VALUERS' JOURNAL

JUNE
1992

IN THIS ISSUE

NEW ZEALAND INSTITUTE OF VALUERS

Incorporated by Act of Parliament

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1950-1951- O Monrad, Palmerston North
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1953-1954 W G Lyons, Palmerston North
1954-1955 S E Bennett, Auckland
1955-1957 R J Madachlan, Wellington
1957-1958 V W Cox, Napier
1958-1960 G C R Green, Dunedin
1960-1962-J W Gellatly, Wellington
1962-1964 S Morris Jones, Wellington
1964-1966-M B Cooke, Christchurch
1966-1968 D G Morrison, Whangarei
1968-1970 A R Wilson, Napier
1970-1971 J M Harcourt, Wellington
1971-1974-R S Gardner, Auckland
19741976 -G M Nid I c illeerer,nverarg
1976-1977 L M Sole, Rotorua
1977-1978 E J Babe, Wellington
1978-1979 P G Cooke, Nelson
1979-1981 - P E Tierney, Tauranga
1981-1983 R M McGough, Auckland
1983-1985 R M Donaldson, Timam
1985-1987 G J Horsley, Wellington
1987-1989 R E Hallinan, Christchurch
1989-1991-R L Jefferies, Auckland

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S Moms Jones (1968)
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E J Babe (1982)
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A L McAlister (1988)
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JOHN M. HARCOURT MEMORIAL AWARD

E J Babe (1975)
R S Gardner (1977)
R. L Jefferies (1979)
S W A Ralston (1980)
K J Cooper (1981)
S L Speedy (1983)
A L McAlister (1986)
M E L Gamby (1989)
E T Fitzgerald (1990)
G J Horsley (1992)

VALUERS' JOURNAL

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Contributions with a biographical note of the author should be typewritten and, sent to the Editor, PO Box 27146, Wellington, who reserves the right to accept, decline or modify material. Views expressed by the editors and contributors are not necessarily endorsed by the New Zealand Institute of Valuers. Copies of manuscript should be retained by the author as they cannot be returned. Deadline: two months prior. Business letters, subscriptions and advice of changed address should be sent to the General Secretary. The mode of citation of this volume of *The New Zealand Valuers' Journal* is (1992) N.Z.V.J. June page.

The New Zealand Valuers' Journal is a refereed publication

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Editorial Comment

Valuing the bigger picture

n his speech to the 1992 NZIV conference seminar held in Gisborne on 13-14 April, the Minister in charge of the Valuation Department, Rob Storey, challenged valuers to take a broader perspective of the valuation business. He cited the recent release by the government of the first ever financial statementbased on accrual accounting which detailed all New Zealand's assets including roading systems and natural resources such as National Parks and he questioned the apparent unwillingness of the valuation profession to take a more prominent role in the debate of public asset and resource values.

He wondered if valuers' reluctance to take a morepublic role was because of a concern about their ability to impute a value on major existing assets.

The response of the Valuation profession to the Minister must surely be that we do have the expertise to accurately value all public assets and natural resources but that the public debate to date has revolved around the need to value and revalue them. In the initial stage this had to be a political consideration that therefore required answers and reassurances from politicians.

However, given the likely public acceptance of a national accounting concept, the valuation profession will beable to promote its ability as being the only discipline with the skills and experience to provide a sound and reliable basis of value.

The New Zealand Institute of Valuers is the national organisation to which registered valuers have collective membership through 14 nation-widebranches and it will be through the Institute that most effective national awareness of the role of valuers in the national economy can be made. The membership of the Institute which includes public practising valuers, institutional and state employed valuers of both urban and rural sectors, have experience in the valuation of real assets in a history of more that 50 years. Valuation methodology has evolved considerably over this period with major advances being particularly apparent in the last 20 years through technological advances in the use of computers and their increasingly sophisticated programmes.

In more recent years, these advances have enabled valuers and their clients to take a much wider view of the range and assets they are valuing and many are now involved in such diverse assignments as establishing values of airports, railway and roading systems, sea ports, ski fields and resorts, forestry and fishing ventures and all manner of public and privately owned businesses as going concerns.

However, the further development of this bigger picture in the valuing sphere is going to require much more widespread lateral thinking within the profession and the Institute and will inevitably require the involvement of a wider range of valuers with expertise in the valuation of all manner of real assets.

Promotion of the expertise of valuers as being the appropriate professionals to assess values to public sector assets,,and resources will be a challenge the New Zealand Institute of Valuers will have to respond to on behalf of it members. But this raises the question as to whether curren t membership of the Institute may be too narrow to achieve the desired result.

The recent establishment of the Institute of Plant and Machinery Valuers under the auspices of the NZIV must be seen as a step in the right direction. It is suggested that the current proposals for a merger between NZIV and the New Zealand Society of Farm Management and the Property Management Institute would be a further positive step. Such a merger would create a single larger b o dy representing a wide range of property professionals who could pool their diverse knowledge and expertise for their common good and for the benefit of the public.

The merged Institute would bea much stronger lobbying force for recognition of the valuation profession and there would surely be some worthwhile savings to be made through reducing current duplication of services to members and administrative overheads. But the greater long term benefit must be the sharing of knowledge and expertise which will give the members of each of the current Institutes a much wider perspective of the valuation scene in New Zealand a glimpse of the bigger picture which if not expanded on by the valuation profession will surely be seen and exploited by others.

The MinisterRob Storey advises that the Ministry for the Environment is already working on the issue of natural resource accounting and he believes that we are going to hear a lot more about it in the future. Dr. Jeff Weber, lecturer in agricultural economics at Massey University in his paper to the seminar at Gisborne s aid that he believed the broader concepts of value will continue to play an important role in New Zealand policy decisions. Let us be sure that it is our profession that provides the advice on those wider value concepts in the future.

Trevor Croot

Client release

Many valuers will by now have had the opportunity to read the recently published decisions ofthe Valuers' Registration Board in which my own case was one of those noted. For those who have not yet reviewed the decision, I urge them to do so.

All practising valuers operating under the Code of Ethics need to read these conclusions carefully, as I suspect some valuers may not fully realise the implications of the "release" clause. It is clear that a valuer has only very limited grounds for release from his client; namely the end of the transaction, or a directrelease given by the client. There are no other valid criteria for release and the normal provisions of contractual employment where consideration needs to change hands, do not apply.

Other issues which arise from these circumstances include the potential under the existing Code of Ethics to effectively "sideline" any number of valuers by refusing to release them, particularly if the instructing party feels the valuer's advice would be damaging to his case. All this may occur under circumstances where the instructing party has already selected the valuation advice they wish to use, and therefore are not relying in any form on the other discarded valuations.

As the Code of Ethics covers not only valuation reports, but any advice given to a client, the potential to breach the Code in any number of ways is great. This situation may apply in many other cases apart from rental valuations, and also include market or mortgage assessments, as well as consultancy advice. As an educational exercise, it may well be appropriate for the Institute to reinforce these points further in the minds of its members.

P W Hinton,
New Plymouth

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The::John: M Harcourt Memorial Award Committee have much pleasurein announcing the confeningoftheAwardfor I 992 on Graeme John Horsley FNZIV offheWcllington Branch of the New Zealand Institute of Valuers.

The Rules of Atuard provide for the honour to be conferred on those persons, not necessarily members of the NZIV, who meet the criteria of having "given outstanding services to the Profession whether during the calendar year or over a longer period".

The AwardCommittee is in unanimous agreement that Graeme Horsley fulfills these conditions by virtue of his outstanding services to the NZIV both at local and international levels in the development and promotion of professional practice standards.

Graeme has served the institute well over many years, as Wellington Branch Chairman.Branch oun.cillor and subsequently National President, and as c an of the"Institute's ZationalPublicity Committee. Since 1987 hehas bee n Ch an or ineinsutu S: ammittee. His contnbution has been outstanding in many areas: of institute ac tvrty but his moat sign cant aehievement in this latter period has been theac ttonby the NZ Society of Accountants of the NZIV's Asset ValuationStandar+ls. Graeme ispresently completing a three-year term as Chairman of the Internatin rjssei ialuanon Standards Committee, a highly prestigious attd important' venthe international,.on of financial dud property markets

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Fellowship Citations

Anthony Ross Gardner
Auckland Branch

Born in 1951, Anthony Gardner was educatedatAucklandGrammarSchoolfnom 1964 to 1968. On leaving school, he joined what was then the Government Valuation Department and attended Auckland University from where he graduated with the Diploma in Urban Valuation in 1974.

He became a member of the NZIV in 1972 and was registered as a valuer in August 1974. Later in the same year, he left New Zealand to work for Dunlop Heywood (in Association with Richard Ellis) in South Africa as a Valuer until March 1976 when he returned to New Zealand, and became an Associate member of the Institute. He joined S tace Bennet & Co Ltd as a Valuer, became a company shareholderin 1984 andadirectorin 1989.

Mr Gardner served on the Auckland Branch Committee for a number of years, chairing the committee in 1986. He also lectured on valuation to Real Estate Institute students at the Auckland Technical Institute for a number of years.

His work has covered a wide range of commercial, industrial and residential properties and his clients include several Pension and Superannuation Funds as well as Trusts and Estates, Companies and legal firms.

During the past 10 years, he has become increasingly involved in Arbitration work, initially as an Arbitrator and subsequently has been frequently called on to act as an Umpire to determine rental disputes between Arbitrators.

He is held in high regard in the commercial community and also by his col-

leagues in the profession, for his competency and attainments as a valuer, his contributions to the advancement of the profession and his participation in the activities of the Institute.

The Auckland Branch Committee recommends his elevation to the status of Fellow in recognition of the esteem in which he is held by other members of the profession and his services to the Institute.

Russell Eyles
Auckland Branch

Russell Eyles, Director Valuation, Colilers Jardine New Zealand Ltd, Auckland, started his career in the Valuation Department as a valuer in 1963 being based at various locations throughout the North Island. He completed the Valuers' Professional Urban examinations in 1967 and was registered as a valuer in April of that year. Russell was appointed Senior Valuer, then District Valuer in Wellington in 1971 and left the Department in 1973 forprivate practice. He joined the Auckland firm of Mandeno Jackson Ltd and left to go into partnership in his ownbusiness withJensen Davies and Eyles in 1980.

Russell founded his own business in 1984 as Senior Partner in Eyles, Purdy and Co, later to become Eyles, Purdy and Co Ltd. He took on his current position with Colliers Jardine NZ Ltd in October 1989 when Eyles, Purdy and Co Ltd merged-

Born in 1940, Russell was elevated to the status of Associate of the NZIV in September 1968. He initially joined the Institute as a student in 1965. He has been active in Institute affairs both in Auckland and Wellington, serving as lecturer, examiner and conference organiser over a number of years.

Rusell has specialised in the valuation of shopping centres, supermarkets, and retail properties as well as central city office valuations together with corporate asset portfolios. Additionally, Russell specialises in commercial arbitrations, both as an Arbitrator and Umpire, and is consulted by many leading companies, investors, and legal firms on lease structure and interpretation. He is retained by leading owners and investors of retail properties, together with pension funds, and property owning companies.

Russellis held in the highest regard for his conpetency,integrityandprofessionalismby both clients and the commercial community, and for his commitment to professional standards and the promotion of valuation.

The Branch Committee recommends that he is worthy of elevation to the status of Fellow of the Institute, in recognition of his service to the profession and the regard in which he is held by members.

Sean Boyd Molloy
Auckland Branch

Sean Molloy is a Senior Partner and Shareholder in the national valuation practice of Darroch & Co and is well known as avaluerin the Auckland Central Business District.

Sean was born in Auckland in 1948 and educated at St Patricks College, Silverstream where he obtained University Entrance and Higher Leaving Certificate. He attended AucklandUniversity and graduated with a Diploma in Urban Valuation in 1973. He joined the Institute ofValuersasastudentinNovember 1972, becameregisteredasavaluerin September 1974 and advanced to membership status five months later.

While attending University, Sean worked as a valuer with the Valuation Department in Central Auckland from 1971 and during that five year period worked in the wider Auckland area. In 1976 Sean moved into private practice as an Associate of Neil Darroch and Associates and subsequently became a partner in Darroch & Co Ltd.

After completing the Diploma in Urban Valuation, Sean completed papers toward a diploma of Town Planning at Auckland University.

He became an Associate of the Institute of Valuers in 1977 and has been an active member of the Institute, serving on various committees of the Auckland branch from 1984 and as chairman in 1988. He left the committee in 1989 after his ex-officio year.

Sean has greatly assisted the

younger members of the profession with sound advice and counselling, and takes everyopportunity to advance the valuation profession in the commercial arena.

He has served the profession both in his vocation and institute service and has earnedareputation amongsttheprofession and with his clients as a valuer of good repute and integrity. He is sought after in particular for his knowledge in the Auckland CBD and for his skills as an arbitrator and expert witness.

The Branch Committee recommends that he is worthy of advancement to the status of Fellow in recognition of the esteem in which he is held by fellow members and the contribution he has made to the valuation profession.

Ian Ross Cameron
Otago Branch

Ross Cameron is the Property Services manager for Otago and Southland with Housing Corporation of New Zealand for whom he has worked for more than 20 years. Ross is a Dunedin person having been born in the city in 1943 and lived there continuously ever since. He attended North East Valley primary School and completed three years secondary education at King Edward Technical College before taking up an apprenticeship in carpentry and joinery. He worked in the building trade for the next eleven years, then joined the Housing Corporation as a property inspector in 1971 when he commenced study through the New Zealand Technical Correspondence Institute for the New Zealand Institute of Valuers professional examinations. After completing the course of part-time study in the commendably shortperiod of sixyears, Ross gained registration as a valuer and Associate membership of the New Zealand Institute of Valuers in 1977.

Ross has only recently resigned from the Otago Branch Committee after having served continuously for thirteen years. He was elected branch Secretary in 1978 and during the three years that he held that position was also the secretary for the NZIV Annual General Meeting and Seminar subcommittee. Ross was elected to the branch committee in 1981 and was Chairman in 1989 and 1990 having been Vice Chairmanforthepreviousttwoyears. During his long term on the committee Ross was particularly involved with the Education sub-committee, being convener for numerous years. Ross and his wife Gail who will celebrate their 25th wedding anniversary next year have one married daughter and two sons, one at universityand the other completing a seventh form year at high school. Ross has been very involved in school affairs, through his family, having been Chairman of the Parent Teachers Association at Corstophine Primary school for four years and then serving six years on the Queens High School Parents Students Teachers Association with two of those years asChairman. Much ofhis leisure time is spent following the sporting pursuits of his family but he is actively involved in social basketball and enjoys using his skills from his previous trade in cabinet making and joinery work as a hobby.

Ross has been involved in the valuation of pnpeilies for Housing Corporation for more than 20 years with increasing responsibility as a senior valuer, then, on appointment as DistrictValuerin l984fmmwhichhe auainedhis present position.

Ross Cameron is very highly regarded by members of the Otago Branch NZIV for his expertise in valuation and administration - duties he carries out with great diligence and sincerity . The Branch Committeethereforrecommends toCouncil his nomination for advancement to Fellowship.

Alfred Warwick Marshall
Nelson/Marlborough Branch

Warwick Marshall isan Associate Valuer and Farm Management Consultant based in Nelson. Until recently he served as the NZ Rural Trust Nelson/Golden Bay, West Coast Co-ordinator and is currently Adjustment Assistance Liaison Officer advising on beech forest claims for that area. He continues to practise as a rural valuer and farm management consultant in the Nelson-Westland land districts.

Warwick was born in Thames in 1925 and received his secondary schooling there. A celebrated' 1949er' he graduated fromLincoln with aDiplomain Valuation and Farm Management and started work as a rural valuer in Napier with Valuation New Zealand in 1950. Transferred to Gisbome he subsequently served in New Plymouth (1952-53) and Rotorua (1953-55). In 1955 Warwick transferred to State Advances Corporation (now Rural Bank Ltd) and was promoted to Senior Farm Appraiser Gisbome in 1956. In 1959 he was appointed District Appraiser Nelson where he served until his retirement in 1985. Qualified as a Registered Valuer in April 1952 Warwick was admitted as Associate Member in 1954. He was Rural Examiner for the Nelson-Marlborough area during the years 1968/ 1977. An active,strongly supportive member of the local branch, Warwick served eight consecutive years on Committee(1977-1984) -five as Branch Chairman. He maintained involvement in Branch affairs, was again elected to Committee in 1990 and continues to serve in that role.

Warwick has been actively involved in service clubs and recently received a DistinguishedServiceAwardfromNelsonIions. A member of the Nelson Agriculture Group, hemaintainsslmngtieswiththeruralcommunity. He is married with four children.

A keen aviator Warwick regularly f lies the tug plane for the Nelson Gliding Club and is an aeroclub and glider pilot of note. He commands very high respect in the Nelson-Marlborough/West Coast region for his extensive knowledge and expertise in valuation and farm management fields. His high standards, detailed approach and demand for accuracy and thoroughness are legend. His conservative approach has been vindicated by subsequent market cycles and his work has stood the test of time. Warwick is well known for his ability to pass on and instill the valuation basics and principles and there are many successful practitioners throughout New Zealand who can thank him for his positive contribution to their careers. Above all are the qualities of honesty and integrity that he brings to all his endeavours.

Warwick is held in high esteem by his colleagues and business associates throughout the region and he has made a substantial contribution to the local NZIV branch over many years. The committee therefore has pleasure in unanimously recommending his advancementtoFellow of the NZIV.

Michael Andrew Sellars
Wellington Branch

Michael Sellars is a registered valuer and a Wellington principal of international property consultant company Richard Ellis.

Michael was born in 1950 and educated in New Plymouth before taking up a valuation cadetship with Valuation New Zealand in Wellington. He studied forand qualified as an urban valuer working initially in the Wellington region and was later transferred to the department's office in Christchurch where he remained for the period 1971-73. Upon returning to the Wellington region as a qualified urban valuer and being accorded registration in November of 1973, Michael joined the Wellington real estate company, S George Nathan and Co. Limited and quickly established himself as one of the Capital's leading commercial property valuers.

Michael gained a wide breadth of experience in all forms of commercial valuation practice including aspects of leasehold land and commercial rentals. His professional presentation, value judgement and knowledge in the valuation and arbitration field is regarded by his peers.

Michael was accorded Associate status of the Institute in 1975. He was elected to thecommitteeofthebranchin 1979 and following a number of years in that role was chairman of the Wellington branch between 1983 and 1985. During this time he participated fully in branch initiatives in the planning and statistical areas and also the setting up of induction meetings for graduate valuers. He has contributed with papers to the Valuer's Journal and been a commentator from time to time at Institute forums.

In 1985 Michael Sellars formed the valuing partnership of McGregor Sellars and in 1989 the practice was acquired by the international group of Richard Ellis. Michael remains a principal of the Wellington New Zealand office of Richard Ellis (Wellington) Limited. Michael Sellars finds time for a range of general and sporting interests including the thoroughbred industry.

His knowledge and valuation expertisewasrecognisedin 1991 when Michael was appointed as an assessor to the Wellington Land Valuation Tribunal. Some two years ago Council of the Institute chose Michael Sellars as a member of it's Wellington executive committee and in 1991 appointed him to the important services committee at national level.

The regard with which this nominee is held and evidenced by this citation are behind the unanimous decision of the Wellington branch to submit the name of Michael Sellars for advancement to the standing of Fellow of the Institute.

Thomas David Henshaw
Waikato Branch

David Henshaw was born in the Manawatu to a farming family who farmed a 560 hectare hill country sheep and cattle property at Kimbolton. He attended Kimbolton Primary School and Palmerston North Boys High School where he began to develop the drawing skills that he is now so well known for.

From secondary school David was selected for the Rural Field Cadet Scheme attending both Massey and Lincoln Colleges as well as furthering his knowledge of the rural scene with the practical farm work that he completed as an integral part of his University education. He graduated from Lincoln College in 1962 with a Diploma in Farm Management whereupon he joined the Valuation Department in Wellington.

From Wellington David transferred to Palmerston North and was promoted to Senior Valuer, Hokitika in 1969. From Hokitika a transfer to Lower Hutt followed, and in 1973 promotion to District Valuer, Te Kuiti in 1975, and from there to District Valuer in Hamilton in 1977, a position held today.

In this job, David is responsible for both rural and urban valuation activities for the Department over a wide area of the Waikato Region.

David had always been interested and active in Institute affairs having held many positions within Branch Committees including a long standing association with the Waikato Branch, having served a term as Chairman and has carried out duties as an examiner and also served on many other sub-Committees. He now represents the Waikato Branch on Council.

David is very well known throughout New Zealand, in particular with the fanning community, for his very aptrepresentation of rural life as interpreted by "Jock." His work is also nationally known through many publications including books, periodicals and calendars most with a very strong and humorous rural flavour. He also has many admirers and associates throughout the art world especially with regard to his water colour landscape paintings.

Waikato Valuers know David Henshaw well for his willingness to assist others, especially in offering guidance to younger members of the profession. He is always approachable and is prepared to find time in a busy schedule to assist where he can.

David's advancement to Fellowship status is wholeheartedly supported by the Waikato Members of the Institute.

Kenneth Eber Parker
Hawkes Bay Branch

Ken Parker is a District Valuer in the Napier office of Valuation New Zealand, a position held for over 12 years.

Ken was born in Auckland in 1946, educated at Te Kauwhata District High School and commenced his property orientated career as clerk in the Department of Lands and Survey, Auckland. In 1966 he transferred to the Ministry of Works and Development, Wellington as a Land Purchase Officer. After successfully completing the Valuers Professional (Urban) Examinations, he transferred in 0

1972 to the Wellington office of Valuation New Zealand, as a Valuer. Achieving the position of Senior Valuer in the same office in 1974, he transferred to Christchurch as District Valuer in 1978 and the following year to Napier as District Valuer. He continued with hisprofessional studies to complete the Valuers Professional (Rural) Examinations in 1981.

Ken qualified for Registration in 1971 and Associate status of the Institute in 1972. He has made significant contributions to both the Institute and the profession, witnessed by the following achievements. Served as a member of the Hawkes Bay Branch Committee 1980 to 1990. During that period he served on several subcommittees, was convenor of the Education Subcommittee, a member ofthePlantandMachineryWorkingParty, and Vice Chairman until his election as Branch Chairman in 1983. In 1984 Ken was appointed Branch Councillor, elected to the same position in 1984 to 1990.

In his professional capacity, Ken is retained as an Umpire both from within Hawkes Bay and beyond, has appeared both as witness and counsel before the Land Valuation Tribunal, the Lindisfarne College hearing being the most notable and appeared as witness before the Valuers Registration Board.

Ken and his wife Gill have two daughters and one son. While his quiet recreational hobby is trout fishing he is actively involved in multi sports both locally and nationally. A frequent Hawkes Bay competitorin marathon events, half marathons and triathalons, Ken has twice before competed in the National Championship, the DB Iron Man. From this event, he qualified to compete in and finished the Hawaiian Iron Man in 1989.

Ken is held in very high regard by the Hawkes Bay Branch of the Institute, his professional colleagues and his sporting associates. The Hawkes Bay Branch is unanimous in supporting this recommendation of Kenneth Parker's nomination for advancement to Fellow of the Institute.

John Dunckley
Otago Branch

John Dunckley is Chairman of the Otago Branch of the NZIV and a Director of Simes Valuation. He holds a Bachelor of Agricultural Commerce Degree (Lincoln) and Dip VPU. He is 42 years of age, married with four children.

Following initial urban and rural experience with Valuation New Zealand in Dunedin where he rose to the position of Senior Valuer, John then expanded his experience by joining Reid Fanners Ltd as Executive Officer for client finance and valuation. From 1985 to 1989 John was a partner in the wellknown and highly respected Dunedin valuation practice of J O Macpherson & Associates Ltd. In 1989 John established his own business trading as Simes Dunckley (Dunedin).

John's contribution to Institute affairs started in 1978 when he was elected to the Otago Branch Committee where he later convened the Education and Statistics subcommittees. In 1982 he was appointed deputy editor of the NZ Valuer's Journal. When teleconference distance teaching was introduced John and the education sub-committee organised the programme for that first year. Subsequently he has chaired distance teaching seminars. At a national level he has participated in subcommittee activity.

In his professional capacity, John has developed methodologies for the valuation of the assets of the Crown Research Institutes and the Ministry of Agriculture & Fisheries.

John's community interests include Chairman of the Dunedin North Intermediate School Board of Trustees, he is an immediate past convenor of the Community Service Committee of the Rotary Club of Dunedin and has shown a special interest in vocational, environmental and conservation issues. John is also a very active harrier and is an organiser of the annual Town Belt Fun Run in Dunedin.

John is highly regarded by his peers. He has always displayed an intelligent approach to both Institute affairs and his ongoing valuation practice. His leadership hasproducedgoodresults within theOtago Branch. A

NZIV 1992 Annual General Meeting Report

The 1992 Annual General Meeting of the New Zealand Institute of Valuers was held on Monday 13 April at4.30pm at Sandown Park Lodge, Gisbome.

President A P Laing welcomed Mr K Norris, President of the Australian Institute of Valuers and Land Economists (AIVLE) and Mrs Norris, other invited guests and approximately 75 members.

The minutes of the previous AGM held on 22 April 1991 were taken as read and approved as a true and correct record of the meeting. Matters arising from the minutes commented on by President A P Laing were that the Presidential Triumvirate is involved in a working party with the Minister in the revision of the Valuers Act 1948; that Council has resolved to further the discussions with the Property Management Institute and the New Zealand Society of Farm Management regarding a proposed merger, and that Council has resolved to wind up the NZIV Services Ltd company as it was no longer operative.

The President noted with regret the death of Mr R J Maclachlan who had been a Life Member of the Institute.

The Annual Report and Accounts of NZIV for 1991/92 were taken as read and adopted by the meeting.

Mr Barry D Wilson was re-appointed as Auditor for a further one year term.

President A P Laing advised that the previously advised Notice of Motion to the meeting had been withdrawn by Council.

The President advised that the following members of the NZIV had been elevated to Fellow by Council:

A R Gardner, Auckland; R Eyles, Auckland, S B Molloy, Auckland, T D Henshaw, Waikato; K E Parker, Hawkes Bay; M A Sellars, Wellington; A W Marshall, Nelson-Marlborough; J Dunckley, Otago; I R Cameron, Otago.

He also advised that Dr Gerald Brown, Professor of Property at the University of Auckland had been awarded Honorary Membership of NZIV.

The President announced that the John M Harcourt Memorial Award for 1992 had been awarded to GraemeJohn Horsley for his outstanding contribution both nationally and internationally for the promotion of professional practice standards in valuation and he presented the Award to Mr Horsley.

The meeting closed at 5.00pm.

The Editor

April 1992 Council Meeting: Report

The April 1992 meeting of the Council of the NZIV was held at the Sandown Lodge, Gisborne on Saturday and Sunday 11/12 April commencing at 8.30pm.

President A P Laing welcomed all councillors including Mr W Smith the new councillor for Wellington Branch and Mr R Calderwood the new Valuer General's Nominee. He also welcomed Mr K Norris President of the Australian Institute of Valuers and Land Economists (AIVLE) and Mr D Smith President of the Institute of Plant and Machinery Valuers.

Minutes of the previous Council meeting were confirmed as a true and correct record.

In Matters Arising from the previous meeting, President A P Laing advised that Valuation New Zealand had been approached through the Valuer General regarding competition for public valuation work and the Valuer General had given some assurances in regard to the policy of Valuation New Zealand. Mr Laing advised that Landcorp had still to be approached.

Mr J N B Wall, Chairman of Professional Practices Committee advised that the Helpline system for members had been set up and has received considerable enquiry in some branches.

The President asked Councillors to report on enquiries that had been made to their local MPs regarding possible future deregulation of the valuation profession and all those who had made enquiries expressed the view that this was not a current issue with the Government.

Awards/Honours

Council awarded Honorary Membership of the Institute to Professor Gerald Brown who holds the first chair in property at the University of Auckland.

Vice President J P Larmer advised that the J M Harcourt Memorial Award Committee had made the Award for 1992 to Mr G J Horsley of Wellington for his outstanding contribution to the Institute as a former Councillor and President and currently as Chairman of the Standards Committee and world President of TIAVSC.

Council approved the advancement of the following members to NZIV fellowship status:

A R Gardner, Auckland; R Eyles, Auckland, S B Molloy, Auckland, T D Henshaw, Waikato; K E Parker, Hawkes Bay; M A Sellars, Wellington; A W Marshall, Nelson-Marlborough; J Dunckley, Otago; I R Cameron, Otago.

Forum Session

Council informally discussed the future publication of Valuers Registration Board decisions under the chairmanship of Mr W A Cleghorn and Mr A Stewart led a discussion on publicity for the profession through NZIV.

Under the chairmanship of Mr J P Larmer council informally discussed the likely effects on the Institute of deregulation of the profession in terms of continuing Professional Development, the required functions of the Institute in the future and whether a change of name would be necessary following a comprehensive report from Mr I Gribble, Chairman of the investigating sub-committee.

Mr W A Cleghorn chaired an informal discussion on procedures for NZIV rule changes.

Committee Reports Received and Discussed

Executive committee:

President A P Laing reported that the restructured Executive Committee is working well with efficiencies being achieved through the attendance of the chairpersons of most of the Council standing committees.

Professional Practices Committee

Mr J N B Wall, Chairman reported that there had been numerous recent complaints from members of the Institute and from the public with respect to the conduct of arbitrations in which members were involved. Council agreed that Mr Wall should prepare a report for members drawing attention to these items.

Publicity and Public Relations

Mr A Stewart, Chairman, reported on the desired future direction of the Committee on publicity for the profession through NZIV, the proposed Young Professional of the Year Award, professional market development seminars and other membership services.

Council confirmed the committee proposal to promote the Young Professional Award which will carry a substantial prize. Council agreed that the name of this committee should be changed to Promotion Committee and that the chairman become a co-opted member of Executive Committee.

Education Board

Mr W A Cleghorn, Chairman advised that a lecture tour on "Loss Prevention" sponsored by Land Professionals Mutual Society and convened by the Education Board, is to be carried out in the next few months in all branches and that it is planned for the seminars to be on a "low cost" or "no cost" basis to members.

Mr Cleghom commented on the future implementation of Compulsory Continuing Professional Development in the light of the issues addressed in the "Gribble Report".

Council agreed that the Education Board should further discuss some NZIV sponsor ship for the World Valuation Congress to be held in New Zealand and for the promotion of aconferencein 1993 similartotheMaoriLand Issues conference held in 1991.

Council confirmed that the Education Board should pursue a change to the Valuers Act 1948 in consultation with the Valuers Registration Board to link the Compulsory Continuing Professional Development to the issuing of annual practising certificates through the Valuers Registration Board.

Council decided by poll vote that precis of Valuers' Registration Board decisions will be published by the Education Board and distributed to members.

Standards Committee

Mr G J Horsley, Chairman reported that the Rural Standard has been completed andwill be issued as apreliminary standard in the near future. He advised that a Standard for small commercial property is now being prepared.

Council agreed that enquiries in respect of standards will be considered by Professional Practices Committee which may co-opt a member of Standards Committee to assist.

Services Committee

Mr R Stone, chairman, reported that the replacement insurance computer programme has been fully developed and will soon be available to members. He advised that Mr Ramsay Newton has been appointed as Marketing Manager to the Services Committee and he will be visiting every branch on an annual basis to promote the full range of services available.

Mr Stone reported that a new system for obtaining regular modal house costing is being developed and that a greater volume of construction cost analyses is now being received from branch Statistical

Officers. He advised that the resignation of Mr J N B Wall from the committee had been received and council acknowledged the contribution Mr Wall had made to the committee or its equivalent over a period of about 30 years. Mr Stone also advised the MrP 0 Brien had resigned and that the committee would be seeking to co-opt two replacement members.

Editorial Board

Mr W A Burgess, Chairman, reported that the Board had considered three options to reduce publication costs of the New Zealand Valuers' Journal and Council agreed that no major change should be made to the Journal format. Mr Burgess advised that the rising cost of posting copies of the Journal to overseas members needs to be considered when membership subscriptions are set.

He reported on the successful lecture tour on the Resource Management Act sponsored by the Board and which was conducted in Auckland, Wellington and Christchurch. A satisfactory net profit was recorded but attending numbers in each of the venues was rather disappointing.

Mr T J Croot, Editor of the New Zealand Valuers' Journal reported that a satisfactory flow of suitable articles and publication material is being received for publication and that good services are being provided by Vicki Jayne of Wordsmith Partnership and by Devon Colour Printers. He acknowledged the valuable assistance being received from John Gibson, General Secretary and the support and direction from the Editorial Board.

NZIV Services Ltd

Council agreed to wind up the NZIV Services Ltd company as it is no longer operational.

Reports from Nominees to External Organisations

Council of Land Related Professions

Mr D Henshaw advised that no meetings had been held.

Massey University Foundation

Mr W A Cleghorn reported on the activities of the Foundation and advised that his appointment as the NZIV representative had been replaced with a personal appointment to the Foundation.

Real Estate, Valuation and Property Management Education Foundation

President A P Laing reported on the activities of the Foundation.

Land Professionals Mutual Society

Mr A L McAlister reported that there is now 175 valuing firms insuring with the society covering 410 qualified valuers. He advised that there had been nine recent claim notifications or "alerts" and that there are cun-ently 60 open files. Mr McAlister confirmedtheLPMS supportforLossPrevention seminars proposed by the Education Board.

Westbrook House Body Corporate 66017

General Secretary J G Gibson reported that the recent alterations to the office premises have proved very satisfactory and that a maintenance programme for the building based on a cycle of five years is being implemented.

Institute of Plant and Machinery Valuers

Mr E Gordon reported that IPMV had held its annual general meeting and seminar in April at Auckland. Membership of the Institute has been reduced through a number of resignations resulting from a general downturn in plant and machinery valuation work but some new members are still being admitted.

Mr D Smith President of IPMV presented a brief report to Council on the activities of the Institute.

Legislation

General Secretary John Gibson reported that the following submissions have been prepared or areun der preparation by NZ I V members:

- Securities Commission report on the valuation of retirement villages
- The Property Law Act 1951
- The Law Commission's "Preliminary Paper No 18, Expert Evidence and Opinion Evidence"
- The Law Commission's "Preliminary Paper No 17, Award of Interest on Debts and Damages"
- Review of the Valuers' Act 1948.

Council accepted the "Gribble Report" from the sub-committee which has completed an in-depth review of NZIV Rules and the Valuers Act 1948 particularly in respect to Compulsory Continuing Professional Development, in widening the membership base and the future name and functions of NZIV. Two alternative scenarios were included in the report and Council accepted scenario 1 as first preference and scenario 2 as an alternative where necessary.

TIAVSC

Mr G J Horsley advised that his term as President ends in June 1992 and he does not wish to extend his term although he has been invited to do so.

Overseas Relations

Australian Institute of Valuers and Land Economists:

Mr Keith Norris, President of AIVLE addressed Council on the recent merger achieved by the valuers and the land economists institutes and outlined the follow-on effects with benefits of larger membership and wider fields of practice.

Pan Pacific Congress Calgary

President A P Laing advised that the disappointment of NZIV membership with the unbalanced programme for the Pan Pacific Congress to be held at Calgary Canada in respect of the heavy emphasis on Central Business District valuations has been conveyed to the Canadians. General Secretary J G Gibson intimated that the nature of the programme may have been responsible for the low numbers of NZIV members registering to attend the Congress.

President A P Laing displayed a number of original paintings completed by MrD Henshaw, Councillor for Waikato Branch, that are to be distributed as presents to Chief Delegates and Alternative Chief Delegates at the Pan Pacific Congress.

Financial Reports

All Councillors reported on current activities and the financial position of their respective branches.

President A P Laing commented on the NZIVaccountsandbudgetforthecurrentyear which indicate a deficit of approximately $26,500. Council agreed that Executive Committeeshouldreconsiderallbudgetitems and adjust where appropriate to reduce the deficit to a maximum of $10,000. Council agreed on capital expenditure for a computer streaming tape of $5000 and for an "in-stand display" update of $8000.

Membership

MrW Briscoe discussed the basis ofNZIV non-active membership and Council confirmed the criteria established for determining non-active status.

Notice of Motion

Council agreed to withdraw the Notice of Motion to the Annual General Meeting as most councillors were satisfied that the provisions for settlement of fee disputes amongst members at branch level are relevant and adequate.

Merger Proposal: NZIV/PMI/NZSFM

Vice President J P Larmer reported on the

various opinions that had been received from individual members of NZIV in regard to the merger proposal.

Council agreed that NZIV proceed to the next stage of negotiations for the merger so that if agreement in principle is reached between the three institutes, a special referendum can be held amongst all members of NZIV to determine support and that 75% in favour will be required before a commitment to the merger is made.

Office Bearers

General Secretary J G Gibson advised Council that under Section 13(4) of NZIV Rules the following two councillors are due to retire by rotation in February 1993: E T Fitzgerald, South Canterbury and T D Henshaw, Waikato. J P Larmer said he would voluntarily retire.

Council appointed the following nominees to external associations:

i) Council of Land Related Professions: Mr D Henshaw

ii) Land Professionals Mutual Society Inc: Mr A L McAlister

iii) Plant & Machinery Valuers' Institute: Mr E Gordon.

Valuers' Registration Board Visit

The Council meeting was visited by a full representation of the Valuers' Registration Board: Messrs H McDonald, Valuer General; P Tierney, D Armstrong, A Stewart and E Gamby and they discussed a number of issues raised by Council.

DrGeraldBrown,ProfessorinPmpertyat University of Auckland addressed Council and President A P Laing announced that he had been elected an Honorary Member of NZIV and presented him with the Certificate. Mr Keith Norris, AIVLE President also addressed the gathering.

The Editor.

Arbitration and the Valuer

Professional Practices Committee Report

With the increasing use of the arbitration process in settling, particularly, rental differences under lease documents, valuers have become more involved in the roles of arbitrators and umpires than in the past.

At the same time clients and clients solicitors have greater expectations of the system of arbitration which is under the spotlight as to its workability.

As a result deficiencies are being highlighted.

The NZ1V are concerned at the number of complaints it is receiving against valuers who are involved in Arbitration situations.

These complaints are generally against valuers who are acting as Umpires, Arbitrators and expert valuation witnesses.

It is my understanding that the appointment of an Umpire or an Arbitrator is akin to a judicial role covered by the Arbitration Act 1908 and its amendments and therefore the VRB and the NZIV have no jurisdiction whatsoever. Any remedies to an aggrieved party are confined to the law on arbitration and these in practice are few.

However it does not inhibit both clients and their legal representatives from complaining about valuers who they consider have not acted correctly.

On behalf of the valuation profession I therefore implore valuers to act in these capacities correctly and expeditiously.

Most of the complaints here are limited to two areas

1. Disagreement with the result

2. The time that it takes to conclude or even commence the arbitration process

The first area will always be contentious as many parties fail to appreciate the law as it applies to Awards by Umpires who are not acting as experts. Here the Award reflects the strength of the submissions put at the hearing and not the personal views of the Umpire and this is difficult for many to fully appreciate.

Delays in the arbitration process occur all to frequently.

Initially it may be difficult for the appointed arbitrators/valuers to agree upon an umpire and in finality an application to the High Court may be necessary. However it does seem to me that there are occasions where for one reason or another, parties appear to be deliberately difficult to a point where an advantage, sometimes monetary, is being sought by unnecessary delaying tactics. This type of delay is bringing valuers into disrepute and while the Institute can do little about it valuers should be aware that it is bringing discredit upon the profession. Unnecessary delays by Umpires in the publication of the Awards is also unacceptable both to clients and our profession. One of the advantages of arbitration is that it is normally the speed with which itis completed compared with court action. As valuers let us abide by that advantage in the eyes of our clients. Turning now to the Registered Valuers responsibility when giving expert valuation evidence at Arbitration hearings. A recent High Court ruling was to the effect that a valuer giving expert valuation evidence at an arbitration hearing is answerable in respect of that evidence to a complaint before the VRB and the VRB have recently conducted a hearing as a result of that decision. No matter what the role of the Registered Valuer at an arbitration the NZIV believes there is an acceptable standard for its members and reminds you of the established benefits of Arbitration and advises you to comply with them to the best of your ability. V12 (i) Speed of settlement (ii) Reduced costs when compared with court action (iii) Privacy (iv) A reasoned and balanced result. If NZIV members do not comply with these, they are doing themselves and their profession a disservice.

John N B Wall
Chairman Professional Practices Committee

Signing Off on Valuation Reports

Executive Committee Report

The Executive Committee of the Institute recently considered this question raised by an international professional group. It concerns signing off valuation reports and compliance with the Institute's Rules and code of Ethics.

The Executive of the NZIV draw to members' attention the following statement which the Executive has issued.

"The New Zealand Institute of Valuers' Executive Committee was recently asked to interpret the Institute's Rules and Code of Ethics concerning signing off reports.

Members' attention is drawn to Rule 25 (3) of the Rules of the New Zealand Institute of Valuer and to Clause 22 of the Code of Ethics.

Additionally members' attention is drawn to the following legal opinion originally published in the *New Zealand Valuers' Journal* December 1987 at page 397.

Executive has directed that the following legal opinion be brought to member's attention:

"We are of the opinion that the use of the designation "Registered Valuer(s)" in association with a company or firm name in circumstance when the company or firm is not comprised entirely of registered valuers is prohibited only where the circumstances of the use are such that it is intended to cause, or may reasonably cause, any *member of the public to believe that any particular person or persons are registered valuers when in fact they are not. Beyond that, each case will depend on its own facts and we cannot offer any more precise guidance which would be of general application."*

It is Executive's opinion that the appropriate form of disclosure or signing off of valuation reports requires strict compliance with the provisions of the NZIV Code of Ethics, i.e. the statement of the members' name or signature, status and designation.

It is optional as to whether the name of the firm is used or not, but clearly the name of the firm without the member's name is contrary to the Code of Ethics.

The question of how a firm describes themselves is covered by the legal opinion above. We would suggest that the following example complies with the provisions of Valuers' Act 1948 and NZIV Code of Ethics.

"Smith Brown & Co
J P Maple ANZIV
Registered Valuer"

Valuing the Timeshare Property:

American Institute of Real Estate Appraisers

This publication was written for valuers, some ten years ago. It covers the basic information required to value a timeshare development.

The book is laid out in an easy to read manner, defines the terms used, which are peculiar to timeshares, including the types of timeshares, and methods of ownership.

Each chapter covers a particular valuation issue, is informative, and concise. Chapter headings are as follows:

Chapter 1 The concept of Timesharing
Chapter 2 Types of Ownership Interests
Chapter 3 Characteristics of Timeshare Properties and Purchasers
Chapter 4 Marketing Techniques
Chapter 5 Timeshare Financing
Chapter 6 Timeshare Exchange
Chapter 7 Timeshare Valuation
Chapter 8 Case Study: Valuation of a Timeshare Conversion

The author gives reasons justifying the discounting technique as the appropriate method of valuing a timeshare property and then develops a full case study including the analysis of evidence of comparable properties.

The Valuation methodology is well set out, but suffers from an over simplification of the discounting process. The author indicates that a yearly discount of cash flows is quite adequate, but with the use of modern computers there is no reason why a more precise discounting technique could not be followed on a monthly rather than a yearly basis.

The author stresses the uniqueness of a timeshare development and the financial approach that must be adopted to achieve an acceptable valuation. The book emphasises the marketing aspects of timeshares and discusses various method of sale.

At the time of writing, the number of timeshare properties in American was recorded together the types of facilities provided in each. These are useful benchmarks when comparing a New Zealand situation. The book also covers networking which enables timeshare exchange.

By dealing with a conversion of a hotel to a timeshare property, the text deals with the multiple aspects of income being derived not only from the timeshare sales, but also from the hotel during the transitional phase.

Although not a normal situation for New Zealand, the case study includes the implications of mortgage finance provided with the property and the manner in which this would be handled. Individual sales of a timeshare should include a non-disturbance clause to protect existing timeshare purchasers.

Overall, this is a useful publication for valuers, covering in just under 100 pages the basic information required to complete a timeshare valuation assessment.

Further information is available through the General Secretary NZIV or direct from the American Institute of Real Estate Appraisers, 430 N Michigan Avenue, Chicago, Illinois USA.

Reviewed by Evan Gamby

Address by Hon. W Rob Storey

NZIV Seminar : Gisborne 13/14 April 1992

t is very timely for me to be addressing 1 members of the Valuers Institute as recent events have seen new emphasis on the work of valuers. The Government has recently released the first ever Government financial statement based on accrual accounting practices. This event has special significance for valuers as the key difference in this form of reporting is that for the first time we have valued not only the financial assets and liabilities, but also of key physical assets in the national estate.

These national assets include land, buildings, and specialist military equipment as well as other government plant and equipment. It even covers assets with more of an emotional attachment such as forests and our national parks.

The total value of these as tabled in the accounts is $22.3 billion.

The fact that the accounts show that if New Zealand was a company we would be insolvent is not in itself a cause for concern. Countries, generally speaking, don't go into liquidation in the way that companies do we just suffer the effects in terms of increases in the cost of our borrowing and in the level of taxes we're forced to pay.

What is interesting in this latest set of half yearly accounts is that we now have a yard stick by which we can easily and impartially measure the stewardship of our national assets by every future government. So in that way the figures are a less important measure of where we are now, rather than where we will be in the future.

Because this process of national accrual accounting is new, it has inevitably caused an element of suspicion.

"Why value something, Mr Storey, unless you're going to sell it" was the question talkback host Sharon Crosbie put to me in a recent radio interview.

Atthe same time aMrW D G Davidson wrote at length to the editor of the Southland Times explaining his suspicions that the only reason the Minister of Transport would value the national roading network would be to come up with some artificial means by which to grab more money off the long suffering motorist.

It is obvious from those examples that neither talkback hosts nor the general public of New Zealand understands the importance of knowing the true value of our assets. And there lies an extremely important challenge to your Institute. As members you have a crucial role to explain to your contacts the importance of knowing the true value of a nation's

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Mahoneys Urban Land Economics: Third Edition

by W K S Christiansen

Reviewed by L M Freeman and CS Croft

The third edition of Mahoneys Urban Land Economics is a further edition to both the list of textbooks published by the NZIV and the contribution of books to the property profession by Ken Christiansen.

The usefulness and necessity of such a publication is in part reflected by the time in which this book has been utilised by students and property people alike. The first edition by J D Mahoney was published in 1965, followed in 1974 by the second editing with this third edition produced in 1991.

The requirement for a further update of this text became apparent in 1988 asthe second edition went out of print and the lack of any alternative `native' text for students undertaking introductory courses in property and urban land economics.

This book provides an introductory text covering a broad spectrum of property issues - including ownership, development, marketing and valuation.

The organisation and layout of the text was based primarily on the previous editions of this book, but with one and a half decades since the last edition, Ken has incorporated very successfully not only the original purpose and objectives of the textbut has also updated and revised Mahoney's material as well as adding completely new material.

The conclusion of this work provides a very comprehensive and broad reaching book covering a vast plethora of subject areas.

The book comprises 35 chapters, six appendices and a total of 417 pages.

Some of the broad outline areas covered include the following:

- The nature and characteristics of urban property.
- Ownership of real estate.
- Urbanisation, evolution and growth of cities.
- Transport, industry, population and other key statistics their impact and effect on land and values.
- The urban land market, incomes and value.
- Equity, investment and urban land credit.
- New Zealand housing.
- Local rating, taxation and town planning.
- Development and re-development.
- Urban valuation-methodologies and discussion.

The topic of land economics is extremely wide and this book provides a good broad base dealing with a large number of issue and considerations. It is structured and laid out well so can be easily followed an understood. It also contains a wide range of diagrams, statistics, and future references to help illustrate key points and concepts.

In summary a good standard introductory text book for students in property as well as a useful addition to the practitioners library as a general reading and reference text. A

assets assets and liabilities in order to be able to effectively and efficiently manage the resources that we have.

In general, it appears valuers haven't taken a public role in this debate and that may be an issue you will want to think about. I wonder if the reluctance to take a public role is because of concern amongst valuers about their ability to impute a value on major existing assets using current valuation methodology.

The on-going public wrangle with Electricorp over the correct methodology to be used to retrospectively value its large one-off capital assets such as power generating stations has highlighted the fact that when it comes to valuations being used as a mechanism for tax collection, people suddenly become very interested.

Many of the valuations you people are involved with *are* in the area of setting a baseline from which local government can collect taxes. The Electricorp case, if it does nothing else, indicates the major inequalities between the various local government sectors who use either land or capital values as a basis for rates collection.

Recent High Court rulings on some district council rating practices indicate this system will be challenged much more in the future than it has been in the past.

Another issue you may well care to debate during this gathering is the appropriateness of continuing to use your valuations as the basis for collecting rates through two different systems.

It is my personal view that it may well now be time we looked at moving to a single uniform rating system, and for the record my preference would be a capital based rating or some derivative of that.

Staying with the accounting theme, I would like to turn now to a concept I suspect you as valuers are going to have to become more familiar with in the future natural resource accounting.

Environmentalists talk about sustainable development, and key to that is the idea that development should take place without destroying the ecological or resource base on which it depends. To do so is to trade-off long term prosperity for short term gain. Obviously this sort of thinking would necessitate a new approach to the way economic progress is recorded and would have implications for project appraisal and the pricing of inputs and outputs of goods and services.

At present, people engaged in economic activity take little account of the cost it imposes on its surroundings. Factories can pollute rivers as if the cleansing waters flow past them for free, power stations burn coal without paying for the effects of carbon dioxide and sulphur dioxide belching into the atmosphere.

These bills are left for others to pay - neighbours, citizens of other regions, other nations and future generations.

National accounts use depreciation in dealing with man-made assets such as factories and machinery. As their value declines, it is written off against the value of production.

If a country's man-made assets depreciate faster than they are being replaced, it is clearly living beyond its means, but no such concept applies to what you could call our national capital.

I have talked about valuing such things as our national parks, but what about resources such as the Maui Gas field. When it was discovered there was no big increase in assets registered on our national accounts. And since that time our exploitation of that gas has been recorded as an income gain in terms of energy units sold rather than a drawing down of capital.

The danger of treating such resources as valueless is greater for countries like New Zealand, which are so dependent on natural assets for income, jobs and exports.

This somewhat `green' view of the role of valuation is a relatively new concept, but one which as practising valuers I recommend you make yourselves familiar with. There are obvious limitations with such techniques just as limitations are encountered with cost-benefit methodology when it tries to turn subjective values into objective figures. For instance, as valuers could you impute a value on a precious natural resource? What value the ozone layer? The elephant? The Amazon? Or Antarctica?

The Ministry for the Environment is already working on the issue of natural resource accounting, I believe it is an area you are likely to hear a lot more of in the future.

Finally, I would like to refer to an interesting situation I have been dealing with lately that encompasses not only the important area of property valuation, but also my responsibilities as Minister of Transport and Minister for the Environment. I am referring to the problems experienced by a number of home owners in Wellington's eastern suburbs where the Wellington Airport Company has announced a major redevelopment plan which would require the acquisition of about 180 houses, the Miramar golf course and a nearby school.

The uncertainty created by the airport master plan has understandably resulted in a level of instability in the local area with home owners and local real estate agents reporting problems selling properties which had been placed under something of a cloud.

After a discussion with the airport company, I am pleased with their decision to buy the properties of people who can prove they are suffering hardship because of an inability to sell. I think that offer is fair and reasonable, and will go a long way to alleviating the fears of those who may be feeling trapped, worried they would not be able to sell their home if for some currently unforeseen reason they suddenly needed to move.

The Wellington Airport Company has stated it will buy such properties at a fair market price, and it is this point that will interest you as valuers. I have recommended the Airport Company seek the guidance of Valuation New Zealand in coming up with a formula to impute a fair price on the properties in the area and am confident that this will be done.

I am sure that once local people see a couple of properties bought out by the airport company they will feel more confident and secure in their position, and there is also the potential for a localised micro-market to be created.

I have covered a number of topics, which on face value may not have seemed immediately relevant to the job of valuation. But in my view that simply goes to prove the wide implications valuers and valuations have in our community and our economy. A

Valuing Unpriced Resources

by J Weber

Recently, the Government released its financial statements, which report the ins and outs of government according to standard business conventions. These statements showed that the government lost about $3.6 billion from July through December of 1991.On the balance sheet, the statements report assets worth from $42 billion to $54 billion and liabilities of at least $56 billion. Both of these ifgures depend on whether such things as regional health boards, Universities, roads, and ACC accounts are included.

In general, I believe this type of accounting exercise can he quite useful - particularly if it leads to greater accountability of actions by those who manage the public's business on behalf of New Zealanders. However, as with any single set of figures, these statements should be treated with a bit of caution.

For example, the statements show a value of $315 million for the 12 national parks, 3 maritime parks, 20 conservation parks, as well as stewardship land, freshwater fisheries, tracks, huts, bridges, boat ramps, etc. This estate covers about one fourth of total land area in New Zealand.

This value was estimated by Valuation New Zealand, using procedures familiar to most valuers. As I understand it, this valuation was done by looking at prices paid for property with similar land forms and vegetation and then adjusting these prices to reflect what a purchaser might actually pay for the parks as they stand.

This value quickly raised questions from environmentalists and Maorigroups, particularly in the South Island. They argue that the value placed on the parks estate was far too low.

This raises the question of how the park estate should be valued. To address this issue, I will provide an economist's perspective on value and point out where this concept of value fits into the current economic policy framework in New Zealand. I will then illustrate this concept of value by referring to a recent study on the value of soil conservation.

Economists value goods and services in terms of money. Money is the measuring rod to indicate gains and loses in utility or welfare. Money is used basically because all of us express our preferences every day in terms of dollars. When buying goods, we indicate our willingness to pay by exchanging money for the goods. Thus, willingness to pay reflects our preferences.

A positive preference for something will show up in the form of a willingness to pay for it. Each individual will have a different wil lingness to pay, but individual willingness to pay can be aggregated into a total willingness to pay for society.

W hile we can safely assume thatpeople will not be willing to pay for something they don't want, we cannot be sure that willingness to pay as measured by market prices accurately reflects the total value of something to either individuals or society. There may be some individuals who are willing to pay more than the market price; the value or benefit they receive from the good is thus larger than that indicated by the market price.

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When an economist sets out to value an unpriced good or service, such as a natural environment, three types of value should be considered.

The first value is use value. This is an economic value that can be measured through preferences. Anglers, hunters, trampers, bird watchers all use the natural environment and all derive a benefit for a value related to this use.

The second type of value is option value. These are values expressed through an option to use the natural environment. This is a potential benefit rather than an actual use value an expression of preference for the preservation of an environment against some probability that the individual will make use of it at a later date.

Option value arises from uncertainty. Given that people do not like risk and uncertainty, individuals are willing to pay more than theiruse value justto ensure 0

that they can make use of the natural environment at later time.

The third type of value is existence value. This is the value that resides "in" something and is captured by preferences for non-use values. Existence value is concern for the rights or welfare of non human beings, the values of which are unrelated to human use. An example of this is the value people place on saving the remaining blue whales; few people will value these whales because they use them or want to preserve an option to use them.

Total economic value can beexpressed as the sum of use value plus option value plus existence value.

The context in which this total economic value is measured is important. Four considerations come to mind. First, is there irreversibility? If an asset or natural environment is not preserved, will it be eliminated with little or no chance of regeneration? Second, how much uncertainty surrounds the asset or environment? Because the future is not known, there could be potential costs if the asset or natural environment is eliminated and a future choice foregone.

How unique is the asset or natural environment? In valuing endangered species or unique scenic views, for example, preferences will likely fall in favour of preservation rather than development. What about the property rights? Values are measured against a specific set of institutional rules and regulations. If these change, the valuation is likely to change.

In New Zealand, valuation has played an important role in recent economic policy. When the government decided to sell Telecom, it needed a value for the enterprise. Because telecommunications is pretty much a market enterprise, there was little need to worry about option or existence values. However, should the government decide to sell Electricorp, the valuation of this enterprise may not be so straightforward. To generate electricity requires natural resources such as flowing rivers and many people express preferences for the option and existence values in such rivers. Thus, the concept of total value may be more useful in this instance.

We are nearing the end of the first year of the Resource Management Act. This Act directs the managers of our natural resources and environment to consider the benefits and costs of any policies they may choose to adopt. Estimation of benefits is synonymous with measuring the total economic value of the policies. In many cases, the use benefits may be low compared to option and existence values, which means valuation techniques need to account for these types of values.

The Act directs that many of our resource and environmental decisions be made at the regional level. How should land uses be determined in a region? How much should a region invest into clean river water, i.e. what is the value of clean river water? What is the value of native forest? What is the value of soil conservation to a region?

Total economic value can be expressed as the sum of use value plus option value plus existence value.

Economists and other social scientists have placed a fair amount of effort into developing techniques for estimating the total value of unpriced resources or amenities. These techniques have been used extensively overseas and sporadically in New Zealand over the past ten years. In New Zealand, total economic values have been estimated for maintaining stream lfows in rivers, preserving native forest, managing water quality, and using parks for recreation, just to name a few.

To give you an example of such work, I'll report briefly on work nearly complete for the Bay of Plenty regional council. One of the central questions of interest to the council was the value, if any, of soil conservation in the region. Since central government pulled back from funding soil conservation programmes when the agricultural sector was restructured, regional councils must now assume responsibility for soil conservation programmes.

In setting up the study, we wanted to identify the total economic value of soil for the Bay of Plenty region. We thought that farmers would have some use value for soil I and we sought to estimate that value by focusing on farms in a typical catchment (the Ngongotaha). We also wondered if the population of the Bay of Plenty region would hold any option or existence values for soil. Soil loss is pretty much irreversible over any reasonable length of time. A high degree of uncertainty surrounds the future supply of soil. And soil is pretty unique, at least when viewed from the standpoint of prospective substitutes. As a result, we designed a method to estimate the total value to regional residents of preventing soil erosion.

Further, we wanted to explore whether regional residents would link their value for preventing soil loss to water quality in the region, especially the freshwater Rotorua lakes area. We had scientific information that soil erosion was a significant contributor to the degradation of water quality in Rotorua lake, and we wanted to see if people perceived that value as important. To estimate the off-farm value of soil conservation, we used the valuation method of contingent valuation. Basically, we ask people directly whattheywouldbe willing to pay for the good preserving soil - as if there was a market for soil preservation. The aim of the method is to elicit values that would lie close to those that would be revealed if there was a market for soil conservation. Such a method can be subject to a number of biases and we constructed our survey to check for these biases. Our investigation of the on-farm use values-showed these to be nearly non-existent. For a majority of the properties we looked at, soil conservation does not have an effect on the management of the property and does not cause major financial effects on the farm. We found that farmer attitudes towards soil conservation were positive - many indicated that they would undertake soil conservation even without subsidies (but they admitted that their rate of uptake might be slower than with subsidies). We also found that farmers thought the past subsidies for soil conservation work were fair, but that these should be increased if the programme was to be continued in the future.

Our findings reflect that markets do not capture soil loss in property values very well. They also reflect that the net benefit for use (benefits less costs) is not very high.

Off-farm, our results show that many regional residents value preserving soil justbecause it exists and because doing so will improve the water quality of regional lakes. About half of our survey sample indicated they were willing to pay to conserve soil. This amount comes out to about $25 to $30 per household per year. When aggregated to all households in the region, this suggests that regional residents have a total value for soil conservation as high as $1.5 million to $2 million per year.

Considering we found that use values are quite low, this total figure primarily accounts for option and existence value.

What does this mean for the regional council? Many of the region's residents value conserved soil. To the extent that a large number of these do not use the resource, intervention by the council to conserve soil seems justified. This intervention can be justified because current property rights (markets and institutions) do not allow those who value the resource

Editorial Board Sponsored Lecture Tour
Auckland, Wellington, Christchurch: February 1992

The Resource Management Act 1991: an introduction

by B Bornholdt

'5. Purpose - (1) The purpose of this Act Is *to promote the sustainable management of natural and physical resources,*

(2) In this Act, 'sustainable management" means *managing the use, deve 1 opment, and protection ofnatural and physica 1 resources In a way, or atarate, which enables peop 1 e and communities to provide fortheirsocla 1, economic, and cultural wellbeing and for their health and safety while*

(a) Sustaining the potential of natural and physical resources (excluding minera 7s) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems, *and*

(c) Avoiding, remedying, ormifigating any adverse effects ofactivitieson the environment.'

(Section 5 The Resource Management Act 1991)

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ewasappointedasthefirstCharm nw. Jjc Commerce Commission in 197. and *was Chairman of the Commission of In-` ??)'? o the fre ghtforwarding industry ;19811. He has been involved in environmental and energy resource law for imber of years. and has also had'a??ei y keen interest in the eo,nnwrciali erty fields of law with partic Morn k property development uardde welt, he has been appoin t4 Umpire in a nwnber o• .*

Not only is this Act an attempt to remind us that the peoples of this earth and in particular thepeopleof NewZealandnow have a common destiny, that of their planet and in particular their country, through the magnitude and seriousness of ecological problems that have finally resulted in the globalisation of human consciousness, but also, it is the end result of what the Labour Government believed to be a new era in environmental management which was met through their tackling the reform of all the laws governing our country in the area of land, water air and mineral resources andputting them all into the one package.

Put simply, sustainable management is using our resources in a way that will maintain and improve the quality of our present environment and not compromise the needs of our children and grandchildren.

We were told that the Bill outlined clear roles for central, regional and territorial government, and for individuals and that the way it did that was consistent with the `plain English' approach to drafting, which made it easier for people to understand what the law was about.

Anyone would be able to take part in resource-use decision making.

The crucial difference in the new law from the old was the focus on the end result rather than on activities. Regional policy statements and district management plans would supposedly set out clearly how a community wanted its environment to be managed. Councils would be required to report annually on their progress against the stated objectives.

The then Minister for the Environment, the Hon Geoffrey Palmer, summed it all up as follows:

"The law is only the beginning, the Bill sets up a sound framework. How effective it is in achieving sustainable management practices will be over to local communities, professionals and politicians

Over eighteen months later and under a different Government led by the Hon Simon Upton, and after a great number of debates, submissions from all and sundry, together with a Review Team and its recommendations to the new Government, a new star was born, through the Resource Management Act 1991 which was finally passed by Parliament on 22 July 1991 0

Unpriced Resources ... continued from previous page

to capture their value.

Is contingent valuation a legitimate exercise? The values obtained through such a method are accepted by many governments. For example, the US courts have accepted contingent valuation to place a value on the loss to the Alaskan environment due to the Valdez oil spill. Evaluation procedures in many agencies now accept the method and the values it produces. In Australia, the method was used recently to valuethe scenic amenities associated with not mining Kakadu National Park in the Northern Territories. In part, the valuation led to the Hawke government's decision not to allow mining.

Yet, estimating economic values is a tricky business. Economist and others have worked hard to refine the techniques and great progress has been made in this regard. The method is reliable in the sense that the estimates fit the patterns of observed economic behaviour. But in many cases, point estimates of value are just not possible. Although the method employs quite rigorous mathematical method and fits neo-classical economic theory quite well, this branch of economics is more art than science.

What does all this mean for valuers? I believe the broader concepts of value will continue to play an important role in New Zealand policy decisions. I challenge you to become familiar with these concepts, to "get into bed" with your friendly resource economist. I believe resource economists and valuers should work closely together, and not as competitors when it comes to valuing unpriced resources.

Finally, I remind you that Oscar Wilde once said that economists are concerned with the price of everything and the value of nothing. As far as resource valuation is concerned, I hope that valuers and resource economists will work to prove that Wilde was mistaken. A

coming into force on 1 October 1991.

On the third reading of the Bill, the Hon Simon Upton in his lauding of the Bill, informed us that in addition to the more substantive changes, a raft of technical changes had been made to improve people's rights, to streamline procedures and to increase the opportunities to avoid expensive litigation.

He informed us that it should be seen as a legitimising intervention only to achieve its purpose. To limit the reasons for and terms of intervention it was intended not only to achieve sustainability of natural resources, but also to facilitate matters for those who seek consents.

We were told that through the Bill we had an integrated statute with a clear purpose and focus and that it was the ability of Sir Geoffrey Palmer to tackle that question and to bring together that panoply of various legislative interventions and mechanisms that he believed would go down as Sir Geoffrey's single biggest contribution to that Parliament.

I note in passing that Sir Geoffrey Palmer is no longer in Parliament neither is the Hon Simon Upton, Minister for the Environment.

Because the Bill (now the Act) was so clear in its purpose and so written in plain English for all to understand, one would have to question why the Hon Simon Upton in his speech at the third reading stage went to such great lengths to enlighten us as to what he believed the meaning of the purpose of the Bill (sustainable management) as contained in Clause 4 (now Clause 5 of the Act) to be. To the extent that judicial notice should be taken of Hansard (his hope) he then took the trouble to make what he believed to be a carefully considered assessment to Parliament in that area. One can only wonder at the naivety of the Minister.

He did not inform us as to how much time energy and costs (to all) would be taken up in establishing that bio-physical bottom line in all areas in which it might be applicable.

In my view the Act does have an unclear (not a clear) and somewhat rigorous procedure for the settling of environmental standards.

Much has been written, not only about the subject, but also on many matters associated with the Act since its passing and many seminars have been held by those marketeers looking with an eye to the future through the marshalling of their clients and prospective clients to their seminars. No doubt the seminars will continue for months possibly years, because that is the time span that I believe we will require to settle down this massive change in legislation affecting all our lives.

Your Institute through the sponsorship of the Editorial Board of the *NZ Valuers' Journal* is conducting this series of seminars through the country in a serious attempt to bring to valuers' notice some of the problems associated with the Resource Management Act where valuers could be involved.

Turning back to my consideration of the Act.

I have no great quarrel with the philosophy behind this Act and its change from the former constitutional base of one of planning, to one of purpose, but I do quarrel with its difficulties of language, its complexities, confusion, lack of clarity and general lack of practical understanding and experience as to how its measures should be applied across the board in practice.

You will be told by someone other than a lawyer that it is a tough Act that needs mental stamina to master.

Squire Speedy has and will illustrate all those matters I have just raised through his "Alphabetical Cross Reference Guide" and through his joint papers with Peter Tierney shortly to be presented

You will be told by someone other than a lawyer that it is a tough Act that needs mental stamina to master.

You will shortly be taken on the whimsical journey through the coat of many colours in a modern check pattern by Squire Speedy and Peter Tierney and I do not intend to cut across the threads of that coat but to look a little further at the Resource Management Act 1991 from a lawyer's perspective but with the valuation profession in broad perspective.

It is my view that the Act is lacking in clarity of expression having been put together under a great deal of urgency at its finish to satisfy the whims of the politicians.

Now, the public and those intimately involved with the Act have to bear the costs of rectification through lack of thought and practical experience of those involved with the Act's formulation and drafting.

Since the Act's passing there have been at least two amendments made to the Act to rectify various shortcomings. The resource management (transitional provisions) Regulations 1991 were put through as an Order in Council on 2 September 1991 which clarified certain matters relating to notification of applications and hearings in terms of Sections 389 & 390 of the Act and the transfer of a current mining privilege to the owner and occupier of the site in respect of which it was granted without making an application under Section 136 of the Act as provided for in Section 413 (9) of the Act.

A Second amendment was made through the Local Government Act 1974 on 28 November 1991 by way of the Local Government AmendmentAct(No.3)1991 relating to the problem that arose with road access related to subdivision and the validation of those acts not coveredby the Resource Management Act.

I am also aware that a number of other amendments are contemplated by the Ministry for the Environment both byway of regulation and also by way of Act amendment which will come to pass during the course of this year, one or two of which I shall refer to later in this paper.

All these changes that have occurred or are likely to occur are matters which valuers will have to be on the alert for just the same as any other professional having to deal with this Act.

Valuers will also in my opinion have to keep abreast of matters more general when coming to grips with this Act e.g:

i) The lateral and dimensional rationales of the holistic thinker,
ii) The value of Geographic information systems in multiple value benefit resource planning
iii) The use of economic instruments in the course of resource planning.

As valuers you should also be interested inwhatCentral Govemmentthrough national policy statements might be proposing, or what the Regional and District Councils through their respective Plans might be doing in your area. OR in acting for an applicant for an approval to do something that might not be allowed in a transitional Regional or District Plan or their respective Plans when they are out of their transitional stages. Q&as an objector either on your own or on a client's behalf (through a submission) filed with a Regional or District Council to an application made to either of those bodies.

You could become involved in a variety of ways, involving your client's property, commercial activity, industrial activity, handling of trade wastes, hazardous and toxic substances, air emissions, subdivisions, involvementwithcoastalland,mining and energy related activities, and environ-

mental impact assessments to name a few.

Finally in this area it is my view that the Act will:

i) Create delays in the decision making process across the board, despite the fact there are time limits imposed on hearings of applications and other matters.
ii) It will increase litigation.
iii) It will be costly for all involved.
iv) It will greatly increase the work of our Planning Tribunals (who are already one year behind in the hearing of appeals) and also that of the High Court and possibly the Court of Appeal.
v) It will create a great deal of uncertainty over a long period

All the above in my view will lead to a discouragement of development and redevelopment across the board which I believe in our present precarious economic situation we can ill afford to allow to happen.

The Valuer's Responsibilities

It is my view that the valuer has a responsibility not only to the client but to him/her self to not only be aware of some of the problems associated with the Act in the valuation field but to be actively pursuing an interest in the Act.

A number of articles have been written over the years relating to the valuer's responsibility and your liability for negligence and I would recommend that you all read again the two articles in *The New Zealand Valuers' Journal* December 1990, namely, "Professional Negligence and Indemnity" by P J Mahoney at page 14 and "Duty of care: when, why, how?" by R L Jefferies at p.120.

Both have application when viewing the RM Act through a Valuer's perspective.

Further, in this area, I can do no better than remind you all of the provisions of some of the objects of your Institute Rules:

(a) To ensure that members of the Institute render the highest standard of service to the public
(d) To preserve and maintain the integrity and status of valuers
(e) To provide opportunities for the acquisition and diffusion of knowledge in relation to the valuing of land and kindred subjects

AND your Code of Ethics:

SERVICE

1. The first duty of every member is to render service to his clients or his employer with absolute fidelity, and to practice his profession with devotion to high ideals of integrity, honour and courtesy, loyalty to his country and the Institute, and in a spirit of fairness and goodwill to hisfellow member, employees and subordinates.

ACCURACY AND GOOD FAITH

16. Reliance placed by clients employers shareholders investors, creditors, and the public in general on the accuracy and good faith of statements prepared or certificates given by members constitute one of the most valuable assets of the profession and the utmost care and good faith are necessary to ensure the maintenance of the highest standards in this respect.

17. When asked for a valuation of real property, or an opinion on a real estate problem a valuer should never given an unconsidered answer. His counsel constitutes professional advice which he should render only after having ascertained and weighed the facts.

17A In submitting any report on real property, a member should observe the highest standards of professional competency expected of a valuer having regard to the nature of the assignment being undertaken.

As Squire Speedy has said in his paper:

"There is much work to be done in getting up-to-date. But that is not the end of it. It is only a start. It is also necessary to keep up to date with rulings of the tribunal and the Courts, and changes to district schemes that will continue to be the cutting face of the new regime. Not only that, there will also be the need to watch for changes in legislation, regulations and national policy statements from time to time."

"Valuers will be at the forefront having the task of placing precise figures on many of these imprecise propertyproblems and being asked for wise counsel on such issues."

Matters of Interest to Valuers

Valuation implications are covered by Squire Speedy and Peter Tierney in their papers to follow and as stated by Squire Speedy

"The valuation implications for considering the effects of the RMA on property values are set out in the form of value trends rather than absolutes. These should serve as a further guide when considering, assessing, evaluating or quantifying the significant effects of the RMA on values of particular properties in particular circumstances. It must be emphasised that different resource management effects will impinge on the rights of separate owners and the value of their properties in different ways."

While under the heading "valuation effects of the RMA" Squire Speedy states:

Although no new valuation principles are involved it will often be necessary to reconsider the application of existing old ones as well as principles of land economics when considering the valuation effects of resource management matters."

Then follow illustrations of specific valuation issues and I do not propose to refer to any of those matters raised, in detail, because they will be fully discussed later.

Touching on one or two other matters.

Cross Leases

I believe that the problem that arose with cross leases as to whether a driveway to separately owned residential units on rear, cross-leased sections can be shared has been solved through the Local Government Act Amendment that I have earlier referred to.

Esplanade Reserves

I am aware that many difficulties have arisen in this area under the Resource Management Act. Some will be discussed by Squire Speedy and Peter Tierney.

There are two problems which I wish to raise with you that have arisen in the transitional section 405 of the Act.

The first relates to the fact that Section 405

(3)(a) being the transitional provision for reductions in width of the Esplanade Reserve does not appear to be consistent with the long term provisions of Section 77 which relates to rules about esplanade reserves on subdivision and road stopping.

As Section 405(3)(a) is worded a reduction cannot be approved if the value of the reserve will be diminished through the reduction in width. It does not matter how small the diminished value might be.

I believe that the Ministry for the Environment is presently looking at that matter.

The second matter relates to the waiver of esplanade reserve requirements. Section 405(3)(b) presently allows cer- 0

tain waivers if the Local Authority and the Minister of Conservation are satisfied that:

"By reason ofsecurity,public safety, minor boundary adjustment, or other exceptional circumstances it would not be appropriate..."

This has proved to be too restrictive because our interpretation has been that the word "other" is qualifying the preceding words of "security" etc so that only exceptional minor boundary adjustments can be approved and also there are cases when other circumstances may not be exceptional but where a waiver would be appropriate.

That is a further matter under review by Ministry for the Environment.

It is also my view that other matters in this area of Esplanade Reserves are also likely to be reviewed during the course of this

Those are all matters in which valuers have an interest when dealing with subdivisions and other related matters in this area.

Lapsing of Consents

The Town & Country Planning Act through Section 70 provided for the lapsing of Town Planning Consents at the expiry of two years after the date on which it was given or two years after the date the consent was given or upheld on appeal and it could only be extended on the approval of the Council subject to an application made within three months after the expiry of the period and subject to substantial progress having been made in the implementation of that consent.

Valuers must have had to deal with that type of situation during the course of their valuations over the years.

That Section was completely replaced by Section 124 of the Resource Management Act which provides that where a consent holder applies for the renewal of thatconsent six months before expiry then they may continue that activity until the renewal has been decided upon. Where they apply three months before expiry they may continue the activity at the discretion of the consent authority. If they apply less than three months before expiry then continuation of the activity beyond the consent period is unlawful.

The Resource Management Act through Section 389 deems that the date the applications were transferred to the new consent authorities or 1 October 1991 to be the application date regardless of how long they have actually been awaiting decision. The effect is that the protection given by Section 124 will not apply

> ...I wonder how many valuers ever check planning consents

even when the time. That is a matter that will probably be the subject of amendment.

I wonder how many valuers ever check planning consents and still further how many of you are aware of Section 124 and its possible problems through Section 389 leading to the possible loss of a planning consent (resource consent)?

This matter is of further importance as the new enforcement provisions allow any person to seek an enforcement order where an activity is taking place unlawfully. The present circumstances mean that in the transitional period an enforcement order may be taken against a permit holder when the permission expires even where an application for renewal of the permission has been made but not yet decided.

This was not the case under the old legislation.

Problems in the Forestry Industry

The forestry industry has raised an interesting question relating to what was previously known as non-notified consents relating to the control of land clearance and excavation where there was likely to be erosion or siltation of rivers, lakes or the sea which were granted by Councils under the Soil Conservation and Rivers Control Act 1941 and its 1959 Amendment. They were usually granted by Councils upon inspection of the logging programme and agreement about good practice without on occasion any time limits.

However, under the transitional provisions of the Resource Management Act those controls are now regional rules which have effect for only two years during which a resource consent would have to be sought that would be a normal resource consent publiclynotifiedand therefore there could be a long time period relating to objections and appeals which could have major impacts on forestry valuations and investment in the forestry sector.

This is a matter still under discussion and changes may be made to the Act to allow for the continuation of the earlier procedure if only for a limited period, to allow existing cutting programmes and extraction plans to continue without undue delay.

Again, I would pose the question as to how many valuers are aware of this current problem and if so, how has it affected your valuations?

The Enforcement Provisions of the Resource Management Act

Much has been written in the area of enforcement as provided for in Part XII of the Act and I do not propose to go over the general ground again. Provision is made for Enforcement Orders, requiring that certain things be done or stopped, cleaning up orders and the change or cancellation of resource consents. Abatement notices are a lesser degree type notice. Such notices can require the owner or occupier of the land to avoid, remedy, or mitigate any actual or likely adverse effect on the environment even though the problem was not caused by the owner or occupier. In the noise area a person can be required to adopt the best practicable option to avoid unreasonable noise.

> ...valuers under the Resource Management Act have a major role to play in this area of enforcement and abatement.

The question may well be asked, what has all that to do with the valuer, while the answer is simple plenty.

This comes back to the valuer's responsibility when making a valuation for any purpose, in particular the Industrial area, while not forgetting the other areas of rural and urban land valuations.

It also comes back into the area of what investigations the valuer should carry out, speaking here in general terms. I am aware that valuers delight in absolving themselves from any and all responsibilities in their valuation reports. That aside, it is my view that valuers under the Resource Management Act have a major role to play in this area of enforcement and abatement.

The valuer, in my view, through such provisions, is put on notice that all might not be right in respect of the property or matter that is under investigation and/or report by the valuer.

The valuer has, in my view, a responsibility to ensure that all relevant consents have been obtained. If such is the case, they should then be checked to ascertain whether they are being complied with and that there are no adverse effects being created by or through the operations being carried out on the land under investigation, report, and valuation. Any adverse effects would by necessity have an impact on the valuation. A good example would be if the land was contaminated. How would that be treated by the valuer in his

report and valuation?

I was recently involved in a Town Planning Appeal hearing where the Planning Tribunal in its decision stated "We sound a warning concerning the issue of building permits on parts contaminated by arsenic caused by timber treatment."

It is my strong view that the valuer is placed on notice by virtue of many of the matters contained within the Resource Management Act and if the valuer ignores them, then the valuer does so at his/her peril.

The Meaning of "effect"

I have referred to "adverse effects" under the enforcement provisions of the Act but that is only part of it.

The meaning of "effect" as provided for in Section 3 of the Act is as follows

"In thisAct, unless the context otherwise requires, the term "effect" in relation to the use, development or protection of natural and physical resources, orin relation to the environment includes (a) Any positive or adverse effect; and (b) Any temporary or permanent effect; and (d) Any cumulative effect which arises over time or in continuation with other effect regardless of the scale, intensity, duration orfrequency of the effect; and also includes (e) Any *potential effect of high probability and (f) Any potential effect of low probability which has a high potential impact."*

Again it is my view that the meaning of "effect" is something that the valuer must give cognisance to when valuing, with particular reference to resource consents and the enforcement provisions of the Act. This could, for example, be of particular application when valuing for a mortgagee because if the owner or occupier of land is not carrying on its activity in accordance with its Resource Consent, or the Regional or District Plans it could be the subject of enforcement or abatement procedures which might seriously affect its operations on the land leading to shut down, which could affect the land and buildings valuation and put the mortgagee at risk.

The meaning of "effect" is related to risk and the valuer may have to evaluate risk in any valuation.

The Green Economy

Much has been written about the use of economic instruments under the Resource Management Act. As recently as 24 January 1992 as reported in the *Dominion* newspaper under a heading "Market approach to the environment" our Conservation Minister Denis Marshall argued that:

"The green economy can work for commercial and environmental interests i f central planners and market economists recognise that each has something to offer."

Marshall further argued that he did not believe that economics was a substitute for environmental ethics, believing that society and communities have to make explicit what their expectations are of businesses. That also recognised that biology, ecology and physics determine the ultimate constraints under which we live. The economics was only the allocation of those resources, not the creation of them.

Once those limits are recognised and built into our objectives and standards, they can be handed over to market mechanisms to choose how they are to be achieved. The only other requirement is for proper monitoring and evaluation and that is what the, Resource Management Act enables us to achieve and that of course brings me into the area of economic instruments.

Economic instrument is not defined in the Act.

The Minister for the Environment has defined it as one.

"That uses a pricing mechanism to achieve an agreed resource management objective"

It can be an incentive or a penalty when used in the environmental impact sense.

Section 32 of the Resource Management Act is headed:

"Duties to consider alternatives; assess benefits and costs"

and places an obligation upon any person (which is defined- in the section), before adopting any objective, policy, rule or other method in relation to any function described in subsection (2) to have regard to.

"(a)(ii) Other means in addition to orin place of such objective, policy rule or other method which, ... may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and levying of charges (including water)"

and

"(b) Carry out an evaluation which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including in the case of any rule orothermethod, the extent towhichitis likely to be effective in achieving the objective of the policy and the likely implementation and compliance costs "

It has been said that together the requirements of Section 32 demand a thorough application of all of the major principles of economics analysis at the margin, assessment of opportunity cost, identification of net benefit and evaluation of comparative advantage to be used prior to the event. I wonder if Mr Marshall sees Section 32 in quite that light.

Section 32 in my view should be of interest to valuers because it requires an assessment of cost benefit analysis of alternative means of achieving a similar means when policy is being considered.

The valuer could well have an input in this area when consideration is being given to National Policy Statements, Regional and District Plans and Rules.

The Duty of Local Authorities to Gather Information, Monitor & Keep Records

The provision for the above is contained within Section 35 of the Resource Management Act.

That section is wide ranging and far reaching and should beread and examined by every valuer. Any comments here are referable to an earlier part in this paper relating to "the enforcement provisions of the Resource Management Act.'

Section 35 has been followed by a recent amendment to the Local Government Official Information & Meetings Act 1987 known as the Local Government Official Information & Meetings Amendment Act (No.2) 1991 which comes into force on 1 December]9..Z. It makes provision for a land information memorandum to be kept by a territorial authority and for the matters to be included in the memorandum in relation to matters affecting any land in the district of the authority.

It is something that valuers should be aware of and which should be used as a tool of valuation procedure, recalling that the Act provides for the issue within 10 working days of application the land memorandum relating to the land called in question by the Applicant (the valuer).

The Building Act 1991

Having made reference to the official information Amendment (not to come into force until 1 December 1992) I would 0

Editorial Board Sponsored Lecture Tour
Auckland, Wellington, Christchurch: February 1992

Impact of the RMA on Property Values

by Squire Speedy

'Give me a light that 1 may tread safely Into the unknown'.
- M.Loufse Haskins
(Quoted by H.M.l(ing George V, Christmas 1936)

In October 1957 Sputnik l's 'Beep, beep, beep" focused the world to the wonders of science and technology that produced those dramaticphotographsofEacth.Thatbeautiful sight from space oftheblue andbmwnsphm with swirls of white evoked many of us to realise that indeed we are one wodd and one

Evenmaethantheatomicbombsof 1945 that filled the minds of man with horror and foreboding, the photos from space diverted thoughtful people away from theirpetty parochial concerns, and raised their sights, forcefully jolting many into realising the need for concernfcrtheprotectionandpie vationof our globe . Those photos put puny man into proper perspective. Indeed there is an urgent need fora concertedeffo ttohusbandEarth's resources.

Just as every property person knows that landisagoodinveslment,becausetheyacenot maldnganymoreofit,sotoowemustpreserve and enhance our'inveslment' in our share of land, water, andairresoucres of one small part of Earth's living environment.

Concerns about the environment have been expressed in papers presented at conferences held in Australia, Canada, Norway, United States, and the United Nations agencies, as wellas hm at home. The greenhouse effect and more recently the hole in the ozone layer have brought home these issues. Sir Geoffrey Palmer took up resource management as one of his 'pet' projects. The theme andphilosophybehindresou cemanagement is that our physical and natural resources shouldbehusbandedsensiblysothattheymay be sustained, as far as it is practicable, for present and future generations, but avoiding any significant adverse effects on the environment.

The end result was a bipartisan approach that produced the notion that all such resources should be brought under

Squire Speedy is brown nationally as a pro-Birk writer on valuation and associated topics and as a text book *author ofrek+own He is4 life Fellow of N/JV and* is *a principatof L .:L Speedy & Sons, Property Administrators o Auckland. Squire Speedy* is *also a* fe/kM *member of the Institute of Chartered gecrs-: taxies andAdminstrators,oftheNZSoerety o Accountants, ofthe Real EstateInstituteof7 and a member of the Property Management Institute apd the NZ Association of Econo mists, He has prepared many submissions on behalf of NZI , most recently on Historic Places legislation and proposed taxation of capital gains. Mr Speedy is a member of the aluers'Journal E4itorial* Board

Introduction to Resource Management Act-from previous page

also refer valuers to the new Building Act 1991 where certain sections do not comeinto force on 1 July j while the balance comes into force on 1 July I=.

That is just another Act that Valuers, like many other professionals, will have to contend with, virtually at the same time as coming to grips with the ramifications of the Resource Management Act.

"Valuation of Maori Land for rating purposes : Time for a change?"

While preparing this paper I came across the above article presented by Pita Rikys, lecturer in Law, Department of Accountancy & Law, Auckland Institute of Technology in the New Zealand Law Journal January 1992.

In his Article MrRikys when referring to the Treaty of Waitangi had the following to say at p.27 & 28:

"Today a number of statutes incorporate either implicit or explicit references to the Treaty ... In this context it is submitted that the Valuation of Land Act 1951, Maori Affairs Act 1953, the RatingPowersAct 1988 & theResource Management Act 1991, should as regards the correct approach to the valuation of Maori land, be read as a legislative scheme. This would make the Treaty explicitly provided for in s.8 Resource Management Act 1991 and implicitly recognised in the Rating Power Act 1988) and ss.6(e) & 7(a) Resource Management Act : matters of direct relevance.

The closefunctional interrelationship between these statutes is obvious; ..."

As valuers, I can only recommend that you ponder on those statements and on quiet reflection you may now come to see the extent and ramifications of the Resource Management Act that are only starting to arise since its promulgation on 1 October 1991.

Education

In the *Evening Post* newspaper of Tuesday 15 October 1991 at p.15 under the heading "Valuer praises Resource Act" your Institute's National President Alex Laing "all fired up" is reported as follows:

"The Dunedin valuer is heaping praise on the Resource Management Act, which he sees as a brilliant superb ... very exciting piece of new legislation that should help to eliminate the urban plight

Most valuers were now geared up to handle the valuation of resources and on-going educational programmes were available to help them handle the new demands. The Institute is considering making it mandatory for each valuer *to undertake 10 hours of training a year.*

It is my belief, and I am talking from a great deal of experience, that 100 hours of training per year would only be scratching the surface of your understanding of the Resource Management Act and all that is starting to flow from it, 10 hours per year would take you nowhere.

I therefore commend to you all, an in-depth study of the Resource Management Act 1991.

Acknowledgement

I wish to acknowledge with thanks the kind permission of Darrochs to reproduce part of my review of the Resource Management Act 1991 which appeared in their publication "Darroch Aspect" December 1991. A

It is a tough Act...
It is tough to grasp many of the changes in terminnology and new themes and concepts.

one single administrative canopy, emerging as the Resource Management Act 1991 [RMA] that came into operation last October.

Itis a tough act. It needs mental stamina to master the gist of its 382 pages in 430 sections and nine schedules, plus the consequential Regulations. It is tough to grasp many of the changes in terminology and new themes and concepts. There are many important differences from the previous Town and Country Planning Act and over 100 other acts it has replaced or amended. The theme is sustainable management of natural resources.

Whether it will achieve the high ideals set foraglorious new future remains to be seen. I have my strong doubts. Unfortunately in this current climate of political cynics, we have become accustomed to treating witha grain of salt the silver-tongued promises of politicians and other soothsayers with axes to grind. One thing is certain: if there are any axes ground and falling, property owners willbe chopping blocks.

The effects of the RMA can be viewed as being good or bad for different property owners and thepublic in general depending on your point of view. Although it may make it easier to initiate new projects, it has widened the scope forobjectors. Every man, Jack, and dogged crank can now have a say in any resource matter that calls for public comment. Democracy at its best-or worst! It is tough on developers to produce extra information for consents and to pay the new user-pays costs.

Some properties will benefit, others will be detrimentally affected in new ways. These matters will be discussed a little later. One thing is certain: the new regime is here to stay, although it will need patching up here and there. The sooner people of property get to know its principles and working procedure, the more comfortably they will be able to cope with it. Unfortunately it will take time and effort.

2. A Coat of Many Colours

Now Jacob loved Joseph *more than all his children, because he was the son of his old age: and he made him a coat of many colours.*
Genesis 27:3

No one can be sure of the full consequences of the effect of this new act. It is more than a single change in direction. It is a major step we are all forced to make into the unknowable future. In the mean time we need Louise Haskin's light to tread safely into that unknown. Some say a is a shift to the left; others say it is a shift to the right.

A better analogy is to think ofresource management being like the cloth used in a new coat that replaces many old ones. Like Joseph's, Sir Geoffrey Palmers's gift coat (assisted by Jim Bolger and Simon Upton) is also multi-coloured, but in a modem check pattern.

Clearly it will have an overall greenish hue from the many strong threads representing the special concerns for any adverse effects on the environment. It will also have cross threads (or wefts) of various shades of brown entwined with pinkish white, representing the principles of the Treaty of Waitangi that are to be taken into account; highlighted with threads of forest-green, azure-blue, and misty-gold, representing the Maori concerns for their lands, forests, fisheries, and the open-ended taonga (or prized possessions).

There will be heavy silver threads in the lengthwise warps of the weave representing the driect and indirect increased costs that owners will inevitably have to bear.

A light-blue weft of the pattern represents the clean air; and hopefully a quieter environment.

The thin strands of gold in the warps of the check pattern represent the incentive to enterprising owners to follow up their hopes and dreams to risk investment in land, property, and production, which is what the RMA is really all about: sustainable use of natural resources of land air and water. Without investment of thought, effort, and capital into various forms of property, our country would not progress and prosper, rather it would sink and decline.

Prominent in the areas between the main checks are grey areas that show the doubt that exists when introducing or performing any new act, or in predicting the whims of human nature in their submissions or deliberations.

Right in the centre of the back of the coat is an almost opaque area that reveals the little hope of getting any proper compensation for interference with property rights unless a property is compulsorily taken for the public good.

The scallops around the edge of that central opaque area emphasize that some owners' rights have been watered down, yet paradoxically others have been strengthened.

Along the margins are areas of sandy-yellow interspersed with rocky-black to represent the protection of the foreshores. But there is a large central black mark for the designers for making owners set aside a substantial width of land along the water-frontage without recompense whenever fee simple or freehold land is subdivided.

Every other major colour is included in both the weft and warp of the weave. Each can represent some new facet of the fabric of the resource management cloth: be it for the new district plan and rules, their easier change, the control of pollution, or orders for heritage, abatement, or water conservation.

Thin threads of rainbow, brown and salmon express concerns for treasured exotic fish, as if woven into the fabric at the last moment.

Along the bottom edge is a band of vertical black lines or bars that serve as a steady warning to those who would treat this act lightly.

An essential part of the manufacture of this new coat, as in all previous ones, is a binding of the cut and trimmed material with pinkish-red tape. Unfortunately this remarkable coat was crafted by many hands, so there is the need to patch up the various inconsistencies and snags that will appear from time to time.

The mixture of all colours of the rainbow, the weave of the cloth, andits cut and styling are intended to give depth and richness to the fabric of society. The designers expect that the new attire will give overall gains to the country as a whole, yet promote the sustainable use, and development, of valuable natural resources of the country; at the same time meeting the reasonable needs of current and future generations. Let us hope that these aims can be fulfilled adequately and fairly.

3. An Alphabetical Cross Reference Guide

A developer is a person who cuts down bush, scars the landscape to create roads and building sites. An environmentalist is a person who buys one of the sites *or buildings-then tries to stop any* more *developmentl*
Adapted from Anon

The RMA is complex. Its principles and new themes are spread throughout many parts of it. New terms and new concepts have been introduced rendering obso-

lete many old familiar ones. Some new ways effect properties more than others, sometimes dramatically; at other times less conspicuously.

In setting about the task of presenting a paper that would help throw some light on how sustainable management effects property values, I initially developed a glossary for my own use that would enable me to have a quick reference to these new issues, and to tie in some of the old ones. But like Harriet Beecher's little slave girl in Uncle Tom's Cabin, Topsy; "It just growed". Eventually it evolved into my main presentation: *Resource Management: An Alphabetical Reference Guide.* (Available from the General Secretary NZIV)

It is obviously impossible to do full justice to such a wide-ranging new subject with so many new concepts, in a short few hours at a seminar. It is an on-going process that all connected with property must learn to live with. My Guide is intended to help with that initial very sharp learning curve, and also, to serve long-term as a handy reference to associated topics and as an index to sections and themes.

My main aim is to tell how the RMA effects property values. Unfortunately that is difficult without your knowing the principles of resource management and terms used. For this reason I will concentrate on the valuation effects rather than resource management technicalities, using property ill ustrations to bring out some of the points. The Guide will help you to gain quick access to those new principles and to the jargon used. Eventually you should be able to use the right turn of phrase at the right time.

There is much work to be done in getting up-to-date.

There is much work to be done in getting up-to-date. But that is not the end of it. It is only a start. It is also necessary to keep up to date with rulings of the Tribunal and the Courts, and changes to district schemes that will continue to be the cutting face of the new regime. Not only that,there will also be the need to watch for changes in legislation, regulations and national policy statements from time to time.

Whenever property rights are likely to be affected there is a need for owners to make submissions, with hearings to attend. Sometimes it will be necessary for them to file objections and to contemplate appeals. The Planning Tribunal and High Court are likely to be kept busy interpreting the new terms and concepts that will lead to considerable delays as well as high legal and holding costs, and often unexpected results.

There are hidden dangers in the RMA. It is far from being straight forward. In fact it has tightened up some of the old common law or laissez-faire ideas that an owner could do almost what he liked with his land unless specifically restricted. Yet paradoxically it has tried to liberalize activities.

Contrary to popular belief, the life of anyone who wants to do some form of development has never been particularly easy. This act will as often as not make their lives even harder. Under the new regime, anyone developing will have to cope with not only the cold winds of economics, and resource management requirements, but also, often with pedantic parochial community boards having field days in decision-making under the new criteria. After which they walk away, leaving the owner-developer with the responsibility and choice of deciding whether or not to live with their determinations; or perhaps they can try their luck hopefully with a more sensible (even if expensive) higher authority. Provided that owner can stand the holding costs and accept the time delay. "Justice delayed is justice denied" is only too true when expensive holding costs are involved.

...Valuers will be at the forefront... placing precise figures on many of these imprecise property problems

We are now living in a property climate of much on-going uncertainty and change during the transitional period and for some time until new district schemes are finally adopted. Even then the prospect of major changes being made at any time will result in a much more flexible and dynamic planning system, with the prospects of sudden change in property values. Valuers will be at the forefront having the task of placing precise figures on many of these imprecise property problems and being asked for wise counsel on such issues. I hope that my Guide will help you when you come to wrestle with some of the enigmatic problems the new act is bound to create.

The principles of the Treaty are to be recognised and taken into account. We see that already in the RMA itself. Included with those principles is the recognition of taonga. In its narrow sense, it means valued possessions. In its intangible wider meaning,it is something that Humpty Dumpty would have envied. You will probably recall that Humpty Dumpty said that a word means what he wanted it to mean-neither more nor less. The rest of the population, like Alice of Wonderland, wonder whether you can make words mean so many different things. Where this will lead to in terms of resource consent applications will have to wait until it gradually unfolds.

The legislature intends that its provisions will be enforced by putting teeth into the RMA. There are harsh penalties that may be as high as $200,000 plus $10,000 a day for some offences, or up to two years jail! It is incumbent on those concerned with property affairs to have a professional working knowledge of the principles of resource management if they intend to stay in the business and keep out of trouble.

4. Changes In Jargon

hTe old order changeth, yielding place to the new, And God fulfils himself *In many ways, Lest one good* custom *should corrupt the world'.*

Idylls of the King by Alfred,
Lord Tennyson

There have been many changes to the familiar old terms previously used in planning matters. New jargon has been adopted to emphasize the new principles of resource management. For example, the change of terminology to district plan and rules, and reference to activities instead of uses, is more than token. The rules must now be reviewed to reflect the new emphasis on the purpose and policies of the act, particularly in its objective of the promotion of the concept of sustainable managementofresources. These mustnow meet the needs of present and future generations, and of the safeguarding of the life capacity of natural resources.

Strictly there are few fully convertible terms. Most important is the change in the purpose of the RMA. The thrust of the new act is on the use of resources, and not merely locking them away without good reason. However, new activities must now avoid, remedy, or mitigate any adverse effects on the environment. Where appropriate, a developer must show that the option proffered to mitigate any significant adverse effects is the best practical one. The practical effect is intended to be a more liberal approach to the use of resources.

This new approach can best be appreciated once the new terminology is understood. Nevertheless, in the mean time, it helps to know the closest new equivalent for commonly used old terms. I have set out in my Guide the main changes, including the many old terms and their approximate new equivalents under the heading of Transitional Period. The main new concepts are also suggested for close scrutiny.

Important New Concepts

(Not otherwise listed below). See Guide for explanations.

Abatement Notice	National Importance
Activity	National Features & Landscape
Landscape	
Adverse Effects	Natural & Physical Resources
Amenity Values	Offences
Best Practical Option	Pre-Hearing
Duties	Purpose
Environment	Sustainable Management
Financial Contribution	Treaty of Waitangi
Intrinsic Values	Use
Maori Culture	Water Conserv

The main changes in terminology are summarised below:

Old Terms:	Approx. New Equlvalents:
Amenities	Amenity Values: Environment
Approval	Consent
District Scheme	District Plan
Foreshore boundary MHWM	Mean high water springs
Historic Place	Heritage place
Objection (Objector)	Submission (Submitter)
	Objection (after a hearing
	Rule
	Resource consents:
	Land use
	Subivision
	Coastal permit
	Water permit
	Discharge permit
	[Scheme plan, unofficial]
Subdivision:	Survey plan, subdivision
Approval	Subdivision consent
Definition includes:	
Leases over 14 years	Leases over 20 years
Sections	Sections
	Cross-leases
	Unit titles
	Company licences
Use:.	Activity:
Predominant	Permitted
Conditional	Discretionary
Dispensation or waiver	Discretionary or
	Non-complying
Specified Departure	Non-complying
Water right.	Water or discharge permit
Wise use and management	Sustainable management

5. That Bundle of Rights

'it would savour of tyranny if a public authority was vested with powers so vague as *to completely take away a property owner's rights"*

Wong v Northcote Borough (1952) NZLR 417

Land has long been an incentive for work and investment. It is an integral part of the capitalistic, property owning society that was set up from the very first settlements. When our British forebears came to New Zealand in the early days, they brought with them not only their m eagre chattels bu t also high hopes of being given the opportunity of satisfying their hunger for a place to call their very own. With sweat and determination many of these pioneering families carved out of the dense bush worthwhile farms, or made other property investments.

With them came a host of traditions and laws including the concept of what we now recognise as a freehold property-owning private-enterprise society. Property values stem directly from the competitive market demand for the bundle of legal and economic rights that are an essential part and parcel of real property.

The rights of property owners have been, and will continue to be, considerably modified and eroded, notwithstanding the sophisticated land transfer recording system that is the envy of the world. With the delegation of many functions from central Government to territorial local authorities, the influence of local politics is likely to have an enhanced impact on development and re-development projects, as well as the permitted use of land.

Owner's rights are affected by the new act in many significant and subtle ways. Some will impinge on one property, or property owner, more than another. New ideas must be catered for, but some old proven practices will continue to hold sway.

Owner's rights are affected by the new act in many significant and subtle ways.

The RMA has delegated most of the operational aspects to the local authorities where the wording of district plans and rules is vitally important. Once adopted they have the force of Government regulations. Just as in the past, when councils set out the working details in their scheme statements and ordinances, in much the same manner, councils will set out in new plans and rules the working details with new fuller information. This must now be modified to meet the new purpose and requirements ofresource managementand its application to the district.

Under the new law (as in the old TCPA), zoning is not specified as such. The RMA seeks to encourage innovative approaches, yet traditional planning techniques are well ingrained practices that will require zoning to be continued on indefinitely. In the long run it will be a combined input that will shape the new order. Despite well intended aims by politicians, the pattern of use or activities will be a compromise between owner's dreams, people power, political will, professional persuasion, and Court determinations.

A wide variety of methods and solutions is one of the aims of the RMA that undoubtedly will be achieved to a greater or lesser degree in different distri cts. Those districts that want to see progress will tend to progress. Those districts that want to oppose change, will be able to slow it

down. Local politics will be terribly important in decision making. But local politicians, influential as they will be, will not necessarily have the last word.

The RMA impinges on land subdivision and other development and any new use of land and other resources in majorways. New rules and national directives will play an important role in assessing subdivisional potential. The loss of land fronting all forms of water will be of grave concern to many who plan to subdivide. What will irk both urban and nural owners is the excessive loss of land without compensation or even any credit of such land lost allegedly for the public good. These owners naturally consider the burden to be grossly unfair.

One of the important powers of local councils is their taking over much of the le gislativeprovisions of subdivisions (with its widened definition that includes cross leases, unit titles, and company licences). The district rules will now set out the financial contributions, particularly those that will fix land reserves as well as esplanade requirements if it is to differ from the normal 20 in.

Development levies as we have known them are likely to be phased out now that various forms of unit developments are considered to be subdivisions. Hence, owners with any subdivision potential at all, should take a keen interest in any proposed change or reviewofanyrelevantdistrictplan; and should carefully consider each opportunity to comment in a submission.

One way to obtain a use not otherwise specifically permitted or controlled, is to initiate an application for a resource consent for a discretionary, or even a non-conforming activity(aslongasitisnotactuallyprohibited), provided any significant adverse effects can be adequately overcome. If this fails, the cumbersome procedure to change a district plan oriole may be attempted; if the stakes are worth the trouble.

On the face of it, most existing residential properties will not be immediately affected. Yet this in itself will give such owners a false sense of security. It is usually only when an owner, or a neighbour, wants to make a change that the practical effect of the RMA will be felt. All too often such owners will find that they have missed their chance to have a say by not following up a notice. As in the past, most councils make decisions on what they perceive is in the best interests of the community from their political point of view. However hard the legislature has tried to make the RMA democratic, by its very nature political decisions are inevitable.

What I perceive as the greatest hindrance to establishing fair and proper rules and plans is mental lethargy. It takes effort to investigate a proposed change. It takes more effort to decide to do something about the matter. This will involve the difficult taskof making logical, rational, and coherent submissions. In practice, such matters are left to very few people. If those who disagree areprepared to exercise their new wide democratic powers and make submissions on an issue at the right time, and if necessary take the matter to appeal, they could find that the Planning Tribunal may well have a totally different view of what is the public interest.

Through apathy, ignorance, or merely by leaving it to the other person, the way is open for cranky people, or groups with special axes to grind, to have a greater impact than warranted by the 'silent majority'. But that only reflects the general political scene. Of course, cranks are really only people who have strong opposing views until they have been proven to have been right all along.

Keeping up with the play is not easy. There is also always the danger of missing a public notification or a submission made on a matter that can effect your property, only to find out about it too late. That is all very unfortunate. If owners simply leave such issues to the other fellow they can be rudely awakened when they find that they are prevented from doing what to them seems reasonable and profitable, without adequate redress. Or worse still, they could well find that something has happened or they want to do something with their property, only to find out that they are too late to do anything about it.

Ideally, whenever a review or change in a district plan is proposed, the land professions should check over all proposals to ensure that they are fair and reasonable; but this may be asking too much of such professions. Yet it is important to bear in mind that once adopted, a rule cannot then be challenged asbeing unfair and unreasonable, only in respect of the particular application of that nule. The only time a rule can be challenged as being unfair or unreasonable is when it is reviewed, or a change in the district plan is proposed.

6. Valuation Implications.

Properties or sites as such do not make value: people do!

Squire Speedy, Property Investment (1980)

There have been important changes that will bring about gains for some properties and losses of potential for others, while existing land uses will tend to be better off.

With the emphasis on effects on the environment, rather than on uses, a more flexible approach to obtaining resource consents can be expected, so long as any advem effects can be reasonably dealt with. Properties will tend to rise in value where the opportunity for higherorbeuerusesisnowpossible.However, it is how the current market responds to that extra potential that is a valuer's concern.

Resource management aims for a cleaner, quieter, safer, healthier, overall environment in which we live, work and play. To this extent, all citizens should gain. However, this gain is not without its price, which will generally fall on property owners, particularly those who wish to make changes, carry out new development in one form or another, or who operate in conditions environmentally undesirable. Some of the cost will also fall on all those owners who wish to protect their properties from inroads into their peace and enjoyment, viewed by some as a Canute-like attitude against a tide of progress. The RMA will generate many such conflicts.

Yetfrom a valuationpointof view,itisnot somuchhowtheresourcemanagementchange effects asubjectproperty thatis important, but rather how such matters effect its value. Paradoxically, until the full effects can be known, the impact on the value of the subject property cannot be fully assessed.

The laws of supply and demand, modified by the special characteristic of real property (which I have previously called geopoly [from Geo, earth; polo, sell]); will work their way through the market no matter how complex or uncertain the impact of such resource management matter may be. The market will respond to any significant resource management issue one way or another. The greater the uncertainty, the greater the discount factor.

The valuation implications for considering the effects of the RMA on property values are set out in the form of value trends rather than absolutes. These should serve as a further guide when considering, assessing, evaluating, or quantifying the significant effects of the RMA on values of particular properties in particular circumstances. It must be emphasised that different resource management effects will impinge on the rights of separate owners and the value of their properties in different ways.

7. Beneficial Effects of RMA on Property Values

The best laid schemes o' mice an' men *Gang aft a-gley. "*

To a Mouse by Robert Burns (c 1786)

Or In the modern idiom:

"Until you've got It, you ain't got it".

Anon

The main sources of potential beneficial effects on land or property values arising from the RMA are set out below.

1. By the grant of a resource consent under the more flexible new regime.
2. By a change in the districtplan permitting a higher use.
3. By a review of the district plan that allows for a wider choice of permitted activities.
4. Byfreeing`existinguses'fromtherestrictive arbitrary 60% increase in value rule.
5. Byconcentratingonadveiseeffectsonthe environment as the prime criteria in dealing with resource consents, makes the new regime more flexible.
6. Unlessanactivityisprolubited,aesource consent may be obtained if its adverse effects are adequately overcome.
7. By prohibiting trade competition as a ground for opposing an application for a resource consent
8. By the introduction of time limits for dealing with resource consent applications.
9. By providing relatively fast machinery to deal with problems from neighbouring properties from: (a) Unreasonable noise; and (b) Contamination and hazardous substances.
10. By extending the definition of subivision to include a lease for 20 years or more, up from 14 years.
11. By providing fairer procedure for imposing designations: (a) By limiting designations to five years; (b) By requiring the designating authority to: (i) Consider any adverse effects; (ii) Seek alternatives.
12. By the Minister exercising call-in powers for politically sensitive applications.
13. Bysavingsintimebyholdingpr -hearing meetings where parties can meet and negotiate, thus reducing the need for formal hearings and appeals.

See: Abatement Notice, Activities, Adverse Effects, Call-in Powers of Minister, Change in District Plan, Designation, Development, Existing Use, Prhearings, Purpose, Review of DislrictPlan, Subdivision, Trade Competition, Review, Time Limits.

8. Detrimental Effects of RMA on Costs and Property Values

Expenditure of local authorlttes rises *to equal the maximum rates (and* charges) *that are politically acceptable"*

Statement to a Commission of Inquiry, North Shore by Squire Speedy c 1965.

(With apologies to C.N.Parklnson)

Increased direct and indirect costs will tend to come about by more stringent requirements, or from delays, such as those arising from the following sources.

1. Higher costs for lawyers and consultants for: (a) Preparing environmental assessmentreports; (b) Considering & implementing the best practical option to mitigate alleged adverse effects; (c) Dealing with the terms of the RMA; (d) Vetting proposed changes and making submissions; (e) Environmental audit reports.
2. Increased application costs required by resource consent authorities.
3. Increase in consultant's fees dealing with submissions opposing the application for a consent to a project
4. Increased direct costs of compliance with the conditions of consent, including the cost of works to mitigate any adverse effects by adopting the best practical option;
5. Increased holding costs; (a) When consent is delayed through the requirement for extra information; and (b) During the notification, pre-hearing, and hearing periods.
6. Loss of valuable land on subdivision without direct compensation when subdividing waterfront land, arising from:
   a. New foreshore boundary of MHW Springs;
   b Beds of rivers and lakes;
   c. Esplanade reserves;
   d. New wide definition of subdivision
   e. Lapsing of `paper' allotments without separate C/Ts
   f. Any increase in reserve contribution.
7. Losses caused by a proposed heritage order by:
   a Direct costs of consultants;
   b. Indirect past costs not reflected in current value.
   c. Direct holding costs;
   d. Indirect holding opportunity costs.
   e. Indirect future profit (opportunity) costs.
8. Costof environmental audits, Or costs of cleaning up contaminants and pollutants, even when caused by a former owner.
9. Potential liability to owners and advisers for potentialities for infringements.
10 When a resource consent is declined or when consented to subject to expensive onerous conditions.
11. When the terms of a resource consent are reviewed and expensive onerous unplanned additional conditions are imposed.
12. Higher survey costs and foreshore consequences relating to: (a) Unit development; (b) Old 'paper' allotments.
13. Loss of land near waterfront from (a) Cross leases; (b) Unit titles; (c) Company licences; and (d) Leases over 20 years over partof land or buildings; (e) `Paper' allotments being ineffective.
14. Higher financial costs set for subdivisions from: (a) Setting revised requirements in district plans, (b) Finding innovative new methods as yet unknown.
15. Any change in district plans or rules that limits or prohibits the potential activities of a property.
16. Higher costs in answering submission in opposition from persons not directly effected by a project.
17. Uncertainties during the transitional phase until the effects of the review district plan and rules for each locality area are understood.
18. Costs and delays in resolving culturally sensitive Maori issues.
19. Uncertainties over existing lawful activities in marine areas.
20. Annual marine rental charges.
21. The need to protect natural habitat, waahi tapu (sacred places) and natural features and landscapes on private property that will reduce the future potential of such properties.
22. Cost of keeping noise to a reasonable level
23. Costsofmountingoppositiontoproposed projects, or changes in the district plan, that are potentially detrimental.

Refs: Best Practical Option, Contaminant, Designation, Extra Information, Environmental Assessment, Foreshore, Financial Contributions, Heritage Order, Notification, Penalties, Pre-hearing, Resource Consent, Resource Consent Review, Review of District Plan, Submissions, Subdivision.

9. Valuation Effects of the RMA

Value Is what you think you have: Until you try to sell!"

(Squire Speedy 1973)

Although no new valuation principles are involved, it will often be necessary to reconsider the application of existing old ones as well as principles of land economics when considering the valuation effects of resource management matters.

1: Each effect of the RMA must be separately assessed for each property, but those effects must be properly investigated so as to be taken into account and given due weight by the valuer.
2: Deal with the effects on a property one at a time.
3: It is sensible to assume that each si - nificant change could affect a sub-

ject property, but that change must be identified and given proper weight as the circumstances justify.

4. Minor changes will have no significant effect on property values. The trick is to know when this does not apply.
5. It is the added value that new potential gives to a property, as reflected in the market value, that is to be valued Discount future potential to its net present value (i.e. current market value).
6. Unless the re-development land value exceeds the undeveloped capital value in its existing use, there will be no loss in market value if that potential is lost.
7. That it is the conditions of supply and demand that determines current value, not zoning or a consent as such.
8. That up-grading a permitted use or activity of a property tends to increase its potential value, but only if there is an effective demand.
9. That any artificial restriction on the reasonable supply of land for a particular use will tend to increase the value of the existing comparable land.
10. Any sudden expansion of comparable land will tend to hold or diminish existing comparable land values (except in a rising and or speculative market).
11. That any diminution in future use of land will tend to reduce the current land value of a property.
12. That anything that increases the cost of development or re-development will tend to reduce the current land value.
13. It is the added value of the cost of the development to the existing use value that should determine its viability, not merely the grant of a resource consent as such.

10. Illustrations of Specific Valuation Issues

'in point of fact, all sorts of considerations enter Into the market valuation which are In no way relevant to the prospective yield.'
J.M.Keynes (1936)

Example 1. Present Value, Not Future Potential

When considering the effects of the RMA on limiting future potential, or extra costs that will be incurred, the basic valuation principle: It is the net present value of any future potential that falls to be valued, not the potential as if it had been realised.

The NPV is equivalent to current market value. Expressed another way: It is the added value of any future potential above its next best use that is part of current value.

Fig 2

MARKET REALITY e *HIGH HOPES*

NET PRESENT VALUE *ESTIMATED POTENTIAL*

It is the net present value of any potential that falls to be valued, not the potential as if it had been realised *SLS*

Fig 3 *Added Value*

Value
Outputs

Over capitalisation
(bankruptcy)

Point of
maximum
added value is
best (optimum)
development

It is the added value that counts

Cost Inputs 0

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Fig 4 *Existing Use Market Value*

S

Then curve value rising with time

Value

Ripe point for re-development

Existing Use declining with age

land value
rising with time
equals
Net present value
of future potentialities

Time ---

SLS

Unless the re-development land value exceeds existing use capital value, future loss of potential will not affect the current market value.

Example 2: Subdivisions Near Waterfront

Lots 1, 2 and 3 illustrates the commonly encountered waterfront sections. Lot 1 has a token esplanade reserve. Lot 2 has a full esplanade reserve of about 20 in. Lot 3 has full water access with so-called riparian rights. Lot 4 illustrates the new requirements. The new mean high water springs boundary must be determined, then a reserve of 20 in must be set aside unless there is a district rule saying otherwise. Alternatively, should there be some compelling reason a dispensation may possibly be allowed.

The dotted line shows the extent of the esplanade reserve if any of the first three types of sections were to be re-subdivided as an ordinary subdivision or as a result of unit development.

When valuing any of these kinds of sections, when considering the prospects of any added or extra value for subdivision potential, any such potential must be carefully analysed, because the residue available after losing the esplanade reserve can materially reduce or eliminate any prospect of extra units. The district rules must be carefully checked for the relevant provisions. The normal requirements for a normal reserve in land (or cash in lieu) will apply as well.

[See: Foreshore; Mean High Water Springs; Subdivision, Esplanade Reserve, Reserve].

Fig 5

Subdivision Near Waterfront

940ni 1 600ni I 1000m2

ROAD

1 Old MHWM
2 Old 3m Esplanade Reserve from MHWM
3 Old 20m Esplanade Reserve from MHWM
4 New MHW Springs
5 Foreshore to be transferred to Crown
6 New 20m Esplande Reserve from MHWS
7 Dotted line shows end of new esp. res. on any new subdivision or unit development
8 Residue area will have lost some (or add) potential for subdivision or unit development.
9 Check district rules for any special conditions.
10 Check district rules for any reduction below 20m.

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3 Adverse Effects Must be Mitigated.

Where stormwater has to be discharged into a natural watercourse, rather than into an existing pipes system, a discharge permit is required in addition to a subdivision permit. Should the discharge cause any significant adverse effects they must be avoided, remedied or mitigated.

Fig 6 illustrates such a problem. Some distance downstream from the proposed subdivision flooding already occurs in storm conditions. The subdivision proposal was notified resulting in downstream neighbours opposing the subdivision unless their flooding problem was to be made no worse and preferably better. At first they tried to force an improvement in their position, but had to accept that if a way could be found to hold the status quo they had to be satisfied.

Fig 6

Adverse effects to be Mitigated

small stream

Or& nods in storms

Road

Detention dam built to mitigate adverse effects of run-off of subdivision as best practical option

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The owner's engineers could spend a considerable amount of time with the submitters, and the water board and council engineers could assist in helping to find the bestpractical solution to theproblem. The best option could be to modify the culvert crossing the stream to create a detention dam that would hold back the peak runoff, yet still let the water flow through at the undeveloped rate of flow. All costs would fall on the subdivider.

[See: Adverse Effects, Best Practical Option, Resource Consent].

4. Excess Esplanade Reserve

Councils have power to require a wider esplanade reserve than the normal 20 in. Although compensation is legally payable, the value of any excess width of land must be off-set by any reduction below 20 in. In the illustration (Fig 7) the 20 in is set back from the MHW Springs. Area (x) is the normal area, area (y) is the reduced area. For the hypothetical illustration, area (a) equals area (y).

It is tempting to consider off-setting equal areas. There could be circumstances when they may be approximately equal in value, but I suspect that this would be only where the valuation is based on a unit area, a most unlikely situation where subdivision potential is involved.

The correct position is to value the two areas separately, as at the date of the depositing of the plan. This date is significant, because both the 'before' and'after' valuation circumstances can take into account the actual works and benefits of the new subdivision. Greater accuracy in estimating the gross realisation and net deductible items is also possible.

One practical aspect is that it is only the extra or marginal costs and allowances that should be deducted. Expressed another way: It is the loss in retail sections less costs and allowances that would normally form the basis of valuation. Of course, no hard and fast rules can be laid down because each circumstance must be separately assessed in light of all circumstances.

All or part of any compensation payable could be further off-set by the normal reserve contribution required. This is one glaring aspect of injustice to owners of waterfront land. To add insult to the injury of loss of the foreshore and the esplanade reserve, they must still provide an normal land reserve or pay a cash contribution in lieu. However, these foreshore requirements are not new and have been applicable to land in county areas since 1946. The position is now aggravated by the foreshore MHWS requirements, the application of the new rules to older built-up areas, and apparent little scope for reducing the standard 20 in line. The application of the rules to adjoining allotments for which no separate titles have been issued can cause a major upset.

[See: Esplanade Reserve, Foreshore, Subdivision Mean High Water springs].

Fig 7 SEA/LAKE/RIVER

If an area in excess of 20m is required compensation is payable off-set by the value of any land less than 20m

Note:

1. area (a) = area(b)
2. The value of area (a) does not necessarily equal the value of area (b).
3. Each must be separately valued as at date of deposit of plan.
4. Check district rules re any extra reserve requirements.
5. Use principles of compensation under the Public Works Act such as 'before and after' method, or such other method as may be appropriate.

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Example 5. Heritage Place (fig a)

(a) Protection of Habitat & Old Maori Burial Ground:

Suppose that a heritage authority wants to protect the swampy ground that is a bird habitat, and also the small area (marked with two Xs) that is an old Maori burial ground. Several resource management consequences of such a proposal could follow.

A heritage order could be placed on thetwoareas tobeprotected.Onceinvoked the owner could not do anything with the land without written consent. In the circumstances that there are no separate titles for the areas, the heritage authority could issue a heritage notice to be followed up by a heritage order. It would be impractical to try and force compensation, because itwouldbe unlikely that the value of the property as a whole would be significantly affected.

Under the circumstances a heritage order would protect the areas with least disturbance to the owner.

If for some reason the heritage authority particularly wanted to acquire the freehold, and the owner was willing to acquiesce, the land could be taken under the Public Works Act. This would have the advantage that such a taking is not a subdivision under the RMA, hence there would be no consequential subdivisional problems.

(The implications of subdivision of a coastal-rural area will be discussed by Peter Tierney).

Heritage House:

Suppose a heritage authority wanted to preserve the 90 year- old homestead house for a combination of reasons. For this illustration we can assume that it is only marginally historic, and that the only claim to fame was that it was the early home of a minor writer and the residence of an early settler who served on various councils in the early days. It is not over 100 years old.Its main claim for preservation could be that it is an excellent example of architectural interest and beauty.

Although a heritage order may enhance its prestige value, it would most probably reduce its market value because of the restrictions on altering the house without the consentof the heritage authority. Before compensation can be payable, amongst other things, the owner (or spouse) would have to prove that after six months the property could not be sold at

its `before' value because of the existence of the heritage order. The Court could order the acquisition, but would first give the heritage authority the chance to back-off.

Should the heritage authority decide not to withdraw, there is no provision for compensation for loss of holding costs or legal and consultants during the foray.

It should be noted that anyone buying a property with an existing heritage order cannot then claim compensation. Such a property must be valued taking into account the existence of the heritage order.

This position is in striking contrast with a designation on a property. This is viewed as the first step in taking of the land, for which `full' compensation is payable. (See my book *Land Compensation,* 1985, published by the NZIV). See: Heritage Order, Heritage Protection Authority, Compensation.]

Discharge Nuisance:

Suppose the occupier of the old homestead was suffering from the `evil' smells from a discharge on to a property across the road. There are several aspects of the RMA that couid help to reduce any detrimental affect on the property. The discharge would most probably be a contaminant, rather than a hazard which would be a much more serious problem for all concerned.

First, a complaint should be made to the regional authority because, under the RMA, no one may discharge a contaminant without a permit (s.15). If the discharge was notpreviously authorised there would be a breach of the RMA with severe penalties of jail up to two years, or a fine of $200,000 plus $10,000 a day. Should there be mitigating circumstances and the contaminant nuisance cleaned up promptly, the charge can be dismissed, or lowered to community service. The main point is that property owners should treat their responsibilities seriously and attend to such matters promptly.

Secondly, any discharge permit can be reviewed at any time to deal with any adverse effect on the environment arising from the exercise of the consent. The discharge permit holder would have to adopt the best practical option to remove or reduce the nuisance; s.128).

Thirdly, if the discharge turned out to be a hazardous substance, the hazard control commission could require the discharge to be cleaned up if the owner did not have the commonsense to get on to the job immediately without having to be forced to do so. This could be a very expensive job. The current occupier or owner, or any former person who caused the trouble could be called upon to carry out the work.

Fourthly, if no progress was being made on the matter the neighbour (or anyone) could seek an enforcement order (under s.314) requiring compliance with the terms of the discharge permit.

Let us hope that no valuer would value such a property without being satisfied that there was no potential cost of cleaning up such a hazardous contamination. There is an obvious need for adequate insurance protection forvaluers against such apossibility. [See: AbatementNotice, Discharge, Discharge Permit, Enforcement Order, Hazard Controls, Hazard Control Commission, Penalties]

Noise Nuisance;

Should the tavern across the road be a source of noise nuisance from its outdoor entertainment, the RMA offers hope of being able to do something about the problem that has plagued owners in similar situations for years. The problem has always been one of practical assessment of interpretation of determining whatprec isely is a reasonable noise level. National standards may beprescribed which should help. Practical experience with such problems suggests that noise level in decibels does not tell the whole story. Some sound frequencies are more disturbing than others. Fans, base notes, and beats of a drum can penetrate better than most normal high notes. It is hoped that there will be sufficient teeth in theRMA to help quieten the environment. The problem is one of proof and effective action.

First, every occupier has a duty to adopt the best practical option to ensure that noise does not exceed a reasonable level; (s. 16). This section over-rides any rule in a district plan (which although it has the ranking of a regulation, it is below that of an act of Parliament). The determination of 'reasonable' is both a technical and practical matter. Opposing experts will tend to disagree (as experts are wont to do).

Secondly, if the noise level is obviously excessive a council abatement officer may issue an abatement notice.

Thirdly, to try to solve a long-term noise problem an application maybe made for an enforcement order.

Fourthly, a prosecution for excessive noise that an occupier refuses to remedy can lead to a maximum fine of $10,000 plus $1,000 a day.

[See: Abatement Notice, Abatement Order, BestPractical Option, Enforcement Order, Excessive Noise, Noise, Penalties]

Fig 8

10 ha lake,
3ha in title

What resource management issues will concern a valuer in valuing Pt Allot 1 as a potential subdivision as part of a farmer's holding of all three allotments.

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Rural-Waterfront Issues (Figs 8 & 9)

Should the owner of the beach farm consider subdividing any portion of the holding, even just one section off the existing road frontage, many resource management issues would be encountered. The main ones would be as follows:

1. If the old allotments do not have separate certificates of title the rules relating to subdivision would apply to the whole of the property including all allotments. The effect of this will be most dramatic.
2. The new mean high water springs foreshore boundary, as well as the bank of the river (both tidal and fresh water) would have to be determined by survey.
3. Because the lake is over 8 ha, the margin would also have to be surveyed.
4. Before the subdivision can be completed the foreshore below MHWS, and the beds of the river and lake, would have to be transferred to the Crown without compensation.
5. An esplanade reserve 20 m wide must be set aside along the foreshore, river, and lake boundaries, unless the district plan otherwise authorises.
6. Notwithstanding that an esplanade reserve 20 m or under had previously been set aside from MHWM, the extra depth would still have to be set aside.
7. Any land isolated between the lake and the riverwould have to be transferred as a reserve through lack of access.
8. Normal reserve requirements must be met, with no credit for the foreshore and esplanade areas required to be set aside.
9. Any portion of the s wampy area that is below MHWS would be transferred to the Crown as part of the foreshore or esplanade reserve. Any balance of the habitat might be set aside as part of the normal reserve requirements.
10. In addition to a subdivision consent, if any stormwater were to be discharged into the watercourse from the subdivision, a discharge permit would have to be applied for and the best practical option of mitigating any adverse effects dealt with.
10. The old Maori burial ground will need some form of protection. This is a matter that would have to be taken up with the tangata whenua (local Maori people). Possibilities would include a heritage order, or perhaps adjusting the boundary of the foreshore reserve, or perhaps including the land in the normal reserve requirements.

Refs: Allotment, Beds, Best Practical Option, Discharge Permit, Esplanade Reserve, Foreshore, Heritage Order, Lake, Maori Culture, National Importance, Subdivision, Treaty of Waitangi. A

Fig 9

Rural Waterfront Resource management issues

1. Old survey. No separate CTs. RMA applies to all allotments
2. Determine new MHW Springs boundary
3. Determine new lake margin

4 Esplanade reserve 20m wide required
5. Only land within CT is aff ected
6. Old 3m esplanade reserve increased.
7. Any isolated land included in esplanade reserve.
8. Lake over 8ha requires bed to be transferred to Crown without compensation.
9. Foreshore (including swampy area) to be transferred to Crown without compensation.
10. Both fresh and tidal water must have esplanade reserve.
11. Esplanade reserve applies to stream average 3m.
12 Discharge consent for piping into natural watercourse.
13. Old Maori burial ground will need some form of protection.

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Resource Management Act: A rural perspective

by P E Tierney

RESOURCE MANAGEMENT ACT (REPEALS 59 ACTS)

It does two principal things : it provides the

Basis (A) For Allocating Community Managed Resources such as Water, Geothermal Energy and Geothermal Water, Coastal Marine Area, (Mean H.W. Springs - 20 kms Limit) Air

(B) For managing the adverse external effects of the use, development or protection of natural and physical resources including the environment.

Main Differences Between R.M.A. and Previous Acts

1. Clear purpose based on sustainable management. All decisions must be consistent with this purpose.
2. Concerned with good environmental management and not a means for achieving social or economic goals.
3. Land, air and water are to be managed in an integrated way.
4. The presumption is that private land can be used as the owner wishes unless it contravenes a provision in the Act.
5. Planning should be effects rather than use based.
6. The duty is on the provision makers. They must have a clear understanding of issues and priorities.
7. Powers under the Local Government and Rating Powers Act must be seen as part of the means for implementing resource management.
8. National policies and environmental standards are provided for. They must be incorporated in the local documents and plans.
9. The Minister for the Environment has wide powers for consent applications of national significance.
10. There is a system of statutory policy statements andplans. Regional policy statements define resource issues of regions and district plans enable these standards to be specified.
11. These should not be used asaprimary means for achieving social or economic policies by promoting a particular form of land use.
12. The use of the regulatory part of the plan is an option not a requirement. Detailed planning is not needed everywhere but planning in a policy thinking sense is essential.
13. Means are provided so that the public can ensure decision makers are doing their job correctly and are reducing the adverse effects on the environment.
14. There are five types of consents
    (1) land use
    (2) subdivision
    (3) coastal permits
    (4) water permits
    (5) discharge permits

Within these five are a further five types of consents

    (1) permitted
    (2) controlled
    (3) discretionary
    (4) non complying
    (5) prohibited

15. There is a single process for all consents which must be provided by the applicants. All consents are to be considered together.
16. Anyone can make a submission on a notified resource consent. Prehearing meetings and other devices are provided for faster decision making and joint hearings are allowed where consents are needed from more than one authority.
17. Anyone can invoke a formal procedure seeking changes to a district or regional plan.
18. Water conservation orders are available to protect any river or water body which has natural, intrinsic or amenity value.
19. Designations for public works to protect the proposed work against changes in land use and to provide for compulsory acquisition is provided. Private network utility operators can access this system via the Minister for the Environment.
20. Heritage protection orders for landscape features and places of national or local significance are provided and operate like designations. They affordprotection and enable compulsory acquisition.
21. The Local Authority has the duty of monitoring to see that objectives are being met.

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Treaty of Waitangi and Maori Issues

When preparing or changing district or regional plans Local Authorities must

(a) as a matter of national importance recognise and provide for the relationship of Maoris to their ancestral lands, water, sites, waahi tapu and other taonga.
(b) have particular regard to Kaitiakitanga.
(c) take into account the principles of the Treaty of Waitangi.
(d) consult with the tangata whenua.
(e) have regard to any relevant planning document of an iwi authority.
(f) where regional policy statements are involved the matters of resource significance to an iwi authority must be stated.

The effect is that Local Authorities must have an effective framework for

consulting Maori groups. There may be difficulties in establishing which group represents the tangata whenua.

Land Use

1. Currently District Schemes prescribe the only uses permitted in a zone.
2. The R.M.A. came into force on 1 October 1991. Between this date and the date at which *District Plans* become operative *Transitional District Schemes* will operate. To preserve its integrity every activity not specifically referred to in the plan is a non complying activity. But from 1 October 1991 applications for resource consent will be dealt with under the new criteria.
3. The new permissive approach is that any activity is permitted unless it contravenes a rule in the District Plan.
4. The shift to permissive planning is intended to alter land use planning. Instead of Councils prescribing the direction and nature of development developers will decide on economic grounds where the activity is best located and Councils will manage the process.
5. As permitted activities may not be prescribed on the District Plan, anyone wishing to establish a new activity will need to apply to the Council for a compliance certificate to determine whether the use is permitted before making investment decisions.

Rate of Change

The change from prescriptive to permissive District Plans will be gradual.

1. Existing District Schemes will continue as *Transitional* for five years since they became operative.
2. New District Plans under the R.M.A. can negate the permissive approach.

Nature of Change

It may be anticipated that under the R.M.A. there may be less emphasis on zones each with a district permitted use and an increase in environmental standards against which any proposal can be assessed.

Example:

(i) home businesses in residential areas.
(ii) shopping centres in city centres vs. residential areas.

Social, Economic and Cultural Goals

The new permissive approach is not unfettered and will ultimately be ringed with Planning Tribunal and Court decisions. The three components will have to be balanced and as well have regard for health and safety.

Participation in R.M.A. Process

It is vital that all groups should have an input into the consultative process.

Existing Uses

Currently existing uses lawfully established may continue indefinitely.

The R.M.A. allows existing uses to continue indefinitely with three major exceptions.

1. Regional Councils can control the use of land for the purpose of:
   (a) soil conservation
   (b) maintenance and *enhancement* of the quality of water and water bodies in coastal water.
   (c) similarly for quantity of water.
   (d) the avoidance of natural hazards.
   (e) adverse effects of hazardous substances.
2. There are to be no existing uses in coastal marine areas.

There are statutory prohibitions on such things as

(a) reclamation
(b) altering structures
(c) disturbing the foreshore or seabed
(d) prohibited activities may be carried out only if expressly allowed in the Plan.

There is a transitional period of three years to allow District Plans to be amended or resource consents obtained for activities being carried out before 1 October 1991.

In coastal marine areas existing uses can be extinguished by a rule in a plan.

3. Generally there are no existing use rights to river and lake beds.

Water

Previously all waterresources were vested in the Crown and subject to certain specified exceptions, could be used by the holder of a water right. This right was obtained via Regional Councils.

The R.M.A. prescribes a restriction on the use of water resources and provides for policy and plans and themechanism for granting resource consents. The resource is not now vested in the Crown. Resource consents are required fora water permit or discharge permit. The emphasis again is on sustainable management as a guiding purpose.

The new Act requires all aspects to be considered and to encompass every conceivable point in favour of the use or protection of any resource. The weight is not an even balance as special weight must be given to matters of national importance e.g. protection of the coastline, outstanding national features, significant indigenous vegetation, maintenance of public access to water resources, Maori cultural interests.

Use of Water

The taking, use, drawing or diverting of any water, including geothermal, is prohibited unless

(a) a resource consent is held (including the transitional right)
(b) the use is expressly allowed in the Plan or
(c) the use comes within certain exceptions e.g. domestic, fire, traditional use of geothermal by the Maori, recreational use of coastal water where there is no adverse effect on the environment.

Previously there was no authorisation necessary for sea water. The R.M.A. prescribes that there is a restriction on the use of "open coastal water" if that use contravenes a rule in the Regional Plan.

Hence for open coastal waters it may be used unless prohibited while fresh and coastal may not be used unless authorised.

Contaminants (previously known as waste)

There is a specific restriction against discharge into water or land where it may enter water or from industrial or trade premises into the air or onto land. Discharge of water into water is also restricted.

Such discharges are permitted if allowed by a rule in the Plan.

Duty to Avoid Adverse Effects

Irrespective of the legal authorisation for an activity

> *"Every person has a duty to avoid remedy or mitigate any adverse effects on the environment arising from any activity carried on."*

In many cases a particular activity will have an adverse effect on the environment which was the reason why a resource consent was previously required. It would seem that this provision can be utilised to readdress the initial grant of the consent.

Regional Policy Statements and Regional Plans

Every Regional Council must have a policy statement setting out an overview

of the resource management issues.

They may also have one or more plans one of which must be a

REGIONAL COASTAL PLAN

It may also specify rules relating to the plan such as

Permitted
Controlled
Discretionary
Non complying
Prohibited

with each category requiring progressively higher tests before the activity can be approved. There is a special category of restricted coastal activities which reflects input from the Minister of Conservation. Councils may embark on an integrated planning exercise in which every user of water resources should take an interest.

District Plans

The process is similar to the old system

(a) proposed district plan is publicly notified
(b) submissions lodged within forty days
(c) cross submissions lodged within twenty days
(d) objections heard
(e) decisions publicly notified
(f) parties can appeal to Planning Tribunal.

District Plans - must be reviewed every ten years. (C.F.5 under old system)

Transitional plans within five years of becoming operative. Anyone can apply to have a District Scheme changed. (Not possible under old system.) But it may be costly for the individual.

Resource Consent Applications

Types

1. A land use consent.
2. A subdivision consent.
3. A coastal permit to conduct an activity or occupy space in the coastal marine area.
4. A water permit.
5. A discharge permit.

Types of Activities

N	
1. Permitted activities	Predominant use
2. Controlled activities	Controlled uses
3. Discretionary activities	Conditional use
4. Non complying activities	Specified departure
5. Prohibited	?

Application for Resource Consent

Made in usual way. An application for a resource consent (other than for a controlled activity) must be accompanied by an environmental assessment. This may well increase the cost to an applicant.

Anyone can object (unlike the old rules). A well defined time limit to hear application. The Local Authority may have its own environmental assessment made and charge it to the applicant.

The consent authority may postpone a hearing until it has all the information it requests.

Administrative Changes

Councils can now charge applicants for resource consents (unlike the old system) so that an applicant can be made to pay for both sides of his case. This could be a major disincentive.

Appeals

Time for lodging appeals with the Planning Tribunal has been reduced to fifteen days (from one month).

Resource Consents

Holders can raise loans against the security of a charge over the consent. It can be registered under the Chattels Transfer Act 1924 and notice given under Part IV of The Companies Act 1955.

Review of Consent Conditions

Councils can review resource consents but must have regard to the ability of the business to be viable if the consent is changed.

Surrender

Any resource consent can be surrendered subject to certain qualifications (S 138).

Rentals and Royalties in Coastal Marine Areas

If one is granted in a coastal marine area which enables the holder to occupy Crown land the holder shall pay rents specified in the regulations.

e.g. Marine farms, boat builders and boat repairs $425.00 p.a.
Whitebait jetties $50-$100.00p.a.

Coastal Tendering

When regional coastal plans have been prepared (in about two years time) the M.O.C. may driect that where competition for sites exists these may be put up for tender.

Existing occupiers of sites in coastal marine areas should consider applying to have their tenure extended and also applying for new resource consents.

Marine farmers previously enjoyed preference rights when their leases expired. This will no longer be the case.

Designations

The designation provisions are similar to the old system except that *Private Network Utility Operators* who are approved as requiring authorities, together with a Minister of the Crown and any Local Authority, may give notice that it requires a special designation.

Heritage Protection Orders

Any Minister, Local Authority or RQdy Comor ate can apply to the Minister for the Environment asking for protection provision for plans of national or local significance. The protection must be in thepublic interest. The range is extremely broad.

The process is similar to a designation.

Water Conservation Orders

The wild and scenic river provisions have been preserved into the new Act.

These provisions may now be used to protect wetlands, geothermal fields and underground aquifers.

Subdivisions

Generally land may be subdivided only if the District Plan expressly allows it.

In practice a resource consent must first be obtained. Applicants will be required to pay the Council's reasonable administrative charge and Council can impose certain conditions e.g. reserve contributions.

Subdivisions include cross leases, company and unit titles so all these are now subject to reserve contributions if the Council so decides.

Esplanade and Other Reserves

An esplanade reserve not less than 20 metres wide above mean high water springs, of the sea and along the banks of any river over three metres wide or lake over nine hectares must be set aside.

Wider or narrower esplanade reserves can be a rule.

No compensation is payable unless the reserve is over 20 metres wide and then only for the land in excess of 20 metres.

Enforcement Orders and Abatement Notices

If there is a breach of the Act positive action can be taken if either 0

(a) no resource consent has been obtained or
(b) there is a breach of the conditions of the resource consent.

Enforcement orders can be commenced by any member of the public and are determined by the Planning Tribunal. Abatement notices are issued by the Local Authority and subject to appeal to the same tribunal.

The effect on a future owner of, say, a landfill site where there is obnoxious seepage could be severe.

Other Enforcement Measures

Direction is given in the case of excess noise and water shortage.

Emergency Work

When immediate action is required to alleviate the adverse effect on the environment Local Authorities may seek reimbursement of costs. Alternatively they may have to pay compensation if it subsequently emerged that it was not the failure of the individual to comply with the Act.

Declarations

May be sought from the Planning Tribunal as to the legality of any existing or proposed action under the Act.

Interim Orders

The Planning Tribunal can issue these on an injunction type basis.

Offences

Penalties for offences are severe e.g. taking water without a permit or commencing a land use in breach of the District Plan has a maximum penalty of two years imprisonment or a fine up to $200,000. If the offence is a continuing one further ifnes up to a maximum of $10,000 per day.

Hazard Control Commission

A commission is proposed to control hazardous substances and new organisms and to evaluate the risks of such substances to the environment.

Transition Rules

These are very complex. Existing permissions, plans and statutory instruments under a wide variety of statutes cease to have any effect unless covered by the new Act's transition provisions.

Existing permissions are translated into comparable resource consents but some have time limits imposed.

(a) Existing water rights expire after thirtyfive years.
(b) Uses of water predating the Water and Soil Conservation Act have a ten year limit.
(c) Existing permissions under the Town and Country Planning Act or the Harbours Act in *coastal marine areas* may not authorise all activities which now require a coastal permit. There appears to be two years grace. All plans or applications in progress may continue providing they were publicly notified prior to 1 October. Existing subdivisions may continue if approval had been given or an objection/appeal is in progress.

Miscellaneous Provisions

(a) Section 355 enables any person to apply to the M.O.C. or the M.O.L. to have reclaimed land in a coastal marine area or land forming part of a river bed or lake vested in that person.
(b) Royalty for sand or gravel extraction is set at $1.70 p.c.m.
(c) Existing geothermal rents and royalties will remain. New licensees will pay in accordance with a prescribed schedule.
(d) Fees for applications are prescribed for example:

Marine Fanning Application	$100
Requiring Authority	$500

Mining

The environmental impact is dealt with as for any other land use. The extraction process requires a land use consent. It will probably require a water permit and/or a discharge permit and a permit to discharge material into water courses or the air.

Acondition may wellbetherefilling of the mine.

Previously mining had the benefit of an Act set up to encourage mining, now it is on a level playing field. This is no longer the case.

Access provisions are changed. In practice mining companies will have to come to an arrangement with land owners. A

Editorial Board Sponsored Lecture Tour
Auckland, Wellington, Christchurch: February 1992

Resource Management Act: Environmental Audits

by J D Lynch

Introduction

1.1 Valuers should take into account any environmental liabilities a site may have when valuing it.

1.2 The process by which environmental liabilities are ascertained is known as an "environmental audit".

1.3 The public's environmental concern is being translated into election votes so stronger environmental laws are being enacted. There was bi-partisan political support for the Resource Management Act 1991 and the international trend is towards comprehensive laws in respect of contaminated sites and pollution of the environment. *The polluter* pays is the basis of modem environmental laws.

United States of America

2.1 In the United States there are administrative regulatory controls to protect the environment. However, to achieve cleanup of toxic chemical dump sites Congress enacted a harsh, retroactive civil liability scheme known as the Superfund Act.The civil liabilities created by the Superfund Act are extraordinary; it is intended to conduct remedial actions on over a 1000 sites at this stage and the cost of cleaning up the sites is estimated to be $21-30 million per site. In addition responsible parties may also be liable for *natural resource damages* which could be potentially even more expensive than the clean up costs.

2.2 The clean up costs and natural resource damages can berecovered from a wide range of persons and bu sinesses associated with the site, including current owners and operators whether or not they have disposed of hazardous substances during their ownership (unless they qualify for the innocent purchaser defence), prior owners or operators, transporters who brought hazardous substances to a site and others.

2.3 A purchaser may be protected by the innocent purchaser defence if it can establish that prior to acquiring a property it carried out all prudent investigation. Consequently environment audits are very important and they are carried out by purchasers before buying properties so that if there are any environmental liabilities they can successfully rely on the innocent purchaser defence.

2.4 The Superfund Act imposes strict liability so it is not necessary to prove fault or negligence in order to recover clean up costs and natural resource damages.

2.5 The American approach may not be adopted by New Zealand but it is influencing the development of policy here and further environmental laws will be enacted in New Zealand.

3. Resource Management Act 1991 Enforcement Orders and Abatement Notices

3.1 There are two complementary procedures by which resource users can be compelled to cease their operations or to take positive action. The precondition for either order is a breach of the Act or a plan or regulations made under the Act.

3.2. The difference between the two procedures is partly procedural. Proceedings for an enforcement order can be commenced by any member of the public and are determined by the Planning Tribunal. Abatement notices are issued by local authority officers, subject to a right of appeal to the Planning Tribunal.

3.3 The substantive difference is that insofar as positive orders are concerned, an abatement notice may require an owner/occupier to undertake action to avoid remedy or mitigate any actual or likely adverse effect on the environment relating to their land, notwithstanding that they might not have caused the adverse effect. This point is of some significance. An incoming owner or occupier might thereby take over hidden liabilities in respect of property. While one can appeal an abatement notice, and the Planning Tribunal might be persuaded that it is unjust that an incoming owner/occupier should be faced with such costs, the Act envisages that possibility and the Planning Tribunal's likely attitude is unknown.

3.4 That situation might occur, for instance, in relation to a landfill . Material is dumped on the landfill. The process of seepage into underground aquifers starts immediately. Ownership of the landfill changes. The previous owner is nowhere to be found. The Regional Council may look to the new owner to remove the source of seepage - at huge cost.

3.5 The enforcement order provisions may also be utilized to require a resource user who has acted in breach of the Act to reimburse any person who has met clean-up or mitigation costs.

Emergency Works

3.6 Local authorities exercising jurisdiction over relevant resources (eg the Regional Council in the case of water resources or the District/City Council exercising jurisdiction over land uses) may require immediate action or alternatively institute immediate action themselves in the case of imminent or actual adverse effects on the environment requiring immediate action. If the local authority takes action, it may seek reimbursement of costs from any person in default under the Act.

3.Offences

3.7 The trend in recent years has been to increase progressively the penalties for breach of statutes regulating the environment. This hasbeen continued. The infringement of the basic prohibitions in respect of the environment - taking water without a permit, com-0

mencing a land use in breach of the relevant District Plan etc is an offence with a maximum penalty of two years imprisonment or a fine up to $200,000 and, if the offence is a continuing one, further fines up to $10,000 per day.

3.8 Liability for criminal penalties does not exempt a party from any obligations to take action, reimburse third party expenses or cease action under the enforcement order/abatement order provisions.

3.9 In the case of actions by employees of corporations, the corporation will be liable, unless it can be shown that none of the directors, or any other person involved in the management of the company could reasonably beexpected to have known of the action in question or, that the company took all reasonable steps to prevent the action in question and that, once the offence was committed, the company took all reasonable steps to remedy any adverse effects.

3.10 If directors and/or managers authorisedorconsented to the actions in question, and shouldreasonablyhaveknown it was an offence, and failed to take all reasonable steps to prevent it, they are guilty of separate criminal offences.

Charges over Resource Consents

3.11 Section 122(3)providesthattheholder ofaresourceconsentmaygrantacharge over that consent as if it were personal property. Subsection (4) states that the Chattels Transfer 1924 and Part IV of the Companies Act 1955 shall apply in relation to a resource consent as if the resource consent were a chattel. This means that charges can be granted over resource consents as security for loans. The charges can be registered under the Chattels Transfer Act and notices of charges are to be given to the Companies Office.

Advice to Purchasers

4.1 The environmental liabilities pertaining to a site or business activity may significantly reduce their value and the liabilities could be so great as to make the site and business a liability rather than an asset. The extent to which the purchaser of a site may be liable for environmental damage caused by a previous owner or occupier is uncertain. However, apurchaser would be best advised to avoid, or at least take into account when valuing a site or asset, any potential liability. Further, environmental legislation now being developed may make it clear that purchasers are liable for contamination caused by predecessors in title. Currently the main risk to purchasers is that environmental damage may still be caused by some continuing source such as a seeping landfill. In such a case the new owner of a property may be liable for the environmental damage caused.

5. Advice to Owners and Occupiers

5.1 Under the Resource Management Act 1991 owners and occupiers may be liable for clean up costs of contamination caused by them. Such an environmental liability would be relevant to any valuation of a site for balance sheet purposes. Valuers should note that land can be charged with clean up costs incurred by a local authority if it has carried out clean up work under the Abatement notice procedure.

6. Advice to Lenders

6.1 An owners environmental liabilities may seriously affect a lender and so should be taken into account when advising the lender prior to a loan being made.

6.2 A borrower's ability to make loan repayments may be affected if the borrower becomes liable for the cost of compliance with an order under the Resource Management Act 1991 or if the business ceases because the borrower is unable for other reasons to comply with environmental standards.

6.3 If the lender takes security over a property, then, even although the borrower has defaulted, it may be most unwise for the lender to enter into possession of the property since the lender will then become the occupier of the land and consequently assume environmental liability as occupier for clean up costs and compliance with enforcement and abatement notices.

7. Valuers

7.1 Valuers should consider excluding liability for environmental liabilities. Valuers frequently exclude liability for hidden defects in buildings and for structural deficiencies.

7.2 An exclusion clause is the last line in legal defence when a valuer is being sued by a client. It is a defensive approach. Valuers should adopt a more positive commercial approach and ensureasfaraspracticalthatneithervaluers nor their clients end up in litigation. Accordingly, valuers should alert their clients toapparentenvironmentalissues. For example:-

(a) If there is obvious environmental damage (e.g. contamination of a site, discharge of contaminants to air or water etc) then the valuer should note it and recommend that the client obtain an environmental audit;

(b) If there is anything about the history of thee site which may give rise to a reasonable suspicion that it may have been contaminated, then the valuer should recommend that the client obtain an environmental audit. For example, if the current owner or occupier is a timber treatment company or if the title reveals that the site has been used by a timber treatment company in the past then a proposed purchaser or lender should conduct an environmental audit to ascertain whether the treatment process has contaminated the site;

c) If an activity needs a resource consent (e.g. a land use consent in order to conduct the activity or a discharge permit to discharge contaminants to air or to water) then there should bean audit to ascertain that:-

(i) The necessary resource consents exist;

(ii)Theresourceconsentshavenotbeen charged as security for a loan;

(iii) The activity complies with the resource consent (e.g. the discharge of contaminants do not exceed the maximum in the discharge permit);

(d) If a building was built at a time when environmentally unacceptable materials such as asbestos were commonly used in construction then this should be noted

8. Conduct of Environmental Audits

8.1 Valuers should notassumeresponsibility for the conduct of an environmental audit. If there are indications that an environmental audit may be appropriate a valuer should recommend that the client obtain an environmental audit and the client should instruct the consultants who are to carry out the environmental audits. Valuers who do assumeresponsibilityfor anenvironmental audit may find they are liable for damages if the client suffers loss as a result of any deficiency in the audit.

8.2 An environmental audit comprises:-

(a) A description of the "legal environment" of a site or activity including the laws and legal standards which must be complied with;

(b) An inquiry to ascertain whether the necessary resource consents exist

(c) A technical investigation to ascertain:-

(i) The condition of the site or the nature and quantity of the contaminants being discharged, and

(ii) Whether the legal standards are being complied with.

(d) Recommended actions to remedy any problems including, ifrequired, anassessment of the cost of remedial actions.

9. Environmental Audits - Smoking Guns

9.1 An environmental audit may be- •

V

Compiled by Leonie Freeman

Kiwinet: instant information on your desk

by A Deane

he National Library's Kiwinet service is a computerised information system which gives users the ability to research the contents of over 200 New Zealand journals, newspapers, cases and tribunal decisions in minutes from anywhere in New Zealand.

Imagine being able to identify types of properties, or, land subject to conditional usage, instantly without leaving your desk. Imagine finding a relevant legal case with just a few words eg. reserve contribution; hazard zone; rural zoning prospecting. Imagine being able to instantly identify magazine articles, changes in the law and newspaper stories from a computer on your own desk in minutes! These are the sorts of benefits enjoyed by over 600 Kiwinet users.

Kiwinet is a computerised information service, based in the National Library of New Zealand. It currently contains 17 information databases and five practice databases (for training and self-education at a cheaper rate). The only difference between a Kiwinet database and the client databases and mailing list databases that most valuers have access to, is that the databases are available at a remote site (Wellington), they are accessed via a telecommunications network (on-line) and one database may have thousands of users. Users access the databases, using a personal computer, communication software and a modem. Any valuer who has a computer and a phone line is a short step away from being able toaccessawealth of New Zealand information.

The Databases

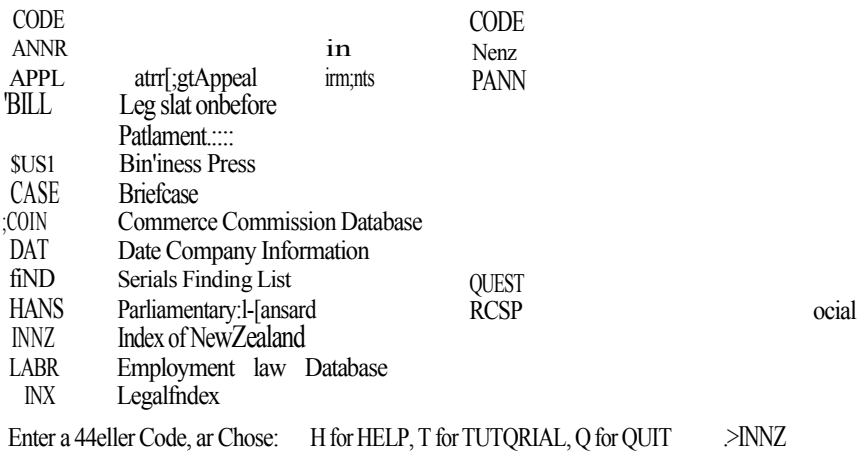
Kiwinet databases are created by database producers from throughout New Zealand, Kiwinet hosts them on a central mainframe computer in Wellington, all the databases are searchable using the same search software BRS/Search which is very powerful and allows a document (BRS/Search refers to records as documents) to be retrieved by any word or number present in the text.

The subjects covered by the databases are broad and of interest to a range of New Zealanders from the fourth form student doing a project on the American's Cup to the queen Street barrister who wants to be fully informed before going into Court Kiwinet contains Legal cases, Planning Tribunal Decisions; Cunentlegisla ilon; Newspaperarticles; CunientAffairs articles; DSIR Scientific reports and Company information. Databases are being added to Kiwinet on a regular basis.

This article demonstrates Kiwinet by showing two sampleKiwmetsearches on the Index New Zealand and Planning Tribunal Decisions databases.

An Introduction to Kiwinet Searching

The first screen you see when you log on to kiwinet is a list of all the databases available to you to search.



Ann *Deane* is *the manager ofKiwinet at the National Library of New Zealand: Her position involves negotiation of new databases and promoting* the *Kiwinet Service. Previously she* was *involved in Database design, :Doctunentationi*

Environmental audits... continued

come *asmokinggun* in the hands ofthe company which obtained it and be used as evidence against it in aprosecution or claim for damages. Therefore, it is essential to treat environmental audits as confidential at all stages from conception to completion.

9.2 The powers of the authorities under search warrants and plaintiffs under the rules of discovery in civil proceedings are far reaching; they can get copies of all relevant documents. The principal exception is *solicitorlclient privilege.* Companies which instruct their solicitors to conduct an environmental audit may be able to resist giving it to the authorities or to a plaintiff. This protection could be crucial. The solicitors in turn can instructengineers and others to carry out site investigations and make recommendations. Ifengineersandother consultants are not instructed by a solicitor then the protection of solicitor/ client privilege will be lost. A

CORRECTION

The article "What practicing valuers need to know about regression analysis " published in Computer Forum In the March 1992 Issue of the *New Zealand Valuers'Journalwas* jointly authored by Prof. Stuart Locke and Iona McCarthy. We regret the publication errors In respect of the authorship of the article.

Each database has a four letter code which is entered for access (we have selected INNZ). Notice the instructions on each screen to help if you get lost.

Database Searching

Searching Kiwinet is easy. Start by defining the concepts you are interested in locating information about eg. you may be interested in looking at the latest articles about resource management. Then choose the database most likely to contain this information; Kiwinet supplies all users with a list of databases and the subjects covered , each database also has a guide, containing search hints, display hints and lists of contents.

This is what a search on the terms resource management looks like on your computer screen using the Index New Zealand database

The next step is to display the information to your screen, we have taken a short-cut and typed d/Wl-3,this asks Kiwinet to display (d), the abstracted, or, medium format (a) of the first three documents (1-3)

INNZ PAGE I OF 10

Cu

te, Richard

Ur_.. Bement Act a worry

d`Farmer

n

LAW ENVIRONMENTAL; LAND TENURE; AGRIclJI I

Ate Discusses the implications of the Resource Management ACt upon rights of access by mining companies to farm land and considers the espfandade reserves provision. Criticises the esplanade provisions Which determine that farm boundary change? be classed as subdivisions,

Document 2 Df 433
AU Gibb, Jeremy
TI Implications for coastal management of sea-level nse.
SE New Zealand Engineering
VL 47'(2 21
DA Mar'1992
DE W
AB Warns ttlat local: authorities should err on the side of caution and allow for a riseeather, (peal government; Environmental impact; coasts.
in sea leveldueto"greenhouse'warming when developing coastal sites. Lists sea-level rise projections. Mentions council's obligations under the Resource Management Act.

Document 3 of 433
AU Palmer, K A (University of Auckland, Dept of Law)
TI Planning and local government
SE New Zealand Recent Law Review
VL 4;402-418
DA 1991
DE LAW, ENVIRONMENTAL LAW, LOCAL GOVERNMENT; PUBLIC ADMINISTRATION; REGIONAL LANNING; CONSERVATION
AB Outlines the essential aspects of the Resource_Manaugment Act 1991. Covers matters such as resource consents, works requirements, heritage and water conservation orders, subdivisions and reclamation. Considers related resource management statutes and other local government matters,
END QF:REQUEST

Index New Zealand is a bibliographical database, which means it describes the type of information available rather than supplying the complete text. Field labels are aprecise description of the contents of the document. These Index New Zealand documents contain the following field labels AU, author; TI, title; SE, Serial/ magazine; VL, Volume number and page number; DA, date of publication; DE, Subject of article; AB, description of contents.

Articles identified on Kiwinet may be obtained from anywhere in New Zealand by either approaching a local library, or, for fast supply contact Rapid Article Access on 0800 804-636.

Resource Management: Widening the Search

The above search has located a number of journal articles about resource management, further searching of additional databases will retrieve the full text of the resource management act, all relevant cases, Planning Tribunal decisions and a number of newspaper articles; it is even possible to trace the Resource Management Bill through Parliament to its final reading.

A Planning Tribunal Decisions Search

The Planning Tribunal Decision database allows you to search for almost any word appearing in any decision since 1984. From 1990 onwards, all related High Court Decisions are included. This example of a Planning Tribunal Decision search highlights conditional usage restrictions on land.

This search is a simple one on conditional use and shows the number of decisions dealing with conditional use, it is easy to add extra terms such as reserves, parks, reservoirs, kennels, to your search to make it more relevant. (see following page A)

More information may be viewed by requesting a full display format. An example of a complete Planning Tribunal Document follows. The whole document isn't displayed as it is 11 screens long and would take up too much space, however it does give you an idea of the amount of information available. (seefollowingpage - B).

If you are new to database searching there is a tutorial which you can work through and databases to practice search-

ing on. A Kiwinet trainer is available for courses nationally and there is an on-line help desk for calls between 8.30am to 5.00pm. Kiwnet is available for searching from 7.00am to 7.00pm, when database updates are run.

Kiwinet opens the door to a growing information resource. Steps for the future include more databases particularly Scientific information, Government information, and New Zealand newspaper information.

For those who do not want to learn how to search Kiwinet themselves, the service is available at most large libraries and information broking firms.

Membership of Kiwinet is free, and you are charged only when you use the databases. For more about Kiwnet, or accesss to Kiwinet information, call Ann Deane on 0800 736-561 A

SAMPLE A ►

SAMPLE B
V

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                                        * PLAN: PLANNING TRIBUNAL *
Search 1 : Enter your search here, or choose H for HELP or an option  =->CONDITIONAL
USE

Search 1 retrieved :
RESULT          415 documents

Enter your search, or press ENTER to Display, or H for HELP or an option =t>d/b/1-3

SEARCH          1       PLAN            PAGE 1 OF 4
DOCUMENT        1 OF 415
NA      SANDHAM GL & MJ vWHANGAREI DISTRICT
PA      TRASS BJ & JM
HD      31 July 1991
FN      AOP98/91
JU      Judge Kenderdine presiding; Messrs JR Dart & TW Smallfield
MJ      Housing; Coastal land; Erosion control; Erosion prevention;Relocatable home;
        Views; Amenity visual; Safety; Need; Public interest; Site suitability

DOCUMENT      2       OF      415
NA      ATKINSON (31-1871) ; HERITAGE MINING (31-2057 ETC)
HD      14 May 1991
FN      A086/91
JU      Judge Kenderdine presiding; Mrs A L Mcmillan & Mr HM Dodd
MJ  Prospecting licence; Stock disturbance recreational use', Maori values; Waitangi
        treat; Land stability; Flooding; Water supply; Water quality; Marine farming; Coastal
        Tana; tnvironmentai aamage; oociai issues; Neea; ionamons; troslon control
DE      noise; hours of operation; helicopter use

DOCUMENT      3       OF      415
NA      WAIRAU PARK LTD; FOODSTUFFS (AK) LTD & ORS v NORTH SHORE CITY
HD      22 May 1991
FN      A096/981
JU      Judge Bollard presiding; DrAH Hackett Mrs AL McMillan
MJ      Retail uses; Use not provided for; Definitions; Size limit; District sch review;
        Supermarket; Retail warehouse
                                        END OF REQUEST

SEARCH          I       PLAN            PAGE    1       OF      11
DOCUMENT        1  OF    415
IN      10 Dec 1991
NA      SANDHAM GL & MJ v WHANGAREI DISTRICT
PA      TRASS BJ & JM
HD      31 July 1991
SB      1 Aug 1991
FN      A098191
JU      Judge Kenderdine presiding; Messrs JR Dart &TW Smallfield
MJ      Housing; Coastal land; Erosion control; Erosion prevention; Relocatable home; Views; Amenity visual; Safety; Need; Public interest; Site suitability
ST      Town & Country Planning Act 1977 s72(2); s3(1) (a); s3(1) (b); Local Government Act 1974 s641.A(1) Town & Country Planning Act 1977 s3(1)(c)
Local Government Act 1974 s4lc
CS      NZTPA 47,13 NZTPA 197
PP      91/12
AB      SIGNIFICANT: planning
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The significance of this case arises from the discussion of the likely effect of development in areas subject to coastal erosion. The appeal was against the granting of consent to the erection of a dwelling house on lot 27 in Whangaumu Street, Whangaumu Bay (formerly known as Wellington Bay);Tutukaka. The grounds were that the objectors and the adjoining landowners would be prejudicially affected by the proposal because, inter alias it was likely to adversely affect land stability and therebyaffect the safety and enjoyment of the properties in the vicinity; and that the proposal was not suitable for the site having regard to the provisions of the District Scheme. Other grounds were that the building had not been designed to be relocatable as that term is used under s.641 A(1) of the Local Government Act; the siting of the building had not been determined with adequate regard to the District Scheme; and the council's decision did not take into accountnordid it provide the assurance for protection of the toe of the foredune and the stability of the slope on the seaward side of the applicants' property thus putting the appellants and other objectors` property at risk

CONCLUSIONS

Subject to a number of conditions the site was a suitable site for the proposal.

Germaine to the site being considered suitable was a condition thatthe building be located on the landward side of the Coastal Hazard Zone 1 (ie 30m from the bottom of the rock wall).

The house was to be relocatablewithin the terms of s.641A of the Local Government Act 1974 and it was also a condition of the planning consent that it be so. This was for the protection of both the landowner and the council and was a legitimate planning issue.

The wisdom of carrying out any furtherwork on the rock wall was questionable. Whilst the wall might give some protection for the site in the longer term if provided with a membrane and overplanting, it would meanwhile detract from coastal protection and breach the provisions of s.3(1)(c) of the Act, By setting the dwelling the distance it had from the seaward boundary it would no longer need the limited short-term protection the wall might give. It was clear that adding to the rock wall was not going to alleviate the situation further,

Due to the fact that forms of coastal protection were evolving and that all the parties to the appeal had already been put to much expense to preserve the coastline and their building sites, the Tribunal recorded its wish that all parties liaise with the experts to ascertain the best methods of continuing to preserve the coastline. This might include removing the rocks altogether.

The appeal was allowed in part. In view of the very major public interest issues which had arisen, costs were to lie where they fell.

END OF REQUEST

Property Management: Kiwi product targets world market

by W Andrew

The changing image of corporate property manager

Never before has there been such a need to optimise a property portfolio as there is today. Traditionally the landowner could rely on inflation to give him a capital gain on his property assets, but today, with low inflation property needs to be managed like a business, maximising income and minimising expenditure. The focus is now indeed on the property manager to perform, the role is changing.

In the last few years, the overall perception of the corporate real estate function has changed dramatically as facilities have become the largest single asset on the corporate balance sheets. With approximately 50% of the world's wealth held in property assets and real estate rapidly approaching 30% of total assets for many large corporations, the spotlight has been focused on the corporate real estate division as a contributor to profits, as opposed to fixed cost overhead.

This new awareness means that today's corporatereal estatemanagers arebeing called upon by senior management to provide up-to-date information in a timely manner.

Glut of new office space in major CBDs

Currently Auckland has more than 30 office vacancies. In Australia, Perth is running at 27%, Melbourne at 25% and Sydney at 16%. Older buildings are losing tenants to the newer buildings due to increased competition and the'nice' deals being cut for the prestigious new high-rise office space. For example, abuilding in Perth recently gave away 7.2 years' free rent out of a 10-year lease arrangement to a notable corporation, just to get their name in the tenancy roll for a new complex. This stresses the need for refurbishing of older buildings to attract tenants back.

> Increasing competition with renewed focus on property assets and increased accountability is highlighting the need for efficient management tools

Kiwi ingenuity targets the world market.

CPMS-Corporate Property Management System is owned and marketed worldwide by New Zealand (NZ) Apple Reseller, Computer World (1982) Ltd.

Installed sites

New Zealand installations include Telecom NZ, DSIR, Labour department, NZ Employment Services, Transpower NZ Ltd, National Bank,. ASB Bank, Christchurch City Council, AXIS Group,

Wayne Andrew is the product manager for CPMS and has *been involved with the sale and marketing of CPMS in New Zealand from its conception. He has also been responsiblefortraining CPMS overseas dealers.*

buildings leases maintenance

rentals contracts contractors

office management module

transactions

project management module

10

letters, graphs, calculations, drawings

accounts

00.

interface to geographical mapping software

budgets

link to current computer system for data transfer

10

Finance Centre Management, Dunedin City Council, Palmerston North City Corporation, Port of Otago.

Pilot sites in the USA include Apple Inc USA, Real Estate Associates, Pennsylvania Charming Shoppes USA. Distributor are currently being appointed for USA. In Australia, Canberra Appleresellers "Approved Systems" is promoting the package into government and the largest Apple reseller "Logical Solutions" with branches throughout Australia, is focusing on Local Government and major corporates.

CPMS What Is It?

The changing nature of this competitive environment requires instant access to information and the ability to select and report on data quickly and in any format for management. The Property Manager is now becoming more accountable and is being forced to compete more aggressively in the commercial market-place.

Property Management by its very nature is a very complicated business. Today's property managers need to have at their finger tips concise and accurate information on their portfolio in a varied format to meet the demands of day-to-day operations and a tool to forecast and programme future events.

This system has been structured to meet these demands at the same time retaining all the many easy to use functions of the Macintosh. It is a tool that you can expand to meet your changing demands and to keep pace with your changing business.

The structure of the database has been designed by Property Managers and as such follows a logical and recognisable format. The basic unit starts with the site and retains information on such aspects as legal description, land value, area etc (over 30 fields, and these can be added to or deleted as you wish). Tied to each site is its buildings. You can have as little as none on the site or as many as you like. There are no restrictions. Tied to these buildings you can have your leases either over the entire building or individual levels.

Attached to this basic core is all the other essentials to enhance and develop your portfolio. There is a contracts and contractors system, a financial system, future intentions and soon. In developing the database it was realised that each company has its own special needs or business interests and these would need to be incorporated into the system. This is one of the main advantages of the system in that it can be easily and cheaply tailored to your needs. A system that is 100% of what you want.

The database is not restricted to holding textual information, it can also hold copies of your plans and photos, and video. This increases flexibility in reporting and gives you the ability to provide a complete picture of your portfolio.

The system makes the best use of the latest laser printing technology and does away entirely with the old "line flow" reports. Reports can be tailored by you, the user, and can include information from any portion of the database and display it in a format that is of board-room quality.

Too often databases become out-dated and fail to meet the changes taking place in your business, however this system is a "living system" that grows and develops to your needs and directions.

Ease of use has been the catchphrase throughout the development phase of this system. You can learn this system in minutes not hours and you don't have to be a computer genius to get what you want from it. Can you say this about your current system? Don't be fooled by its simple-to--use approach. This is one of the most powerful systems available to date.

CPMS handles all normal PM functions

Sites/valuations
Buildings
Leases
Tenants/Rentals
Intentions
Tenancy Usages
Contracts
Contractors
Project management
Office management
Building fit-out
Facilities management
Maintenance
Transaction
Debtors
Creditors/cheque writer
Account details
Budgets
Word processing
Drawing
Spreadsheet
Graphics, 2D and 3D
Map Link

In addition the extremely flexible design and programming capabilities of 4th Dimension enable the system to be changed quickly and cost efficiently to cater for the user's individual requirements.

Graphic data can be mixed freely with the other data on the system and scanned map data can be incorporated for each site. User s can write their own reports and freely select and sort on any field in the database.

The software is fully multi-user on an Appleshare, Novelle 386, DEC Pathworks network and runs on the Macintosh range of computers, including MacClassic 11, LC, llsi, SE/30 and llci, llfx, Quadra and Powerbooks 140 and 170. It conforms to the normal Macintosh interface standards and can easily be used within an hour by someone who has used a Macintosh before.

Who uses it?

The system is currently installed into large corporations in the telecommunications, banking, government and local government sectors, commercial property management companies from the smallest operator to the multi-national and universities.

Not a package

This Property Management system is NOT a completed package because we believe users don't want packaged software but rather they want economically feasible tailor-made systems. This is what we offer.

Designed by property managers

The Corporate Management Property System has been designed in partnership with property managers with several years' experience.

Tailored to suit

The flexibilities of the software platform allow tailoring to address the specific needs of the different corporate structures, ensuring on-going personalisation as these requirements change at minimal time and cost.

Connects to existing computer

The connectible nature of the Macintosh also allows the system to connect to most computer environments allowing exchange of data thus adding to your current system without redundancy of hardware.

Apple Interface Features

As with all of our systems a simple-to-use, Apple interface is included that allows for:

- Easy addition/modification/deletion of information
- User driven reporting, sorting and selection
- Specialist Programmer reports.
- On line help.
- Sharing data with other Macintosh applications (via clipboard & file transfer).
- Import, export and archive facility
- Integrated 3D Graphics package. • Integrated mail-merging facilitie • Integrated labels generator
- Integrated spreadsheet
- Integrated drawing package
- Integrated word-processor

Legal Decisions

IN THE COURT OF APPEAL OF NEW ZEALAND
C.A.185/91

IN THE MATTER of Section12 of the Arbitration Act 1908

AND
IN THE MATTER of Memorandum of Lease Registered No. 380829/2 (Canterbury Registry)

BETWEEN GUS PROPERTIES LTD a duly incorporated company having its registered office at Christchurch and carrying on business as a property developer
Anoellant

TOWER CORPORATION a body corporate pursuant to the Tower Corporation Act 1990
SeR pondent

Coram: Cooke P.
Richardson J
Gault J.

Hearing: 4 and 5 February 1992

Counsel: W *G G* A Young Q C and Joanne M Appleyard for Appellant
MR Camp Q C for Respondent

Judement: 13 March 1992

JUDGMENT OF COOKE P

This appeal from a judgment of Tipping J. delivered on 27 June 1991 raises two questions. The case relates to land, buildings and improvements in Christchurch being in substance the Hornby Mall and leased for 24 years less one day from 12 June 1978 by the respondent (Tower) to the appellant (GUS) by memorandum of lease dated 25 June 1981 as varied by a memorandum of variation dated 30 July 1982. By an award dated 19 July 1990 the late Mr J.R. Fox of Christchurch, Barrister and Solicitor, determined the market value of the premises at 11 June 1984 as $5,542,238 and at 11 June 1987 as $7,822,897. The operation of percentages specified in the lease then automatically fixed the rent for the two material three-year periods. The arbitrator gave reasons for his award and expressly incorporated them as part of the award. In aHigh Courtproceeding brought by Tower challenging the award, the Judge held, first, that it was not a case in which a specific question of law had been submitted to the arbitrator, and hence the award was reviewable in the Courts for error of law on the face; secondly, that there was indeed error of law on the face. He set the award aside and ordered remission to another arbitrator. GUS appeals on both questions.

Of the material documents it is desirable to set out first clause 4(a) of the lease as varied:

4 IT L$ HEREBY FURTHER MUTUALLY AGREED AND DECLARED as follows:-

(a) Three Years Rent Reviews: That the respective yearly rental payable hereunder for each of the successive three (3) yearly periods (computed from the firstrevision date) (and fora shorter period immediately prior to the expiration of this Lease) shall be whichever is the greater of the two amounts following namely:-

(i) The amount of the yearly rent payable hereunder at the rate payable immediately prior to the period under review for rent (after including therein any increases in rent that may have been agreed upon by the parties hereto pursuant to the terms of this Lease or by any other arrangement); or

(ii) Whichever percentage rate of the market value of the land described in the First Schedule hereto and all buildings and improvements thereon that is applicable in relation to the appropriate period namely:

For the period 11th June 1981 to the 10th June 1984 nine decimal four percent (9.4%) of such market value.

For the period 11th June 1984 to the 10th June 1987 nine decimal four three per cent (9.43%) of such market value.

For each of the three yearly periods falling between the 11th June 1987 until the expiration of this lease ten decimal three two per cent of such market value.

For the purposes of this clause the market value of the land described in the first schedule and all buildings and improvements thereon shall be determined as at the commencement date of each review period by agreement between the Lessor and the Lessee and in default of such agreement then such market value as determined by arbitration in the manner provided in Clause 5(f) hereof BUT in no case shall such determination include any alterations fixture or fittings paid for and owned by the Lessee.

Next, clause 5(f):

5(f) Disputes: All differences and disputes which may arise between the parties hereto touching or concerning these presents or any act or thing to be done suffered or omitted in pursuance hereof or touching or concerning the construction of these presents shall be referred to the arbitration in New Zealand of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before their entering upon the reference) in accordance with the Arbitration Act 1908 or any amendment thereto or re-enactment thereof for the time being in force.

As to the rent reviews for the three-year terms beginning respectively on 11 June 1984 and 1987, the parties each appointed arbitrators, who were professional valuers. The arbitrators never formally appointed an umpire, nor did they hold any formal hearing. In discussion and negotiation *inter se* they made considerable progress. The result is reflected in a deed between the parties which, up to the point where it has completed dealing with the 1984 review, should be reproduced *in toto.* This is essential, notwithstanding the length of the quotation, for the deed with its schedule is an integrated whole, its import only to be absorbed when it is read fully.

A DEED made this 9th day of May 1990

BETWEEN TOWER CORPORATION, a statutory corporation (hereinafter referred to as "Tower") of the first part

AND GUS PROPERTIES LIMITED a company duly incorporated having its

registered office at Christchurch (hereinafter referred to as "GUS") of the other part

WHEREAS Tower and GUS are lessor and lessee respectively of certain land and buildings and lessee and sub-lessee of certain other land and buildings pursuant to a memorandum of lease between them entered into on 25 June 1981 for 24 years (less one day) from 12 June 1978 (hereinafter referred to as "the lease").

AND WHEREAS the lease was varied by memorandum of variation of lease and sub-lease entered into on 30 July 1982 (hereinafter referred to as "the variation").

AND WHEREAS the rent payable in relation to the lease is to be reviewed as at 11 June 1984 and 11 June 1987.

AND WHEREAS the lease and the variation provide for a formula pursuant to which the reviewed rental from each date is to be calculated which formula requires a determination of the market value of the premises specified in the lease.

AND WHEREAS the market value is to be determined in each case by agreement between Tower and GUS and in default of agreement by arbitration.

AND WHEREAS Tower and GUS each appointed valuers and arbitrators (hereinafter referred to as "the valuers").

AND WHEREAS the valuers have reached a measure of agreement as to establishing the market value of the premises but have failed to resolve to outstanding issues (the extent of the agreement and the extent of the outstanding issues being specified in the schedule hereto) and have therefore failed to determine the market value of the premises at either review date.

AND WHEREAS the parties, rather than continue with the arbitration procedure contemplated by the lease and the variation have agreed to refer to the arbitration procedure contemplated by the lease and the variation have agreed to refer to the arbitration of Jonathon Roger Fox of Christchurch barrister and solicitor (hereinafter referred to as "the arbitrator") the determination of the market value of the premises as at 11 June 1984 and I1 June 1987.

NOW THEREFORE THIS DEED WITNESSETH as follows:

L THE parties hereby submit to the arbitration of the arbitrator the following issues:

(a) For the purposes of the lease and the variation what was the market value of the land described in the first schedule to the lease and all buildings and improvements (but not alterations, fixtures or fittings paid for and owned by the lessee) thereon as at 11 June 1984?

(b) For the purposes of the lease and variation what was the market value of the land described in the first schedule to the said lease and all relevant buildings and improvements (but not alterations, fixtures or fittings paid for and owned by the lessee) thereon as at 11 June 1987.

These issues are to be determined in accordance with the agreement reached between the valuers as specified in the schedule hereto.

2 THE arbitration is to take place on 9 and 10 May 1990 (and such other dates as may be necessary to allow the hearing to be concluded) at Christchurch atpremises to be determined by agreement between the parties and in default of agreement to be specified by the arbitrator.

,, THE arbitrator may receive all relevant evidence notwithstanding any rules of law as to the admissibility of evidence.

4 TOWER and GUS are at liberty to call as witnesses before the arbitrator the valuers originally appointed by each as arbitrators.

5,, THE arbitrator is to make his award in writing with reasons within six weeks of the conclusion of the hearing subject to the power of the arbitrator by memorandum in writing to enlarge the time for a period not exceeding four weeks.

L THE parties shall each bear half the costs in connection with this arbitration.

M WITNESS WHEREOF these presents were executed the day and year first hereinbefore written.

THE COMMON SEAL of TOWER CORPORATION was hereunto affixed in the presence of:
(Signed)
Authorised Officer
(Signed)
Authorised Officer

THE COMMON SEAL of GUS PROPERTIES LIMITED was hereunto affixed in the presence of
(Signed) Director
(Signed) Secretary

SCHEDULE

A. 1984 Review

1. The valuers agree that subject to the outstanding issues specified below in paragraphs 3 and 6 the market value of the premises if $5,959,780.00 and the contractual rent to be fixed on review is $562,007.00.

2. In establishing this figure the valuers have relied on the following calculations:

(a) Gross rents	599,502.00
(b) Deductions	22,734.00
(c) Net rent	576,768.00
(d) Capitalisation rate	9.68%
(e) Market value	5,959,780.00
(e) Contractual return	9.43%
(f) Contractual rental	562,007.00

3. The valuers disagree as to whether the market value for the purposes of the lease is to be so calculated. The valuer appointed by GUS contends that the premises should be valued on the assumption that a head lease (not necessarily the existing head lease) is in place and that the assessment of market value for the purposes of a rent review should allow for the existence of a head tenant's margin. Whether these contentions are correct are "outstanding issues" referred to in the deed of submission to arbitration of which this schedule forms a part.

4. Thevaluersareagreedthatifthevaluer for GUS is correct then subject to the outstanding issues specified below in paragraph 6 the market value of the premises is $5,542.238.00 and the contractual rental to be paid is $522,633.00.

5. In establishing this figure the valuers have relied on the following calculations:

(a) Gross rents (if let to a head tenant with a head tenant's margin of $40,408.00)	559,094.00
(b) Deductions	22,734.00
(c) Net rents	536,360.00
(d) Capitalisation rate	9.68%
(e) Market value	5,542,238.00
(f) Contractual return	9.43%
(g) Contractual rental	522,633.00

6. The valuer for GUS also maintains that the premises should be valued on the basis that they are vacant and not subject to any leases. If this approach is right then he contends that the market value of the premises established by either of the above approaches must be reduced by an allowance for 0

initial vacancy, leasing commissions, and advertising and promotional costs. The valuer appointed by Tower does not accept that these are appropriate assumptions to be made. Whether the "no leases" and vacant possession assumptions should be made and if so, the consequential effecton what would otherwise be the market value of the premises are outstanding issues.

There follow provisions on an identical pattern, save for the figures, relating to the 1987 review. It is enough for present purposes to concentrate on the 1984 review, as the result of the appeal will necessarily be the same for the 1987 one.

In essence Mr Fox as the arbitrator determined that the contentions of the valuer for GUS stated in para.3 of the schedule were correct and that therefore the market value of the premises was $5,542,238; but he rejected the contentions of the same valuer stated in the first sentence of para.6 of the schedule. Hence in the arbitrator's view no further reduction was required, nor was it necessary for him to consider the points raised in the remaining part of para.6. But 'if I am wrong in that view and the matter goes further' (words of the arbitrator which cannot give rise to a right in either party to review by the Court if none exists otherwise) he went on to indicate his views as to the appropriate result if the premises were notionally treated as completely vacant. On the assumption he would have reduced the market value of $5,959,780 by leasing commissions ($89,925) and advertising and promotion expenses ($25,000) to $5,844,855.

Reviewability

As to whether the award is reviewable for error of law on the face, the principles were considered and applied by this Court in *Attorney-General v. Offshore Mining Co. Ltd* [1983] NZ.L.R. 418, and it is unnecessary in dealing with this appeal to go beyond that case and the authorities there cited.

In his judgment Tipping J. made extensive quotations from the *Offshore* judgments, but, perhaps significantly, he did not mention the actual result of that case. The decision there was that, although consideredin isolation this reference to the arbitrator might appear to be in terms a general reference of a dispute, the documents placed before him by the parties showed that their difference was solely as to the construction of their contract, and therefore in reality and substance what was referred was a specific question of law. Since Mr Camp for the present respondent has largely founded his argument on it, I must quote the following passage from my own judgment at 422:

In deciding on which side of the line a given case falls it must be essential to identify accurately the dispute that the parties referred to the arbitrator. The actual language of the reference will be important but a purely literal approach could not be enough. The Court must surely look for the reality and substance of the reference agreed on by the parties. I do not think that the use of such words as "in express terms" and "as such" by Lord Wright in his speech in *Absalom* at p.615 can have been meantto suggest otherwise. At the same time, if at the outset the parties have referred a dispute covering a number of issues to an arbitrator in general terms, admissions of fact during the hearing should not normally, it seems to me, be treated as converting the reference to a specific reference of a question of law - even although in the end the dispute may reduce to construction. One would still have to be satisfied that there was an agreement to alter the reference itself. Otherwise counsel making a sensible concession on fact might unwittingly deprive a client of ordinary remedies in law.

It is the latter part of that paragraph which Mr Camp invokes. He contends that the measure of agreement reached by the valuer arbitrators and Mr Fox's determination should be seen as linked stages of a continuous arbitration, under a general reference, culminating in the fixing of the market value. On that approach Mr Fox would be treated as in substance the umpire appointed by the arbitrators. Undeniably the deed shows that he was appointed by the parties, but Mr Camp suggests that this may be dismissed as a mere matter of machinery a device resorted to so that the valuer arbitrators could give evidence before Mr Fox. The argument is a development of an observation by Tipping J. in his judgment that the remarks in *Offshore* invoked by Mr Camp 'have distinct relevance to the present case' .

The Judge's main reasoning is best put in his own words:

Although the points encapsulated in paragraphs 3 and 6 of the schedule are by description distinct and self contained points, the way the reference is constructed makes them to an extent anyway interdependent. Exactly the same comments apply to part B of the schedule dealing with the 1987 review which is constructed in the same way. It is not as if the parties have asked the arbitrator what in terms of their contract is meant by the expression "market value of the premises".

Although I agree with Mr Young that the dominating point, however one looks at the matter, amounts to a point of construction of the lease, I am not persuaded that the parties have referred to the arbitrator a specific question of law. While it is undoubtedly true that a point of law, namely the correct construction of the material provisions of the lease, will necessarily and obviously arise during the course of the reference, the way in which the reference is constructed and indeed the substance of the matter, seem to me to militate against the view that the parties must be taken as having agreed to submit a discrete and specific question of law.

On this point the Court should in my judgment be slow to impute to the parties in a case of this size and consequence the intent to accept the views of the arbitrator on the point of construction, even if the arbitrator is shown to have erred in law on the face of the award. It seems to me that parties committing a dispute to a private tribunal will usually expect the tribunal to observe the law and not commit patent errors. Prima facie they will intend to preserve their right to complain of errors of law on the face of the award. As Cooke J. said in *Offshore Mining* they are certainly free to abandon such right if they wish but they must do so clearly enough to leave the Court satisfied that this was their intention.

While respecting both the reasoning of Tipping J. and the argument of Mr Camp, I am unable to accept either. It is true that the deed of 9 May 1990 is of no little extent and complexity and in its actual language might be said to wrap up the fact that specific questions of law were being submitted to Mr Fox. Expressions such as 'on the true construction of the lease' were not used. But, as stated in *Offshore,* the reality and substance are to be looked for. As I hope to show in a moment, when the deed is analysed in more than a purely literal or superficial way it becomes apparent that in reality and substance specific questions of law were submitted. As for the continuous arbitration agreement, this flies in the face of the deed, which makes it plain that instead of pursuing an arbitration in full accordance with the lease, with two arbitrators and an umpire, the parties elected to begin afresh, accept the measure of agreement achieved by the arbitrator valuers and make a new and limited sub-

mission to Mr Fox as sole arbitrator. Quite rightly his award proceeds on exactly that footing. As he says in his reasons:

The Lease itself provides for disputes or differences to be referred to the arbitration in New Zealand of two Arbitrators (one to be appointed by each party) and an umpire. However by mutual agreement the matters in difference have been submitted to me as sole Arbitrator.

The determination of the market value as at the 11th June 1984 and 11th June 1987 is both assisted and confined by the Submissions under which the parties have agreed through their valuers on certain matters.

Even the plaintiff's statement of claim, dated 27 September 1990, proceeds on the same footing. It pleads that the parties undertook rent reviews in accordance with the terms of the lease but were unable to agree on the rent payable and by an agreement dated 9 May 1990 referred the dispute to the arbitration of Mr Fox.

Turning to an analysis of the deed, one notes that it is carefully drawn, obviously with professional legal skill. The last recital expressly says that rather than continue with the arbitration procedure contemplated by the lease the parties have agreed to refer to the arbitration of Mr Fox the determination of the market value. So far that would be a general reference, a position which would remain under clause 1 of the deed, paragraphs (a) and (b), were it not for the immediately following and limiting sentence `These issues are to be determined in accordance with the agreement reached between the valuers as specified in the schedule hereto'.

The cardinal starting point emerging from the schedule is that the market value is to be taken as fixed at $5,959,780 subject only to the outstanding issues specified. The first outstanding issue is specified in clause A.3. It is whether the valuer for GUS is correct in his contention that:

> *...the premises should be valued on the assumption that a head lease (not necessarily the existing head lease) is in place and that the assessment of market val ue for the purposes of a rent review should allow for the existence of a head tenant's margin.*

As was evident from the arguments that we heard from both Mr Young and Mr Camp, those contentions by the GUS valuer amount to saying that, on the true interpretation of the reference to `market value' in its context in this lease, the premises should be valued on the assumption that a head lease is in place and allowing for a head tenant's margin. Certainly on both sides counsel and valuers place weight on the history of the relationship of the parties and the matrix of facts surrounding the entering into of the lease, but they are invoked as aids to construction. In the end the question is one of construction, namely - In the circumstances of this case what did the contract of the parties mean when it referred to `market value': in particular did it mean the market value of the lessor's interest in premises subject to a head lease? Therefore the question is one of law for the purpose of reviewability.

If the question is answered in favour of the GUS valuer's contentions, as it was, the automatic adjustments specified in para.4 of the schedule are to be made. Then the arbitrator is to proceed to consider the contentions of the same valuer stated in the first sentence of para.6. In the same way these require the interpretation of the `market value' reference in the light of its context and any available aids to construction. Again, for the purpose of the principles governing reviewability it is a submission of specific questions of law. If those questions are answered against the contention of the GUS valuer, as they were, the arbitrator's task is complete. He need not go on to consider the issues raised by the rest of para. 6.

Those further issues would not necessarily have involved interpretation alone. They were or could have raised mixed questions of fact and law. But the scheme of the schedule was that, in the event of negative answers to the specific questions posed by the opening sentence, being questions of interpretation or construction (in this context the two terms are interchangeable) the arbitrator had to go no further.

In other words this was a carefully constructed reference whereby the parties submitted defined issues of interpretation to the arbitrator. In the event of his determining them as he did, no further issue arose. His precautionary observations on further issues in case he should be wrong cannot alter the effect of the deed of submission. Nor can it make any difference that the issues on which he made those alternative observations were or may have been partly issues of fact. In substance the primary task imposed on him, a lawyer, by the deed and accepted by him was to answer a sequence of defined questions amounting to questions of law. In the event of answers other than those which he gave,a secondary task that could involve determining issues partly of fact was to devolve on him. It never did; but the important point, I think, is that defined issues which were in truth, albeit not in terms, questions of law were submitted. On analysis it was far from a general reference under which questions of law arose only incidentally. First and foremost it was a submission of specific questions of law.

In my opinion therefore the case falls under the specific reference head, and review of the award for error of law on the face is excluded unless (which is not suggested here) the arbitrator had fallen into one of the more fundamental kinds of illegality alluded to by Viscount Cave L. C. in *Kelantan Government vDuffDevelopment Co.* [1923] A.C. 395,408-411. In saying this I recognise that, as is common with competing legal principles, the point at which the line should be drawn is not self evident. On balance, however I think that this case belongs much more naturally to the specific submission of questions of law category than to the general reference category.

On that view the award is not reviewable by the Court on the grounds of the errors of law alleged, and it might seem both needless and pointless to say anything about whether there were such errors. But further rent reviews will occur between the parties. Moreover, the questions discussed in argument on this part of the case have a bearing beyond this particular case. It may beof some use therefore to make some brief observations.

As to whether the arbitrator was right in his determination of the specific questions of law submitted to him, I agree with the Judge that he was not, and generally for the same or much the same reasons as were given by the Judge. I think that the law can be stated quite simply.

(i) What the lease required to be ascertained as at the review date was `the market value of the land ... and all buildings and improvements thereon'. That means a valuation of the fee simple interest, not merely the lessor's interest as has been contended for on behalf of GUS. It is only the land, buildings and improvements that are to be valued. That means that any contractual rights by way of a head lease or subleases that may happen to attach at the review date are not to be valued.

(ii) Depending on their terms, which are likely to reflect the state of the market and the economy when they were agreed or fixed, such contractual rights could be either a benefit or a burden to the owner or a head lessor at the 0

review date. But in assessing the market value of the fee simple at the review date the valuers have to assume that no such contractual rights then exist.

(iii) The only relevance that the terms of existing head or subleases could have is that they might throw some light on what fee simple value would be agreed between a willing purchaser and a willing vendor on the review date. For example if (which is certainly not necessarily the case) the state of the market at the review date was such that a head lessee or sublessees could be found on the same terms, that is to say terms neither more or less favourable from the point of view of the lessor or sublessor, then that will be a major consideration for the valuers. The reason is that, between a willing vendor and a willing purchaser of the fee simple, the income derivable from the premises, if fresh leases or subleases were sought to be negotiated at the review date or as soon as reasonably possible thereafter, will bea major factor in the hypothetical bargaining process.

(iv) It is not correct as a matter of law that 'the premises should be valued on the assumption that a head lease (not necessarily the existing head lease) is in place and that the assessment of market value for the purposes of a rent review should allow for the existence of a head tenant's margin'. The possibility of arranging a head lease and the necessity in that event to allow for a head tenant's margin is simply one to be taken into account in ascertaining what a purchaser would be willing to pay for the fee simple. The possibility of leasing shops directly to tenants has also to be considered. The relative advantages and disadvantages of the two courses have to be compared. On the evidence of the valuers it may well have been the case here that on balance neither course would have been more advantageous. The question is one of fact. But if one course happens in fact to be clearly more advantageous to the owner and practicable in the state of the leasing market, that will be reflected in the market value of the fee simple. This may be seen as an application of what valuers sometimes call the highest and best use principle, but to speak in terms of such a Principle can be misleading: the basic question is always what would be agreed between a willing but not anxious vendor and a willing but not anxious purchaser as the fair price of the fee simple at the relevant date.

(v) While it is correct that the premises are to be valued as if not subject to any leases, it seems to me incorrect that they are necessarily to be valued as if vacant. Contractual rights to continued occupation are to be ignored, but the fact that all the shops were currently let could throw light on the market for notional fresh lettings. Further, sitting tenants might prefer to take fresh leases rather than to have the dislocation of moving elsewhere; this could be relevant to any suggestion of an initial vacancy allowance, a suggestion which was rejected by the arbitrator here, on the evidence, in the views expressed by him on the assumption that he was wrong in his primary conclusions. It seems to me that the needs of an existing head lessee or of sitting tenants fall to be considered in estimating market demand, just as it was held by the Privy Council in *Vyricherla v. Revenue Divisional Officer, Vizagapatam* [1939] A.C. 302 that in assessing compensation for a compulsory purchase the needs of the particular acquiring authority for the land enhanced the value. (The latter principle is excluded by s.62(l)(d) of the Public Works Act 1981, but those provisions do not apply to a case such as the present).

(vi) There has been an apparently endemic trend in New Zealand for valuers, accountants and lawyers to seek to replace the willing seller-willing buyer test by more specific and detailed tests applicable to particular categoriesofcases. This Court has constantly pointed out the dangers and fallacy of this process, yet it continues, as the present case evidences. Past examples considered by this Court include *Hatrick v. Commissioner of Inland Revenue* [1963] N.Z.L.R. 641 (assets-value and notional liquidation method only one way of valuing shares; essential question always what would be agreed between willing but not anxious parties); *Wellington City Council v. National Bank ofNew Zealand Properties Limited* [1970] N.Z.L.R. 660 (rejection of proposition that `the tenant is entitled as to right to an accounting of the capital growth which the landlord enjoys'); *Coleman v. Myers* [1972] 2 N.Z.L.R. 225 (fallacious to treat value of control to takeover offeror as irrelevant in fixing price for sale of minority shares; at pp.333-340 there is a fuller statement of the approach to valuation put more briefly in the present observations); *Jacobsen Holdings Ltd v. Drexel* [1986] 1 N.Z.L.R. 324 (in arriving at compensation for access to landlocked land, benefit to grantee to be taken into account as well as detriment to grantor); *Holt v. Holt* [1987] 1 N.Z.L.R. 85 (special value of control given by single A share not to be ignored in any attempt to value that share); affirmed by the Privy Council [1990] 3N.Z.L.R.401); *Powell v. Powell* [1987] 1 N.Z.L.R. 192 (prospect of very considerable future benefits from interest to be valued; nil assessment not open). The proposition as to an assumed head lease in place advanced in the present case is testimony to the difficulty of eradicating a stubborn virus.

But it must be repeated that in my opinion these observations cannot affect the outcome of the present appeal. It should be allowed; the award should be restored; judgment should be entered for the defendant in the High Court, with costs to be fixed by that Court if necessary. For costs of the appeal the appellant should have $3500, with disbursements, including the cost of reproducing the case and the reasonable travelling and accommodation expenses of one counsel, to be fixed by the Registrar. The Court being unanimous, the case will be disposed of accordingly.

Solicitors:
Buddle Findlay, Christchurch, for Appellant
Phillips Nicholson, Wellington, for Respondent

IN THE COURT OF APPEAL OF NEW ZEALAND
CA 185/91

IN THE MATTER of Section12 of the Arbitration Act 1908

AND
IN THE MATTER of Memorandum of Lease Registered No. 380829/2 (Canterbury Registry)

BETWEEN GUS PROPERTIES LTD a duly incorporated company having its registered office at Christchurch and carrying on business as a property developer
Appellant

TOWER CORPORATION
a body corporate pursuant to the Tower Corporation Act 1990
Respondent

Coram: Cooke P.
Richardson J
Gault J.

Hearing: 4 and 5 February 1992

Counsel: W G G A Young Q C and Joanne M Appleyard for Appellant
MR Camp QC for Respondent

Judament: 13 March 1992

JUDGMENT OF RICHARDSON J

The threshold question arising on this appeal is whether the award of the late Mr Fox as arbitrator was and is reviewable for error of law on the face of the award.

The general principles are well settled and have been discussed by this Court in *Attorney General v. Offshore Mining Ltd* [1983] NZLR 418 and *Manukau City Council v. Fensible Court Howick Ltd* [1991] 3 NZLR 415. If the parties have asked the arbitrator to decide a specific question of law, in principle the answer is not amenable to review. In that case the proper inference is that the parties put the point of law to the arbitrator on the footing and intending that the arbitrator's decision would be binding on them. But, if there is a general reference or a composite question of mixed law and fact, the award is reviewable for error of law even though in the course of the answer points of law are necessarily identified and decided. In that situation there is no basis for inferring that the parties agreed to be bound by errors of law on the face of the award. Further, if the parties have asked a series of questions one of which is a specific question of law, the exception from curial review of answers to questions of law will apply to the answer to that question. Finally, in determining what questions were required to be decided by the arbitrator and the scope of those questions, it is necessary to consider the submission as a whole in its factual matrix and thus consistently with ordinary principies of interpretation of documents the apparent breadth of a generally expressed question may be cut down by other provisions of the submission.

This in my opinion is the position in this case. The factual matrix to the reference to Mr Fox is sufficiently expressed in the recitals to the Deed of 9 May 1990. They record that the rent payable in relation to the lease was to be reviewed as at 11 June 1984 and 11 June 1987; that that required a determination of the market value of the premises specified in the lease; that Tower and GUS each appointed valuers as arbitrators; that the valuers had reached a measure of agreement as to establishing the market value of the premises but had failed to resolve outstanding issues "the extent of the agreement and the extent of the outstanding issues being specified in the schedule hereto"; and that the parties, rather than continue with the arbitration procedure contemplated by the lease and the variation, had agreed to refer to the arbitration of Mr J.R Fox of Christchurch barrister and solicitor the determination of the market value of the premises as at 11 June 1984 and 11 June 1987.

In short, rather than continue the rent fixing process under the original arbitration reference the parties decided to start a fresh arbitration before a lawyer appointed for that purpose. The fresh arbitration was to be on a limited basis and to take account of the matters on which agreement had been reached by the valuers. The arbitrator was asked in terms of clause 1 to determine the market value of the land described in the first schedule to the lease and all buildings and improvements excluding alterations, fixtures or fittings paid for and owned by the lessee, first as at 11 June 1984 and second as at 11 June 1987. Although the question is expressed as a question of mixed law and fact clause 1 goes on to make it clear that it is not a general reference at all. It stipulates that the question for each review period is "to be determined in accordance with the agreementreachedbetween the valuers as specified in the schedule hereto" .

On analysis of the schedule it is apparent that for each review period specifically limited questions were asked of the arbitrator. Thus in relation to the 1984 review para. 1 records the agreement that subject to the outstanding issues specified in paras. 3 and 6 the market value of the premises is $5,959,780-00 and the contractual rent to be fixed on review is $562,007-00. In terms of para.3 the arbitrator is to consider the contention for GUS that the assessment of market value should allow for the existence of a head tenant's margin. It is common ground that that is a matter of construction of the reference and of the lease and so is a question of law. If the contention is right then subject to para.6 the base figures in para. 1 apply. If rejected, and again subject also to para.6, the market value of the premises is reduced to $5,542,238-00 and the contractual rental to $522,633-00 (para.4). In short the first question for consideration by the arbitrator is a specific question of law.

The second question or rather series of possible questions, arises under para.6. At the first step the arbitrator is asked to consider the proposition advanced for GUS that the premises should be valued on the basis that they are vacant and not subject to any leases. While any assumptions as to vacant possession if considered alone would be matters of fact, the important question of no leases to which it is incidental is clearly a question of construction and so a specific question of law. If that composite sub question is answered against GUS nothing further is required of the arbitrator. If answered in its favour then two further questions arise for consideration. One is whether there should be an allowance for initial vacancy, leasing commissions, and advertising and promotional costs. The other is the consequential effect in money terms on what would otherwise be the market value of the premises.

In his award the arbitrator answered the para.3 question in favour of GUS and on his approach to those questions could see no room for any further adjustment under para.6. In effect his answer at the first step under para.6 was against the proposition advanced by GUS and the further sub questions did not require any answer. It follows in my view that the crucial questions addressed to and answered by the arbitrator are specific questions of law and are not subject to curial review for any error of law on the face of the award.

In his submissions Mr Camp argued that looked at realistically the reference to Mr Fox was no more than the continuation of the rent fixing process in the course of which the parties through their valuers reached agreement on various factual matters. He emphasised the breadth of the questions posed in clause I and submitted that rather than have those questions determined by an umpire appointed by the original arbitrators, the machinery of the deed of submission was availed of so as to allow Mr Fox to take the matter up at that point without having to start afresh, and to allow the former arbitrators to give evidence before him. No doubt there

were sound commercial reasons why the parties adopted the course they took. However, it is what that did that counts. The ascertainment of the questions required by the parties to be answered by Mr Fox and actually answered by him must turn on the deed of submission into which they actually entered rather than on consideration of an alternative means for resolution of the difficulties they found themselves in when the original arbitrators could notreach final agreement which they could have followed but chose not to do. For the reasons given I am satisfied that in their Deed of 9 May 1990 the parties submitted specific questions of law for decision by the arbitrator and his answers to those questions are not reviewable for error of law on the face of the award.

In the result it is not necessary to consider the second question concerning the interpretation of the submission and the lease. However in case it is of assistance in further rent reviews I add two comments. The first is that as part of the factual matrix the actual occupancy level of the mall shops as at the review date must be evidence of the market demand and supply, and thus that the land had that letting potential even though the particular contractual rights are not relevant to an enquiry in terms of clause 1 as to the market value of the freehold land, buildings and improvements specified in that clause.

Second, market value calls for an enquiry as to the value at which a willing but not anxious vendor would sell the property and a willing but not anxious purchaserwouldbuy. As hasbeen emphasised in numerous cases, this is essentially a practical question not to be overlaid by philosophical or legal niceties. Various methods or approaches which may be conventionally used or taken by experts in arriving at that value are in the factual area and are to be assessed on the facts in the ordinary way. As Turner and McCarthy JJ emphasised *inHatrick* v CIR [1963] NZLR 641, 661, the method of approach must not be elevated to become the test itself; it is only an aid to ascertain the market value. Each method of approach and whether more than one should be employed, depends in each case on the circumstances. That warning is in point where, as here, there were attempts to elevate factual considerations into legal doctrine.

There are two other aspects of particular relevance in valuation cases. One is that property is valued not merely by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future and to the various means by which its income earning potential may be realised. Thus questions of head leases, multi tenancies and professional management arrangements may all arise for consideration in the factual area. The other is that the hypothetical sale involves a hypothetical sellernot the owner as seller and because the whole world is hypothetically there making hypothetical bids *(IRC v. Crossman* [1937] AC 26,69) the lessee under a rent review is there as a hypothetical purchaser, butagain its actual and potential use of the property is a factor for consideration in the factual area.

Solicitors:
Buddle Findlay, Christchurch, for appellant
Phillips Nicholson, Wellington, for respondent

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IN THE COURT OF APPEAL OF NEW ZEALAND
C/A 185/91

IN THE MATTER of Section 12 of the Arbitration Act 1908

AND
IN THE MATTER of Memorandum of Lease Registered No. 380829/2 (Canterbury Registry)

BETWEEN GUS PROPERTIES LTD a duly incorporated company having its registered offices at Christchurch and carrying on business as a property developer
Appellant
TOWER CORPORATION a body corporate pursuant to the Tower Corporation Act 1990
Respondent

Coram: Cooke P.
Richardson J
Gault J.
Hearing: 4 and 5 February 1992
Counsel: W G G A Young Q C and Joanne M Appleyard for Appellant
MR Camp QC for Respondent
Judgment: 13 March 1992

JUDGMENT OF GAULT J

I have read in draft the judgments of Cooke P and Richardson J. I agree with them. However, because we are differing from the Judge on the first ground of appeal I will give my own brief reasons.

As has been said the relevant principles are easy to state but not always easy to apply. Where the parties have agreed to submit to arbitration what is in substance a specific question of law, the award is not reviewable in the absence of fundamental illegality of a type not here in issue.

In each case it is a matter of construction as to what was submitted to the arbitrator. There is no presumption in favour either of a general submission or a specific submission on a question of law. It may be that there is express agreement to exclude curial review. That may be implied from the submission in the circumstances in which his made. Where on a proper construction a specific question of law has been submitted, in the absence of a clear indication that review for apparent error was contemplated, the parties are bound by the decision of the arbitrator to whom they entrusted the dispute.

The position is no different merely because the arbitrator is asked also to determine questions of fact or mixed questions of fact and law. Re *King and Dureen* [1913] 2 KB *32, Attorney-General v Offshore Mining Ltd* [1983] NZLR 418,432.

The relevant part of the deed by way of submission, with the schedule, is set out in the President's judgment. I have found nothing in the factual matrix which dictates any different view from that emerging from the terms of the document.

Tipping J expressed his view as follows:

> *"While it is undoubtedly true that a point of law, namely the correct construction of the material provisions of the lease, will necessarily and obviously arise during the course of the reference, the* way *in which the reference is constructed and indeed the substance of the matter, seem to me to militate against the view that the parties must be taken as having agreed to submit a discrete and specific question of law."*

He said:

"What they did was to submit the question of market value of the premises to the arbitrator and in the process they advised him that they, or more accurately their valuers, had reached certain agreements on certain hypotheses but had been unable to resolve the matter overall."

In relying on the way in which the reference is constructed I take the Judge to mean, as Mr Camp submitted, that the arbitrator was asked to step into a partially completed rent review and that his role was to complete what must be seen as the single process of determining the rent for each of the two review periods. His part of the process was to complete determination of the market value of the land and buildings in light of the agreement reached on certain points. He was required, therefore, to undertake a process of valuation necessarily involving a series of steps being the determination of the issues raised in clauses 3 and 6 of the Schedule and, if required in light of his conclusions on prior issues, to assess the quantum of any adjustments found to be appropriate under clause 6. When his duties are viewed as a single decision-making process in this way, it is said, the specific issues raised by the disagreement of the valuers should be seen as questions of construction arising incidentally in the process of determing the market value and not as discrete questions of law submitted for determination.

Mr Camp further argued that it is artificial to break up the sequence simply because the reference is constructed in such a way as to bring in at the appropriate stages the points of agreement which should be seen simply as suitable concessions to facilitate the process.

On analysis, however, it is apparent that in substance the arbitrator, in a fresh reference, was called upon to determine two questions of law in respect of each review. The first arising from clause 3 of the Schedule was whether the premises are to be valued on the assumption that a head lease is in place. The second arising from clause 6 is whether the premises must be valued on the basis that they are vacant. It is only after those two questions have been answered that the further determinations called for in clause 6 (if they arise) are to be determined.

Thus in substance there are clearly identified two specific questions of law for determination. They were put to and determined by the arbitrator. They were not so much issues in a process he was to undertake but rather the principal issues for his determination, being outstanding issues on which the previous arbitrators had been unable to agree. In effect his role was to resolve the two issues of law which underlay the disagreement as to the market value.

Accordingly I agree that this case falls into the class in which error on the face of the award is not reviewable.

If it had been open to review the award I would have agreed in substance with Tipping J that the requirement in the lease for determination of the market value of the land and buildings does not call for any assumption of a head lease or head lessee's margin as a matter of law. It will, of course, be for the arbitrator on any particular review to determine the market circumstances with which the willing buyer and seller are presented. I agree also that the valuation exercise is not to be confined by existing contractual rights. They may reflect a manner of use of the premises which the hypothetical buyer and seller would contemplate but that is a factual matter for the arbitrator.

Similarly, I find no justification for postulating as a matter of law a complete retenanting of the vacant shopping mall on each review date without consideration of encumbants as existing potential tenants in the assessment of market demand. It will be a matter for the arbitrator to determine whether, in the relevant market circumstances, allowance is necessary for filling vacant premises and, if so, the appropriate quantum.

I would allow the appeal.

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Phillips Nicholson, Wellington, for Respondent

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