three methods of valuation he used. We also consider that Mr Beagley should have given some recognition to the potential from a more economic use of the recreational space and the possible addition of 22 rooms, which he accepted existed, although because of the planning difficulties and the situation of the car park we think not a great deal could have been added for that potential. Aside from this criticisms and despite his limited experience, we found Mr Beagley's report thorough and comprehensive.

It was accepted by Mr McClelland that when Mr Beagley prepared his report he was unaware of Mr Ferguson's report or of the subsequent complaint. There is no question therefore about Mr Beagley's independence when he compiled the valuation. His appearance before the Registration Board to give evidence as the only valuer to be called by the prosecution is another matter. He was and is an employee of the firm of which the complainant Mr O'Sullivan was a principal. Mr O'Sullivan

was his supervisor in his work of hotel valuation. In the circumstances it is impossible to say that he can be seen to be an impartial expert witness. Like Mr McClelland we have some difficulty with the Valuer-General's decision not to obtain another valuation from a valuer who could be seen to be disinterested in the outcome of the prosecution.

This regrettable omission placed Mr Beagley in the invidious position of having to defend a valuation which was the basis of his employer's complaint. We would agree with Mr McClelland that the Valuer-General in submitting to the Registration Board Mr O'Sullivan's letter of complaint together with Mr Beagley's valuation, Mr Ferguson's valuation and his exchange of correspondence with Mr Ferguson and Mr O'Sullivan, can hardly, without more, be said to have 'investigated' the complaint as he was required to do by the terms of s.32(1) of the Act. Mr O'Sullivan's letter of complaint contained factual errors which were significant and should not have gone before the Registration Board without verification. These errors related to an allegation that the Quality Inn was sold for \$4.5 million it was never sold; and that subsequent valuations gave figures of \$6.5 million the only subsequent valuation was the one carried out by Mr Beagley.

These omissions and deficiencies, however, do not avail Mr Ferguson on this appeal. Before this Board, Mr McClelland has, quite rightly we think, not challenged the Registration Board's ruling that Mr Ferguson had a prima facie case to answer. The Registration Board was entitled to act on the whole of the evidence. There was sufficient evidence, including Mr Ferguson's report and the admissions he made at the hearing of the inquiry to enable the Registration Board to conclude that Mr Ferguson had made a gross over-valuation and an excessive recommendation for mortgage purposes. The fact of the matter is that Mr Ferguson was unable to explain what the Registration Board described as a "quantum jump" from the valuation figures he obtained by analysis to the \$10.5 million valuation as a "going concern".

We disagree with Mr McClelland therefore when he says that apart from Mr Beagley's evidence there was no other evidence to support the convictions. Even accepting the highest of the figures produced by Mr Ferguson's three-pronged approach, the \$10.5 million valuation would still be beyond the 15 per cent acceptable variance referred to in *Singer and Freidlander Ltd v John D Wood and Co* (1977) 243 EG212, a case cited by Mr McClelland.

The Board's finding that Mr Ferguson was guilty of the first charge is therefore upheld. It necessarily follows that Mr Ferguson's loan recommendation was excessive. Again even if we were to accept the highest figure in Mr Ferguson's analysis of \$8.8 million, a mortgage recommendation should be no more than \$5.8 million.

As to charge 3, Mr McClelland contends that it has no legal basis. S.31(2) provides:

Unethical conduct for the purposes of paragraph (c) of the last preceding subsection means conduct in breach of the code of ethics prescribed by the rules of the Institute.

The charge does not refer to any particular clause in the code of ethics. The only clause of relevance is clause 3(3) under the heading 'Fiduciary duty to clients'. That clause says:

He should not undertake any valuing work for which he is not qualified and where he is in any doubt as to the adequacy of his professional experience to undertake the work.

There is no clause in the code of ethics which refers simply to work being undertaken by a valuer who 'did not have adequate professional experience to enable him to undertake

such work'. It seems to us that the wording of clause 3(3) suggests that something akin to intention or mens rea is required, that is, a valuer undertaking work for which he knows he does not have the professional experience to carry out. This must be all the more so where the failure alleged is a breach of fiduciary duty.

We agree with Mr McClelland that to establish a breach of clause 3 (3) of the Code of Ethics it is necessary to prove that the valuer undertook work for which he was not qualified and where he was in doubt as to adequacy of his professional experience to undertake that work.

It is not contended that Mr Ferguson was not qualified to undertake the work. The evidence is that Mr Ferguson had no doubt that he had the requisite professional experience to carry out the valuation.

We agree with Mr McClelland that what is alleged in Charge 3 does not amount to a breach of the code of ethics and therefore pursuant to s.31(2) does not amount to unethical conduct. If we are wrong and the test should be an objective one, then we find that the evidence does not support the allegation that Mr Ferguson did not have adequate professional experience to undertake the valuation of the Quality Inn Motor Hotel. We do not understand Miss Wallace to contend otherwise.

She says, however, that Mr Ferguson did not have adequate professional experience to enable him to carry out the valuation in three days. We cannot accept that the test can be formulated in such terms.

It would be impossible to apply. It would involve argument over the number of days in which any particular valuer is professionally qualified to carry out a particular valuation or class of valuations.

Such a test also mis-states the issue: the question is not how quickly he can do it but how adequately he can do it. Likewise, the Registration Board has applied the wrong test in relation to Charge 3: that is, it based its finding on the inadequacy of the report and the insufficiency of the research and analytical work, rather than on any inadequacy in professional experience. The conviction of Mr Ferguson on Charge 3 is wrong and cannot stand.

Mr McClelland criticised the Registration Board for imposing a penalty without giving Mr Ferguson an opportunity to make submissions. Mr Stevenson told this Board that the Registration Board's practice varied: sometimes no opportunity was given to make submissions on penalty, sometimes submissions were heard if requested and sometimes the Board invited submissions after it found the valuer guilty as charged. We think the Registration Board should always hear submissions on penalty.

It seems to us that counsel appearing before the Registration Board can assist in maintaining uniformity by expressly asking, as a matter of practice, to be heard on penalty, either at the inquiry or subsequently if a finding against his/her client should be made.

In any case, this Board heard Mr McClelland on the question of penalty. He pointed out that this was Mr Ferguson's first appearance before the Registration Board. His valuation reports had been accepted by a large number of respected financial organisations.

Mr Ferguson was frank and open right from the start with the Valuer-General and with the Registration Board. Mr Ferguson accepted that he acted under pressure and omitted to do certain things he should have done.

He acknowledged that he acted unprofessionally in accepting to do the valuation in a hurry in allowing himself to be put

in that situation. Mr McClelland submitted that Mr Ferguson had done all the preliminary work and was on the point of considering what the value should be when Mr Patel put the pressure on. Mr Ferguson had learnt a lesson and he would not repeat the mistake again.

A six month suspension was, Mr McClelland submitted, too severe; a fine and reprimand would be appropriate. In support of his submission Mr McClelland referred to the cases of *Steel*, *Williamson*, *Simkin* and *Wright* to show that a valuer was not suspended on a first appearance for similar matters.

We accept that Mr Ferguson was completely honest and open right from the start.

Indeed, had it not been for his frankness, it is questionable whether, because of the difficulties with the prosecution's case, Charges 2 and 2 could have been established to the requisite standard. We also agree that Mr Ferguson's mistake was in allowing himself to be pressured into producing a report in a time frame which was manifestly unrealistic.

It was a grave error of judgment, one which had the potential for disaster for himself and for any lender who might have acted on it.

All the warning signs were there: a request to value a hotel outside his usual area of operation; complications due to the fact that the hotel was not purpose built; complications with regard to zoning and lease of the car park; potential on the basis of a 22-room addition alleged by the person requesting the valuation for loan purposes; the sudden and unexpected pressure to produce a report in a drastically shortened time-frame.

It seems evident that Mr Ferguson was carried away with his client's enthusiasm over this unsubstantiated 'potential' and under pressure forgot his responsibilities to the potential mortgagee see *Corisand Investments Ltd v Druce and Co* (1978) 248 EG 315.

None of the cases referred to by Mr McClelland involved potential losses in the millions. Moreover, this valuation occurred nearly five months after the stock market crash when the warning signs were apparent for all to see.

We are of the opinion that something more than a fine and reprimand is required.

In our view it cannot be said that the penalty imposed by the Registration Board was wrong in principle or unreasonable in the circumstances of this case. The penalty should not be disturbed.

In summary, Mr Ferguson's conviction on Charge 3 is overturned. The Registration Board's findings as to Charges 1 and 2 stand.

The penalty of six months suspension and \$1,000 fine is upheld.

This decision is unanimous.

M Lee DCJ
Chair

Mr P R Holmes
Member

Mr M Sellars
Member

Reserved decision delivered this 30th day of May 1989 by me,
Elizabeth Alison Ford.

Deputy Registrar, District Court Wellington

IN THE MATTER of the Valuers Act 1948
AND
IN THE MATTER of an appeal from a decision of the
Valuers Registration Board by JOHN
ALISTAIR KENNEDY

Date of Hearing: 14 December 1989

Date of Decision: 30 May 1989

Appeal Board:

District Court Judge M Lee

Mr R M McGough - Assessor appointed to represent the
Valuers Registration Board

Mr W H Doherty Assessor appointed to represent the Appel-
lant

Counsel:

Mr M P Reed for Appellant

M M T Parker for Valuer-General

Mr J B Stevenson for the Valuers Registration Board

RESERVED MAJORITY DECISION OF JUDGE M LEE AND MR R M McGOUGH

This is an appeal pursuant to s.32(1) of the Valuers Act 1948 from a decision of the Valuers Registration Board ("the Registration Board") dated 29 July 1988. That decision followed an inquiry held by the Registration Board pursuant to s.32 of the Act on 22 and 23 February 1988. The charges against Mr Kennedy were:

1. Section 31(1)(c) of the Valuers Act 1948:

That you have been guilty of such incompetent conduct in the performance of your duties as a Valuer as renders you liable to a penalty provided by the Valuers Act 1948 in that you in compiling a Valuation Report dated 15 December 1986 in respect of a property situated at Kirkbride Road and George Bolt Memorial Drive, Mangere (Lot 3 on DP 13141) grossly over-valued the property.

2. Section 31(1)(c) of the Valuers Act 1948:

That you have been guilty of such incompetent conduct in the performance of your duties as a Valuer as renders you liable to a penalty provided by the Valuers Act 1948 in that you in compiling a Valuation Report dated 15 December 1986 in respect of a property situated at Kirkbride Road and George Bolt Memorial Drive, Mangere (Lot 3 on DP 13141) made a mortgage recommendation that was excessive.

These charges arose as a result of a complaint lodged by Mr T G Smith on 19 February 1987 with the New Zealand Institute of Valuers which organisation referred it to the Valuers Registration Board in May 1987. The Registration Board found Mr Kennedy guilty as charged. It fined him \$1,000 and suspended his registration for six months.

The land, the subject matter of Mr Kennedy's valuation report of 15 December 1986 (hereafter called "the property") comprises an area of 2.0234 hectares and is described as part Lot 3 on Deposited Plan 13141. It is bound to the north by Kirkbride Road, in the south by Kohinoor Avenue and to the west by George Bolt Memorial Drive, with a narrow parcel of land containing 3,675 square metres adjoining the western boundary of and separating the property from George Bolt Memorial Drive. This narrow parcel of land makes up the other part of Lot 3 DP 13141 and was owned by the Manukau City Council. To the east of the property is land zoned Reserve. The property has

not been connected with sewerage, water, and storm-water services.

The property is zoned Residential 1 in the Manukau City Council's district scheme. The northern-most third is covered by the Auckland Regional Authority "Proposed Motorway Airport" designation with an underlying Residential 1 zone. Land immediately to the south of the property and to the north on the opposite side of Kirkbride Road is zoned Residential 1. To the west on the opposite side of George Bolt Memorial Drive is land zoned both Industrial 3 and Commercial 9. This commercial zone is a special zone to provide for the development of and tourist-related facilities associated with the operation of Auckland International Airport, including travellers' accommodation. The Residential 1 zone allows travellers' accommodation on front and corner sites as a permitted conditional use provided that the premises do not contain more than 60 bedrooms.

The property was sold on 11 July 1986 by E F and J J Enwright to Geneva Developments Limited for \$800,000. On 13 June 1986 Geneva Developments Limited entered into an agreement to sell the property to Maughold Enterprises Limited (hereafter called "Maughold") for \$1,300,000. That agreement was subject to the purchaser obtaining planning consent for a tourist hotel complex (including licensed premises) to be developed on the property. The agreement also provided for vendors finance in the sum of \$500,000 secured by a second mortgage over the property in terms which gave the purchaser the right to raise by way of a first mortgage "60% of the valuation of the property including any development carried out thereon, the value to be determined by a registered valuer."

On 15 July 1986 Maughold applied to the Manukau City Council for planning consent to erect and operate a 60 bedroomed travellers accommodation on the property. A plan of proposed subdivision was submitted with the application showing the area proposed to be developed as Lot 1, being the southern-most part of the property consisting of 7,500 square metres. Lots 2 and 3 on the proposed subdivision contained 5,000 square metres and 7,000 square metres respectively, with Lot 4 comprising 3,240 square metres serving as an access lot from Kirkbride Road and running along the eastern boundary of Lots 2 and 3. The proposed subdivision included the strip of land belonging to the Manukau City Council which formed the western part of Lot 3, DP 13141.

Almost the whole of the proposed Lot 3 in the subdivision scheme plan is covered by the Auckland Regional Authority Motorway Airport designation. The proposed subdivision scheme plan did not form part of the application for conditional use consent but was merely included for explanatory purposes.

On 11 November 1986 the Manukau City Council communicated to Maughold its consent to the planning application. The approval included a restaurant, lounge and bar, conference room, service and amenities block, swimming pool and parking areas in addition to 60 bedroom units. The consent related to both parts of Lot 3 DP 13141, and was subject to the condition that the two parts be held together.

In July 1986, agreement had been reached for the sale of that part of Lot 3 comprising 3,675 square metres by Manukau City to Maughold.

It is against this background that Mr Kennedy gave a

valuation of the property of \$3,732,000 as at 15 December 1986, and made a loan recommendation of \$2,488,000.

At the hearing before the Registration Board the prosecution evidence was given by Mr R B Shera, a registered valuer employed in the Valuation Department at Manukau City as District Valuer (Senior). Mr Shera had been a registered valuer since 1972. His experience in valuation had been solely in the South Auckland district since he joined the department in 1964. He produced a valuation report on the property which he prepared at the request of the Valuer-General.

That report was dated 8 June 1987 and gave a valuation of the property as at 15 December 1986 of \$1,185,000. Mr Shera recommended a maximum advance of trust funds on a first mortgage against the property of \$393,600 for a term of 30 years at current rates of interest.

Mr Shera's report contained a comprehensive discussion of the property under the following headings: Type of Property, Legal Description, Land, Zoning and Town Planning, Locality, Conditional Use Application, Proposed Development, Improvements, General, Market Consideration, Valuation, and Mortgage Recommendation.

The report was accompanied by a two-page schedule of sales evidence, colour photographs of the property taken from different aspects, a plan of part Lot 3 DP 13141, a plan of the proposed subdivision and a locality map.

Under the heading "Locality" Mr Shera noted:

Industrial land to the west of George Bolt Drive is in high demand, where the majority of sites are being developed for airport related uses. A 19 hectare block of Commercial 9 land to the south and a little closer to the airport is currently being developed where sites varying in size from 2,000 square metres to 3.2500 hectares will be offered for sale.

Since the opening of the airport in the early 1960's, the large blocks of residential land fronting Kirkbride Road have been developed for airport related uses and in particular, travellers accommodation which is a permitted conditional use rather than the normal residential use.

However, in general terms the immediate locality lies between the residential development to the north and the airport and rural land to the south, while Kirkbride Road is the main arterial Road connecting Auckland City to the north and Manukau City and the Southern Motorway to the south.

Under the heading "General" Mr Shera said:

The subject land with its strategic location and high exposure being situated at the intersection of the main access to the airport, is very appropriate for the proposed use of travellers accommodation in a locality where development related to the airport is becoming a predominant feature. However, the location and exposure are somewhat negated by the access to the proposed development.

The designation over the front one-third of the site seems to complicate the situation somewhat as the motorway network to the airport is still very confused. The notice of requirement designating the land was made on 31 July 1972.

While there may be some future potential for additional units on the land shown as Lot 2 and immediately to the north of the proposed development, I have extreme doubts whether any purchaser would be interested in the development of the designated area adjoining Kirkbride Road and shown as Lot 3 on the proposed scheme plan submitted, until sometime in the future when access to the airport becomes a little clearer.

I further understand that the Auckland Regional Authority intend to enter into a Deed of Covenant with the applicant, before consent is given to proceed with the construction of the units exempting them from any future claims for injurious affection which may occur through changes to the roading pattern at this intersection. A median strip is proposed along Kirkbride Road

which will direct traffic leaving the airport away from the site.

This must have some effect on value.

The subject conditional use approval provides for the development of 60 (sixty) units on 125 square metres of land area per unit. From my investigations this ratio of land area per unit of accommodation can vary considerably. However as far as I can determine, the majority of developments within the immediate locality would seem to be around the 125 square metres per unit comparable with the approval that has been given to the subject premises."

In discussing market considerations Mr Shera said:

In assessing a current market value to the subject property, I have investigated land values primarily surrounding Manukau City and the International Airport for both residential land that has similarly been approved for the development of travellers accommodation and the levels of industrial and commercial land to the west of George Bolt Drive. However as the available evidence is fairly limited, some consideration has also been given to the available sales evidence within the Auckland area.

Notwithstanding that the majority of developments within the immediate locality are airport related, there is very little recent evidence to draw any real conclusions with all the sales being of historic value and quite obviously well below market value."

Mr Shera noted as "possibly the transaction of greatest interest" the sale of the property dated 11 July 1986 from Enwright to Geneva Developments Limited for \$800,000. He said that his inquiries revealed this was a genuine sale including potential for a higher use, the analysis of this sale indicating a hectare rate of \$275,000 plus a potential of some 50% with an allowance for the designation.

Mr Shera did not use as part of the sales evidence the almost concurrent sale from Geneva to Maughold at \$1.3m because although he knew of the sale that information was not available to the general public as at 15 December 1986. However, in his report he said that the planning application in the name of Maughold suggested a second sale.

Under cross-examination before the Registration Board Mr Shera said that his valuation would have been slightly but not significantly different if he had included the sale at \$1.3m in his analysis.

Mr Shera noted as "another sale of interest" that of 246-248 Kirkbride Road some 100 metres to the east of the property on the opposite side of Kirkbride Road where 2,947 square metres sold in July 1986 for \$207,500 with conditional use approval for 38 travellers accommodation units.

This represented \$70 per square metre or \$5,460 land value per unit of accommodation.

Mr Shera referred to two other sales "of historical interest". These were a large rectangular-shaped site on the corner of Massey and Pukaki Roads approximately 1 kilometre east of the subject land containing 3.2895 hectares, sold in June 1985 for \$400,000, representing \$12.68 per square metre of \$7,692 land value per unit of accommodation; and a large 5.2133 hectare holding located in Redoubt Road opposite the Manukau City Centre and adjoining the then proposed Commonwealth Games Village, held in two titles and sold in November 1985 and March 1986 for an overall price of \$984,000 or \$18.87 per square metre. Mr Shera understood that planning approval was being sought for a 150-bed motel-hotel complex. This would yield \$6,560 land value per unit of accommodation. This part of the report concluded:

I have also given consideration to the level of industrial and commercial sales to the west of George Bolt Drive where industrial sites of 1500 square metres and 4886 square metres sold late in

1986 for \$80.00 per square metre and \$70.00 per square metre respectively while the asking price for the new Commercial 9 subdivision have been set at \$100.00 per square metre for inside lots of 5000 square metres up to \$175.00 per square metre for 5500 square metre sites adjoining George Bolt Drive.

Mr Shera valued the property in three parts. He valued the rear area of 7,500 square metres on which the 60 unit travellers accommodation was proposed to be erected at \$750,000, representing a net rate of \$ 100 per square metre or \$12,500 land value per unit of accommodation. This was the area shown as Lot 1 of the proposed subdivision. The balance of the land Mr Shera valued at \$275,000 per hectare with an additional allowance for potential.

This hectare rate was analysed from the sale of \$800,000 in July 1986 and was also confirmed by the sales of residential land throughout Manukau which had been purchased for residential development.

The additional potential was valued at 50% in respect of an area of 8,205 square metres, corresponding to the position of Lot 2 in the proposed subdivision, yielding \$338,415; and at 10% for the front portion of 8,204 square metres corresponding to Lot 3 of the proposed subdivision which also contained the ARA motorway designation, yielding \$248,171. The total value was \$1,336,586 for 2.3909 hectares. From this Mr Shera deducted \$155,000 for the 3,675 square metres of land to be purchased from the Manukau City Council, giving a rounded-off figure of \$1,181,000 for 2.0234 hectares of land. To this he added a nominal value of \$4,000 for the improvements, giving a total of \$1,185,000.

With regard to his mortgage recommendation Mr Shera said that this had been limited to a third of the assessed land value to reflect the unknown factors relating to the designation of the front portion of the land and the complexity of the proposal.

Under cross-examination before the Registration Board it was put to Mr Shera that the land in the Commercial 9 subdivision to the south of the property (called "Airpark") with an asking price of \$175 per square metre was comparable to the rear portion of the property of 7,500 square metres. Mr Shera did not consider the two pieces of land were comparable because the Airpark land was zoned Commercial 9 and could be developed as of right, the subdivision had been completed with services laid on, and access had been formed. None of this applied to the property in question.

Mr Kennedy's valuation report dated 15 December 1986 was addressed to Maughold's solicitors. It was prepared in response to a request from Maughold: "Could we please have a Valuation (a one paper) on Auckland Airport, the Land only, not subdivided, but with the Town Planning Approval which has been received." We reproduce Mr Kennedy's report in full:

15 December 1986
Mahony Samuel Becker & Co
Barristers and Solicitors
P O Box 5624
AUCKLAND
Attention Mr D M Burgess

Dear Sir

MAUGHOLD ENTERPRISES LIMITED - LOTS 1, 2 AND 3 KIRKBRIDE ROAD/GEORGE BOLT MEMORIAL DRIVE, MANGERE, AUCKLAND

As instructed we have inspected the above named parcels of vacant land for the purpose of mortgage recommendation and report as follows:

LEGAL DESCRIPTION

The land is presently Part Lot 3 on Deposited Plan 13141 containing an area of 2.0234 hectares more or less held in Certificate of Title 443/259 (Auckland Registry).

We are advised that a plan of subdivision has been approved to provide for three Lots with the south Lot, Lot 1 of an area approx 7 00 square metres, the centre Lot, Lot Lot 1- approved for redevelopment

into high density residential accommodation having area approx 7500 square metres.

\$1,800,000

Lot 2 zoned Residential 1 with potential for residential redevelopment having area approx 5000 square metres.

\$943,000

Lot 3 zoned Residential 1 with potential for residential redevelopment of area approx 5000 square metres, being a corner Lot.

\$989,000

\$3,732,000

2 of approx 5000 square metres and the north Lot, Lot 3 of area approx 5000 square metres. The balance of the land is to be dedicated to the Local Authority for road widening purposes, this to include the present full road frontage on the west side and similar road frontage on the north side facing Kirkbride Road.

ZONING

Under the City of Manukau Review District Scheme 1984 the land is zoned Residential 1. We are advised that Lot 1 has been approved for redevelopment as a Conditional Use into high density residential accommodation units. The same approval has not yet been received for Lots 2 and 3.

VALUATION

(THREE MILLION SEVEN HUNDRED AND THIRTY THOUSAND DOLLARS)

RECOMMENDATION

Under Section 10 of the Trustee Act 1956, we recommend that this should be a reasonably safe security for an advance of up to two-thirds of the figure of our valuation, namely \$2,488,000 (TWO MILLION FOUR HUNDRED AND EIGHTY EIGHT THOUSAND DOLLARS).

GENERAL

We are instructed that a detailed description of the property is not required in this report although this can always be forwarded at a later date on receipt of instructions.

Suffice to say that it is a prime holding on the south-east corner of the busy road junction Kirkbride/George Bolt Memorial Drive approx one kilometre to the north of the Auckland International and Domestic Airport in South-west Mangere in Manukau City. It is one of the most prominent Lots in this area well suited for redevelopment into high quality and high density residential accommodation. We are of the opinion that it is a particularly valuable holding of its type.

Yours faithfully

J A Kennedy
Registered Valuer

Mr Kennedy's evidence at the inquiry has been summarised by the Registration Board. It is a fair and succinct summary of what was said and has not been challenged in this appeal. We can do no better than to reproduce it in full:

The main points emerging from his evidence are as follows:

- (I) Mr Kennedy has been a registered valuer since 1966 and has wide experience in valuation work throughout New Zealand and overseas, with particular reference to the hotel/motel and tourist related market.
- (ii) He advised that the principals of Maughold Enterprises Ltd

(Messrs Holt and Baldwin) are very experienced in obtaining land at a modest price subject to planning approval, obtaining the planning approvals and thereby increasing the value of the land significantly.

- (iii) He produced Exhibit E containing his valuation report on the subject property dated 18th September 1986, being a valuation of part of the land in question (7500 square metres) plus the estimated completed value of the 60 accommodation unit development, amenities, buildings and other improvements. He stated that at that time he had difficulty in obtaining comparable sales.
- (iv) He produced Exhibit F which contains a bundle of papers including a list of asking prices within the "International Airpark" subdivision land zoned Commercial 9.
- (v) In early December 1986 Mr Kennedy checked with the Auckland Regional Authority concerning the motorway designation over the front portion of the subject land and ascertained that the Authority no longer required such an extensive land area for its roading purposes and would ultimately uplift the designation. He was however advised that it would be some years before the designation would be uplifted (indicating approximately 10 years later in his evidence). In Mr Kennedy's view this information placed a totally new dimension on the subject land.
- (vi) It was Mr Kennedy's conclusion that in spite of certain disadvantages and uncertainties, the subject land presented many positive aspects and displayed outstanding development potential. In fact, Mr Kennedy stated that in his considerable experience, this is the finest motel site in New Zealand.

Under cross examination Mr Kennedy confirmed that prior to his 15th December 1986 valuation he ascertained from the Manukau City Council that approval for 60 units had been given, relating to the southern portion of the land and that future development was subject to the ARA roading plans. He also advised under cross examination that although his valuation was on the basis of a subdivision into 3 lots (plus an access lot) he did not deduct for the costs of subdivision (ie survey costs, reserve contribution costs, cost of forming the access lot, profit and risk allowance, etc, etc) because he was of the opinion that the subject land was so far superior to any other land that unless these costs were very high they were not a factor that needed to be taken into account. In further clarification of this point Mr Kennedy stated that he in fact valued the land as one site in three separate parts, even though his report shows separate values for 3 separate lots.

Also under cross examination, the position regarding the extensive area of land designated for motorway purposes was further explored. Mr Kennedy was referred to the Manukau City Council letter of 8th December 1986 in which Council advised the ARA consent to sale of the Manukau City Council portion to Maughold Enterprises Ltd but with a provision from the ARA that 'it cannot give any assurance or undertaking at this stage as to whether or not the existing motorway designation can or will be modified or removed.' Mr Kennedy's response to this situation was that he had clear advice from the ARA that the 'motorway proposal is dead' and that the designation will ultimately be uplifted but will remain in place from some time to come and will not be removed until the ARA is legally in a position to do so. Mr Kennedy stated that this 'may be 10 years'.

Under cross examination Mr Kennedy further stated that his report of 15th December 1986 was essentially an 'in-house' report, not designed for public use.

When questioned on the sale prices in the 'International Airpark' subdivision, Mr Kennedy advised that Lots 2,15, 16 20, 21 and 25 had sold. He was not aware as to whether

the asking prices had been achieved but he understood that to be the case and he was not aware of the dates of the sales.

Mr H P Holt also gave evidence before the Registration Board. He was the Managing Director of Maughold Enterprises Limited which owned Fair Isle Charters Limited. It was the latter company which negotiated the purchase of the property at \$1.3 million in June 1986 and which was the applicant for mortgage monies for which Mr Kennedy's valuation report was prepared.

Mr Holt's evidence was that in July 1986 when agreement was reached to purchase the 3,675 square metres of land from the Manukau City Council, he had discussions with the Council and with the Auckland Regional Authority in the course of which he was advised that the plans for the motorway would not be proceeding. Instead an amended scheme of road widening was proposed with the result that a much smaller area of the property would be required for street widening purposes. Mr Holt told the Registration Board that in his opinion the subject site was superior to land in the International Airpark subdivision and was extremely well positioned for hotel/motel and associated uses.

He informed the Board that Mr Kennedy's valuation of 15 December 1986 was an updating of a previous report on the same property prepared in September 1986. Mr Holt also told the Board of offers received for the property and valuations undertaken on similar land in Taupo, Wairewa and the Bay of Islands. The Registration Board considered this evidence to be of little assistance since none of it was supported by any documentation.

Under cross-examination before the Registration Board Mr Holt said he was aware that the motorway designation would not be lifted until alternative airport access and roading schemes had been resolved. He said Maughold would have been prepared to pay up to \$2 million for the property. The Registration Board's decision noted:

Mr Holt conceded that the business of developing and running hotels is more than usually risky and that his own experience in the business has involved him in at least one financial collapse.

An affidavit sworn by Mr J F McElhinney was produced to the Registration Board. In this affidavit Mr McElhinney deposed to being a registered valuer, an associated member of the Institute of Valuers, an associate of the Real Estate Institute, and the Managing Director of Hospitality Brokers (New Zealand) Limited, a real estate company based in Wellington specialising in hotel, motel and restaurant brokerage. He deposed that around July 1987 his company listed two properties on Kirkbride Road, including the property at No 246 at prices which worked out at \$186.88 and \$195.70 per square metre. "Also at a similar time we were advised that the subject site in these proceedings... could be purchased for \$4m."

Mr McElhinney said he showed these three sites to a client who formed the view that the subject property was the best site. Mr McElhinney deposed that while he had no detailed sales knowledge he understood the site at 246 Kirkbride Road was sold in September 1987 unconditionally "for \$560,000 or more". Finally, Mr McElhinney listed the reasons why his client considered the subject property the best site. He then expressed the opinion that "an affordable land value for a motel site can be anything between \$15,000 and \$25,000 per unit dependent upon the type and location of the motel."

The Registration Board considered this affidavit:

contains no concrete market evidence. It simply lists asking prices and Mr McElhinney's unconfirmed understanding of what a hotel/motel site sold for in September 1987. It is of very little assistance to the Board in dealing with a valuation exercise as complex as the one now before it.

The Registration Board compared Mr Kennedy's valuation of \$3,732,000 for the property with the sales prices of \$800,000 and \$1,300,000 for the subject property, as well as with Mr Shera's valuation of \$1,185,000.

The Board said that on the face of it, Mr Kennedy's valuation appeared to be extremely high. In addressing the question of whether or not that valuation was grossly excessive and whether or not the mortgage recommendation was also excessive, the Registration Board noted that the valuation was prepared for mortgage security purposes, that Mr Kennedy was aware of that fact and "he must therefore be aware that his prime responsibility is to protect the interests of the mortgagee".

The Registration Board referred to the case of *Corisand Investments Limited v Druce & Company* (1978) 248 EG 315 and said:

The judgment reinforces the fact that two fundamental matters must be borne in mind by a prudent valuer who is instructed to value land on behalf of a prospective mortgagee of that land.

First, that following the execution of the mortgage, the mortgagor may default, in which case the mortgagee may be forced to sell the property. Secondly, that if the proceeds of the sale are insufficient to cover the arrears of the mortgage debt and the costs of the sale, then the mortgagee will incur monetary loss. It follows, it was ruled, that the valuer must exclude from his valuation any element or factor which is present at the date of the valuation, but which might well not be present at the date of the future forced sale.

The judge concluded that the valuation in question contained a large speculative content. It was accordingly the duty of the valuer, in preparing the valuation for mortgage purposes, either not to include that speculative content, or adequately to identify it as such for the guidance of the lenders.

When we examine Mr Kennedy's report of 15 December 1986, we can find no warning to the prospective mortgagee concerning the designation of 1/3 of the land area; and no note that the amount of the valuation is substantially in excess of the equivalent price paid for any comparable land in the immediate vicinity, including one or more previous sales on a substantial portion of the land being valued.

The Board notes that this particular report is one of a series presented on the same property but cannot accept this fact as an excuse for omitting essential information and detail, particularly having regard to the type of property and the magnitude of the valuation and mortgage recommendation.

All witnesses before the Board agreed that this particular site has good potential for the type of development variously described as "tourist hotel", motel or travellers accommodation. The measure of its value for that purpose can only be determined by examining the market evidence pertaining to land suitable for that type of development. Within the Mangere area, this type of development has been going on for more than 20 years. There are many hotels/motels in the region, ranging in size from small units to relatively large and high quality establishments. Accordingly, we are not dealing with a use which is unknown or untested.

The only concrete market evidence before the Board is that quoted by Mr Shera and this sales evidence in general

supports his valuation of \$1,185,000. It also is very much in line with the two sales on the substantial portion of the subject property, only a few months before the date of valuation - ie the sales at \$800,000 and \$1,300,000.

According to Mr Shera's evidence, the closest sale in terms of proximity is that at 246-248 Kirkbride Road where a site of 2,947 sq metres sold in July 1986 at a price reflecting \$70 per sq metre or \$5,460 per motel or room unit. Mr Kennedy's valuation on the 3 sites within the subject block reflect rates ranging from \$141 per sq metre up to \$240 per sq metre, the latter relating to the site for which the 60 unit development has been approved, that value reflecting a rate of \$30,000 per motel or hotel room unit.

According to the evidence before the Board, there are absolutely no sales in the vicinity which reflect the rates applied by Mr Kennedy. He has justified his valuation figures, and been prepared to commit mortgagees' money, on the basis that this particular land is so far superior to anything else in the area that it warrants the value and mortgage advance applied.

We believe that Mr Kennedy's approach involves a high degree of risk, both to himself as a professional valuer and to the ultimate mortgagee. The only sales in the area which come anywhere near even his lowest rate per sq. metre are those within the "International Airpark" subdivision and his information on these sales appear to the Board to be very sketchy. He "understood" that asking prices had been realised but had no information on the terms of these sales or the dates of the transactions. To commit \$2,488,000 of mortgagees' money on the basis of "understanding" as to sale prices is not, in the Board's view, adopting the level of care and competence required of a registered valuer.

The problem is further compounded by the fact that Mr Kennedy has applied a high level of value to land which he himself concedes is likely to be subjected to a motorway designation for up to 10 years. This designation covers almost the whole of lot 3 to which he has ascribed a value of \$989,000 as at December 1986. On the evidence before it, the Board cannot see how anyone would pay this price for a block of hotel/motel land which is likely to remain sterile or anaesthetised for up to 10 years.

Furthermore, Mr Kennedy has apparently disregarded the abnormally high element of risk involved in motel/hotel development, a level of risk which Mr Holt has experienced and acknowledged when giving his evidence.

The Board accepts that during 1986 the real estate market in general was volatile, and the market relating to hotel/motel land was probably more volatile than that relating to other classes of land. There may be an outside chance that, having obtained the planning approval, the subject site *may* have sold at a figure well in excess of the total consideration of \$1,455,000 paid by Maughold Enterprises Ltd. However that proposition contains a high element of speculation and the Board does not believe that Mr Kennedy is entitled to recommend mortgage advances on the basis of what may happen in a volatile market. As noted above, his prime duty is to protect the interests of mortgagees when undertaking mortgage valuations and on the evidence before it, the mortgage recommendation of \$2,488,000 fails to do that. In all the circumstances, the Board is in no doubt that this is a case where the mortgage advance should be fixed at a figure well below the maximum two thirds limit fixed in the Trustee Act, particularly where the mortgage advance is based on a valuation which is substantially in excess of sale prices for similar land during the period immediately prior to the date of valuation.

Before this Board Mr Reed, counsel on behalf of Mr Kennedy, sought leave to introduce further evidence by way of

affidavit support of his challenge to Mr Shera's expertise. Mr Parker on behalf of the Valuer-General, opposed the application strongly on the ground that Mr Shera's expertise was not challenged at the hearing before the Registration Board. We allowed the affidavit to be admitted.

The affidavit is sworn by Mr Raymond Graham, the Wellington Director of Edward Rushton New Zealand Limited. The affidavit deposes to the company being a member of the Rushton Group, having offices in Australia, the United Kingdom, the United States of America and New Zealand. The thrust of the affidavit is to say that the company employed 20 registered valuers in New Zealand including a specialist valuer who carried out the majority of valuations of hotels and motels in New Zealand.

The company considered such valuations to be highly specialised, requiring a detailed knowledge of the hotel and motel business. In respect of farm valuations the Group would only utilise a valuer who had "an urban (sic) degree".

It is difficult to see in what way the contents of this affidavit are relevant to the present proceedings, or how an affidavit in such general terms can serve the function claimed by Mr Reed. We consider that we can place little or no weight on its contents.

Mr Reed also called Mr William Patrick Baldwin to give oral evidence before this Board. Mr Baldwin is a civil engineer and in late 1986 was a member of the development team involved in the development of the property on behalf of Maughold. Mr Baldwin said that in late 1986 he investigated the possibility of other sites in the area including the Airpark subdivision as a backup to the company's development plan should the option on the subject property fall through. He said the company was offered two lots in the subdivision, one comprising 3.25 hectares at \$6 million and the other lot comprising 2.5 hectares at \$5 million.

The company also considered the possibility of amalgamating six smaller lots in the subdivision at a price of \$168 per square metre. He considered the subject site superior to the Airpark site.

Mr Baldwin said that had the development gone ahead on the property the company could have put at least 120 units on Lots 1 and 2 of the proposed subdivision and could have built on the area with the motorway designation, conference rooms and substantial recreational facilities. Mr Baldwin said there were a couple of nationwide valuation firms which have guidelines for purchasing properties which he knew "to be universally used". He considered that on the subject site they would use the figure of \$20,000 land value per accommodation unit.

Under cross-examination Mr Baldwin acknowledged that 60 units was the maximum they could have put in one lot in the Residential 1 zone. To develop 120 units even with the existing motorway designation would require a subdivision. The Auckland Regional Authority had refused to remove the motorway designation.

He said people had been frightened off the property by the designation but the Maughold development team had looked into it more fully and found there was no problem at all. He claimed the Auckland Regional Authority had allowed people to build on designated land without uplifting the designation but he was unaware of anyone who had built a hotel/motel development on designated land with the approval of the ARA.

Mr Baldwin was asked whether the company would have taken up the offer to buy one of the lots in the Airpark subdivision if the option on the subject property had fallen through. He said that the developers of the Airpark site wanted a class of

hotel similar to the Hilton which was "out of our league". The rooms Maughold were building cost \$35,000 each, whereas the rooms they would have been required to build on the Airpark site would have cost \$60,000 each. He said it would have required a "drastic change of direction".

He admitted in December 1986 Maughold had not subdivided the land. He agreed that on the subject site the company could not have built offices, warehouses or a 400-bed hotel as of right, as they could have done on the Airpark site which is zoned Commercial 9. Mr Baldwin said he was a full-time employee of Maughold, and that the company was now in liquidation.

Both Mr Reed and Mr Parker made lengthy submissions on the law and on the facts. We trust we do them no injustice by attempting to summarise their arguments.

Mr Reed's first submission was that the charges as laid were defective and the way the Registration Board went about its decision was also defective.

The elements of the "offence" under s.3 1(1)(c) according to Mr Reed were:

- (i) Improper, unethical, or incompetent conduct
- (ii) In the performance of his duties as a valuer
- (iii) As in the opinion of the Board renders him unfit to be registered under the Act.

Under that provision, Mr Reed said, a person could not be charged with one or two of the ingredients; he must be charged with all three and the Registration Board must be satisfied of all three ingredients before it could act.

Mr Kennedy had not been charged with anything related to being unfit to be registered. Similarly, the whole of the Board's reasoning was about whether the valuation and mortgage recommendation were excessive.

The Board found that Mr Kennedy was guilty of incompetent conduct in terms of both charges but there was nothing in the Board's reasoning to show that it had brought its mind to bear on whether Mr Kennedy was unfit to be registered under the Act. Mr Reed said the Board applied the wrong test, namely whether Mr Kennedy had been guilty of such incompetent conduct as rendered him liable to a penalty.

Mr Reed's second submission was that the Act is flawed. Under s.31 a valuer could only be guilty if he was unfit to be registered. The inquiry pursuant to s.32, according to Mr Reed, dealt with that issue. Section 33(1) says: "After any inquiry made as provided in the last preceding section" which related to the inquiry under s.32 which in turn related to the acts and defaults specified in s.31.

Mr Reed submitted that in order for a penalty to be imposed a person had to be guilty in terms of s.3 1, including unfitness to be registered.

That being the case it would be totally inconsistent to be able to impose a lesser penalty under s.33. Mr Reed said that his second submission was not essential to his argument but had been raised on previous occasions before the Board.

In reply Mr Parker referred this Board to the oral judgment of Doogue J in *Findlay v The Valuers Registration Board* dated 14 December 1987, High Court Hamilton Registry, M.171/87. In that case counsel for the plaintiff submitted that charges framed in the same way as the ones presently before this Board did not disclose offences under the Act.

Like Mr Reed, counsel in that case argued that the charges had to set out all the ingredients of s.31(1)(c), including the allegation that the valuer's conduct was such that it would, in the opinion of the Board, render the valuer unfit to be registered under the Act. His Honour disagreed, saying that that would

give rise "to a pre-determination which would be entirely inappropriate". His Honour continued:

In my view of the matter the words in s.31(1)(c) upon which Mr Allan places reliance, must be read in relation to penalty and not in relation to the charges against the valuer in question ...

Mr Panckhurst properly referred, in my view, to the different penalties between sections 31 and 33 of the Act as provisions for graver misconduct under s.31 and provisions for lesser misconduct under s.33. In my view it would not be appropriate that those laying the charge should have to indicate what penalty was sought should the charge be made out, as long as it is clearly brought to the attention of the plaintiff as was done in this case, that it is a charge under s.31(1)(c) as a result of which the plaintiff's name could be removed from the register as a valuer if, in the opinion of the first defendant, his conduct was such as to render him to be unfit to be so registered if the charge is made out.

It seems to me that the charge has been laid in the most appropriate fashion without regard to penalty so that should the first defendant find the charge made out then they could ... determine whether the more serious penalty provided for under s.31 should be imposed or the lesser penalties provided for under s.33 should be imposed..."

With respect we agree. It seems to us that His Honour's statements are a complete answer to Mr Reed's contention. His first two submissions therefore fail.

Mr Reed's third submission related to the way the prosecution was conducted. Mr Reed criticised the fact that the only evidence for the prosecution was given by Mr Shera who was employed by the Valuation Department and had been appointed by the Valuer-General to investigate the complaint. As such, Mr Reed thought Mr Shera could hardly have been completely impartial. Furthermore Mr Shera's entire experience was in the South Auckland district since 1964 when he joined the Valuation Department.

He admitted he had no experience valuing hotels or motels and had never conducted such a valuation outside the South Auckland district. Mr Reed submitted that anyone attempting to value a hotel/motel site with the tourist potential of the subject property should have wide experience throughout New Zealand. Mr Reed submitted that Mr Shera should not be accepted as an expert. The prosecution should have called in addition someone with the requisite expertise.

In reply Mr Parker pointed out that Mr Shera's expertise and experience was at no time challenged during the hearing before the Registration Board. In any case the exercise was a valuation of vacant land zoned Residential 1 with a number of potential uses, including travellers accommodation. Mr Shera's experience was sufficient to identify and value that potential. Mr Shera had had 16 years of experience as a valuer in the South Auckland area and he was aware of developments in that part of the city.

Mr Shera was experienced in valuing a wide range of property and was sufficiently experienced to be accepted as an expert by the Registration Board.

We agree. We do not accept that the mere fact of Mr Shera's employment in the Valuation Department gave him a vested interest in the outcome of the prosecution. Mr Reed's reasoning would have the evidence of all law enforcement officers automatically impugned. Mr Reed's third submission fails.

Mr Reed's fourth submission follows on from the last. He submitted that the standard of proof was on the balance of probabilities but with the standard increasing commensurate with the gravity of the charge.

On a charge of incompetence the standard of proof should be close to beyond reasonable doubt. The opinion of one valuer against another would not be enough to establish the charge even

on a balance of probabilities test unless there was a finding of credibility. In support of this argument Mr Reed cited passages from the case of *Singer and Friedlander Limited v John D. Wood and Co*, (1977) 243 EG 212, at 213:

The valuation of land by trained, competent and careful professional men is a task which rarely, if ever, admits of precise conclusion. Often beyond certain well-founded facts so many imponderables confront the valuer that he is obliged to proceed on the basis of assumption. Therefore, he cannot be faulted for achieving a result which does not admit of some degree of error. Thus, two able and experienced men, each confronted with the same task, might come to different conclusions without anyone being justified in saying that either of them has lacked competence and reasonable care, still less integrity, in doing his work.

Further on the same page:

If a valuation is sought at times when the property market is plainly showing signs of deep depression or of unusual buoyancy or volatility, the valuer's task is made more difficult than usual. But it is not in such unusual circumstances an impossible one. As Mr Ross said, valuation is an art, not a science. Pinpoint accuracy in the result is not, therefore, to be expected by he who requests the valuation. There is, as I have said, a permissible margin of error, the 'bracket' as I have called it. What can properly be expected from a competent valuer using reasonable skill and care is that his valuation falls within this bracket."

Next Mr Reed referred to a statement in *Corisand v Druce* op. cit. at 321:

The assertion by a valuer of acknowledged skill and experience that in his judgment a property was worth a particular sum on a particular date will again not readily be shown to have been such an opinion as no competent valuer could hold by simple reliance upon the assertion of another valuer, also of acknowledged skill and experience, that in his judgment the proper valuation was a figure so much lower than the first that the first must be regarded as a valuation which no competent valuer could put forward.

Mr Reed submitted that on the facts Mr Kennedy's valuation was justifiable. He mentioned a number of ways of using the site some of which at least have not been touched upon by evidence.

Mr Reed then referred to the affidavit sworn by Mr McElhinney which was put in on the basis that the Registration Board could give it what weight it thought fit. He criticised the Registration Board for making no reference to the affidavit at all. Mr Reed submitted that the affidavit contained factual information of an uncontentious nature and the Board was wrong to reject that evidence. Mr McElhinney's evidence, said Mr Reed, was in line with that of Mr Kennedy, Mr Holt, and Mr Baldwin. Mr Shera was "the odd man out". In reply, and in relation to the passage at page 321 in *Corisand* cited by Mr Reed commencing with the words "The assertion by a valuer of acknowledged skill and experience ...", Mr Parker referred us to the paragraph immediately following that passage which said:

Where there is evidence of what a property in fact fetched in the market after fair marketing in fairly comparable circumstances, there is a fact against which the opinions and estimates can be tested ... Where there is no such evidence the bare conflict of opinion will not readily be resolved in favour of that party upon whom the onus of proof lies.

Mr Parker submitted that applying that statement the Registration Board was entitled to say that Mr Shera was right and Mr Kennedy wrong. Mr Kennedy produced a gross over-valuation

because he failed to use the comparative sales approach correctly, did not value the land as it was with regard to zoning, planning designation, and the absence of subdivision, and took an approach which involved speculation without identifying it. Mr Kennedy was not entitled to use values which applied to the Airpark subdivision.

That land was zoned Commercial 9 with a much greater range of uses as of right, including a 400 bed motel/hotel complex.

In general Mr Parker's submissions on the evidence supported the findings of the Registration Board which we have quoted and he will excuse us for not repeating them.

Mr Parker pointed out that Maughold was able to borrow more than they had paid for the property on the basis of Mr Kennedy's valuation. He referred to Mr Holt's evidence to the effect that as a result of Mr Kennedy's valuation he could have obtained a first mortgage of \$2.2 million without having to refer back to the vendor second mortgage. The potential for a substantial loss existed.

We agree with Mr Reed that in disciplinary proceedings the standard of proof is close to beyond reasonable doubt. Mr Parker has not contended otherwise. There is also considerable force in Mr Reed's submission that where the incompetence alleged is one of gross over-valuation, the prosecution should call at least two valuers.

However, this was not a situation where two competent valuers confronted with the same task and both using reasonable skill and care have reached different conclusions. We refer to a passage in *Corisand's* case at page 322 regarding the duties of a valuer in valuing for mortgage purposes:

The valuer must, in valuing for mortgage purposes, exclude from his valuation any apparent asset or valuable content of the hotel as a saleable property, which will not be, or may well not be, available for sale by the mortgagee when he attempts to realise the security. That sale price which the valuer must try to estimate for the guidance of the intending lender is that sale price which the property is likely to fetch - as the valuer can judge it - at the time relevant to the possible realisation of the security and in the circumstances then relevant.

It follows that, if the current open market price which the valuer judges would be realised at auction at the time of valuation is based upon a market which the valuer knows to be 'high', and supported by speculative buyers apparently willing to pay prices not justified by ordinary principles of investment return, then such content of the market price so estimated as depends upon the market being in that stage (which I shall call the 'speculative content') should either not be included in a valuation for mortgage purposes, or should be identified as such, and as so included, for the guidance of the lender, if at the time of valuation there is substantial ground for the valuer to know that the speculative content of his estimated market price will not or may well not be maintained in future, or may well not be readily realisable on the forced sale of the property.

I accept the view of Mr Cawte that a mortgage valuation must look for a certain period into the future. The valuer cannot be expected to peer very far ahead, or to anticipate trends or future changes of which no indication has been or could then be given to an ordinary competent valuer. The valuer, however, can reasonably be required to be aware of the fact that the market is 'high', or unusually buoyant, when such are the circumstances, and to guard against over-confidence in such market conditions. He can reasonably be required to consider what the position of the property may well be in circumstances of forced sale within six to 12 months of his valuation.

We also refer to a passage in *Singer's* case at page 213 where

referring to a market showing signs of deep depression or unusual buoyancy the learned Judge there said:

The unusual circumstances of his task impose upon him a greater test of his skill and bid him to exercise stricter disciplines in the making of assumptions without which he is unable to perform his task; and I think he must beware of lapsing into carelessness or over-confidence when the market is riding high. The more unusual be it the nature of the problem, for no matter what reason, the greater the need for circumspection.

Bearing these passages in mind, and the passage referred to us by Mr Parker it seems to us that what the Registration Board had before it was the opinion of a valuer who in carrying out his valuation had followed the accepted principles of his profession governing the valuation of land for mortgage purposes particularly the need for extra caution and indeed conservatism in a buoyant and speculative market, as against the opinion of another valuer who carried out his valuation in a manner which totally ignored those principles.

We have quoted the Registration Board's assessment of Mr Kennedy's valuation in some length because we totally agree with it. Indeed apart from the finding of gross over-valuation Mr Reed has accepted the Registration Board's criticism. He could hardly have done otherwise.

Mr Kennedy's valuation reflected a lack of the skill and care which members of the public have a right to expect from his profession. In addition to the omissions and faults referred to by the Registration Board we list the following errors:

1. The area of the property was wrongly stated in Mr Kennedy's report.
2. The proposed subdivision of the property had not been approved, contrary to Mr Kennedy's belief.
3. The western part of Lot 3, DP 13141 was to be sold by the Manukau City Council to Maughold, and not vice versa.
4. The planning consent was for conditional use as travellers accommodation and not "high density residential accommodation units".

The following passage from the transcript of evidence before the Registration Board captures the flavour of Mr Kennedy's approach:

I did not do a full subdivisional analysis on the Maughold land. Costs of holding, Parks and Reserves contribution, legal costs of sale, marketing costs, holding costs, costs of raising finance, costs of sewer and all the other detailed items, I did not do a full subdivisional analysis on this land. I was of the opinion that this land was so far better for this purpose to which it was to be put that unless these costs were wildly out of excess of normal they were a factor, and no more than that. I found it difficult to measure the extent of corner prominence of one site to another and reduce that to percentages or costs, in the same way that I found it difficult to measure the benefits of traffic flow, the land being solid as opposed to being filled ground, access and the other matters. I thought about this deeply and was of the opinion that, having given due weight to the zoning problems that occurred to this site, a square footage rate generally comparable to that of the Airpark land had relevance.

We do not accept Mr Reed's contention that Mr Kennedy's valuation was justified and was supported by the evidence of Messrs Holt, Baldwin and McElhinney.

Taking Mr McElhinney's affidavit first, we do not agree that the Registration Board failed to deal adequately or correctly with it. That Board gave reasons why it gave that affidavit little if any weight. We agree totally with those reasons and find that the affidavit added little if anything to the evidence, other than to point to an unconfirmed sale in September 1987 of the

property at 246 Kirkbride Road at a purchase price of less than \$15,000 land value per unit of accommodation.

In any case the upper limit of what Mr McElhinney considered to be "an affordable land value for a motel site" would have yielded a figure of \$1.5 million for a 60 unit site. Mr Baldwin's figure of \$20,000 land value per unit for the subject site would have given a value of \$1.2 million. Mr Bolt thought Maughold would have been prepared to pay \$2 million. The property sold in mid 1986 for \$800,000 and then at \$1.3 million. Mr Shera, after a comprehensive analysis of sales evidence, reached a figure of \$1,185,000.

Giving due weight to development potential on the one hand and planning uncertainties on the other hand, we agree with the Registration Board that "there may be an outside chance that...the subject site may have sold at a figure well in excess of ...\$1,450,000...". We consider that the evidence might at best have supported a valuation of between \$2 million and \$2.5 million.

We conclude that there was ample evidence to support the Registration Board's finding of gross over-valuation to the requisite standard of proof.

As far as the mortgage recommendation, Mr Kennedy based his valuation on the asking price for the most highly priced of the Airpark lots. We agree with the Registration Board that he was not entitled to do so. The developers who commissioned Mr Kennedy's valuation were entitled to take what commercial risks they saw fit, but Mr Kennedy was not entitled to expose potential mortgagees to those dangers. The dangers were there: Mr Holt admitted that a buyer of raw land for hotel development particularly where there were zoning designations, conditional use approvals and similar aspects would take a very cautious approach; and Mr Baldwin quite spontaneously told this Board that "people had been frightened off the property" by the motorway designation.

The chances of realising Mr Kennedy's mortgage recommendation of \$2,488,000 in a forced sale would in our view be nil.

The Registration Board was entitled to conclude that Mr Kennedy's mortgage recommendation was excessive. Any valuation of vacant land requiring a developer to realise its potential does not warrant a full two-thirds recommendation, particularly if the level of value adopted in the valuation is based on the realisation of this potential to the absolute maximum.

With regard to penalty, Mr Reed referred to the decision of the High Court in *New Zealand Classic Car Company Limited v Motor Vehicle Dealers Licensing Board* (unreported, Wellington Registry, M29/85, 22.2.85, Davison CJ) where the question was whether the licensee "has been guilty of misconduct in the course of his...business as a motor vehicle dealer and that by reason of that misconduct it is in the interests of the public that the licence be cancelled or suspended". His Honour held that to amount to misconduct justifying suspension or cancellation there must be something which is 'wilful'. It must be more than negligence, mistake it must be something where there is a wrong motive...". The simple answer to Mr Reed's submission is that Mr Kennedy was not charged with misconduct but with incompetence.

It seems to us that the statements in the *Classic Car* case about wilfulness and wrong motive cannot appropriately be applied to a charge of incompetence.

Mr Reed told this Board that Mr Kennedy was a valuer who had given enormous service to the community and to the profession. Mr Kennedy accepted the criticism of the format of his report but he had made a valuation which he thought was appropriate and fair.

Mr Reed said no-one lost any money because of the valuation and the complaint came from a person with no interest in the matter. He submitted that in the circumstances a suspension was inappropriate and that a fine was sufficient.

With regret we are unable to agree. The potential for loss was there. The purpose of professional disciplinary measures is to protect the public interest by maintaining a high standard of professional competence and conduct. Penalties should therefore reflect the nature and degree of misdeeds and a consistent approach should be taken and should be seen to be taken. These considerations should take precedence over individual circumstances.

Nothing Mr Reed has said justifies in our view a departure from that approach. The penalty imposed by the Registration Board cannot be said to be inappropriate or too severe and we see no reason for overturning it.

For all the reasons given above, the decision of the Registration Board is confirmed. Mr Stevenson on behalf of the Registration Board asked us to take into account the costs of \$735 incurred by that Board in preparing the record. We consider that it is appropriate for the appellant to pay these costs and we so order accordingly. No other orders in respect of costs have been sought and we make none.

M Lee, Chair

R M McGough, Member

Reserved decision delivered this 30th day of May 1989, by me, Elizabeth Alison Ford, Deputy Registrar, District Court Wellington

MINORITY DECISION OF W H DOHERTY

In assessing whether Mr Kennedy in providing a valuation report dated 15 December 1986 provided a grossly excessive valuation for the sum of \$3,732,000 and a mortgage recommendation of \$2,488,000 the Appeal Board considered the evidence available to it by means of a transcript of the original hearing and subsequent evidence and legal submissions at the Appeal Board hearing.

It did not have the advantage, or disadvantage, of general valuation knowledge of the area or a preconceived idea as to the likely level of value but can only base its judgment on the evidence provided.

The only valuation evidence presented against Mr Kennedy was a report by Mr Shira together with a comparison of the actual sale prices of the parcel of land being valued. It is therefore necessary for both Mr Shira's valuation and the actual sale prices of the subject land to pass detailed inspection to provide a basic guidelines as to the value of this land. It is only from that guideline that it can be determined whether or not Mr Kennedy's valuation and Mortgage Recommendation was excessive.

The valuation evidence presented against the valuer in Mr Kennedy's position has the potential to be used to take away the valuers livelihood.

It can only be expected, and in fact necessary, for that valuation evidence to be critically examined and for the evidence to pass largely unscathed before it should be accepted as the determinant as to the value of the particular property concerned and whether or not the defendant/appellant was incorrect.

This is particularly the situation, as in the present case, where with only one valuation given as evidence on which to judge whether Mr Kennedy did in fact supply a gross over-valuation.

A similar test must be provided to determine whether the mortgage recommendation was excessive but this should also

be considered a light protection of the mortgagee. If Mr Shira's valuation and the sale prices do not pass detailed inspection, in the absence of any other evidence from a valuer, then no value can be accurately placed on the land and it is not possible to decide whether the valuation carried out by Mr Kennedy was in fact excessive.

Shira's Valuation

Mr Shira's valuation contained a standard report comprising of nine pages covering the standard headings, together with a schedule of sales evidence, five pages of assorted photographs, site plans and floor plans of buildings and a copy of the relevant page of the District Scheme. In particular, it is necessary to concentrate on various items of the report to examine whether or not his analysis of sales and application of that analysis is beyond reproach.

Sales Comparison

Mr Shira stated in his report under "Market Considerations":
...there is very little recent evidence to draw any real conclusions with all the sales being of historic value and quite obviously well below market value.

He then goes on to list various sales, basically as follows:

Address	Date	Sale price	Area	Rate per m ² in \$
Subject property	7/86	800,000	20340	39.33 *
246-8 Kirkbride Rd	7/86	207,500	2947	70.41
Massey/Pukaki Rds	6/85	400,000	32895	12.16
Redoubt Rd	11/85	784,000	48612	16.13 **
Redoubt Rd	3/86	200,000	3521	56.80)
George Bolt Drive	late 86	-	1500-4886	70-80
Air Park	asking 87		5000-5500	100-175

Mr Shira's analysis was \$27,500 per hectare plus 50% potential.
Mr Shira's analysis was \$18.87 per square metre.

No details were given as to the origin of this sales evidence. It is presumed from deduction of the evidence that it is based on the sales information available through the Valuation Department. It would appear that Mr Shira has not investigated further the correctness of these sales, either by perusal of Transfers in the Land Transfer Office or by discussion with any of the parties involved. As the correctness or otherwise of the evidence was not challenged, these must be taken as true sales evidence.

Mr Shira under cross-examination stated that he analysed the \$800,000 sale, but did not analyse a sale of \$1.3 million entered into agreement on June 1986 and Registered on the Title on 14 April 1987, the same day the \$800,000 sale was registered. He had not taken into account the \$1.3 million sale because while the \$800,000 sale had been processed through the Department and made available to the private sector through the microfiche system, that was not the case with the latter and higher sale.

Analysis of that sale would be as follows:

Address	Date	Sale price	Area	Rate per m ² in \$
Subject site	6/86	1,300,000	20340	63.91

A sworn Affidavit was presented by Mr J F McElhinney a Registered Valuer and Associate member of the Institute of Valuers holding a current Practicing Certificate and an Associate of the Real Estate Institute. While Mr McElhinney was not cross-examined, he referred to a reputed sale of 246 Kirkbride

Road in September 1987 selling unconditionally for \$560,000. While that evidence can be considered as being hearsay and not subject to cross-examination, it is relevant in cross-examination that Mr Shira admitted that he was aware of that sale but did not know the price.

More importantly, he admitted he had made no attempt to establish the purchase price or determine the general level of increase that has occurred since the July 1986 sale. The Affidavit provided indicated a potential sale price of \$560,000 which would give a nett rate of \$190 per square metre.

Evidence was given and accepted by the Registration Board that during 1986 the Real Estate market in general was volatile, and the market relating to hotels/motels was probably more volatile than that relating to other classes of land. Bearing that in mind and turning to the two sales, together with Mr Kennedy's valuation figure, these can be summarised as follows:

June 1986	\$800,000	sale of residential land
June 1986	\$1,300,000	Sale subject to approval for a specified departure for a tourist hotel complex (inc. licensed premises)
December 1986	\$3,732,000	Valuation for extended site with specified departure for 60 units.

Complicating the matter were other factors summarised as follows:

1. The Auckland Regional Authority had a designation over part of the land for motorway purposes.
2. The Manukau City Council agreed to sell the owner 3599 square metres of land acquired for road not now required due to change in the ARA motorway requirements.
3. A subdivisional plan had been drafted showing three developments lots plus one access lot and land to be taken for road.
4. Possible amendments to the Auckland Regional Authority designation requiring less land from this site as shown in the subdivisional plan.

With these factors as a background, Mr Shira valued the land with approval to develop 60 units as follows:

7505m ²	@	\$100.00/m ²
8205m ²	@	\$41.25/m ²
8204m ²	Ca	<u>\$30.25/m²</u>
23909m ²	@	\$55.90/m ²

This compares with the sale of \$1.3 million at a rate of 63.91 per square metre and the adjacent Kirkbride Road sale at \$70.41 per square metre in an acknowledged period when motel land was particularly volatile.

The reason for the adoption of rates as low as \$30 per square metre was because of the designation and its effect on value. This presumption ignores normal valuation practice and principles and shows a basic misunderstanding of the requirements of both the Town and Country Planning Act and the Public Works Act.

The valuation provided as evidence has utilised the subdivisional plan as a basis and accordingly the developer is able to request the local authority to erect 60 travellers' accommodation units on each of the individual 3 lots, that being a total of 120 units. The local authority may deny approval for a number of reasons, including the fact that the land is designated. In view of the general level of similar development in the area and that approval had already been given, the designation would appear to be the principal reason for denying approval if such was denied.

If this was the case, Section 83 of the Town and Country Planning Act could be invoked by the owner. Section 83 states as follows:

83. Tribunal may order land to be taken

- (1) If the owner of any land that has been made the subject of a requirement or that has been designated so requests in writing, the tribunal may, in its finding on any appeal before it or on any application made to it at the time on that behalf, order that the Crown or local authority making the requirement, shall within three months thereafter, take under the Public Works Act 1928 for public work for which the land is required as a state or interest in the land if
 - (a) The Tribunal, on an appeal under Section 31 of this Act confirms that any consent to which that Section applies should not be granted on the ground that the land should be used for the public work referred to and the requirement for the designated public work; or
 - (b) The requirement of designation would prevent future use of the land or building for every purpose for which the owner or occupier, but for the requirement or designation, could lawfully have used it without detracting from the amenities of the neighbourhood.
- (2) Determining whether to make any order that the land be taken of the section the Tribunal shall have regard to the imminence or otherwise of any change in the use of the said land and to any obligation, apart from this Act, upon the owner, without compensation, to provide or maintain the same or another highway, reserve, or designated open space, or to suffer similar restriction upon use.
- (3) If the Tribunal makes an order under the Section that the land be taken under the Public Works Act 1928, the owner of such land shall be deemed to have entered into an agreement with a person making requirements for the taking of land for the purpose of Section 32 of that Act.
- (4) The amount of compensation payable for any land taken to an order of the Tribunal made under this Section shall be assessed as if no restriction on the use of any other land had been posed by the Scheme of by any scheme affecting adjacent land. In accordance with the provisions of the Public Works Act full compensation must be paid in which case its value with potential for travellers' accommodation must be taken into consideration.

It is clear that the subdivision into three lots is principally a paper transaction to maximise development under the current Code of Ordinances having a maximum development of 60 travellers' units per allotment.

As approval had been given to the development of 60 units already, the additional two lots have a similar level of development as their highest and best use. This is covered by Mr W P Baldwin giving evidence to the Appeal Board stating that the company could have put at least 120 units on lots 1 and 2 and built on the area with a motorway designation conference rooms and recreational facilities.

To develop this number of units would require a subdivision. Mr Shira has largely acknowledged that factor in valuing the land as three lots and not as one parcel. The full value should apply to all lots without deduction for any designation over a portion of the land.

In summary, I find that Mr Shira's valuation includes too many inconsistencies to use as a benchmark to set a value for this parcel of land. In particular:

1. It was a failure to analyse or in any way consider the sale of \$1.3 million.
2. He made considerable deduction for a designation, notwithstanding the requirements of the Public Works Act and Town and Country Planning Act.
3. The rates used are not consistent with analysed sales within the locality.
4. Failure to explore Kirkbride Road resale to give a general level of increase occurring in the vicinity.
5. Lack of knowledge of the possible change in the designation affecting the site.
6. General misunderstanding of the provisions of the Town and Country Planning Act and the Public Works Act.

Sale Price Evidence

It is acknowledged that the time period is one of high volatility.

This is shown in the sales evidence produced by Mr Shira which show an increase in the order of 350% over the period 1985 to 1986. If one takes into consideration the knowledge of the Kirkbride resale, although given only in Affidavit, as well as the asking prices within the Air Park commercial 9 zoned land, this would indicate a further 150% increase over the period 1986 to 1987.

It is appreciated that both the Kirkbride Road rumoured sale and the Air Park asking prices are not hard valuation evidence, however it is the type of evidence that a valuer has to work on in a practical field situation.

Evidence given by Mr Holt, the Managing Director of Maughold Enterprises Limited, echoed Mr Kennedy's opinion over the desirability of this site for travellers accommodation. He stated in cross-examination that when negotiating the purchase of the land for \$1.3m, the original asking prices was \$1.65m.

He further stated his organisation would have paid \$1.65m if they had to and would have gone to \$2m. He did not state what he would have paid for the land once the approval for 60 travellers units had been approved.

Mr Holt also gave evidence that after the approval was given that an approach was made by the original agents, Bathrick and Thompson, to put a price for sale to a potential purchaser. The figure quoted was \$3.3m which was not taken up.

With the subject property we have a situation where there was a substantial increase in two purchase prices within the same month and it was well known in valuation and real estate circles that over the 1985-1987 period there were a number of cases involving large increases in sale prices of a particular parcel of land occurring over a very short time scale. It is therefore perceivable that a price in excess of \$1.3 million may have been paid for the land in December 1986 or in the new year of 1987, with that land having approval to develop 60 travellers' units.

I therefore come to the conclusion that the two sales that occurred in 1986 for the subject property cannot be taken as a guideline for the value of this property with the specified departure approval as at December 1986.

Kennedy's Valuation

While I appreciate this valuation was an update on earlier valuations, it does not state this and could be taken by a lender as the only valuation. The valuation is for an area including the land acquired from the Manukau City Council taking the total area to 2.1314 hectares versus the 2.0234 hectares valued by Mr Shira.

It was also on the basis of the subdivision mentioned earlier being carried out as it values the land to the three allotments as shown in that scheme plan.

However, this is only apparent after considering the evidence put before the Registration Board and the Appeal Board and it is not readily apparent from a perusal of the report.

The area shown in the legal description on the report is 2.0234 hectares, however the total area valued is 1.7500 hectares. The difference in area is not explained within this report. Although this was a short updated report, reference should have been made to the earlier valuation and to the reason for the difference in the areas shown in the legal description and that shown under "valuation".

In cross-examination Mr Kennedy relied heavily on the Air Park asking rentals and to a general guidelines basis and valuing the land on a rate per unit for lot 1 having approval for 60 units at \$240 per square metre or \$30,000 per unit.

His total value for the land on 2.0234 hectares was \$184.44 per square metre, reducing to \$175.10 per square metre if one adopts the larger area of 2.1314 square metres. Based on the sales evidence produced, the average rates utilised are certainly towards the top end of the scale. Mr Kennedy has certainly produced a valuation that has squeezed every ounce of potential value from the evidence available. That is, in valuation terms, he has provided a very full valuation.

From the evidence provided it is relatively clear that Mr Kennedy in compiling his valuation did not carry out a great deal of research into sales available within the area and has almost taken a cavalier approach to arrive basically on his subjective judgment that this is the best site for travellers' accommodation within the country. I am not prepared to go so far as to say that the valuation carried out by Mr Kennedy was grossly excessive, as the evidence produced does not allow me to determine the value of the site and to compare that with the valuation carried out by Mr Kennedy.

Some emphasis must be placed on a judgment of Archer J in *Valuer-General v McPherson McVeagh and Babe Land Valuation Case Book 421*:

It is also made quite clear that the basis of fixing both capital and unimproved value is to be valued in the open market. Although these are the general principles, we must nevertheless remember that a valuer is entitled to look at every item of evidence which will assist him in arriving at a true value. We must remember that it has been laid down by the highest authority that provided the answer arrived at is right, it does not matter very much what method if adopted in reaching that result.

It is essential to have a benchmark to determine the value of this site and to ascertain whether or not Mr Kennedy's valuation figure was excessive. I believe that Mr Shira's valuation is defective in a number of areas sufficient to reject that valuation to be adopted as a benchmark.

Likewise, the various factors on which the sale prices were based on the subject land and the factors as at the date of Mr Kennedy's valuation differed, accordingly those sales cannot be reasonably utilised as a benchmark. In the absence of any other evidence or valuation to support a substantially lower figure than that placed on the property by Mr Kennedy, I cannot accept that the charge that he has grossly overvalued the land can be sustained.

Mortgage Recommendation

Mr Kennedy stated in evidence that the valuation was provided

for in-house purposes only and was not provided for the purpose of establishing a security for loan purposes.

I cannot accept this claim as the opening paragraph clearly states, "As instructed, we have inspected the above named parcel of vacant land for the purpose of a mortgage recommendation report as follows:" Further on page 3 under the heading "mortgage recommendation".

He states: "Under Section 10 of the Trustee Act 1956, we recommend that this should be reasonably safe security for an advance up to two-thirds of the figure in the valuation, namely \$2,488,000."

Legal opinions have already been given on the requirement of a valuer to protect the mortgagee and not to take into account factors that may not be applicable at a later date of a forced sale. In day-to-day valuation practice, it is usual to limit a mortgage recommendation on vacant land to a maximum of 50% of value. This is more important where the valuation figure maximises the potential value for the site.

I believe it would have been appropriate in the subject site to maximise the loan recommendation to 50% of the value. Utilising Mr Kennedy's valuation figure of \$3,732,000 this would give a mortgage recommendation of \$1,866,000, some \$622,000 less than that actually provided by Mr Kennedy.

Mr Shira adopted a mortgage recommendation figure of one-third of his valuation, being a recommendation of \$393,600. In cross-examination he stated he would normally have used a recommendation figure between 50% and two-thirds, but reduced it to one-third in this particular case because of the designation and complexity of the proposals.

Mr Shira had already heavily discounted his valuation of the site due to the designation and has therefore effectively double-accounted.

A comparison with the two actual sale prices of \$800,000 and \$1.3 million emphasises this point and even utilising a 50% recommendation on the latter sale, would have a recommendation of \$650,000, almost twice that recommended by Mr Shira. Accordingly, Mr Shira's recommendation as providing a basis must be discounted.

In view of the valuation adopted by Mr Kennedy, being without doubt the highest that could be placed on the site, the maximum mortgage recommendation should have been 50% and with some consideration given to reducing the percentage rate further to protect the mortgagee's interest.

I find that I have to accept the Registration Board's decision on the second charge that he provided an excessive mortgage recommendation.

Penalty

The Registration Board's initial penalty was on the basis that Mr Kennedy was guilty to both charges. Even if Mr Kennedy is found guilty of both charges, it is a first offence and in view of the acknowledged volatility of the market, the lack of sales and the changing nature of the land in respect to specified departure for tourist accommodation I believe that a suspension penalty is too severe.

On the basis of Mr Kennedy not being guilty of a charge to providing a grossly excessive valuation, but guilty to the second charge, a lesser penalty is warranted.

Accordingly, I believe that the Registration Board's penalty of six months suspension and \$1,000 fine be amended to a fine of \$1,000 only.

Signed: W H Doherty

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