NEW ZEALAND INSTITUTE OF VALUERS

SEPTEMBER
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IN THIS ISSUE

NEW ZEALAND INSTITUTE OF VALUERS

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VALUERS' JOURNAL

SEPTEMBER 1992

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The New Zealand Valuers' Journal is the official publication of the New Zealand Institute of Valuers. The focus of the Journal is to publish researched articles on valuation, property investment and related matters, and to encourage the investigation and expansion of the frontiers of knowledge that cover such fields. It seeks to publish reports of decisions of hearings of tribunals, courts, and arbitrations of special relevance to the profession.

The New Zealand Institute of Valuers has a special interest in scholarly research that can be useful in property valuation and development, finance, investment, property management and market analysis, real estate and the valuation of plant. The Editorial Board is willing to work with any potential author who is developing new and exciting ideas.

Articles and correspondence for the New Zealand Valuers' Journal should be submitted to the Editor at the following address:

The Editor, New Zealand Valuers' Journal,
P 0 Box 27146, Wellington, New Zealand.

All contributions should be typewritten and accompanied by a biographical note of the author. The Editor 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. Each manuscript submitted will be reviewed by the Editor to evaluate its appropriateness for the Journal and assigned anonymously for review by two or more referees. Complete editorial policy review process and style instructions are available from the editor. 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. September page.

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Most professions in New Zealand have been under close scrutiny by their clients and the public at large in recent years, particularly in regard to quality of performance and cost effecitveness. The valuation profession is no exception and practitioners have felt the pressures of accountability and the need to produce quality assessments and reports at competitive cost.

To successfully withstand such public scrutiny, valuers must be fully aware of current market trends, recent changes in legislation and contemporary valuation techniques. Suchknowledgerequires an on-going commitment to education. In most forms of human endeavour, as is clearly illustrated in the sporting arena, a thorough knowledge of the rules is required to play the game well and achieve the best personal or team performance.

The New Zealand Institute of Valuers (NZIV) is aware of the increasing need for valuer education, particularly resulting from the changing national economy, the public demands on professional services and the lingering possibility of government directed deregulation. The Mission Statement of the institute reads:

"The NewZealandInstitute of Valuers encourages its membership to develop high standards of professionalism and excellence through the provision of education, support services and promotion".

The institute has honoured this commitment through the establishment of an Education Boardwithawidecross-section of member representation; by strengtheningliaison between the three universities that provide valuer education (Auckland, Massey and Lincoln) and with Otago University who provide the facility for distance teaching telecommunication seminars; by improving member communications in its monthly newsletters, statistical bulletins and the New Zealand Valuers'Joumal;byco-o linatingkxaland national educational seminars and conferences andincludingregulardistanceteaching telecommunication seminars.

In addition the institute has, in conjunction with the Property Management Institute and the Real Estate Institute of New Zealand, jointly sponsored two professorialchairsinpropertystudies,atMassey and Lincoln Universities, the salary of a senior lecturer in valuation at Auckland University, and a charitable education foundation to fund property research. The NZIV has invested considerable resources in a a micro-fiche and computer based sales notification service to subscribers and provides associated technology advice. Its Education Board has been responsible for publishing five text books, three videos on building construction and has established a comprehensive library on valuation and related matters. It is currently involved in editing a land valuation law book to be issued by a private publisher.

In early 1991 the Board distributed a questionnaire on Continuing Professional Development (CPD) to institute members the results of which were published in August 1991. While this gained only about a 25%response, thatisapparentlyan acceptable return to indicate membership preferences. Results showed that *75%* of respondents believed CPD should be compulsory and 89% of that number said they would remain members of the NZIV if membership became voluntary even under a compulsory CPD programme. Preferred emphasis for CPD content was for the development of ethical standards, community relations and professional skills.

FollowingthemembersurveytheNZIV Council proposed the following form for a Continuing Professional Development programme:

i) Avoluntaryphase-inperiodfortwoyears
ii) A requirement for 10 hours CPD per year for the first two voluntary years thereafter rising to 15 hours per year or 45 hours in a three year cycle
iii) Providers of CPD programmes required tocan►plywithstandardslaiddownbythe Education Board rather than the institute having to approve each individual seminar, course of study or conference
iv) Hours of attendance subject to random audit rather than a structured attendance recording system
v) Branches to be responsible for providing the bulk of CPD
vi) Universities to be encouraged to provide a wide range of CPD programmes
vii) CPD programmes to include a mixture of face to face lectures, correspondence learning, in-house staff training and extraordinary work related to valuation such as the authorship of articles, presentation of papers, teaching, lecturing and tribunal work
viii) Attendanceatandsuccessful completion by all members of a compulsory course in ethics within the first three years of the CPD programme becoming operative and a refresher course to be undertaken at five yearly intervals

But, for any proposal to be compulsory, a substantial majority of members mustvoteinfavourofthenecessary NZIV rulechanges and the Minister in charge of Valuation must approve.

In a paper presented by Mr W A Cleghorn, NZIV Vice President and Chairman of the Education Board, to the conference on *The Impact of Professional Development on Professional Practice* at Coffs Harbour, New South Wales from 27-29 Mayjt was stated that the NZIV Council believed a compulsory CPD programme would be desirable for the institute as it would:

a) strengthen the profession throughout the country;
b) equip members to meet the challenges of change and increased competition facing the profession;
c) raise the professional profile of members both nationally and overseas particularly in respect of compliance with international valuation standards and practices
d) enhance the image of the NZlV as the organisation providing professional support and leadership to its members

Mr Cleghorn said in his paper that the Council of NZI V was "aware that once we start off down this trail, we have an ongoing requirement to maintain the programme and all that is associated with it. However, we do note some of the moves made overseas where it is found after a period of five to ten years under a compulsory regime, members begin to realise the attractiveness and desirability for a continuing professional development programme and so the need forcompulsion is removed". A

Valuing: the Bigger Picture

The Editor,

I found the editorial comment in the June issue of the *NZ Valuers' Journal* both encouraging and perhaps discouraging.

Encouraging, in that it proclaims the obvious need for a broader base for valuation and valuers and in seeing a NZIV/PMI/NZSFM merger as a positive step in this direction.

Discouraging in that it seems to suggest that a new merged institute would be mainly for the benefitof valuers. I am sure that is not the intention.

I would take issue with the comment that the recent establishment of the Institute of Plant and Machinery Valuers is a step forward. I applaud the recognition and development of this specialistbranch of the valuation profession, but I would suggest that, in the context of merging institutes, the addition of yet another to the existing total only adds to the potential for future problems.

My casual conversations with numerous members of the professions involved indicate a degree of pragmatic enthusiasm for merging, and even impatience that merger negotiations and proposals are not advancing more rapidly.

I belong to five of the land related professions and am a strong supporter of unity: union is strength. But any merger discussions will only come to successful fruition if the participants are accepted as equals. It is a merger we are talking about, not a take overbid. Some sacrifices can be expected in the process.

The merged body will be greater in all respects than the sum of the constituent parts; a case of"added value" for each and everyone involved. Therein lies the real strength of the argument for merging. We might even achieve the resources for some very necessary real estate research.

We might look at the example set by the Royal Institution of Chartered Surveyors which, over the years, has come to embrace all the professions of the land. It has just adopted the new descriptive slo*gan: Chartered surveyors: the property profession.*

What we areembarking on is the foundation of an all-embracing New Zealand property profession, or else nothing worth wasting further time on.

W K S Christiansen, Auckland

The New Zealand Valuers' Journal

Annual Manuscript Competition

Conditions of Entry

The New Zealand Valuers' Journal Editorial Board offers an annual Award for a leading article to be published in the Journal. The Award has a value of NZ$1000 and shall be paid to the successful applicant who meets the following conditions:

1. The competition is open to any author of an original work based on research into or comment on a topic related to the valuation of real property and entries should be submitted to the General Secretary, New Zealand Institute of Valuers, PO Box 27-146, Wellington.
2. The article shall not have been submitted to any other journal or publisher prior to being submitted for entry into the competition.
3. The article shall not exceed 10,000 words including any equivalent space where illustrations, diagrams, schedules or appendices are included.
4. The manuscript shall be typewritten.
5. The author shall provide a brief biographical note which may be published.
7. The closing date for submission of manuscripts shall be 1st April in each year and any winning article shall be published in the journal.
8. Judging shall be by the Editorial Board and shall be on the basis of the relevancy, quality, research and originality of the article to the principles and practice of valuation. The judges' decision shall be final and binding. The Editorial Board shall not be bound to make an award in any year if no article meets an acceptable standard.
9. The winning manuscript shall become the property of the New Zealand Institute of Valuers and the author shall agree as a condition of receiving the award to pass copyright to the institute and no reprinting of the article shall take place without the express consent, in writing, of the Editor of the *New Zealand Valueis'Journal.*
10. All unsuccessful applicants for the Award shall be advised.
11. The decisions of the Editorial Board on any matter relating to the competition and award shall be non-reviewable and correspondence shall not be entered into nor reasons given for the decisions of the Board.
12. The article may be on any topic and the following are provided as suggestions only:
    Valuation of publicly owned assets; forestry valuations; lifestyle blocks rural/residential property; valuation of chattels.

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The Law Affecting the Valuation of Land In Australia

by Alan A Hyam

1983, Sydney, The Law Book Company Ltd with a foreword by The Hon Mr Justice R Else-Mfl heL. Price A$49+ postage. Orderftom Box 3139 Auck1ond

"eviewed by Squire Speedy

This is a book that New Zealand valuers will find sits well alongside and reinforces New Zealand texts on similar topics. Hyam covers the main case law relating to official valuations that have been contested. The gambit includes the similar type of cases we have seen in New Zealand, but with the advantage of a larger country with proportionally more litigation. A glance through the list of cases reveal many old 'friends' *suchasSpencervCommonwealth,theRaja* case, the *Maori Trustee (Whareroa 2E Block)case,theCedarRapidscase,Tetzner* case, *Toohey's* and many others. Hyam is working in familiar territory. Of course there are many differences between Australian and New Zealand law of valuation, but probably no worse than between one Australian State and another.

The technique used throughout is mainly to let the principles of valuation law speak through extracts from cases, commencing with the legal meaning of land stated in *Bury v Pope* (1588). He progresses to fixtures, plant, improvements, which have been argued about in many a rating case. Property interests seem old hat, but I suspect many valuers would gain by boning up on the fine points of the meanings of fee simple, estate, owner, premises, and interests, leases, remainders andreversions in land. Offhand, how many valuers can explain what hereditaments, corporeal and incorporeal are? With many new subdivision consents requiring re.stictive covenants and similar restrictions and benefits, there is always the danger of overlooking the full impact of such terms.

All valuers know what is meant by 'value', or at least we think we do. Nevertheless , Hyam's choice of extracts from judgements are worth reading. Personally. I like the Victoria and Western Australia state's use of 'site value' instead of our confusing'land value' for the replacement of 'unimproved land value'.

I take issue with Hyam's use of the phrases: *Valuation: General Principles* (Chapter 3) and *Methods of Valuation* (Chapter 4), because these principles and methods relate mainly to dealing with comparable sales evidence. Even so, this comment is not intended to denigrate those issues.Thefundamentaldifferencebetween cost and value, effect of potential on value, and sales to adjoining owners and of the subject land are all covered. Hyam conifrms that offer to sell or purchase, and reserves set for auctions, are not evidence for hearings.

With this era of sophisticated mathematical techniques introduced by universities aided by computers, it is useful to be reminded that the courts dislike valuation based on mathematical calculations or averaging alone. All aspects of value mustbe considered.

Restrictions imposed by statute, which mainly concerns town planning restrictions, follow the same path as we do here. Land with a potential and block sales of potential subdivisions, called 'in globo' sales, also follow the same principles as ours. The 'before and after' method is discussed from a legalpointofview,butthe lackof worked examples is a weakness. Examples would also have been useful when discussing capitalisation of profits.

Compensation upon compulsory acquisition is covered in a large chapter (Chapter 8). There are differences in the laws between the Federal Government and those of the States. Yet it is a useful chapter that supports similar principles that have been established in NewZealand. The Australian concept of 'value to the owner' is discussed in detail, but I do not think that there is any significant difference in principlefromourmethodaf ertakingintoaccount that in addition to market value of land, New Zealand owners can claim for injurious affection and disturbance and some other matters. In effect our Act recognises in a clear statutory form, what Australian owners have to try to claim under less precise statute and common law.

Becausereinstatementcompensationis new here, the Australian experience and case references will be useful for anyone involved with a claim where a'resumed" property has no general demand and no normal market. A church is one example. Of special interest is the prospect of the reinstatement approach being used for a dispossessed owner who is required to outlay more than the market value to acquire a suitable replacement premises.

Rural lands are touched on as are mines and mineral bearing land. The comment on the valuation ofstrata is useful, particularly in respect of its 'land value' where amending legislation was passed in 1961 to overcome the obvious difficultyof trying to value stratum space as 'unimproved' land when in reality it can only exist as an improvement. Valuers preparing to give evidence would gain from reading the two ifnal chapters on evidence and procedure.

The common British heritage of property law that includes the law of compensa tion, together with the fact that Australia has a similar system of rating based o property values, makes Hyam a useful reference text. A

The Analysis and Appraisal of Closely Held Companies

2nd Edition by Shannon P Pratt

Published by Dow Jones4rwin

Reviewed by Alex Laing

Sometimes being rather tardy about get ting around to completing a book review can have great advantages. It means the book constantly disappears from one's office and when it comes to review time, one has collective opinions of an office to call on. Shannon Pratt's book is one of those books to which you constantlyrefer mainly because of its clear and logical approach to valuation issues.

When the book arrived, the first two references I sought were those relating to the Capital AssetPricing Model (CAPM) and Arbitrage Pricing Theory (APT). The references to CAPM are helpful and well illustrated while the references to APT are descriptive only. However, the book systematically works through the derivation and application of discount rates and for that alone, the volum@ is a requirement for the up-to-date valuer.

Shannon Pratt's approach to valuation methodology and application has a refreshing pragmatism. He does not skirt around issues but tackles them directly with helpful examples and good reference material. The text does not suffer in New Zealand terms by its USA orientation and examples. The volume is well indexed and contains appendices, including a helpful definition of terms, as well as a comprehensive bibliography.

This is a book I would thoroughly recommend to valuers as an authoritative text on income valuation techniques, and to those wishing to understand the valuations of shares and obtain an insight into merger and acquisitions and corporate finance. A

The Sixteenth Pan Pacific Congress

Calgary: 31 May 5 June 1992

by S Bond

With the massive deregulation in the financial sector and the government restructuring that has occurred since Labour gained power in 1984, our exposure to overseas markets has increased. With this has grown the need forabroader globalperspective. Aninternational forum, such as the PanPacific Congress, provides the ideal opportunity for the sharing (and airing) of ideas and information on global issues, as delegates come from a wide range of cultural backgrounds and experiences.

The 16th Pan Pacific Congress attractedsome428delegatesand 155 guests from 13 countries. New Zealand was represented by eight members of the Institute, including our President, Alex Laing, with Senior Vice president John Lanner as the Alternate Chief Delegate. Together with the accompanying wives, the New Zealand contingent totalled 14 people. This was perhaps a somewhat disappointing attendance, and interestingly not one Aucklander attended, despite their desire to be the next New Zealand hosts of the Pan Pacific Congress!

There were nine sponsoring member organisations from Australia, Canada, Japan, Korea, Malaysia, New Zealand, Singapore and USA. This provided for a broad spectrum of Pacific Representation which was reflected in the variety of viewpoints presented at the plenaries.

During the Congress, organisations which had applied for membership to the Pan Pacific Congress as sponsoring nations were accepted, being those from the Republic of China (Taiwan) and Indonesia. Mexico indicated an interest in applying for membership also. This will broaden the participation in the Pan Pacific Congress which can only be of benefit to all members.

The Congress *themeFrom the Ground Up- The Building of Value* was chosen as a reflection of the changing political scene and general economic conditions around the world. The renewed attention that commercial real estate investments have received recently, has emphasised an even greater need for a better understanding of the global economy and various factors influencing real estate values.

The programme was well organised into a number of plenary sessions with the recently completed Calgary Eaton Centre providing a focus for the topics. As well as an introductorynational market overview, plenary session topics covered the development, financing, leasing, marketing, valuation, taxation and rating assessment of the Eaton Centre with the speakers discussing these from the viewpoint of their respective nations. A detailed guided tour of the property was given with informative commentaries provided by the property owners.

Two later plenaries covered professional practice and standards, both domestic and international, and it was unanimously agreed that a need exists for standards internationally especially with the increase in across-nation investment.

The closing session on the Pan Pacific Congress for the future, further stressed the importance of a global view. As we share similareconomic conditions, transfer of information about the international issueswejointly face, willbeofgreatbenefit to us all.

The host nations of the future were announced at this session. The 17th PPC is to be held in Yokohama, Japan in 1994, the 18thPPCinSydney, 1996andthe 19th PPC in Singapore, 1998.

A minor technical difficulty that arose during the plenary sessions was in the quoting of values or rates. These were generally quoted in the currency of the speaker's country making meaningful comparisons difficult. In future it is hoped thatallspeakers will use the same currency, such as the US dollar.

Included in the Congress was a field day with an option of either a tour of Banff National Park and Lake Louise or an agricultural tour. Apartfrom theeducational function of each tour these served also a touristic purpose and enabled those attending to discover more of Calgary's attractions.

The social activities were organised around the theme of Stampede and included an opening cocktail evening with the distribution to all registrants of a white stetson. The appropriate opportunity to wear these was given the next evening at the barbecue and rodeo held at Heritage Park (a historical replica of a Canadian village). A stampede breakfast continued the theme. The All Nations Gala Night provided all major delegators the opportunity to display their national culture through song, dance and actions, with the New Zealand contingent performing the Haka in true kiwi style with sheep to accompany them. Of further note that evening was the brilliantly colourful and lively performance by the Koreans, and the Indian costumes and professional dancing capabilities of the Canadian performers. The sole representative from France, and his wife also deserve mention for their wit and humour when leading us in rounds of the well known song "Alouette".

The closing Banquet was the first (and only) opportunity to dress formally and wear the outfits we had travelled so many miles with! (The remainder of the Congress functions had been either very informal or informal as is the Calgarian custom).

These functions provided the opportunity not only to mix socially and make new friendships but also gave the op- 0

Vineyards and the Wine Industry in Marlborough

by N R Ibbotson

This paper deals with the factors effecting the value of vineyards in the Marlborough District.

Marlborough's unique climate, with dry (drought) autumns, and moderate temperatu es,plusfreedrainingsoils,have combined to produce fruity wines which have gained an international reputation for qualitywhich places them amongst the best in the world. For this to have been achieved in less than 20 years is amazing.

Marlborough's first vineyards were planted in 1973 by Montana, now over 32% of N.Z.'s grapes are grown here on 1,800 hectares with 40% being owned by wine companies and the balance privately owned. The area has increased by some 600 hectares since 1989. The number of wineries has grown from one to 11, varying in size from 40 Tonne to 15,000 Tonne, plus four operating grower-owned wine boutiques with at least another four on the drawing board.

Total average district production is 22,000 Tonne with 65% of this going to Montana and 10% to Corbans. There are some 105 private growers who have on average 10.5 hectares of vines producing 110 Tonne. Larger private growers would have up to 50 hectares producing up to 700 Tonne, and Montana have 450 hectares producing on average 7,000 Tonne.

A recent trend has been for growers to have wine made on a contract basis, setup their own small boutique type winery bar, and in some instances export under their own label. A recent contract winery also makes wine for a number of larger North Island wine companies.

Grape prices paid

The price paid/tonne for Marlborough grapes varies dependent on variety, whether they are `contract or free', the sugar or'Brix 'level and which company is purchasing.

As a general rule prices have been negotiated annually between grower and company, often with Montana and its growers setting a price and other smaller wineries following, often at a small premium above the Montana Price.

In past years a separate price/ha had been set for bulk Montana grapes, and a slightly higherprice/hafor'varietals'. The average yield/ha of the particular variety was then divided into the price/ha to arrive at a price/tonne. Since the Commerce Commission's ruling making collective pricing arrangements illegal a new individual contract has been signed by most Montana Milk growers which ties the grape prices to the market price of wine. (27.16% of the ex winery price of white table wine sold in casks.) A high percentage of originally Montana contract varietal growers have chosen to operate without a contact.

Bulk grape prices have fallen by 20% since 1990 to $344.60/tonne or based on average yields of 20 tonne/ha= $6,892/ha gross. Varietal prices have strengthened with Sauvignon Blanc for example bringing $950/tonne at an average yield of 11 tonne/ha = $10,450/ha gross.

Prices over the last eight years for bulk grapes have varied from $6,892/ha in 1992, to $10,300/ha in1985, and varietals from $9,500/ha to $12,000/ha. Free '(as opposed to contract) varietal grapes have over recent years brought a premium.

Given a New Zealand oversupply situation (which is forecast) the premium paid for free grapes will obviously go and it may be difficult to sell them at all if they cannot be exported.

During the last oversupply in1986 all varieties were effected and some contract as well as free grapes were not paid for.

It is apparent at present that the N.Z. local wine market, especially the bulk end is struggling for profitability whilst the varietals especially those exported are performing reasonably well, and are in strong demand.

Vineyard Development

Full production is likely in the fourth year providing irrigation is used. A first cropcan be achieved at 20 months if management is of a high standard and irrigation available. A more normal result would be for first production at two-and-a-half years. 0

ABUJTY

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portunity to discuss valuation matters. Personally, I further used these oppordmities to determine if interest existed for developing a one year exchange with a practitioner or academic between the host country and New Zealand.The Westin Hotel, venue for the Congress, was well located with many of us able to take advantage of either the beautiful Bow River walkway or the downtown shopping centre, both of which were within two blocks of the hotel. The weather was kind enough to allow such outdoor activity, although quite variable with22°C plus 90% humidity one day, falling to 11°C the next. All in all, the Congress was most enjoyable, educational and highly successful. A

ESTIMATE8 VINEYARD D VELOPMENTcoSts
jftWWEKECTARE:AS AT 10/6/92 (NETT OF G 8.T.)

XQYA! t;STs1H Ati>
Includes Labour

These costings (as outlined left) assome:

1. Average yields and returns, based on Montana Muller Thurgau and Chardonnay price.
2. The vines are trained to the wire in the first year and this method can, under very efficient management give re turns of up to 7.5 tonne/ha of Muller Thurgau (bulk) (additional income of $2,355 per hectare).

   Most new growers however waste money by attempting to go to the wire in the first year, and many 1st year vines trained up in the district last year would give improved production in eighteen months time if taken back to *two buds now*. Spindly vines to the wire in the first year, struggle in the second year and the money involved is wasted.
3. Labour is costed at $8.50/hour which is a basic rate and does not allow for expertise or supervision. Any owner input will reduce this figure.
4. Tractor hours including labour are costedat$33. /hourwhichisa`farmer' rate as opposed to a contract rate.
5. Vines are grafted, phylloxera resistant and costed at $3.20 per vine. Vines of their own roots at $1 per vine would reduce this cost by $3,950/ha.
6. No inflationary factor is included.
7. No allowance is made for interest or personal drawings.

Profitability

Year four indicates a mature vineyard average profit level of $1084/ha bulk varieties, $3,984/ha varietals however further variations are substantial as the comparisons indicate (see Profitability/ hectare table on following page).

At the end of year four the high performance seven ha. varietal vineyard is $76,230 better off than the average performing vineyard and a massive $130,256 better off than the low yielding bulk variety vineyard.

The above indicates the effect variety and yield, especially high yield at an early age, has on profitability.

It costs virtually the same to grow a low yielding low price variety as it costs to grow a high yielding high price variety.

Cost of Production

Growing costs can also have a substantial effect on the level of profitability and the following are examples.

A traditional pruning system (cane pruning) has a cost/hectare of approximately $1,020.

PROFITABILITY/HECT

	Bulk Grape Price. Low Yields.	Ave Grape Price. Ave Yields.	Varietal Grape Price. High Yields.
Second Year			$1,150
`I't h Year	$630,	$ 4,080	$ 8,050.
fourth Year	$4,082	$ 9,180	>$14,950L;f
4 Years Total Gross Income Earned/hi	$ 4.712	$13,260	$24,150
otal C st toTo Year four/ha	$ 35.398	$ 36 228	$3,,228:;
Deficit at Year Four/ha	$ 30,686	$ 22,968	$12,078
Assume 7 ha Vineyard	x ba	x7ha	Z11 `
7 ha Total Deficit At Year Four (ot including land)	a2ia.s°z	5]50.2I	89.S4

Spur pruning by machine costs approximately $400/haand minimum pruning (hedging)costsapproximately $250/ha. Asavingof $770/ha.

Savings in costs can also be made by helicopter spraying, as opposed to tractor, herbicide weed spraying as opposed to cultivation, contractors versus own equipment, and syndicate ownership of harvesters as opposed to contractors.

The combination of the above cost savingmeasurescanr uceaverageannual charges by approximately $1150/ba from $5196/ha to $4066dha.

It should be noted however, at present wineries tend to dictate traditional higher cost pruning methods for the favoured varietals.

VARIATIUN.I..N RETURN: ..... du

Low Yield/Bulk Price		$3,150
Average Costs		
	Deficit	$ 2,046/ha
Average Yield/Varietal Price		$ 9,180
Average Cost		$5,196
	Surplus	$ 3,984/ha
High YieldNarietal Price		$14,950
Average Cost		$5,196
	Surplus	$"9,754/ha

'RETURNON CAPITAL

High Capital Invotved/ha		$41,000
, High Return/ha		$ 9,754
	= 23.8% Return on Capital	
Average Capital Involved/ha Land & Plant		$35,125
Average Return/ha		$ 3,984
	= 11.3% Return on Capital	
Low Capital Involved/ha		$31,125
Low Return/ha	Loss	$1,114
	3.5% Negative Return on Capital	

To summarize profitability. Prior to interest and personal drawings but after allowing for labour all, returns from a 7 hectare planted block profitability is as follows:-

An average bulk grower	$7,588
A top bulk grower (high performance low cost)	$39,060
.,An aver varietal grower	$27,888
Atop varietal grower	$68,278

A top varietal grower is $60,690 better off thapan average bulk grower,

Capital involved

Land

Recent sales indicate mature established vineyards are selling per planted hectare-at between $30,000 and $37,000 which is virtually the same total as bare land $1 1,000/ha plus development $25,000, equals $36,000/ha.

Plant

A vineyard with a full set of new plant including sprayers, trimmer, 2 tractors, motor bike, rotary hoe, leaf plucker plus other smallplant would have up to $90,000 capital involved or on a 8 hectare property equals $11,250/ha.

A vineyard using a contractor for spraying, pruning, leaf plucking and trimming could have as little as $10,000 involved or on a 8 hectare property $1,250/ha.

An average vineyard would probably have $25,000 in plant equating to $3,125/ha.

Factors affecting profitability

1. Winery Profitability

This is the most important factor to vineyard profitability. Long Term Profitability of growers is dependent on long term profitability of wine companies. This is now dependent on export markets because without exports New Zealand has an oversupply of grapes and local consumption is falling.

2. Management

In the vineyard, the management factor is of prime importance. A good manager acts before the need is apparent and before a problem occurs. A bad manager is always a week behind which often means the difference between a good and bad crop.

Correct early training and subsequent pruning of vines is imperative. Poor labour supervision by management is disastrous. With 1794 vines per hectare bad management leads to 1794 mistakes and 1794 poor vines per hectare.

3. Production From Young Vines

The earlier, and the higher the yields, the greater the profit. Poor management, competition from *weeds, and lack of irrigation* would be the three main factors reducing yields from young vines. The correct weed sprays used at the right rate and right time are giving excellent weed control.

4. Number of Buds Per Hectare

The greatest factor affecting yield of mature vines is *buds per hectare.* Most vineyards are pruning off crop by not leaving sufficient buds. Most wine 0

companies do not pay a sufficient premium for quality therefore encouraging growers to produce higher yields to maximise returns. High yields in some varieties can effect quality, especially in cooler years when ripening is a problem.

5. Varieties

At present the favoured varietals Chardonnay, Sauvignon Blanc, Semillon, Pino Noir and Merlot give a better return. Chardonnay is a slower producer however and does not come into production as quickly. It is also slightly harder to grow and more susceptible (along with Merlot) to low temperature at flowering which can reduce yields.

6. Trickle Irrigation

This is giving a response on most soils especially on young vines and with good overall management normally pays for itself in the first two years. The cost of irrigation is approximately $4,000/ha which equates to four Tonne of varietal grapes. Top vineyards with irrigation have achieved 4 tonne /ha at 18 months of age.

7. Aspects of Vineyards

Vineyards running east west generally do not appear to be yielding as well as those running north south.

8. Costs of Production

Mechanical pruning is reducing the cost of production and generally where itresults in higherbud numbers yield is increasing. Complete herbicide weed control is less costly than cultivation and hence reduces production costs.

Helicopter spraying of fungicides is cheaper than tractor spraying and has been satisfactory in most cases especially for early season sprays.

9. Climate

Late spring frost, hail, low temperatures at lfowering, and predisposing weather conditions creating disease can cause reductions in yield. Different varieties have varying levels of tolerance to frost, cold at lfowering and disease. In Marlborough's cold years, such as this last season, yields have been reduced and a small proportion of late varieties have struggled to obtain satisfactory sugar levels.

10. Shelter

Is detrimental in accentuating frost risk, disease risk, bird damage, and a drop in yield due to competition, but can be beneficial in assisting to maintain warmer temperatures over flowering.

11. Contracts

Over recent harvests `free grapes' of the favoured varieties have given a higher return, however this will not last indefinitely. A good contract is only as good as the wine company. Only time will tell which are the good companies. The present industry trend is toward shorter term contracts of three to five years and more free grapes.

12. Pests & Diseases

Yields are decreased substantially if diseases especially 'Botrytis', 'Powdery and Downy Mildew' are not controlled by a regular spray programme.

13. Size of Vineyard

As the vineyard size increases the spread of capital cost in machinery is also greater enabling a spreading of capital, lower costs and a higher return.

14. Phylloxera

This is an aphid pest that lives on the roots of ungrafted vines and eventually kills them.

It wiped out the vines of France in the 19th century and it is present in Hawkes Bay, Gisborne and Marlborough. It was first found in Marlborough on one vineyard in 1984 and a 1990 district survey showed the pest to be present in 40% of surveyed previously clean vineyards. (4 out of 10.) It is now estimated to be on at least 50% of vineyards and is spreading reasonably quickly. At present only an estimated 15% of vines are on resistant rootstock. It is expected that over the next 10 years the remainder of the district will be replanted onto these resistantrootstocks at a cost including loss of production between $12,000 to $21 000/ha. It is further expected, based on present returns that these plantings will take place with varietals rather than bulks.

15. Soil Types

Grapes in Marlborough are growing on flat land of substantially varying soil types. From river gravels and stones, which in their undeveloped state carried less than 2 stock units per hectare, to heavy clay based silt loams, with impeded drainage, to very fertile heavy silt loams capable of intensive cropping. The winery favoured soil types are the free draining stoney silt loams.

The best location of these within the district appears to be dependent on the eyes of the beholder with most companies and growers believing the land they are growing on is the best.

It is generally considered the heavier more fertile soils produce poorer quality, however quantity and subsequent profitability to the grower is greater on these heavier soils.

16. Planting Density

Traditional New Zealand and Marlborough spacing is 3 metres x 1.8 metres, equalling 1,790 vines/ha. An increase in density of planting can provide greater early income flow, but in the long term provides higher costs, less profit and more hassles. Vineyards analysed by the writer with planting density of 3,300/ha have an operating cost on average of $10,600/ha, virtually double the normal cost, without any increase in the mature yield per hectare.

17. Height of Fruiting Wire

Normal height of lowest fruiting wire is 1 metre from the ground. Where height is only .75 metre or less labour costs are increased by approximately $270 per hectare.

18. Supply & Demand

As an overall view, New Zealand grape plantings are increasing (slowly) although the effect on production increase is being reduced by a continuing swing from bulk varieties to lower yielding export varieties, and by effects of Phylloxera.

Exports areincreasing, by 35%/annum average,over the last three years, accounting at present for 15% of all sales of N.Z. wine and estimated in 1991/92 at 6.75 million litres worth $30 million.

Imports to N.Z. have increased by over 300% from 1986 to 1991, but have fallen by 35% in 1992 to an estimated 8 million litres which amounts to 17% of all wine sales in N.Z.

Total wine sales within N.Z. are expected to decline in 1991/92 by approximately 11%, after having grown for the last three years.

New Zealand at present has a requirement for approximately 61,000 tonne of grapes. Expected production from the 1992 harvest was between 63,000 tonne and 80,000 tonne. Actual production would appear to be 53,000 tonne, 20% down on last year (due to the cold at flowering) and thelowestsince 1988.Ashortfallespecially in the favoured varietals is likely to occur over the next 12 months.

The New Zealand area planted has the potential for a 80,000 tonne crop which would create an oversupply.

19. Government Taxation

The government takes a tax at the rate of $1.70 per litre ($1,277/tonne) on 46 million litres equals $78 million/annum (plus G.S.T on wine sales $40 million). The grower receives 46 cents/litre for bulk wine and $1.40/litre approximately for varietal wine. Obviously any change to government tax on wine effects the industry and subsequently the grower. The 1991 budget increase amounted to 100/litre or $75/tonne.

This is the highest rate of tax on wine of any wine producing country in the world.

Effects on values

These previous factors which all effect profitability also have an effect on values, however it would appear that the market response to these factors is less than would be expected, and where change is taking place, slower than would be expected.

In saying this it is pointed out that the number of sales of mature vineyards in the district is low, approximately four per year, and the sales tend to beof the poorer, partly developed vineyards.

There have been no sales of mature bulk vineyards since the 20% drop in grape prices.

Recent sales (1991 and 1992) have included $37,000 per planted hectarefor a young top varietal vineyard expected to achieve between 15% to *20%* on capital involved, with a good but short term contract; $32,000 per planted hectare for an average mixed variety vineyard, with a poor disputed contract at the time of sale and expected to return between *10%* to *15%* on the capital involved; $30,000 per planted hectare for a poor mixed variety vineyard partly with a disputed contract andbadlyeffectedbyPhylloxera,expected to give a negative return on capital. The buyer for this vineyard was obviously not fully informed, although the agent involved had other buyers lined up.

Other sales over a longer time period indicate a surprisingly small difference between top high producing vineyards with good contracts, favoured varieties, and no apparent Phylloxera, compared with low producing vineyards with poor contracts, less favoured varieties and in some cases bad Phylloxera.

The valuer needs to be aware of the factors that influence the viability of the vineyard.

He needs to be aware of the variable management factors as opposed to the fixed physical factors and their interaction plus he needs to be aware of the buyers interpretation andweighting given to these factors.

Asa valuer comparable sales indicate the market, which indicates a lack of awareness of the variation in returns obtainable.

As a professional recommending mortgage finance the lending margin percentage obviously needs to be varied to suit the viability of the vineyard.

As a consultant, provided my involvement is prior to the sale taking place I am able to advise the client fully on all aspects. It is extremely frustrating to be consulted after the property has been purchased at an uneconomic price.

Canterbury vineyards

The writers experience with Canterbury vineyards is limited. A recent article in *NZ. Grape & Wine* May 1992 by A. J. Gray and G. F. Thiedle, Department of HorticultureLincolnUniversity shows the following table with regard to Canterbury grapes.

Average Prices, Yields and Revenue of the Main Grape Cultivators for the 1991 Season

	Yleld MW	Pty l	Revenue Leal
Chardonnay	5.1	1,128	5,763
Pinot Noir	5.8	939	5,466
Sauvignon Blanc	4.9	1,000	4,900
Riesling	7.9	622	4,892
Muller Thurgau	10.9	425	4,611
Gewurztraminer	5.2	767	4,000
Pinot Gris	5.5	550	3,007
Cabernet Sauvignon	1.8	1,017	1,830

The yields shown are approximately half the average yields of Marlborough vineyards. The prices are on average slightly higher per tonne and the gross revenue is less than Marlborough's average total costs of $5,196/ha (net of harvesting) in all varieties other than Chardonnay and Pinot Noir.

It may be that the vines in the survey were not mature, and that yields will increase with maturity. This could bring added difficulties in ripening however, as Marlborough experience indicates for every additional 1 tonne/ha an extra week of ripening is required. If the same applies in Canterbury, Chardonnay for example at nine tonne/ba, (Marlborough average) would require another four weeks of ripening.

The biggest factor affecting yields and profitability in Marlborough (apart from) Phylloxera and management) is cool conditions at flowering.

(Statistics given in this paper are approximations.)

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The Changing Scene for Commercial Property

by P F Menzies

My paper is intended to focus your attention on what I believe is the most significant property market event in the last 40 years the end of high inflation.

Inflation has been a deadly combination of illusionist and saboteur within our industry. Illusionist because rapidly increasing asset values masked real values and saboteur because inflation allowed the entry of speculators and profiteers who have left us with a legacy of badly located, badly designed and badly constructed buildings. This dreadful mess has lowered the standing of the property industry in the eyes of investors and tarnished the reputation of many professionals who were caught up in the whirlwind of the property boom in the eighties. Few if any of those involved with property have avoided either financial loss or an involvement with professional work which one would view in retrospect with concern. Did any of you for example give advice on property values over the last five years which was later proved quite wrong?

What caused inflation and what has brought about its collapse? Is this a temporary phenomenon or can we anticipate a long period of very low inflation? If low inflation is here to stay, how does this impact on property values? Will low inflation bring new demands into your profession?

Centrally Directed Economies

A feature of the Western world following World War II was the growth of centrally directed economies. The clearest example is Russia.

Following World War II, communism as a political system appeared to be successful in Russia with food production and industrial output growing at strong rates.

A feature of all countries involved in World War II was a post war boom. People went home and settled down to live and work peacefully having experienced five years ofterror. As aresult, economics expanded and both good and bad systems of government worked.

Those in control of Russia were so confident they pronounced a wish to have communism take over all other political systems. The Cold War was in full flight and I believe history shows that the nuclear deterrent in the hands of the USA, Britain and France kept Russian ambition neutralised.

We were not totally immune from the pressure of communism. Within our trade union movement, communist sympathis ers fought to bring down our democratic system.

Communism has suffered the fate of all false ideologies collapse. With this collapse has come a realisation that other forms of centralised government are inappropriate.

> Inflation has been a deadly combination of illusionist and saboteur within our industry.

New Zealand has flirted with socialism, a more dishonest ideology than communism since it has a foot in the communist camp with its concentration of economic and social power in central Government's hands and a foot in the democracy camp to provide tax revenue.

Out of our centrally directed economy has come inflation as politicians fumbled with economic policies and attempted to run major businesses without proper business systems or skills.

One may argue that the break up of our centralised economy has added to inflation with the liberalisation of the financial system ahead of both labour market reforms and the privatization of some government businesses. Whatever is the truth matters little since in the long run without all the reforms in place the attack on inflation will have been only a short term success. The re-structuring of our economy and the attack on inflation as directed by the Reserve Bank has given us the prospect of a long period of stability and gradual expansion in business activity and employment.

Unemployment is the remaining problem to be solved. We must not be deluded into believing that the policies adopted by Governments in the past can work today. Our economy is too weak to support the past level and variety of welfare programmes. Our business enterprises must be controlled by competent management applying systems which lead to long term growth.

Unemployment will be solved by a society committed to old-fashioned values of thrift and honesty backed by skill, enterprise and optimism. Employment growth will come from small businesses with an internationally competitive approach to their operations.

This paper was presented at the NZIV Seminar held at Gisborne on 13-14 April 1992.

My purpose in spending so much time looking back at our economy is to build a platform for my projection of the future, to give a basis for my belief that we have the strong possibility of a long period of very low inflation. If this comes about it will have a profound effect on the professional advice required from your firms.

Market Related Economies

With the collapse of communism and the associated failure of socialism there is a surge of change in every Western country. Within New Zealand the not so quiet revolution is underway with the level of debate seriously distorted by media desperate for audience share.

There is still significant reform ahead if we are to avoid re-building parts of our economy around systems that will lead to another collapse. In all probability such an out-turn would involve a solid shot of inflation.

I am presuming that orderly reform will continue with balanced budgets, a growing economy leading to budget surpluses with consequent debt reductions, and following this an accelerating growth in the economy with significantly reduced unemployment.

All of this can occur without inflation. It is my proposition here today that this is very likely to be the future.

Why low inflation?

I will now refer you to a graph (Fig 1) from the London Economist of February 22nd 1992 showing that British consumerprices between 1661 and 1930 remained constant. From 1930 to the present inflation has raised prices 4000%.

On reflection you may ask how one can presume inflation will suddenly slump with this recent history of extraordinarily high inflation.

Simplistically one can postulate that the collapse of centrally directed economies, coupled with the revolution in communications and automation stemming from the invention of the silicon chip, has created a world over supplied with manufactured goods. This is in parallel with the continuous improvement in food production which started with the agricultural revolution and continues today where the world has significant unused food production capability. Markets are facing oversupply in many food and manufactured products at a time when automation is reducing employment. Job creation appears to be the new challenge. Without jobs there can be limited growth in consumption and this must keep inflation at very low levels if centralised economies remain unpopular.

Because of this I predict along period of low inflation.

Property Without Inflation

In the absence of inflation property is reduced to its essentials. Buildings become depreciating assets and landremains at values reflecting its ability to attract revenue earning improvements.

If for example a commercial office building in a town or city suburb remains just that over a period of 20 years and its location remains stable in terms of staff access, transportcosts and other operating costs, there would be no reason to expect a change in land value. However the building on the land may incur maintenance and deprecation expenses such that it has little residual value after twenty years.

Consider this example:
An investor has $2.5m to invest today. Consider the outcome after 20 years if he chooses a property and the outcome if he chooses Government stock.

Property Investment

Assumptions:

* Total cost $2.5m including land at $350,000.
* Rent at commencement $300,000.
* 10 year net lease.
  Rent increase year 4 is 4.5%.
  year 7 is 6% (compound)
  year 10 is 6.5% (canpound)
* Re-furbishment cost year 10 $0.5m
* No income year 11 during re-furbishment and letting up.
* nine-year lease in year 12 at 15% discount to market.
* Rent increase 4.5% year 15 and 6% year 18.
* All cash flows invested to earn 5%
* Property sold year 21 for $1.0m.
  Land value $500,000 and residual building $500,000.
* No tax.

Government Stock Investment

Assumptions:
First 10 year interest 9.0% Cash flow invested to earn 5%. Year 11 cash reinvested in 10 year Government stock at 6%. Cash flow second 10 years invested to earn 5%. No tax.

Result

After 20 years total cash flow Property Investment is $10.5m and from Government Stock $8.98m.

I would suggest that this example points to some new demands on the 0

nature of information valuers provide to clients when appraising a property.

Property, whether it be owned by the occupier or an investment, exists for customers, the occupants. The customers' needs are paramount in any business and so it is with property.

In appraising a building one must measure it against the current and future requirements of the occupants. This requires a knowledge of their business which extends into details such as mode of operation, hours of work, frequency of visitors, technology used and many other factors.

A view must be formed as to the future requirements of the occupants to determine if the premises will remain acceptable, measured against likely trends in all aspects of the occupants' businesses.

By way of example, I quote from the Richard Ellis Europe second quarter 1991 bulletin dealing with the needs ofmultinational companies as building occupiers:

"There are essentially three types of office operations by multinational corporations that need to be accommodated and each have requirements that investors or developers should consider when contemplating a building scheme.

i) Back Office

This would consist of intensive clerical functions typical of the financial services or insurance industries.

The density of personnel would be comparatively high within a range of 10 to 16 sq. m (100 to 160 sq. ft) per employee. Design specifications to be taken into account include:

- Column free floors between 1,500 - 3,000 m2;
- High floor usability i.e. high net:gross ratio;
- Raised floors throughout to accommodate cabling for computers and communications;
- Highly efficient operating conditions for HVAC (where applicable);
- Backup power and telecommunications;
- Security systems.

The interior fitting out will be nominal as the accommodation will be of an open space nature with extensive use of modular office systems furniture. Offices, conference rooms, cafeterias or lunch rooms will be built around the core of the building leaving the windows unobstructed and taking advantage of the natural lighting. In this regard the occupier will want double glazed windows to reduce heating and cooling loss.

> Without inflation, old buildings have nothing working in their favour in competition for tenants.

ii) Marketing and Sales Office

Occupiers in this category will be more interested in location and accessibility. Space requirements can vary greatly. A higher degree of finish will be expected with density levels ranging from 20 to 25 sq.m. (200 to 250 sq.ft) per employee as more personnel will be in closed offices rather than open plan.

The following can still be considered as a minimum:

- Easy accessibility for cabling although not necessarily raised floors;
- Accommodation forparking (visitors/ staff);
- Availability of conference rooms within the building outside of the space let.

iii) Executive and Administration Ofifces

The fitting out of this space will be commensurate with the image of the company. This can range from lavish fit out to a conservative or modest, but nevertheless high quality mode.

Features of interest are security, image of location within the building and external views. Density levels will be liberal and above 25 m2. (250ft2) per person.

Windowed offices and having a prominent location for the senior employee will be important. The space would be planned to contain all the essential services so that nothing will be needed outside the space. The design of the building, and its presence within the area will be of priority.

Closely following will be communication systems capability and control of the internal environment. Accessibility to a private elevator would be a luxury more than a necessity, although private car parking for the senior employee would be expected. Finished ceiling height in excess of 8 feet would be important.

In all of the above, the primary consideration will of course be given to location. Where locations are comparable an occupier's decision will be made on the presentation of the interior space layout. Owners and developers should not try to market a building where the business operation must be reconfigured to match the space. "

This is an example of the *World Village* concept. International company's requirements today are everyone's requirements tomorrow. If the building you are appraising lacks several of these key requirements, it may have almost zero value in a few short years. Businesses of the future will have to be internationally competitive and with inflation no longer a factor, that old building in the right location may become part of a heavily oversupplied second rate building market. Without inflation, old buildings have nothing working in their favour in competition for tenants.

A heavily oversupplied second rate building market is certain to be subjected to the most severe price cutting without any prospect of improvement. The only answer is substantial expenditure on upgrading or rebuilding.

Mainzeal has been involved in a wide range of renovation projects and they rarely produce space equivalent to new. Careful analysis is required to balance capital expenditure against forward cash flows. Note carefully that valuers must include in their appraisals reference to occupiers' present and future needs. You will have to be informed on world trends.

Since low inflation will result in small increases in cash flow some aspects of a building's operation which were largely ignored in appraisal reports during the past may assume economic significance. Large rent increases have helped to mask cash losses arising from some of these problems.

Some examples:

- How complete are the as-built drawings and operating manuals?
- How accurate are the measurements of building areas?
- What internal fittings belong to the building owner?
- Has the operating expense account been competently audited. How does it compare to budget?
- Is the building water-tight? If not what is theproblem and cost of rectification?
- Does the building have any unusual operating expenses? Unusual in terms of magnitude and type?
- Is there a sinking fund? What is its history?
- Details of insurance policies. History of application of these policies.
- Are there any requisitions from authorities or breaches in leases?
- Are any repairs or maintenance necessary by reason of any defect in the design and construction or modifica-

tion to the building?
- What guarantees are in place?
- Is it in order to approach any tenant on any matter relating to the property and its management?

Property appraisals of the future must also take account of many technical matters and although you will not need the skills to report on such matters, you will need to access people with the skill to provide the reports required. Here is a list of items in the area of Mechanical Services and Electrical Services.

Mechanical

- Thermal performance of external cladding system both glass and frame
- . Are curtains a necessary feature?
- Humidification system.
- Cooling capacity to cater for change of use which may increase heat load (eg lighting intensity).
- Health audit of air supply systems.
- Outside air supply.
- Energy efficiency of building use of off-peak power to store energy (ice made at night for refrigeration during the day).
- Flexibility of air conditioning system to cater for varying internal subdivisions.
- Efficiency of after hours use of services.
- Ability tocaterforchangestoin-house catering requirements (exhaust ducts).
- Plumbing stacks for wet areas in diverse locations.
- Acoustic quality of services installation.
- Extract systems are air changes adequate-
- Occupancy level assumed.

Electrical

- Sub-station switch board and distribution expansion capability.
- Back-up power capacity.
- Access for servicing/upgrading.
- Security systems.
- Lightning Protection.

Similar lists are required for fire services, lifts, hydraulics (plumbing and drainage) and communication (internal and external).

From the above one can conclude that appraisal reports covering all of the above will be lengthy and expensive. While not every property will require the detail I have outlined, almost every property should be reviewed with these in mind.

Low inflation will result in modest increases in future cash flows and hence expenses not anticipated could have a profound negative impact on the financial performance of a property.

Any prudent owner should be interested in such potential negative cash lfows and be prepared to pay for adequate professional advice detailing such outturns.

I suggest this will produce significant demands on your profession and the need for a much closer working relationship with technically skilled professionals. A

Changing Scene for Commercial Property

A Commentary by R P Young

r Menzies expresses the view that M the most significant (Commercial) property market event in the last 40 years is the end of high inflation. I agree with him with respect to the fact that many years of high inflation have, until quite recently, completely distorted the real estate investment scene by creating an illusion that extremely high profits were available (both shortand long term) within the commercial property investment sector. The evidence that these profits were largely an illusion is now scattered all around us, particularly in the major cities and most particularly- Auckland, which is the market with which I am most familiar.

Over the past 40 years (the period referred to by Mr Menzies) inflation exceeded 10% in 16 years and exceeded *15%* in 4 of those years, using March quarterfigures. However, thereal damage was done in the last 21 years when inflation exceeded 10% in 15 years and exceeded 15% in 4 years. The impact has been devastating, as is graphically described by Mr Menzies.

Between 1945 and around 1980, the status of urban commercial property in New Zealand ranged between fairly dormant to unspectacular growth. Very minor business cycle fluctuations were noticeable on occasions but nothing like the boom bust cycles which were experienced in Australian cities and elsewhere. By international standards, stability, caution and probably a fairly high degree ofboredom were features of ourcommercial real estate market over most of those years. Largely through Government policies, New Zealand was insulated from international economic and financial forces which would have otherwise influenced the flow of investment funds and the real estate market generally.

With the advent of Rogemomics all of that changed dramatically in the early 1980's and a combination of events resulted in an unprecedented building boom within the commercial (principally office) market. Not the least of these events was the impact of years of high inflation. The other major influences were the very liberal availability of finance and an explosion in the demand for office accommodation.

Within the Auckland Central Business District, between 1980 and 1992 a total of 632,000m2. (leasable area) of office accommodation was completed. 0

This represents 55% of the total office stock within the Auckland Central Business District. The result of this massive increase in supply has been that the Auckland CBD now has over 370,000 m2. of empty office space, 175,000 m2. being in those buildings completed in the last 12 years. It could take most of the next decade to lease all of this space and some of the poorer quality office space currently on the market may never be leased at all. Obviously some poor planning and forecasting went on in the 1980's.

Mr Menzies poses the question: "Did any of you for example give advice on property values over the last five years which later proved quite wrong?" The answer of course is yes, for most of us, and probably yes for all of us.

One must however recall the obvious defence that any form of economic forecasting is a particularly hazardous job. A valuation is no more or less than an economic forecast and I would pose the following questions:

How many investment analysts were forecasting in early 1991 that over the ensuing 12 month period the five year Government Stock interest rate would fall by approximately 30% (from 12.16% in January 1991 to 8.57% in January 1992)?

How many investment analysts are prepared to predict, with a high degree of accuracy, what five year Government Stock rates may be in 12 months time?

How many Sharebrokers or Investment Analysts are prepared to state, with a high degree of accuracy, what Brierley, Carter Holt or Telecom shares might be selling forin six months time or 12months time?

Yet Valuers are expected to predict the real estate market with a high degree of accuracy and with less sophisticated statistical tools and research available as a basis for that prediction.

While I agree with Mr Menzies' general comments on the impact of inflation, this is not the only force which has bought the commercial real estate investment scene to its present state. A further major impact has been the almost complete disappearance of any New Zealand based pool of investment funds able to take advantage of the current relatively high yields and low prices. This applies particularly toany investment property priced in excess of around $3 million.

In order to sell such properties the vendor is almost totally reliant upon purchaser interest from Tokyo, Taiwan, Hong Kong, Singapore or Indonesia. The absence of a locally based pool of investment funding must result, at least to a large degree, from the previous Governments decision to strip life insurance and superannuation savings of any tax benefits. This was announced in December 1987 andboughtintorealityby the 1988budget. The present Government has shown no inclination to change the situation. New Zealand must be one of the few "western" nations not to have a life insurance or superannuation system which is either compulsory or encouraged by taxation policy. The consequence is that organisations which formerly were purchasers of commercial investment property are now vendors.

> "...low inflation will have a profound effect on the professional advice required from our members."

From a Valuer's point of view, one of the most dangerous legacies of the recent era of high inflation is that many of us may fail (until it is too late) to appreciate that trends and influences which have become anintegral partof the market over the past 20 or 30 years, largely as a result of high actual and expected inflation, will no longer be a part of the market in the next 10 to 20 years. It is still common to hear Valuers. confidently predicting an automatic increase in land values over the next 10 or 20 years.

We must face the reality that this may not happen and that there is indeed the possibility for real and actual land value declines in certain locations and in certain sectors of the market. For the past 30 years inflation has taken care of this problem but will probably not do so over the next ten years or so. Mr Menzies is quite correct when he states that a long period of low inflation will have a profound effect on the professional advice required from our members.

Mr Menzies mentions the "world village" concept and I believe that the point is well made. I feel that over the next 10 to 20 years this may have an influenceon the demand for CBD office space in New Zealand, principally in Auckland and Wellington. Consider for example the impact of CER.

If our business association with Australia continues to become stronger, then the Head Office functions of many of our insurance, banking, service commercial and industrial activities could be situated in Sydney or Melbourne rather than in Auckland, Wellington, Christchurch or Dunedin. Indeed, we have already seen some movement in that direction. Given that Head Offices consume about 600% more office space than do branch offices, the implications are obvious.

Mr Menzies highlights the need for valuers to pay more attention to the technical quality of a building and its mechanical services. I have long held the same view and at the risk of sounding a little arrogant would refer you to anarticle which I compiled for a conference held in November 1986 and which was published in the March 1987 issue of *The Valuers' Journal.*

In that article I pointed out that many Auckland buildings were then being constructed with packaged incremental ceiling mounted airconditioning units which had a low installation cost, high running cost,shc tphysicallife,highnoise volume and frequent maintenance requirement.

The problem was that in those days most property and development companies did not want their valuers to be too specific or knowledgable about the type and quality of mechanical services.

The result was, I suspect, that many Valuers involved in this particular field were not aware of the short or long term implications arising from the installation of a cheap unitary type airconditioning system as distinct from a more expensive central plant VAV system. I have not seen much evidence that the situation has changed and I hope that Mr Menzies highlighting of this topic will encourage a more professional approach on behalf of Valuers.

The changing scene in the commercial real estate market has been dramatic and unprecedented in the personal experience of anyone working in New Zealand over the past 30 to 40 years. In Sydney someone wrote a book (now out of print) about the property crash of the early 70's. A modem day Somerset Maugham or John Steinbeck has a wealth of material from which to draw in compiling an account of the events which have led us to our present situation.

In the *Sunday Star* April 5 1992 Mr Chas Stunt of the Serious Fraud Office is quoted as saying, with reference to the mid 80's:

> *the period was one of naked greed in New Zealand where deceit and malpractice was evident on a vast scale an era of rampant corporate banditry unparallelled in the history ofNew Zealand.It has left a dirty and embarassing blot on our commercial reputation which*

Prospects for Residential Property Valuers

by S M Locke and I McCarthy

he outlook for residential valuation T will be significantly influenced by two main factors. First, the residential property market, including both the volume of transactions and price movements which may occur in the next few years. Government moves which have resulted in changes in the economy are of considerable significance in this regard. Second, and of equal importance, is the response of the valuation profession to a range of professional issues. The major contributory components of these two factors need to be explored. These major influences are reviewed in Sections 1 and 2 respectively.

I Residential Property Market

1.1 Residential property prices

In the absence of a crystal ball which works, it is necessary to rely on economic models when endeavouring to forecast movements in residential property prices.

Many studies have been conducted, both overseas and in New Zealand, attempting to develop econometric models of housing markets. The basic issue is one of supply and demand. Price, where transactions occur, is at the point of intersection of demand and supply curves, sometimes called Marshallian Scissors, as depicted in Figure 1. (see following page)

However, the real difficulty is in forecasting these supply and demand schedules.

1.1.1 Forecasting Models

Various levels of sophistication in the application of econometric models have been attempted and these are variously reviewed in the literature. A contemporary article which shed light on the results of empirical research is Muth and Goodman (1989). Their research into the determinance of the demand for housing concludes that price, interest rates 0

This paper was presented at the NZIV Seminar held at Gishorne on 13-14 April 1992.

...continued from previous page

will never be totally erased.

Put simply, it was a national disgrace.

It would be surprising if the commercial real estate development and investment market was totally divorced from the practices referred to by Mr Sturt. Whatever the reasons, however, the commercial real estate investment market is now in a sad state, at least in Auckland. It is characterised by very weak demand for all classes of property but particularly for vacant or redevelopment land; by an overwhelming oversupply of office accommodation in the face of a contracting demand, by the absence of a New Zealand based pool of investment money available to retrieve the situation and by an unpredictable and sporadic level of offshore demand.

The Auckland City Council's Strategic Planning Division published an"Economic Update" in February 1992. This division has the courage to face reality and its report notes:

Auckland is now showing signs of being the region most adversely 4yected by the economic recession. This is retlected in escalating unemployment, stagnant property markets, and declining retail sales.

This report has been criticised by the Chief Executive of the Auckland Chamber of Commerce and Industry who has been reported as accusing the planners of navel gazing when there were many initiatives taking place in industry. The Chamber is reported to have blasted the City Planners for not "encouraging the future".

My own views on the subject are that we got into our present mess very largely because those responsible for the rash of property development (most of whom went bankrupt) achieved the present situation by ignoring the facts and realities of the general economy and the property market in particular.

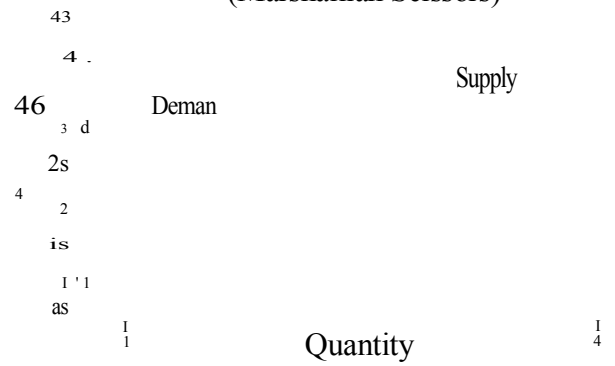
We are certainly not going to get out of the mess by continuing to ignore fact and reality.

I, like Mr Menzies, appeal to old fashioned values of thrift and honesty backed by skill, enterprise and optimism. I hope that people in the business and investment scene use these criteria in the future when appointing their Valuers. I havehadthefeelingthatinthepast, Valuers have often been appointed with other objectives in mind. A

Fig 1

Demand and Supply Curves

(Marshallian Scissors)



and inflation were of primary importance. Brown (1990) foundthatcapilal appreciation was an important determinant in people's attitude towards their demand for housing.

More recently, in New Zealand, Westpac (1990) identified inflation, real disposal incomes, mortgage interest rates and consumer confidence as being particularly important. Newspaper articles, such as Pederson (1991), in *the National Business* Review, argue that tough decisions are to be made on the home front at this point in time. This is similar to the view previously expressed in editorial comments of the Mortgage Affordability Index (see December 1991 issue).

Many factors in New Zealand have altered over the last two years and as a result the type of models previously developed for explaining housing prices, and providing a statistical basis on which to forecast housing prices, no longer hold. An example of this is the work of Birks (1984) who considered movements in urban house property prices for New Zealand. Much morerecently Mitchell (199 1) conducted a statistical analysis of the economic factors influencing residential house prices in New Zealand. His extensive econometric modelling concluded that the type of factors important in New Zealand were similar to those reviewed in the literature for overseas studies.

> While research has provided models with high explanatory power in the past, these are not useful for predicting the future

Specifically, population (NZS DPEA.SADC), CPI (NZS CPIQ.SE9A), residential building permits issue (NZS BLD.SCCIICO), industry confidence index (NZIER), capital appreciation in residential values over previous 12 months, and the money supply measured by M3 (NZS FINM, SAGB) were found to be the most frequently significant variables. Perhaps the most telling observation in Mitchell's study is that the stability of the models he developed had high explanatory power until 1989. Government policy changes occurring in the last two years have resulted in considerable shocks which have not been readily incorporated into the statistical models.

While research has provided models with high explanatory power in the past, these are not useful for predicting, ie forecasting the future, when structural change, such as occurred in 1989/1991, is so large as to affect materially the robustness of the equations. In other words, it is not possible to use the previously developed models in a quantitative way to predict what is likely to occur in the period 1993 through to 1995. Nevertheless, an examination of the variables which were found to be important in thepast and some of the shocks to the system which have altered the relationships, may provide indicative clues for qualitative forecasts of where residential housing prices may go.

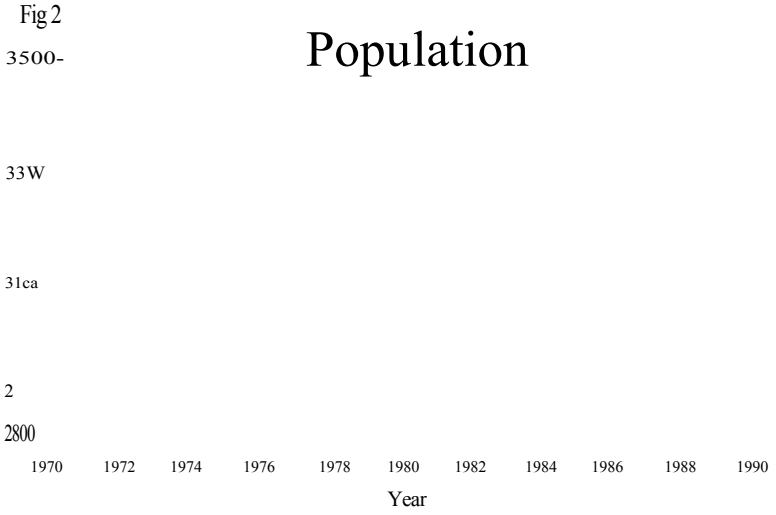
It is unlikely that New Zealand will experience large population growth, Figure 2, in the next few years although the downturn in the Australian economy has brought some New Zealand citizens back home. However, these people appear to have been integrated back into family housing and have not increased the demand for residential sections or accommodation.

There is a continuing drift of population towards the north and it is anticipated that as the ethnic mix continues to alter there will be a change in emphasis in the type of housing required. This trend is readily revealed in the mis-match problem which Housing Corporation continually experiences with its stock compared to the types of accommodation required. In the absence of a concerted immigration campaign, it is unlikely that demographic factors will cause a significant alteration in demand for residential housing and accordingly prices.

Housing Corporation's waiting list *(Evening Post 20* March 1992) has fallen and this is perhaps indicative of demand, as shown in Figure 3.

Fig 2

Population



1.13 Consumer Price Index

Reserve Bank policy appears to have been effective in limiting the level of inflation for New Zealand over the last 12 months, to around two percent. The Reserve Bank forecasts that inflation can be held at these levels for the next few years. While movements in the exchange rate and interest rate will impact upon inflation, as will changes in Government's taxation policy, it appears likely that a low inflationary

Figure 3

	February 1991	February 1992
Waiting List	3,102	1,212
Vacant Stock	1,324	1,992

regime will prevail in the short to medium-term.

In the past it has been argued that property is a good hedge against inflation. With the change in the level of CPI increases from those experienced through the late 1970s and 1980s to a much more modest rate of increase, as shown in Figure 4, it is likely that this will impact upon housing prices. At the psychological level, if the population is convinced that low inflation will prevail, then speculative and hedging procedures will not be favoured. The result which follows is that property will not be a favoured form of investment. Other more liquid securities offering similar returns will be sought and the Government's push towards investment in industry will channel funds towards those ends. In particular taxation breaks for depreciation and investment, which are likely to occur in the next year or so, will syphon more money towards the industrial sector. Home owners will be less likely to upgrade their housing or pursue the traditional home improvement approach endemic in New Zealand.

"... if the population is convinced that low inflation will prevail, then speculative and hedging procedures will not be favoured."

1. 1.4 Permits

The number of building permits issued over the last two years, shown in Figure 5, is indicative of the fall in interest in residential housing. Unless there is a considerable increase in building productivity such that construction costs fall, it is unlikely that new housing will be competitive compared with the price of existing houses. Perhaps the action of several large and small building companies in offering 100% mortgage finance to new home buyers is illustrative of the problem.

The low level of demand means that supply far exceeds demand, yet prices cannot fall any further because the cost of sections and building materials are such that there is very little, like zero, room in which to move. Accordingly, construction companies are offering financial deals which effectively lower the price to the consumer in the short term but not necessarily in a relative price sense. While the companies maintain increasing cash flow this is viable but with any further downturns the wheels may really fall off the wagons.

1. 1.5 Industrial Confidence

There is not indication that industrial confidence is increasing. A survey released on 20 March 1992 indicates that for the domestic market industrial output had fallen some 11% in the last 12 months. While it is anticipated that commodity prices, in particular butter fat and wool may strengthen through 1992, the general outlook for the industrial sector is one of weakness.

With a pick up in the value of export products there should be some flow through of funds into the light engineering sector from rural property holdings. This in turn, because of the multiplier effect, will lead to some further expansion in the industrial sector. However, even given the low base from which improvements are commencing, indicators suggest that the turning and movement will be slow.

1.1.6 Capital Gain on Residential Properties

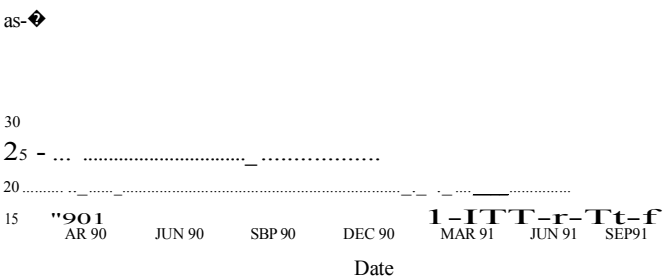
For a significant portion of New Zealand, the last 12 months has not shown an increase in residential property prices. In fact, residential property prices have fallen in many centres, as shown in Figure 6. This is not only the case for major cities but also for provincial towns. With such obvious evidence in front of them it is not surprising that prospective house purchasers do not rush to accept the vendor's price. The result is a stagnant market with many properties listed at unreasonable asking prices.

Fig: 5 i

Fig: 4 ..

Residential Building Permits Issued

Palmerston North



In fact, the problem may well be accentuated through the unfortunate action of Real Estate agents who build their book by listing any property they can get their hands on. More careful management of the listing procedures will ensure that prices required by vendors are achievable, or at least potentially achievable. Unfortunately, a large proportion of listed properties are at unrealistic prices and the agents are doing themselves a dis-service in terms of advertising expenses, etc and overall are not positively contributing to a recovery in the market.

1.1.7 Money Supply

The Reserve Bank has continued a stable monetary policy, depicted in Fig 7, which appears set to continue. There is no indication that a major relaxation in the control of monetary aggregates is likely to occur in the short or medium-term. An increase in the money supply normally fuels inflation which the Reserve Bank has avowed to control. In this light, it is anticipated that the money supply growth will be curtailed and kept in line with the general level of increase in gross domestic product (GDP).

1.2 Structural Changes in the Economy

The Government, through policy changes announced over the last two years, has sent a number of shocks into the New Zealand domestic economy. The impact of these has been exacerbated by falling commodity prices affecting New Zealand's export income. Brief consideration of some of the more important policy changes and the implications for residential housing prices is important.

1.2.1 User Charges

Government, through its Departments and SOEs, has introduced a range of new user pays pricing decisions. The most striking are in the area of health and education although rural post seems to have captured slot of media attention recently. The implications of these increases in user charges relate primarily to their impact on personal disposable income. As a direct result, people now need to budget a portion of their after-tax disposable income to be available for health charges and education.

This does not necessarily mean that money will be needed each week for health charges or education, but rather a saving's plan may be necessary. Health insurance is becoming more widely accepted in New Zealand and the contribution levies have increased markedly overthelasttwelve months. In response to tertiary education fees being introduced, compounded with the loss of living away from home allowances, there have been a number of new products developed in the form of education trusts whereby people may save for their children's education. Both these vehicles require regular contributions out of after tax personal disposable income. This means that less is available for housing. Perhapstheoldrulesofthumb, suchas25%of gross salary or 30% or joint salaries going to pay off a mortgage, no longer apply.

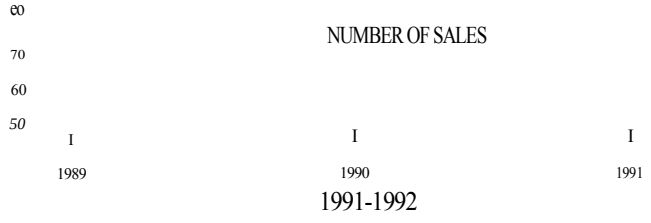
1.2.2 Superannuation

Changes in the guaranteed Retirement Income Package/National Superannuation, mean that people now need to make a much more conscious series of actions in terms of saving for their retirement. No longer can it be assumed that the State will pay apension ata level which mostretirees will find acceptable. In order to maintain an adequate standard of living people now need to take out personal superannuation cover. The life offices have been developing new products in this area to meet these needs. Potentially taxation changes will be introduced in the next one to three years making contributions towards superannuation tax deductible and thus making this an even more attractive savings form.

Housing sales

(SOURCE: REI NZ)

EMDIA T1



.•. Fig:6

Fig. 7 'w

2 The Professional Response

The outlook for residential valuations is influenced by a number of changes occurring within the valuation profession. In particular, valuation standards, form of reports, information availability, technology, research, and environmental changes will alter the way in which valuation practices in the future are conducted. Of particular importance is the way in which the profession as a group is moving to address important issues in the residential valuation area.

2.1 Valuation Standards

The promulgation of the exposure drafts from theNew Zealand Institute of Valuers covering residential valuations and valuations for mortgage lending purposes constitute significant steps forward. The latter standard makes it clear that lending institutions need to determine the level up to which they are prepared to offer mortgage lending against the security base. It is

the financial institutions which are meant to be experts in risk assessment, not the residential property valuers. While the financial markets have been deregulated some archaiclegislatianssuchasprovisionswithin the Solicitor's Nominee Act impose regula wry restrictions upon the valuers.

Signing off is likely to become a much more contentious issue. There appears to be a wide range of practices concerning the degree of supervision and responsibility taken for the actions of unregistered valuers working within firms. Does a registered valuer need to inspect physically all the work and sites relating to the unregistered valuer's work before signing a valuation report? Should the unregistered valuer sign the report? Or, should the senior partner sign all the reports for the firm as is the practice in thepublic sectorwith the Valuer General? These are important concerns in terms of professional appearance, educationforthetraineevaluers,andlegal liability.

2.2 Report Format

The long-form versus the short form report is an issue which will not go away. With costpressures the movement towards short-form residential reports cannot be turned back. The tick-the-box reports are likely to grow in circulation and popularity. Nevertheless, it is essential that customers, eg a bank, do not totally determine the format themselves as there is a tendency to include items which do not strictly fall within the valuer's sphere of competence.

So long as the reports are in accordance with the valuation standard then the profession can be assured that the necessary work has been undertaken No matter what form of reporting is used there is always a danger thatanunscrupulouspe so nwillnotconduct the actual work and fudge the report. However, reliance on abase standard gives some further credence to the acceptability of short foam reporting.

2.3 Information

The availability of Valpak, VNZ Link, and Real Estate Sales Statistics can increase the productivity of residential valuers. The search for comparables and a capacity to extract information from such data bases straight into a spreadsheet through to a word processing package in a short period of time, now allows for more valuations to be done inaday.

It is to be expected that information technology will continue to advance and that further sophistication will be introduced. Perhaps in the not too distant future, land information systems/geographic information systems will be combined with valuation data bases to provide one integrated data base.

2.4 Technology

Word processing allows for the generation of standard-form reports at much lower cost. With *pro forma* reports stared in the computer's memory itis possible to add the relevant details, producing a full report within a short period of time. Facsimile machines have sped up the capacity to receive plans and titles in sharterperiods of time, again affording increases in productivity for valuation practices. Full use of mobilephones,lap-topccmputers, facsimile machines, and optical scanners ensures that the modern practitioner can process information and generate reports away from the office, transmitting the necessary details back to the word processing station for the generation of a finished report in short order.

It is the valuer's time which is the most expensive element of running a successful practice and steps taken to increase the productivity of the valuer's daily hours will lead to significant increases in fee income. Reading, research, marketing services are integral components for a residential practice. Increased productivity flowing from technology must be capitalised on.

2.5 Research

Much work continues into the use of statistical procedures for valuations. Regression techniques and factor analysis are becomingincreasinglysophisticmtedwhenapplied tomass appraisal work. The implication of these statistical processes for single property valuations in the residential context are less clear. With the availability of informationon ValpakandtheRealEstateSales S tatistics it is possible for the practitioner to use pre-prepared statistical procedures in order to arrive at values for a single property. However, it is unlikely that such procedures will find widespread adoption in the short to medium-term.

Education in the necessary statistical competencies will take some time topercolate through to the professional valuers. Nevertheless, itistobeexpectedthatascost pressures continue the adoption of modem research based methods will become increasinglyprevalent. Half a generation back it was the dawning of the HP age (Hewlett Packard calculator age) for valuers, perhaps in ten to fifteen years it will be the era of the statistical valuer.

2.6 Environment

Changes in the economic environment will impact significantly upon residential valuations. The availability of financewillbe impoitantandanymovestowaedsdeveloping asecondarymoctgagemad etinNewZealand will be of importance. With the proposed changes to the Housing Corporation still under discussion it is possible that the mortgage portfolio currently up for sale could faun the basis of a secondary mortgage market. The ensuing increase in liquidity to theresidential financing sector that such a market would getnemiewill ntlyinu sethedemand for valuations.

The capital adequacy rules, covering registered banks, required by the Reserve Bank treats residential mortgages as half as risky as commercial mortgages. This positive bias ensures an interest in the residential sector from the major financial institutions. Presumably mortgage guarantee insurance will continue to grow in New Zealand as it has elsewhere, opening up the housing market to more and more prospective buyers. Valuers need to capitalise on this regime.

Summary

In one sense it does not really matter too much what the market does in that there is plenty the resourceful residential valuation practice can do to promote productivity.

On the other hand, it is easier to make a dollar in an active market.

The forecast is a gradual increase in activity from July/September 1992 onwards if the economy remains on a steady course. A sudden win at GATT or the America's Cup could be the catalyst for greater movement. Similarly, the demise of Ruth Richardson or Don Brash could start further leaks in the tub which would be less than helpful.

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Prospects for Residential Property Values

A Commentary by R M Malthus

My background is probably somewhat similar to many residential valuers in the Institute. However, over the last two years I have been introduced to a slightly different perspective of the residential property market, as I have also been a director of a real estate business. Accordingly, when commenting on S tuart Locke and Iona McCarthy's paper I am making my remarks both from a valuer's point of view and also as a real estate company director. I have also tried to follow the format of the paper, firstly with reference to the direction of the residential property market and secondly with regard to professional issues influencing theresidential valuer.

The Residential Property Market

I am sure that most valuers are more than familiar with the initial scissors graph which gives a good foundation with reference to the establishment of price by the forces of supply and demand. Although as valuers we are unfairly accused of being historians, it is important that we go back to identifying the traditional factors that influence housing demand, such as price, interest rates, rate of inflation, prospects of capital gains and real disposable incomes. However, of more immediate importance are the Government and social changes which have ocuffed over the previous two years and the impact they are having on traditional forecasting models.

Firstly, with no new government initiative on changing our immigration policy, it appears that our population is not likely to see any majorincreases in the short term. However, although our stable population may not have any significant impact on the demand in our residential market, it is fair to say that the make-up of our population is changing. Consider the increase in the number of single parent families and the demands this new and rapidly growing population sector is having on the traditional market. To this can also be added the increase in proportion of beneficiaries, old age and others, in our population base.

With regard to consumer price index and inflation, I agree all indicators suggest there will be very limited capital gain due to inflation if the present Government policy remains in place. However, as an aside, the true measurable gains from previous inflationary blow-outs are questionable. Particularly when considering that a residential property owner, usuallywhenrealising theircapitalgains, has also to buy on the same market on which they have sold. Thereforethe gains are more academic. A better means of comparison would be to relate gains in the residential property market with alternative investments, be they other types of property or more tangible items such as shares or other business investments.

The number of building permits will continue to be an interesting indicator of residential property demand. Obviously many urban centres are now experiencing oversupplied residential markets where existing housing can be purchased at levels significantly below cost. Likewise, we see in such markets the only time that there is a significant increase in residential building activity is when the market is undersupplied. Therefore I can only agree that building permit numbers area useful indicator from which to make market projections.

I am interested in the comments in the paper regarding industrial confidence as I can accept that residential markets in the major metropolitan centres of New Zealand are suffering under the present industrial decline . However, all is not doom in many provincial centres, particularly those relying on dairying where an increase in milkfat prices does have a significant impact on the residential market. No doubt the situation is not limited to Taranaki, but must also relate to other strong or growing dairying districts, not least being Canterbury and Southland.

However, it is worth commenting that certain industries do have a significandy greater impact at a local level than others and this is particularly so in the case of Taranaki, and no doubt Whangarei's petrochemical industries. The construction phases of these industries in those localities has seen a major increase in residential market activity, but in the medium to longer term such industries return only limited funds to the local economy. However, a dollar increase per kg in payout for milkfat or protein does have a major impact on the money injected into the local economy from the farming community and in the longer term this has a roll-on effect on the housing market. In this regard I am hopeful that this positive influence on our provincial market will continue, particularly as our producer boards improve their international marketing expertise and given that there is some stability in the value of our New Zealand dollar in relation to our trading partners.

With my associated real estate interests, I am particularly interested in the comments regarding asking prices on the residential property market. Although house prices may be static in major cities, I suggest well managed real estate agencies will not take listing at any prices, as managers will not look to accumulate listings for the sake of locking up the market, as this approach to marketing must be seen as highly unprofitable in light of advertising costs. There is no point in taking on listings unless you can be reasonably assured of selling the property in less than the average selling period. Accordingly, I am conscious that many of our real estate businesses are now maturing withreferenceto marketattitude. Asking prices of residential property are

tending to beinfluenced to a greater degree by the sales manager, especially with regard to exclusive marketing and there is obviously little point in having an exclusive listing that is overpriced on an oversupplied market.

At this point I would like to introduce just a small piece of additional information which may be of interest. It is some graph material we have produced from statistical information relating to asking prices, sellingpricesandsellingperiod. Although the sample used is relatively small in relation to metropolitan centres, it does reflect the widened gap between initial asking price and eventual selling price as the selling period extends. It is this type of information that the real estate managers need to be aware of and will endeavour to make the vendor equally aware of the same when taking a listing on a well supplied market.

With regard to money supply, I have not seen any significant restrictions on money supply in provincial centres. In fact, in my locality the medium to higher price market is particularly well supplied with housing finance to the point that lending institutions are now going togreat lengths to write mortgages at higher percentages of the purchase price or are looking to support such mortgage finance with mortgage guarantee insurance.

In spite of the well supplied financial state of the market, it is noteworthy that with changes in Housing Corporation policy that there is some difficulty fundingpurchasers inthe lower socio-economic end of the market. I believe this in turn will impact on the greater market as the chain reaction roll-on effect of sales is often influenced by the first parcel of money introduced to the market, be it at the lower priced end of a sales chain.

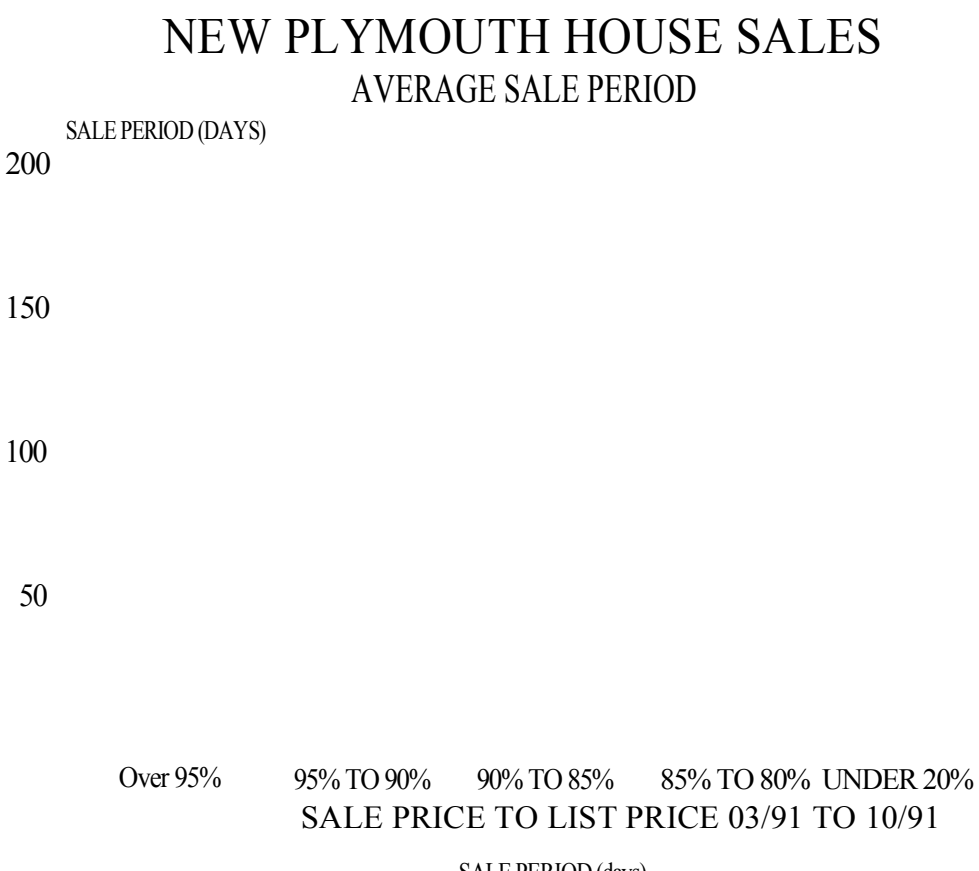
I fully support the authors' comments on the influence of Government changes to health, education and superannuation. It is inevitable that these changes will have a significant impact on real disposable incomes of families and their housing requirements. Nevertheless, given that these changes are not again subject to change, the residential market will readily adapt as perspective house purchasers are able to quantify their real disposable income.

The Professional Response

The second section of the paper is, I am sure, of equal interest. The areas of professional standards are very much to the forefront of our industry and I was impressed to receive an instruction from an insurance company last week requiring a report to meet the professional reporting standards of the New Zealand Institute of Valuers. Let us hope that this requirement moves closer to being mandatory for mortgage lending within the insurance industry and other lending organisations.

As far as countersigning non-registered valuers reports is concerned, I, like many other valuers, am havingtodo such countersigning as a regular part of my work programme. I accept there are a wide range of attitudes concerning supervision and countersigning procedure, but I feel that the responsibility must still rest squarely with the countersigning registered valuer. In this regard, it would be difficult to specify the standard of supervision required, particularly with regard to re-inspection of property, but the responsibility must remain fairly in the hands of the countersigning valuer who must make a considered decision as to the ability and experience of the unregistered valuer both with regard to the work they aregivenandtheamountofcrosschecking required before taking the ultimate responsibility of countersigning the report.

Report format layouts will no doubt be an on-going area of discussion. I 0



Influences on the Retail Property Market

by G C Davies

The retail property market is a multiple infrastructure subject to many complex influences. Many of these influences are often misunderstood or superficially examined.

The scope of this paper is orientated to discussing part of the least considered components in the range of influence on the retail property market.

It may well provoke more questions than answers as to the value of individual retail properties, but I perceive that part of the intention of the inclusion of such a paper is to provoke thought as to some of the more traditional broad brush approaches which sometimes prevail with respect to retail property.

Retail Trends.

Retailing has evolved at an increasing pace over the last two or three decades.

Consumer expectation and habits have been modified by changing credit facilities, reduced licensing controls, additional competition and legislative changes including the deregulation of trading hours and labour restrictions.

From a position of very little choice with many products virtually provided on an indented basis and five day limited hour trading from strip shopping or small general traders, the retail market of the 1990s is dramatically different..

Six and seven day trading of supermarkets, large covered shopping centres, off price retail warehouses and "factory shops" have generated a kaleidoscopic infrastructure of new shopping patterns

This paper was presented at the NZIV Seminar held at Gishorne on 13-14 April 1992.

0 from previous page

do not consider it is a debate between long form an short form reports at this stage, but more a debate about the adequacy of some shortreports. However, again I consider the responsibility of the registered valuer must first be to his profession and the standing of the profession, and secondly to the client. Such acommunication process is probably the ideal opportunity to further develop valuer/client relationships, introducing the client to theprofessionalstandardsweandthey shouldrequire and the reasons that we require them.

As anaside, some lateral thinking needs to be given in this area, particularly when noting how the client will use the report information. It may well be that information is extracted from the short report to fill in details on a computer screen display. There is therefore the ideal opportunity for the valuing firm to see what the clients' requirements are with regard to that display andpossiblyrepeatthatdisplayinsummary at the end of the short report. This in turn will no doubt save the client time as well as ensure that they have the precise information they require.

Having access to both the Valpak information and the real estate sales statistical information, I cannot help but feel somewhat frustrated that our Institute is not able to get more of the information that our subscribing valuers specifically require. Although my comments are somewhat of an aside from residential valuation, I take the opportunity to show the inadequacy of some rural property information. Firstly, thevaluationofdairyfannpropertyisalmost c ompletelydependentoninfacnnationdrawn from the real estate industry as I June dairy farm settlements mean that practically no current season information is available through Valpak. Likewise, the information available through Valpak does little but confuse the valuer with regard to GST and unless some more specific details are given as to the GST content in a sale price, it is inevitable that valuers will find information provided by thereat estate sales statistics of more assistance at least with regard to rural valuation. Imakenoapologyforasomewhat cynical response to the final paragraph in this paper on the information section relating to a combined land information system. Is this a marvellous dream? It certainly was muted 15 years ago but is unlikely to come any closer to reality unless some of the above mentioned issues are addressed in the short term.

I am sure most valuers will accept that technological advances in our industry are having a major impact on our valuation practices. It is up tous as pcacddoness to share our experiences of the benefits of these advances and no doubt assist our institute to advance at an even faster technical pace. Howver,Iwooulds uggestthatt esetechnical advances are dong little more at present that keeping our foot in the residential valuation door as opposed to making any significant increases in our fee income.

Finally, with regard to research, I would drawyourane ntionmtheauthors'comments an the advances in regression techniques for mass l valuation wank I feel there is a danger within our profession and within the real estate industry, to use mass appraisal assessments as a base for values for single propexties. How many times are we as value rs asked by clients in the market what is a reasonable margin to be paying above Govemmexnt valuation, yet when we look at the real estate and Valpak statistics, we see the wide range of these parameters on which the nesidential buying public place so much anphasis.Isuggestitisourresponslb litymopoint out to the public that this information is provided as a base four mass appraisal and not as a suitable base to establish values for individual prop

In sumnmary, I found this to be a most thought-provoling paper on the prospects for residential values.

difficult to have imagined even just a few years ago.

The influence of increased trading hours and increased mobility in respect to shopping patterns and hence, distribution of retail expenditure, is impacting on individual retailer viability and changing the suitability of locations for specific retail categories.

> The influence of increased trading hours and increased mobility in respect of shopping patterns... is impacting on individual retailer viability."

Clearly the sustainability of retail business should influence the value of retail property. However, in practice, there appears to be a propensity to ignore the health of a particular, or alternative, retail business in terms of valuation, until such time as vacancies occur.

Obviously the larger urban retail markets, such as Auckland, experience the full range of segmentation and a greater volatility than some smaller markets. Nevertheless the principle of the impact of extended trading hours remains the same.

Consider the predominant shopping pattern that emerged in the era of five day trading, with one late night. In a family household structure involving one or more of the parents working and with school age children, the number of shopping hours where the whole or most of the family could participate was very limited. (Time spent travelling to participate in such visits was influenced by the same time constraints). Multiple purpose shopping trips were therefore very usual.

> "The preparedness of the consumer to travel further, motivated by price, choice or amenity level relating to leisure activity, is becoming obvious."

The late night trading day in a number of suburban shopping centres sometimes accounted for between 4O% and 50% of the total turnover experienced by some retailers. The purchase of shoes, apparel and general merchandise therefore often occurred on the same trip as the weekly supermarket visit and frequently at the same centre. The fact that there were limited numbers of comparison goods retailers in such centres with limited choice did not detract from such retailers' success at that time.

Liberalised trading hours have been the catalyst to a greater separation of essential and non-essential shopping trip motivation and the preparedness of the consumer to travel further, motivated by price, choice or amenity level relating to leisure activity is becoming obvious.

The effect of this is that suitably located suburban centres have been expanded and upgraded, providing better comparison goods choice and amenity levels including entertainment and foodcourts (e.g. Lynmall and St Lukes). Some other suburban centres have seen a consequential shift in retail mix toward the convenience goods and service retail outlets withanumberofcomparisongoods retailer failures, or relocations.

Groupings of off price retail warehouse operators have now developed into centres, generally in locations with district or sub regional influence potential (Cavendish Drive, Manukau City and Target Road, North Shore.)

The evolution in the food and grocery segment has seen a major shift in expenditure towards the supermarkets (Table 1 below).

Supermarkets have changed noticeably over the last ten years with segmentation between the full service supermarkets (New World, Woolworths and Foodtown) and the discount segment (Pak `N Save and 3 Guys). In the early 1980s, the 2,5000 m2 supermarkets were considered very large. Now, Pak `N Save retail food warehouses in excess of 5,000m2 are not unusual.The trading pattern and catchments of these stores also differ from full service suburban supermarkets.

Retail Feasibilities

Considerable research is carried out prior to committing to develop a large new New World supermarket or Pak 'N Save retail food warehouse. Similar research is essential to ensure the success of retail shopping centre developments and major retail outlets.

Careful demographic and psychographic research can identify the supportable retail categories and this, together with the design of shopping centres and location of the retail mix, will have impact on the success of the retailers and hence the value of a shopping centre.

Strong trading of an existing centre can justify the expansion of such a centre. However, the corollary is not necessarily true. It is a question of the turnover which is being achieved relative to that which is available.

Of course, the lack of predictability relative to the shift of retail emphasis

TABLE 1

NZSIC	CENSUS OF DISTRIBUTION 1977-1978		CENSUS OF DISTRIBUITON 1982-1983	%	EWC 1986-87	
62211)						
62212) Dairy Grocers	615,465,000	46.86	1,387,149,000	41.38	1,348,180,000	27.44
62213 Supermarkets	446,928,000	34.03	1,336,720,000	39.88	2,844,872,000	57.90
62214 Butchers	165,026,000		380,216,000		391,914,000	
62215)						
62216) Fish Shops	16,238,000		49,454,000		92,352,000	
62217) Deli and Health						
62219 Food Nec	8,841,000		45,226,000		39,137,000	
62220 Greengrocer	60,994,000		152,698,000		197,078,000	
	1,313,492,000		3,351,463,000		4,913,533,000	

1978 for every $1.00 spent in Dariy/Grocer, 73c in supermarket.
1982-83 for every $1.00 spent in Dairy/Grocer, almost $1.00 in supermarket.
1986-87 for every $1.00 spent in Dairy/Grocer, $2.11 in supermarket.

on market segmentation and national and local economic impact on discretionary expenditure make absolute predictions very difficult.

Differing emphasis on retail property value

A developer naturally seeks to make a development margin. The investor seeks a return on investments as do the lessees.

Obviously there are many areas of mutual interest, but the perceived value of certain development decisions may vary.

Assuming that a thorough retail and project feasibility study has been carried out, there are still decisions at the development stage that may have good medium and long term value, but if not valued as such would provide no incentive to the developer to take the medium and long term benefit options.

For example, additional capital expenditure of say $200,000 may provide a saving in operating expenses of $50,000 per annum. (short term views on value would not make such expenditure worthwhile). However, if such savings were recognised as enabling the lessee to sustain arelatively higherrental level then clearly the capitalised value of such additional income stream would justify the capital expenditure to provide the improved efficiency.

Other questions that developers, investors and valuers need to consider are:

If the total comparable occupancy costs are to be taken into consideration as part of comparative valuations what are the advantages of the lessor meeting the management costs of a centre?

Where will the relative capitalisation rates move with large shopping centres, suburban centres and offpriceretail warehouses? How much emphasis will be placed on the retailer performance relative to the standard of the premises and changing locational influences?

What impact does more open competition have on lessees with liquor licences?

What impact does the Resource Management Act have on retail property market values, relative to generally restrictive application of the 1977 Town and Country Planning Act?

Glossary of Terminology Used

Convenience Goods:
Merchandise purchased on a frequent basis, often with product and brand knowledge well established by the consumer prior to the shopping trip and where little comparison of goods occurs prior to making the purchase decision (eg food, groceries, household and pharmaceutical products).

Comparison Goods:
Merchandise which usually involves the consumer in comparing price and quality prior to selection, Most consumer durable product are involved in this category (eg. apparel, shoes, fabrics and gifts).

Discount segment:
The category of store relying on price reduction as the main purchaser motivation rather than range or service.

Discretionary Expenditure:
Residual disposable income remaining after essential expenditure and purchases.

Full Service Supermarkets:
Outlets where goods are packed at the checkout on behalf of the customer.

Factory Shops:
Shops that traditionally have been associated with industrial manufacture as an ancillary use. More recently they have located independent of factory association, often selling "seconds".

Research (Demographic):
Socio economic structure established generally by Census information.

Research (Psychographic):
Human behaviour and motivation, generally established by survey and personal interview. A

AVERAGE WKLY HSHOLD EXPENDITURE ON OTHER SERVICES

TABLE 2 ANALYSED BY INCOME GROUP, FOR YEAR ENDED 31ST MARCH 1990

Other services Expenditure $000

50 100 150 200

UNDER 11

11 TO 17

17TO21

21TO26

26 TO 32

32 TO 39

39 TO 47

47 TO 57

HHHHHHHHHHHH4

57TO74

74 AND OVER

influences on the Retail Property Market

Commentary by R Eyles

The complexities of the present retail market cannot of course be fairly treatedinate aicalsenseinashatpaperbut Mr Davies has provided a very pertinent summary of some of the changes that have n oendyaffectadretadtradinginNewZ,ealand. His paper encourages a deeper considetation of matters that affect retail activity and raises questions for us all to think on.

My comments are confined to some specific processes, opinions or cautions relative to (primarily) shopping centre and/ or supermarket rentals and valuations, followedby a general comment on the valuation process and the need to more closely consider risk.

Changes *have* been rapid and, in many retail (and other) situations, traditional valuation methods and broad brush approaches without check or qualifications are now inadequate.

> "..traditional valuation methods and broad brush approaches without check or qualifications are now inadequate."

Valuation is largely a function of comparison and for the purposes of this commentary it is probably of merit to identify specific difficulties of a comparative measure to indicate the current need and demand for closer research and analysis, rather than generalise.

The construction of the modem shopping centre lease generally includes for a perfonnance rental, sometimes variable and often additional to a base rental. Forvaluation purposes,thea ko danofac tualrernalse: isling atthevaluationdatewould,inanovetsimplified way pre-suppose continuance at that level. It would not account forthe exc eptionally good or bad year, or the prospects of percentage rental growth or decline and ignores the progressive and semi ble changes that hiswricalresearchandfutureevaluationc ould at least indicate.

Adoption of actual rentals at one date does not necessarily identify the poor performer or the potentials of gain from better and more efficient retail management. It would not account for the greater picture:

- for competition that has not yet impacted on turnover or rentals?
- forpotentialt rn verdeclineorgrowth due to economic change?
- for potential growth due to centre expansion and the installation of new anchors?
- the views of the major anchor tenants?

No one anticipates absolute prediction, but it has to be part of the valuer's job to consider all factors that will affect income whether in a detrimental or beneficial way.

Although relatively new in New Zealand, there are now a number of supermarkets and discount department stares which have entered leases primarily angled toward turnover rental bases with provisos that there is no ratchet other than to the initial base rental. Reviews are generally provided for to apply periodically, but on the basis of performance averages.

Rentals therefore have the prospect of rising or falling depending on certain preceding years turnovers and it is clear that some turnover prediction needs to be made in conducting a supermarket valuation engaging such a lease.

Supermarket turnover performance should not be necessarily disregarded out of hand relative to rental assessments not the subject of percentage rental lease criteria. Balanced against an assessment of management performance, turnover must constitutethebestmeasureoflocationvalue, all other things being equal.

We all appreciate and sympathise with each other as to the difficulties of securing the tightly held and most confidential nature of data of this sort, and it is perhaps because of this that just a few valuers can specialise in supermarket work.

Perhaps it rather indicates that, as a valuer, the simpler task is to act for the operators!

But absence of annual turnover figures should not preclude such considerations and in fact, assessed expectations may be preferable based on demographic and local economic evidence. I have to say that the case presented by Woolworths at the arbitration between Woolworths (NZ) Limited and Commercial Centres Limited (Tikipunga, Whangarei), which strongly incorporated this train ofthorght,isavaluablereference, although there are others.

For mtail valuation in general it is inadequate for comparison data to be applied unlessalidetailofthecomparisonislmown. This is not a new view, but a restatement in these changed, difficult and complex times to reinforce the compulsory need for accuracy through knowledge, research and full analysis.

Whilst sales analysis which sought to simply determine passing rental yields (subject to sufficient volume) may have been adequate in the past for comparative measures of value, this is now no longer good enough due to the wide incidence of incentives, operating expense liability differentials, ratchet propped rentals, vacancies (and so on) in buildings that sell

Gross occupancy cost calculations in most cases now have to be the measure of rental value forshops particularly in central city areas where substantial differences in operating expenses can occurdepending on the size ofbuilding, quality of services etc.

Capital values should probably reflect differentials of rental between market t

andratchetedlevelsasacashflowtoprotect the possibility of over valuation through overall capitalisation. Of course the negative converse also applies. In rental assessments for centrestops, recognition has to be fairly given in the base rental assessment process to those comparisons which are held artificially high by ratchet, inf luen ced by leased defined percentage or index changes are representative of rates established with turnover rent excess.

These ace just a sample of sane valuation problems that have grown out of change, but sufficienttoidentify theneedfornefinementin our research and analysis processes.

In a market which is continuing to change rapidly and where existing analytical techniques are not providing entirely satisfactory solutions these are two approaches.

The first is to ignore detailed analysis as it is (or maybe) wrong and rely on the intuitive approach (gut feel) which may be valid but has a high degree of risk and the unlikelihood of finding favour in the market. Bankers and potential investors would naturally enough not accept this approach. The second is to improve the sophistication of existing techniques. Major problems relate to uncertainty as to future cash flows and where detailed cash flow projections are prepared, it is difficult to calculate the appropriate discount rate which adequately reflects the risks. For example:

- Are the growth rates achievable? •
Will the tenant pay the rent?
- What will the. end yield be?
- If part or all falls vacant how long will re-letting take?

These and other matters can be subjected to sensitivity analysis to measure the implications forth value. Theproblem is in quantifying the likelihood of a particular event occurring. Detailed knowledge can obviously assist and, for example all details of future supply are essential to calculating growth rates. Equally important, however, is the need to understand demand and yet there is little information, except historic trends available. Full financial details can assist in quantifying tenant risk, but few valuers are qualified to carryout such analysis. It is seldom that such reports are obtained for valuation purposes.

Increased information willclearly assist in achieving a more accurate cash flow projection. In particular, the areas that may need further research and investigation include:

- tenant demand (the how, why, where and when of absorption)
- details of tenant's strength of covenant
- fullinformationastomarkettransactions (ie. the details behind incentives and lettings)
- tow and why property yields change (the relationship between supply, demand, monetary policy, inflation, interest rates, etc.)

Even with this information there is very little known about the measurement of risk in property. Certain studies carried out overseas on portfolios have started to investigate this and of course the stock market uses the `Beta Factor" to measure risk.

New techniques need to be developed to help construct a methodology which not only identifies and measures this factor, but then reflects the weight the market places on risk. In the mid-1980s risk was largely ignored, but in the 1990s it has become a key element in the investment process.

Inconclusion,weasvaluersmuststriveto recognise the problems associated with the ch i gesdmtaffectusandtheinevitab7itythat change will continuo. There is already a keen awareness and solutions to problems arecontinually being found This, however, is not without effort and clearly, knowledge and abili*ty* are the strengths that will arise out of continued and diligent research and analysis.

I with to acknowledge the assistance of Mr Robert McIntosh, from Colliers Jandme in Sydney in the compilation of this paper. A

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Changes in Disaster Insurance

by D Sargeant

At the time I accepted the invitation of the Planning Committee to address this conference last August I was hopeful that there would have been a resolution to an issue that first came to our attention in July 1988. You mightrecall the Budget of that year and Roger Douglas indicating that there were going to be changes made to the Earthquake and War Damage Commission and to its operations.

In July 1988, Peter Neilson, the Associate Minister of Finance, issued a public discussion paper titled A *Review of Earthquakelnsurance.*The Budget of that year restructured the EQC. The main features of that restructuring included the Commission paying an annual guarantee fee, dividends and taxation. The Budget also forecast opening earthquake insurance to the private market. The intention of these changes was stated as encouraging the Commissiontodecneaseitsreliance on the Government's guarantee as insurer of last resort by reinsuring part of its risk off-shore. At the same time as opening the Commission up to competition from the private market, changes were made to require it to pay a dividend and tax sothatthe Commissionwouldbeencoluagedtocharge a realistic premium and should not be in a position where it was able to undercut the private market through favoured circumstances. When you cut through all the words, the Government's aim simply was to reduce its contingent liability and shift the risk to the private market

TheCommissionwasalsorestruchured and established as a crown owned agency with a paid up share capital of $1.5 billion, with the Minister of Finance being the sole shareholder. Anew Commission was appointed with the Chairman and General Manager being key appointments. The Minister was no longer a member of the Commission.

The objective of the changes outlined in the discussion paper were.

1. To reduce stress in the time of a major disaster,
2. To improve the Government's financial management by reducing its exposure to a large scale financial risk;
3. To improve the overall effectiveness of Government's policy on the provision of earthquake insurance; and
4. To allow individuals a greater freedom of choice.

Thediscussicnpaperproposedthatearthquake and other form of disaster insurance for domestic dwelling owners should be compulsory up to replacement For all other risk,i e.canmeivialrisks,ownerswouldhave an option of insuring and they would have choiceofinsuangwitheithertheCommission or the private market

The reasons for the changes were firstly to reduce the Government's's contingent liability which at the time was estimated to be somewhere between $10 and $20 billion if there was a major earthquake in Wellington. Secondly, it was perceived that many New Zealanders under provided for earthquake insurance and would require govemmentassistanceintheeventofearthquake; and thirdly, the existing scheme did not reflect the true cost of the risk of earthquake.Thedeadli neforimplementingthese changes was 31 March 1990.

Since that time a number of deadlines and proposals have come and gone. Generally, the Insurance Counciland its members have supported the thrust of deregulation. However, there were many policy and practical issues thatrequiredresolution and the Council has raised these on anumber of occasions with the Government At times the fact that the Council has raised these issues has been interpreted as it being opposed to the changes and trying to either derail them or slow them down. That has not been the case and as I will outline later in this paper, the problems that the Council foresees with the proposals are very real.

SincetbeociginalannamcementinJuly 1988 we have also seen three ministers responsible for the implementation of the changes: Peter Neilson as the Associate Minister in charge of the task under the Labour administration; on the election of a National Government, Doug Kidd was appointed the Minister to oversee the transition; and then in late 1991, Maurice McTigue was appointed the Minister in charge following a cabinet reshuffle.

In May 1991 Doug Kidd released a further discussion paper. That paper indicated a major shift in some areas in the government's thinking, particularly on the domestic side. Domestic insurance would no longer be compulsory and this was most welcome. As well, the Commission's domestic cover was capped at $72,000, with the private consumer being able to buy topupcoverfromthe private insurance market. The Government's intention to deregulate the commercial disaster insurance market rernainedpr ttymuchintact.However,thene were a number of concessions to the industry, the most important being phasing out the Earthquake Commission's cover overaperiodoftwoyeacs.MauriceMcTigue issuedafurtherstatementinFebruarybased on the discussion paper. These announcements contained a number of refinements to Doug Kidd's proposals.

The latest proposals include a start-up date of 1 October 1992. From thatdatethe requirement for commercial property owners to buy earthquake insurance from the Earthquake and War Damage Cornmission will be removed. The phase-out period has been extended from two 0

This paper was presented at the NZIV Seminar held at Gishorne on 13-14 April 1992.

years to three. The Commission's domestic cover has been capped at $100,000 up to replacement. The Commission's contents cover is limited to $10,000 and cover is removed for motor vehicles.

As I have said, the target date for these changes to take place is 1 October 1992. The Minister has indicated to the Council that he hopes to achieve this by firstly introducing regulations toremove compulsion for commercial cover, and at a later date legislation to make amendments to domestic cover. The Council generally acceptsthispolicydirectionbuthasanumber of withwhatiscurrentlYp oposed. These fall under two broad categories: technical issues and broader policy issues.

Our main corms relating to technical mauerscovertheavailabilityofreinsurance capacity, the lead-in time available to insurers following the introduction of legislation or regulations, and the interface between the industry and the Commission during the phase-out period.

> "it is likely that the cost of earthquake insurance will increase and cover will be restricted."

Since 1987 there has been a dramatic reduction in the world-wide catastrophe reinsurance market. This has followed a series of spectacular claims on reinsurers arising from both man-made and natural catastrophes. Between the Piper Alpha disaster in 1987 and December 1991 something like $34 billion has been paid out in reinsurance claims, while premium income in that time has been in the vicinity of $4 billion, and those claim figures do not include the recent Japanese typhoons, the largest of which cost $US5 billion.

The horrendous claims experience, combined with a withdrawal of capacity from the reinsurance market, has major implications for New Zealand at a time when the Government is deregulating earthquake insurance. New Zealand insurersrelyheavilyontheLondonandEuropean reinsurance market for excess of loss catastrophe cover. Both these markets have been severely affected, and although New Zealand has not had any major claims in recent years, New Zealand insurers are having difficulty renewing their existing reinsurance programmes and are facing substantial priceincreases. If New Zealand insurers continue to have difficulties obtaining reinsurance and are forced to pay substantially more for the reinsurance they can purchase, it will have major impacts on the commercial insurance market. It is likely that the cost of earthquake insurance will increase and cover will be mood. It is too eadytosaybyhowmuch,butpcopertyowners with poorer constructed risks on soft soils can expect to be paying substantially more. It is likelytobesometimebeforc capacitybecomesavaiiableintheL.orndonand European madcets.

It is impossible to say how long it will take as it will depend entirely upon the claims experience reinsurers face over the next couple of years. If claims continue at the present rate, capacity will continue to decline and price will increase. If, on the chef hand, reinsurers have ore ortwo good years, we may see a return of capacity and capital within the next three to five years. Because of the capacity problems, it is crucial that the Government introduces a degree of flexibilityinto the length ofphase-outperiod. Atpresent it isproposedthatthe Commission's cover will phase-out over a period of three years, commencing on 1 October when the Commission will take only 75 % of the indemnityvalue of the risk. In the following year this will reduce to 50%, and in the final year 25%. The Council has lobbied the Government to introduce some flexibilityinto this phase-out regime, taking into account the availability of reinsurance.

We believe we have been successful in convincing the Mniister to do this. He has recently gone on record as indicating that the Government will slowdown the phase-outperiod if reinsurance cover continues to be a problem.

The Council also has major concerns relating to the amountof time available to it between the introduction of regulations or legislation and the commencement date. We have repeatedly told the Government that the industry requires a minimum of six months notice between the time when legislation or regulations are finalised and when the start-up date commences. At present, when the Government alters the FreServicelevy,aminimumoffourmonths notice is given to the industry to allow it to make the necessary adjustments to computer systems and other administrative procedures. The proposed changes to comumecial earthquake insurance go to the very ace of companies' computer, administrative and operating systems. As a result, insurers require a minimum of six months notice from the date legislation is passed to the date deregulation commences. This will allow insurers sufficient time to alter their computer systems, provide adequate noticeof change to policy holders and the public, redraft policies and associated documents. At the same time, insurers will have to make estimates ofth& probable exposures, develop reinsurance capacity and restructure reinsurance programmes. For one of the Counia7's larger companies, that will require the company approaching over 400 reinsurers to obtain their agreement to allow them to restructure their existing reinsurance anangenentL

If the lead-in time is insufficient to obtain reinsurers' agreement or capacity is limited, it will mean that risks in the commercial market will be uninsured or have severe restrictions placed on the amount of cover available to them. Another major cwcemoftheindustryrelatestotheintexface between the Commission and the insurance market during the three year phase-out period. At this stage it appears that the Commission's cover will remain largely as it exists under current legislation. The only difference willbe that there willbe a cap on the Commission's cover and war damage will be excluded.

From the Council's point of view, we are hoping that the Government willtake an opportunity to address the issue of "the gap" that can arise between valuations at thecommencementofcoverandatthetime of loss. We have had discussions with the Commission and the Government, suggesting that the Commission insure on a ifrst loss basis up to the extent of its cover. This issue has not been resolved.

Also outstanding are questions relating to the co-ordination of claims during the phase-out period. Obviously at the beginrung of the period when the EQC will have the major portion of the risk, it is expected that the Commission will play a major role in claims settlement. However, as the Commission's role decreases it would be common sense to expect its role in claims settlement to diminish. However, this has not been resolved. As well, the level of deductible should be co-ordinated and appliedonthesamebasisbetweentheindustry and the Commission. Similarly, any loss adjustment should be on a similar basis. Finally insurers need confirmation that the won will accept all business on renewal for the percentage agreed and also accept new business.

The Council also has a number of broader policy concerns arising from the dexegulationefearthquakeinsiuarce.These affectthesolvencyoftheindustry,anumber of issues relating to taxation of insurers, and finally the funding of the Fire Service. The solvency of the industry is a major issue and must be addressed at the time that Govemmentintroducesderegulation. Atpresent there are minimum entry requirements into the New Zealand insurance market Potential insurers are required only to have apaid

upcapitalof$100,000andlodgea$500,000 bond withthepublictcustee. Whiletherehave been no major collapses of insuranceco mpaniesinrecentyears,itiseasyt+oseeatimewhen companies may not be able to meet their obligations arising from a major disaster if the Government does not impose minimum solvencyrequh me mFrocntheCouncil'spoint of view, it believes the minimum capital of insurers should be possibly as much as $5 million. At the same time, there must be Government supervised solvency tests condnctedonalln%reis,andir>streis'reinswanoe programmesmustbesubjecttosomesautiny. hTereisnopointininsunnshavingreinsumnce programmes with companies that are unable tomeettheirobligationsintheeventofamajor catastrophe.

Under the existing tax regime, New Zealandinseuerspurchasingreinsiuanceoff-shoe are placed at a major disadvantage. Atpresent the cost of that ieunarance purchased offshore is not able to be included as a tax deductibleexpense.T isissomethinglrlcenot allowing a manufacturer to deduct the cost of importing goods used as part of the manufacturing process. The outcome of this is to increase the cost of reinsurance to New Zealand insurers. These costs will inevitably be passed on to the consuunerand this will affect the New Zealand insurer's ability to compete against cheaper off-shore insararx*e* markets.

The Council also believes that the Government should allow insurers to build tax eificientcatasiropheesevesardint heproeess reduce their dependence on the worldwide reinsurance market If insurers are not able to do this they will always be vulnerable to the cyclicalandstruct ralchangesthatinevitably occur in world *re*insurance markets.

Finally, the funding of the Fire Service is an issue that must be resolved. At present the Fire Service isfundedthrough alevy based on the indemnity value of property, and it is collected in a similar manner to the existing Earthquake and War Damage levies. However, with the proposed changes, indemnity value will all butdisappearfrom domestic and commercial properties. As a result the Government must find a new way to fund the Fire Service. It is the Council's contention that this should be through the consolidated account The Fire Service is no different to any other community service, such as the Police, MmisttyofTrmspoctoffx s,ordefe epesormel, which are all funded through the consolidated account

The changes in Government policy will havemajorimplicationsforyouasvaluersand I imagine that you face some uncertainty as deregulation takes effect At present the position is fairly clear cut for you. The current Earthquake and War Damage legislation

"With the proposed changes, indemnity value will all but disappear from domestic and commercial properties."

requires indemnity valuation for the purposes of determining Government levies. This is likely to continue while the Earthquake Commission's cover is phased out over the next three to four years. However, afterthatthepictureisalotlessclear, unless of course the Fire Service continues to be funded along similar lines as at present. However, at this stage that looks unlikely. This will mean that there will no longer be any statutory requirement for valuations. From insurers I have spoken to, there is a desirethatannualvaluationsforreplacement values continue. In some cases they have even suggested that indemnity valuations will continue toberequiredforthepurposes of claim settlementwhereaperson chooses not to rebuild following a loss. However, the ability of insurers to require valuations on an annual basis is uncertain. Because of the nature of the market it is impossible to say all insurers will demand annual valuations. Some may be satisfied with three-yearly valuations with annual inflation adjustments. Ifan insurexrequiresan annual valuation,andisfacedwithlosinganaccount to a competitor who only requires three-yearly valuations, it may be difficult to hold aline if he wishes to keep the business. If it *is any* consolation, however, at this stage Insurance Council members I have spoken to all prefer annual valuations to continue.

An important issue to consider is the adequacy of valuations in the event of an earthquake. No doubt this is an issue that exists at present However, once theEQC's involvement ceases, accurate valuations for insurers will become even more important They will becarrying a risk from the ground up and must be able to determine with a relatively high degree of certainty their maximum probable losses for the purposes of obtaining reinsurance programmes. A factor which mustbe considered in determining the adequacy of that valuation is whether or not sufficient is allowed for the inevitable delays that will arise following a majorearthquake in cities such as Wellington.

Amajoreard>QuakeinWellingtonwillsee shortages of labour and materials and delays as local governme ntassesses the adequacy of building codes, restores services and processes building applications. As a result, it is quitepmbablethatdelaysofuptDtwototHrm years could be experienced in rebuilding. If this is the core, the question must be asked whether valuations allow for sufficient post eventinflationanddelaystoal owthebudding ownertorebul d.Iftheydon't,b lk ingowneis mayfindthemselvesgcosslyunder-insumd.It may be thatbuilding owners will require two valuations; one covering normal material damage loss, and the other covering earthquake.

Afinalarealwouldlilcetotouchonbriefy is the imp*licati*on of these changes for inert gage]enders.Atptese:rtmostmmtgagelantlers require the borrower to carry fire insurance. Under existing legislation they automatically receive earthquake itstran e. However, as the EQC's involvement is phased out, mat gage lenders could find themselves severely exposed to earthquake risk if their mortgage documents do not st*i*pulate earthquake insurance as a separate requirement.

In discussions that I have had with the Bankers Association and the Financial Services Federation, there appears to be a major problem looming for mortgage lenders as a oonsequenceoffdresechanges.Newmortgages show not be a problem as the terms can be adjusted to include a requirement for earthquake .How'ever,amajorear hqual  e inWellingtoninthenextfewyearscouldplace severeslrainsonmartgagelenderswhoarenot abletarequiremortgageestoc arryeadrqualm insuranc*e*. This will be an area that the Government will have to give further corisider tiantop iortofrnalisingitspolicytc egulate commercial earthquake insurance.

I have attempted to give you a broad outline of the Government's proposals to deregulate commercial earthquake insurance and I have only briefly touched on the domestic proposals. The reason for this is that the Council believes that the proposals for domestic insurance are about right The capon theEarthquakeCommission'scover of $100,000 should see mostpeople receive an adequate level of housing in the event of a major earthquake. There may be some questions about the adequacy of the contents cover but we do not see this as being a major issue.

Our real concerns lie in the commercial area. Those issues relating to capacity and availability of reinsurance, the adequacy of the lead-in time and the interface between the Commission and the private insurance market, along with adequate prudential supervision, the resolution of a number of major tax problems, and the funding of the Fire Service, all have to be resolved in the Council's view if the Government is to successfully implement its policy. The Minister has indicated his desire for a 1 October start-up date. Unless we see regulation and legislation within the next few weeks, I wonder if that start-up is achievable. A

Changes in Disaster Insurance

A commentary by J A Fletcher

t is my privilege to be asked to comment on David Sargeant's paper titled Changes in Disaster Insurance. As avaluer, however, I think the title should read Disaster in Insurance Changes. You may well ask why?

1. From an Earthquake andWarDamage perspective there will, on cessation of the Commission's activity in the *commercial sector,* be no benefit to the insured to obtain a Certificate as the present policy of the Commission to levy on indemnity value will not apply.
2. Earthquake insurance in the *commercial sector* will not be *compulsory.*
3. Insured may not elect to take out earthquake cover.
4. In some instances, I have been advised that overseas insurance underwriters haveinfactprovidedearthquakecover free of charge, possibly in ignorance of New Zealand's earthquake risk.

A simple question which valuers and indeed, the insurance industry, must ask themselves is. what benefits, if any, are there to the insured in obtaining a Reinstatement Insurance Certificate? The obvious ones are.

1. Professional judgement as to the appropriateness of required insurance cover.
2. Back-up of Certific ate (hopefully) with professional indemnity insurance.
3. Adequacy of records i.e. construction detail, floor areas etc.
4. In event of a claim, ready justification of insured sums, as assessments are based on established building costs.

All lead to the easier settlement of claims.

Also significantly impacting on both you as a consumer of insurance and as a valuer, through the probable changes in the Earthquake and War Damage Act, and market change within the insurance industryitself is a third ingredient and that is *"the disaster of the Insurance industry".*

1. Recent substantial losses incurred by the underwriting division of some insurance companies. To quote from "The Insurance Council of New Zealand Inc. 1991, Annual Review".
   - the market in 1991 saw the first signs of a long overdue recovery for New Zealand fire and general insurers as they sought to recover and consolidate after the heavy losses of the previous three years.
   - because of the losses of the last years, many companies have eaten heavily into their capital reserves.
   - Profitability declined markedly in 1989 and 1990 with some of the worst underwriting results on record. It was very evident that drastic action had to be taken in 1991 if New Zealand was to retain a viable insurance industry.
2. Rising insurance premiums.
3. Difficulty in placing insurance covers.

In no way do I profess to have any significant knowledge of the "goings on" of the insurance industry, but undoubtedly, we are now tied in to a "global market".

In the past two to three years, I suggest we have seen a "soft" insurance market bought about by the cyclical nature of the insurance industry itself and in this period there has been over capacity leading to competitionbetween insurancecompanies for market share.

We now have:

1. A hard market with, in some cases difficulty/inability to purchase covers e.g. h i gherriskpremises such as joinery factories.
2. Increasing insurance premiums.
3. In the short term, increasing pressure on commercial insured to reduce earthquake insurance costs by placement overseas.

From a valuer's perspective, I firmly believe just three word are going to be important as we progress through the 90s and into the next century and if we are to continue to have any Insurance Certificates. They are:

GET IT RIGHT

I don't mean your personal life, your motor vehicle or indeed your next holiday. Simply, just by completing the normal Reinstatement Insurance Certificate in a manner that assists your client and its broker/insurance company.

Get it right by:

1. understanding whattheclientrequires.
2. Brokers/Insurance companies needs, in order to assist in fulfilling clients' requirements.

Briefly some of the clients' requirements are:

- Adequatebutnotexcessiveinsurance cover.
- In the event of a loss, sound knowledge of property lost.
- Adequate description on Certificate of property insured.
- Appended letter to Certificate detailing those items included/excluded from the Certificate.

The object of the exercise is essentially one of marketing, as under the present tight economic conditions, you can be sure your services will *not* be accepted unless there *are benefits* to your client i.e. the insured and his insurance broker/company.

I am advised underwriters are now looking more closely at proposals put before them. They require more information, in order to establish risk/premium rating.

At present, we have set out in the normal/traditional Reinstatement Insurance Certificate, a definition for determining indemnity value, effectively this to a degree could have meant that provided you followed the definition, you

Compiled by Leonie Freeman

Imaging and Its Application to Valuers

by I Reid

he activities of the valuer are one of the last professions to be substanMy altered by information technology. These changes are long overdue. In other areas of commerce it is possible to buy wheat that has not been grown, with money you do not have, in the currency you have not seen, and the country you have not been to all from a computer screen in one of New Zealand's major cities.

Valuation still operates with certificates of title, registered mortgages. and the professional's 'gut reaction'. Many valuers believe that electronic spreadsheets, a product introduced nearly ten years ago are at the full front of the information industry. However, the worldhas changed since the advent ofLotus. The office environmenttakes for granted electronic funds transfer, cell phones, and fax machines. One reason property has fallen behind other areas of commerce is that, until recently, information systems have generally concentrated on the management of text; the production of reports, the analysis of figures, and the collection of data. However analysis of the business environment suggests that only one third of a manager's time is involved in text management. The majority of the time is involved in talking to people, visiting sites, and searching for information. This is especially true of property professionals where issues are more qualitative than quantitative. New generations of information systems combine all of these aspects.

A major development which is likely to effect real estate is known as expert systems. The major area of imaging will be the presentation of information to clients. In the present climate some of the most demanding clientsarenon-traditional property people, who are forced by an increasingly competitive economy to make property perform. Examples would range from oil companies, managing 200-300 service stations, to health and education sectors trying to provide an economic return. In these areas the portfolios are often widespread in terms of value and geography. These managers need photographs and plans to understand properties which they seldom visit. One solution is to electronically store photos and plans 0

..continued from previous page

were not liable in the event of a claim if it gave the wrong answer.

The proposed changes to the legislation could see:

- new formats to the traditional Certificates;
- evolution of new terms or definitions;
- a move away from indemnity value to reinstatement value only (except I note the present Fire Services levy is still on indemnity value);
- the insured taking out a global cover, not allocated to a particular risk, i.e. a first loss limit basis;
- an increasing move away from insuring older, less functional buildings on full reinstatement to the adoption of a notional or alternative building cover.

With the changes in the Earthquake and War Damage regulations, there is a very significant chance that your services for the completion of Reinstatement Insurance Certificates will no longer be required. That is, unless the quality. of the information provided is to the standard where the client who is paying for the Certificate and the "insurance market" say we want valuations from Registered Valuers because they provide the most professionally appropriate information.

I challenge you to change the way in which you complete and present your Reinstatement Certificates, with the objectofaddingamarketable,thatisa"dollar benefit", for your client by providing additional useful information such as an outline plan of the building, photographs of the building and additional construction and use details. Importantly, when completing certificates for commercial risk, state the method adopted for determining the indemnity value. In the settlement of claims, market value is generally fair for residential property but for commercial claims the indemnity value could be significantly different from market value, depending on building use, location, historic significance etc.

David Sargeant has outlined the difficulties being experienced by The Insurance Council of NZ. in adjusting to the proposed changes in disaster insurance and I believe their position is clearly expressed in The Annual Review produced by the Council where they state:

"We support the general direction of the Government's proposals, but maintain that deregulation cannot be successfully implemented until several technical and policy issues are resolved." A

alongside the financial information. In the future an instruction to value a property portfolio may only be given with the ability to provide image and plans compatible with the database.

This has already happened in the design field, where architects are expected to provide plans in CAD (Computer Aided Design) format which is compatible with the client's systems.

This technology is already commonly used in the real estate industry overseas, and is being actively investigated by a number of firms within New Zealand. A computer and a screen can be set up in a busy retail location. A series of questions establishes the customer's specific requirements and scanned images of videos can show them what is available. A marketing edge is where the customer records their name, address and requirements providing an instant database to the real estate agent.

Wang's freestyle is another product showing the future because it moves the desktop personal computer beyond simple text and numerical data storage.

In the interests of making the valuerat home, the screen depicts a fax machine, stapler, waste paper basket and filing cabinet It allows property professionals to operate with these office necessities without moving from the chair.

Scanned images of correspondence replace the in-tray, various documents can be "stapled" together, so the database immediately allows them to be simultaneously available. This may include a voice recording of a telephone conversation, a photograph of a building, CAD-based floorplans and a lease document all to be associated together, and all stored on the hard disk.

It is the inter-relationship between thesepieces of information which open up the opportunities, and make the break from purely text-based storage.

Let's say the valuers want to discuss this with a client. Maybe the client is not in. Surveys show that one in four phones calls are not connected to the person you called. Or maybe the client is based in Auckland, London or Hong Kong. The valuer can draw comments in the margin, and record a message with the notes. The margin notes appear, as the voice is played back. So comments like'this number looks high' can be accompanied by the pen circling the figure on the paper.

The informal jottings and notes which make the office environment work can now be transferred by computer. It also means that the valuers database not only stores comments, but also the off-the-cuff remarks, the reactions and the images that create the in-depth knowledge of property.

This is not the technology of the future. Diners ClubNewZealandhavescans of 76,000 documents which can be retrieved by their managers.

National Bank Visa is going through the same processs. When you ring them up, they have your hand-written note in front of them. The managing director of Caltex uses it to communicate with compatriots in Australia.

I believe the new `phone it before you own it' car register system also uses this technology. Travel agents now use it with their clients. They can fax an image of the itinerary to the client who signs it and faxes itback. They have verbal and written confrimation, no arguments about what was booked.

Much of the emphasis for property professionals is now being able to deliver that information onto the site. It is worth discussing the imaging technology and its role in developments. A picture can be electronically captured of a development site. This can be stored electronically and can be called up when discussing a paritcular property.The other aspect is the ability to show what a site is like with a development completed. This is useful when selling the development, attempting to pre-lease or arguing about the impact with town planners.

Again, this is not future technology. In Wellington and Auckland hair dressers can get your own image projected life size with anew hairstyle added before they let loose with dye and scissors.

Much of the competition or competitive advantage valuers have over their clients in other professions is access to information. The new directions and information systems will mean the most important resources of the property professional, time and experience, will be more effectively used. However there is a real danger that if the profession allows their clients use of the information to eclipse, their role will also be eclipsed. A

Valuers Registration Board Prizes for 1991

The Valuers Registration Board's prizes for the 1991 academic year have been awarded to:

Auckland University	Tara Woolley	of Auckland
Massey University	Stephen Attwell	of Otaki
Lincoln University	Timothy Hale	of Rangiora

The awards, currently $500 each, are made by the University Councils on the recommendation of the appropriate Faculty or Professorial Board to the students showing the greatest promise of being successful valuers.

Legal Decisions

IN THE HIGH COURT OF NEW ZEALAND:
AUCKLAND REGISTRY
COMMERCIAL LIST
C.L. 69/91

BETWEEN NORTH SHORE CITY COUNCIL
Plaintiff
AND DENNIS RALPH HEATH
Defendant

Hearing: 31 March 1992
Counsel: Mr L McEntegart for Plaintiff
Mr E F Mills for Defendant.
Judgment: 31 March 1992

(ORAL) JUDGMENT OF WILLIAMS J

Introduction

This is a commercial cause where, pursuant to s. 24C(4) of the Judicature Act 1908, the parties seek resolution of a dispute in respect of the construction of a contract or document namely a lease between the plaintiff and the predecessor to the defendant Mr Heath ("the defendant"). That predecessor was Takapuna Tourist Court Limited ("Tourist Court") which executed the lease on 6 July 1982 relating to land owned by the plaintiff Council situated at the northern end of Takapuna Beach in Auckland. The purpose for which the lease was taken was for a caravan and camp park.

The lease was for an initial period of four years but if rights of renewal were exercised, it would run until 1 October 2001.

The defendant exercised the third right of renewal for the period 1 October 1989 to 1 October 1991.

The significant clauses of the lease relating to renewal are first Clause 21 which provides, inter alia:-

> *"...the lessee shall have the right to obtain a renewal lease of the premises for a further term of two years at a rental to be determined in accordance with the First Schedule to the Public Bodies Leases Act 1969 but otherwise on the same terms and conditions as are herein contained..."*

This requires a cross reference to the Fast Schedule of thePublic Bodies Leases Act and in that respect Clauses 2 and 3 of the First Schedule are pertinent. They provide:-

> *"2. Not earlier than 9 calendar months and not later than 3 calendar months before the expiry by of f luxion of time of the term of the lease hereby granted, or as soon thereafter as may be, the lessor shall cause a valuation to be made by a person whom the lessor reasonably believes to be competent to make the valuation of the fair annual rent of the land hereby demised, so that the rent so valued shall be uniform throughout (the whole term of the renewal lease) (or the whole of the first* [number] *years of the term of the renewal lease).*
>
> *3. In making the said valuation no account shall be taken of the value of the following improvements on the said land:* [Specifying, as the lessor thinks fit, the kinds of improvements, whether made during the term or at any other time, which are not to be taken into account in the valuation of the rent]"

It can be seen from the sections in brackets that in a particular lease, the clause may be modified to fit the appropriate circumstances.

In the present case the parties did not, in their lease, go to the point of actually dealing with the options and variations provided for in the First Schedule to the Public Bodies Leases Act.

The issue for determination

The issue of construction which has arisen is whether or not, in terms of the rental review valuation for the period 1 October 1989 to 1 October 1991, the valuation should take into account the value of improvements currently on the property and which existed prior to the commencement of the lease i.e. 1 October 1981.

The plaintiff's contention is that account should be taken, in making a valuation, of improvements that existed prior to the commencement of the lease. The defendant disagrees and presents several opposing arguments. First it contends that the doctrines of estoppel or waiver are relevant and suggests that rectification of the lease may be required. As to this I note that on 21 February 1992 Barker J refused leave to the defendant to file a counter claim seeking rectification. I am informed that the reasoning of the learned Judge was that such a cause of action was inappropriate to a situation where the parties were seeking resolution of a question of construction in terms of s.24C(4). In the present procedural context, the same problem exists with the invocation of the doctrines of estoppel or waiver. I note that the defendant filed an application for leave to appeal against the determination of Barker J but eventually the appeal was not pursued.

Aside from those matters, the defendant's contention is that the lease was in respect of land only and no account could be taken, for the purpose of the rental review valuation, of the improvements that existed at the time of the commencement of the lease. It was submitted in the alternative by the defendant that if the plaintiff's contention was upheld the value to be ascribed to the improvements should be the value, if any, at the date of commencement of the lease i.e. at 1 October 1981.

I should record that it is common ground in relation to the rental review that the valuation should not take into account the value of improvements made by the defendant during the currency of the lease.

The defendant filed two affidavits. The plaintiff opposed their reception on the basis that the question of construction should be decided on the language of the lease alone. It further submitted that the affidavits breached the rule that in construing a document the Court should not take into account the prior negotiations of the parties.

The defendant invited the Court to receive the affidavits under R.501 and, subject to what I am about to say about admissibility, I think it is appropriate to order that those affidavits be formally received. However, it is correct that the affidavits contain material which is inadmissible on the construction point. However, some of the material (to which I shall refer later) is undoubtedly relevant and admissible on the construction point under the well established principles as to contractual interpretation all of which are to be found helpfully summarised in the decision of the Privy Council on appeal from the New Zealand Court of Appeal in *Chase SecuritiesLtd v. GSHFinance Pty Ltd* [1989] 1 NZLR 481 at 485-487.

The Genesis of the transaction: the surrounding circumstances

Before I confront the question of construction, it is appropriate to record the commercial purpose of the contract, the genesis of the transaction, the background and the context, to use the words of Lord Wilberforce in *Reardon Smith Line Ltd v. Hansen-Tangen* [1976] 1 WLR 989,995-996.

The land in question was originally privately owned and had been used as a motor camp prior to its being acquired by the Takapuna City Council. The Council had apparently managed the camp for several years but during the 1980-81 summer season ceased to operate the land as a motorcamp. For aperiod of some months, the camp was closed and apparently became the target of vandals. The various buildings on the site were stripped of fittings and extensively damaged.

InJuly 1981 theplaintiffinvitedapplications for the lease of the land. It was common ground that the initial intention of the Council was to require the successful lessee to demolish virtually all of the buildings on the site and erect new camping facilities. In the end, however, permission was given allowing certain of the existing buildings to remain.

Those existing buildings included a building called "The Rose Cottage", a shop and the custodian's accommodation.

During the currency of the lease, Tourist Court effected various improvements on the land which included modifications or alterations to those existing buildings which the Council had permitted to remain standing.

As noted earlier, there is some evidence that these existing buildings were in a dilapidated or damaged condition. However, it is not critical from the standpoint of the construction issue for me to decide what was their precise condition at the time of the commencement of the lease. It is a compelling inference that they certainly needed upgrading in order to be brought into a useful or habitable state.

The lease provided that if the lessee carried out improvements it would have the legal right under the lease to remove those improvements from the site at the end of the lease. Against that background one turns to examine the competing arguments.

The Competing Arguments

The argument for the plaintiff was one of graceful simplicity and suffered nothing by its brevity. It was simply that "die lands - to use the language of the lease must include fixtures on the land ,i.e. all improvements in existence at the commencement of the lease. In this respect one sees in the memorandum of lease, and the recitals, and in the operative part of the lease, the following:-

The First Recital

"1. The land described in the Schedule hereto (hereinafter referred to as "the land") is vested in THE TAKAPUNA CITY COUNCIL.. .

IM Second Recital

2. The lessor has agreed to lease the land to TAKAPUNA TOURIST COURT LIMITED a duly incorporated company having its registered office at Auckland (hereinafter called "the lessee") for the purposes of a caravan and camp park

IM Gperative Clause

"NOW THIS MEMORANDUM WITNESSETH that the lessor hereby leases to the lessee the land (such land being hereinafter called "the premises") ...

The plaintiff submits that in the normal way and as a matter of law, "the land" and"the premises" include improvements by way of fixtures on the site at the commencement of the lease. *BlacksLawDictionary* 6th Ed. 1991, supports the plaintiffs argument. Under the heading "Premises" it defines that word as meaning "land with its appurtenances and structures thereon". *Hinde McMorland & Sim,* Land Law Vol.2 pars 12.032, under the heading "Fixtures" states:

> *"Broadly, a fixture is anything, once a chattel or personal property, which has become so attached to land as to form in law part of the land and to have become real property .... Thus buildings erected on land and items permanently attached to the buildings become fixtures and apart of the land itself."*

See also *Neylon v. Dickens* [1979] 2 NZLR 714. Thus one can say that the use of the phrases "the land" and "the premises" in the opening section of the lease do support the submission that improvements which existed at the commencement of the lease are encompassed by the lease and in particular the rental review clause.

The question is whether there is anything in the surrounding circumstances or in the other provisions of the Memorandum of Lease which require any different conclusion. The case of *Pons.ford v. HMS AerosolsLtd* [1979] A.C. 63 (H.L.)-deals with a different but similar question relating to rental review clauses. Lord Wilberforce gave a dissenting judgment which, along with the dissent of Lord Salmon, has apparently come to be regarded as persuasive in this area of the law. He said, when referring to the rent review clause, at p.73:-

> *"The clause exists and must be interpreted in the context of this lease and what the parties must have been aware of at the time they agreed to it".*

Here, it seems to me that the first important point is that the incorporation of Clause 2 of the Public Bodies Leases Act means that the rental must be a valuation of "the *fair* annual rent of the land hereby demised".

Bearing in mind the genesis of the transaction and the surrounding circumstances, it seems to me to be entirely fair as between these parties, since no specific improvements were expressly excluded by the lease from consideration, to bring into account in the valuing process the value, if any, of improvements in existence at the commencement of the lease. Conversely, it would be equally fair to exclude improvements introduced over the term of the lease by the defendant: see *Modick RC Ltd v. Mahoney* [19921 1 NZLR 150 and in particular to the judgment of Hardie Boys J. at pp.156-7.

I now look to the remaining provisions of the lease to see whether there is anything which requires the ordinary meaning of the word "land" or the phrase "the premises" to be construed as excluding fixtures in existence at the commencement of the lease or any language which would prohibit an approach aiming at assessing a fair annual rental as between the parties.

Fortheplaintiffit was said that Clauses 4, 15 and 22 were of importance. In essence they provide:-

(a) that the lessee shall maintain the buildings and other improvements on the land;
(b) that the lessee may remove, at the expiration of the lease, any buildings or other improvements which itmakes or erects during the term excluding the facility block;
(c) the premises and the buildings and other improvements thereon other than buildings or improvements removed pursuant to Clause 15 revert to the lessor at the expiration of the lease.

On the basis of those clauses it was submitted that they reflected at a minimum that the buildings and other improvements on the land at the commence-

ment of the lease formed part of the land owned by the lessor and that that land so defined was properly the subject of a rental review valuation in terms of the lease.

The defendant, however, pointed to a number of clauses which, it was claimed, led to the view that the land to be valued at the rental review did not include any improvements which existed at the time of the commencement of the lease. Reference was first made to Clause 3 of the lease. It provided that the lessee had to submit plans for the erection on the premises of buildings namely a camp facilities block and a public toilet. Clause 3

(1)(b) of the lease provided that once those works had been approved by the defendant they were to be completed within 12 months from the commencementof the term. Clause 3(1)(c) then went on to provide that:

Within the said period of 12 months from the commencement of the term of this lease, the lessee shall remove all existing cabins and office block from the permises and clear and clean up the site of each such cabin.

It was stressed by the defendant that in this and other clauses there was a clear distinction drawn between the phrase "the premises" i.e. the land, and the word "buildings".

To the extent that this submission was based on Clause 3, it would have considerable force but for the fact that the surrounding circumstances show, and it is common ground, that there were some buildings which the Council agreed to leave on the site. Those latter circumstances therefore take away much of the force which would otherwise apply to the argument mounted on the basis of the language of Clause 3.

The defendant also pointed out that in Clause 4 there was a contrast between "the premises" and the interior and exterior of all buildings; that there was a similar distinction in Clause 5 between the premises and associated facilities and, even more so, in Clause 10 which provided that the lessee might lay down any lawns gardens or paths on such portion of the premises as were not be used for the buildings thereon. Furthermore in Clause 11 there was reference to the right of the lessor to inspect "the premises". However, if anything, that clause seems to cut the other way because it speaks of the right to enter the premises and view the state of repair and condition thereof which tends to convey the conceptof thepremises including the buildings especially since the clause speaks about notices to remedy or repair the same.

No mention was made by the defendant of Clause 12 but that too is consistent with the premises including the buildings. It has to do with compliance with Acts, Bylaws and Regulations concerning use of the premises and it is not unreasonable to construe "premises" there as including the buildings and the use to which any buildings are being put in addition to the use being made of the actual land itself.

The defendant next relied on Clause 15 as another where there is a contrast between the premises and buildings or other improvements made thereon. However, it was properly conceded by the defendant that Clause 17 appeared to be against the construction for which it contended because it provided:-

"The lessor will not be liable for any damage to the premises or the lessee or any of the lessee's servants employees or licensees or the lessee's property fixtures orfittings caused either throag(1 water entering the premises through windows walls ceilings roofs gutters or through stoppage leakages or breaks or defects in electric installations or apparatus or any pipes sinks and other parts of the building." (Underlining added)

The defendant submitted this clause was just a case of poor drafting and was not decisive on the interpretation point.

Finally, reference was made to Clause 22 which it was said supported the distinction between the land and the buildings because it referred to the fact that at the expiration of the term or renewal thereof, "the premises and *all buildings and other improvements* thereon, other than buildings or improvements removed by the lessee pursuant to Clause 15 hereof) shall revert to and vest in the lessor without compensation...". (Italics added)

My conclusion at the end of this textual analysis is that there are contradictory indications in the various clauses. Some clauses support the defendant's argument; other clauses support the plaintiff's arguments. It may well be one of those cases where the draftsperson has not applied his or her mind squarely to the distinctive circumstances of the case. There are internal inconsistencies on the critical point of construction.

I conclude that there is no uniformity in the use of the words "the land" and "the premises" in the c lauses I have mentioned. That being so one comes back to the ordinary meaning of the word "premises" and the established propositions from *Black and Hinde McMorland and Sim*

I should also say that I do not derive any great help from the fact that the parties did not, as provided for by Clause 3 of the First Schedule to the Public Bodies Leases Act, specify any improvements in relation to which no account was to be taken in the valuation process. That is a matter which can equally be used to support the arguments of the plaintiff or the defendant.

Conclusion on Construction Point

My answer to the question of construction posed is therefore that in the valuation exercise on renewal, the valuers should take into account the value, if any, of improvements on the land at the commencement of the lease such as those buildings which were allowed to stand. I stress the words "if any" because it will be for the valuers to decide whether the contention of the defendant is correct namely that those existing buildings or fixtures were in such a state as to have no value. What will be involved, since some or all of those existing improvements have been substantially altered and improved by the defendant, is to segregate the components of the present value of all buildings so that a distinction is made between the original improvements and those improvements erected by Tourist Court or its successors.

For avoidance of doubt I record that I do not accept the defendant's contention that the value of the improvements which were on the land at the commencement of the lease must be the value at that time and not at the time of the rental review. Although it may be a difficult exercise for the valuers, I see no basis for saying that the valuers cannot take into account the value of those original improvements as at the date of the rental review exercise. If it is said that such distinctions in the valuation process are difficult to make and that perfect precision is not possible, then my answer is that the object of the valuers is to find a fair valuation as between the parties and come to a reasonable conclusion in all the circumstances.

On this question, the judgment of Hardie Boys J. *in Mahoney* atp.156 which directs attention to what the particular parties acting reasonably would agree as a proper sum, may assist the valuers in understanding their task.

The foregoing construction of the lease is a reasonable commercial construction and to that extent is consistent with the approach which was endorsed by Lord Diplock in *Antaios Compania Naviera*

SA v. *SalenRederierna* [1985] 1 AC 191, 200-201. His Lordship emphasised that the proper construction of a contract or lease is one that must closely align itself with business commonsense. I cannot think that it would be sensible for the plaintiff to have given permission for the buildings to remain standing on the basis that there was an absolute prohibition on bringing into consideration on a rental review any value which thosebuildings mightpossess. I do stress, however, that there may be a very considerable difference between allowing for the possibility that those buildings have some value and attributing to them any substantial valuation. That must depend in the end on what the valuers think as to the original and present state of those improvements.

I reserve leave to either party to apply in case any unforeseen matter arises out of my determination on the construction point.

In the particular circumstances I do not make any award for costs. Although the plaintiff made the running, it is more in the nature of a case where two parties have encountered a genuine difference of view as to the way in which a lease is to be construed and have sensibly utilised the commercial list procedures as a way of finding an authoritative answer. In such circumstances the fair and appropriate order is that each party should bear its own costs.

Solicitors:
Simpson Grierson Butler White, Auckland, for Plaintiff; Denholm & Co,

IN THE WELLINGTON LAND VALUATION TRIBUNAL
LVP 35/91

IN THE MATTER of the Valuation of Land Act 1951
AND
IN THE MATTER of an objection puruant to s 19 of that Act to a valuation revision

BETWEEN B G KYNE
Objector

AND THE VALUER-GENERAL
Respondent

Hearing: 18 March 1991

Appearances: Objector in person
Ms Parle for the Valuer-General

RESERVED DECISION OF THE NO.1 LAND VALUATION TRIBUNAL

This is an objection pursuant to s 19 of the Valuation of Land Act 1951 to the Valuer-General's valuation in the 1990 roll revision of a two-flat property situated at 16 Robertson Street, Island Bay, Wellington. The land area is 460 m2. The Valuer-General's values and those contended by the objector are as follows:

	1990 GV		Obiector's values	
	Flat 1	Flat 2	Flat 1	Flat 2
Capital Values	$72,000	72,000	60,000	60,000
Land Value	$19,000	19,000	11,000	11,000
Value of Improvements	$53,000	53,000	49,000	49,000

Mr Kyne did not call or produce evidence of comparable sales or indeed of any other kind in support of his values as such. The gravamen of his complaint is well summarised in aletterdated 19March 1991 written on his behalf to the Valuer-General by the MP for Island Bay, Miss Elizabeth Tennet:

> *"...Mr Kyne owns a property at 16 Robertson Street Island Bay which has a garage built on Wellington City Council road reserve land. He pays rental on the encroachment and has been assured by the Wellington City Council that no rates are due on the garage on road reserve land.*
>
> *However he has since been told that the garage has been included in the recent valuation of the property and as it is this valuation that sets the ratesfor the property, he is effectively paying both rates and rental for the garage .....*

At the hearing, Mr Kyne produced copies of correspondence exchanged over the past year with a number of individuals and organisations in his quest of what he terms "relativity and equity". Those involved have included various officers in Valuation New Zealand and the Wellington City Council, the Inland Revenue Department, the Departmentof Consumer Affairs, and the Ombudsman's Office. This Tribunal is and can only be concerned with issues arising from the valuation of the property itself. Therefore several of the matters raised before us by Mr Kyne, such as the income of the Wellington City Council generated by rates and encroachment licence fees, are so far as this hearing is concerned irrelevant.

Mr Kyrie argues that the garages did not enhance the value of the property because:

(a) of the garages limited use: they may only be used for the parking of private cars.
(b) There is only a monthly tenancy.
(c) Such tenancy can be revoked at one month's notice.

From the copies of documents Mr Kyne produced to the Tribunal, without objection from the Valuer-General, the following points appear relevant:

1. The garages were built by Mr Kyne on road reserve land (called "encroachment") adjoining the front boundary of his property.
2. Mr Kyne is the licensee from the Wellington City Council (WCC) of the encroachment.
3. The licence may be revoked by the WCC at any time on giving one month's notice in writing.
4. WCC may revoke the licence forthwith without notice if the garages are used for any purpose other than the garaging of private motor vehicles.
5. The licence is not transferable and is granted on the condition that it is personal to the licensee while he is the owner or occupier of the property served by the garages.
6. On the determination or revocation of the licence the licensee is required to immediately remove the garages, failing which the WCC will do so at the licensee's expense.
7. The licence fee is determined on an area basis. The fee is reviewed annually by the WCC. If a licensee does not wish to pay the fee, the licence is terminated.
8. The encroachment may not necessarily be located on the frontage of the property owned by the licensee.
9. If a licensee sells the property served by the garages, generally the WCC will make the encroachment available to the purchaser, but in recent years there have been several instances where the WCC has offered the encroachment to other people.

The Valuer-General has consistently maintained, both in past correspondence with Mr Kyne and at this hearing, that while the garages do not add anything to the land value, they are an enhancement to the property and are an "improvement" within the meaning of the Act. Mr Kyne on his part has just as consistently contended otherwise.

The Valuer-General called as his sole witness Mr Philip John Western, Managing District Valuer of the Wellington Office of Valuation New Zealand. Mr West-

em produced a valuation report and evidence of comparable sales in support of the Valuer-General's assessment. In his valuation report Mr Western included the garages as improvements. In his analysis of the most comparable sale, Mr Western said if the garages were on freehold land, they would have added $10,000 to the capital value of theproperty at 16 Robertson Street. He had deducted 40% to take into account the fact that the garages were on road reserve. Thus he estimated the garages gave an added value to the site of $6,000, or $3,000 for each flat. In Mr Western's view, a prospective purchaser would pay for the right to have covered off-street parking adjacent to the land. Mr Western emphasised that he had not valued the road reserve land, only the garages. Mr Western further pointed out that rental is paid for the encroachment, i.e. the land on which the garages sit, not for the garages as such.

The relevant definition is contained in s 2 of the Act:

"Improvements", in relation to any land means all work done or materials used at any time on or for the benefit *of the land by* the expenditure of capital or labour by any owner or occupier thereof in so far as the effect of the work done or material used is to increase the value of the land and the benefit thereof is unexhausted at the time of valuation; but, except in the case of land owned or occupied by the Crown or by a statutory public body, does not include work done or material used on or for the benefit of the land by the Crown or by any statutory public body, except so far as the same *h*as been paid for by way of direct contribution. (our italics)

We consider that the question whether the garages are an "improvement" within the meaning of the Act depends on whether the garages can be said to be "for the benefit of the land". The answer to that question depends to a large degree on the teens and conditions governing Mr Kyne's right to maintain the garages on the encroachment.

The Deed of Licence has not been produced in full to this Tribunal, but Mr *Kyne* has copied for us several of its provisions. This evidence was notdisputed by or on behalf of the Valuer-General. In our view the most significant provisions, for the purpose of the question we have to decide, are those we have paraphrased as Points 4, 5, 6 and 9 above. Points 4 and 6 show that there are conditions in the Deed which allow the WCC to terminate Mr Kyne's right to occupy the road reserve land should he use the structure on that land for a purpose other than the stipulated one. This indicates the right to occupy the encroachment does not run with the land. In our view the practice of the WCC as set out in Point 9 puts that question beyond doubt. Further, it is expressly stated in the Deed that the licence "is personal to the licensee..." Point 5.

Mr Kyne's ability to derive a benefit from the garages depends on the continuation of the licence granted to him by WCC. That licence is personal to him and does not run with the land. It is therefore incorrect to say that the garages are "for the benefit of the land."

For these reasons we conclude that the garages are not an "improvement" and should not be included in the valuation assessment for 16 Robertson Street. In all other respects, there is no evidence to show that the Valuer General was wrong. Accordingly we determine the values for the property as:

	flat_1	ElaL2	I''
Capital Value	$69,000	69,000	138,000
Land Value	$19,000	19,000	38,000
Value of Improvements	$50,000	50,000	100,000

The objection is allowed to the extent set out above.

We were told by Mr Western that this objection may be something of a test case, since there are a large number of garages built on road reserves serving residential properties in Wellington. The effectof this decision could be significant for Wellington City. Therefore we note for the record that Wellington City Council was given notice of this hearing but has not put in an appearance.

M Lee, DCJ, Chairman
SWA Ralston, Member
M A Sellers, Member

IN THE HIGH COURT OF N.Z.
AUCKLAND REGISTRY
CP 2548/89

BETWEEN ALAN CHARLES CANAVAN and DIANE FAYE AUGUSTA CANAVAN
Plaintiffs

AND BRUCE TREVOR JORDAN and VIVIENNE ADELE JORDAN
Defendants

Hearing: 18,19,20 December 1990
Counsel: B W Morley for plaintiffs
J D Atkinson for Defendants
Judyme_nt: 20 December 1990

ORAL JUDGMENT OF ROBERTSON J

I have decided in this case that although it is now the first day of the vacation, the need to provide an answer overwhelms the desire which I might have had to take time to analyse in a more sophisticated way the evidence which I have heard during the last three days.

Since people began to live in permanent places on this planet it is clear that the view which they had from wherever they settled was a matter of great importance. That has been nowhere more graphically demonstrated than in thenew worldwhere one finds recent cities like Hong Kong, San Francisco, Sydney and Auckland, where building has been in and around a harbour with the views of water, city scape and other natural features obviously being of considerable importance.

In 1986 the plaintiffs decided to move house. They looked at an area in West Auckland and found what is described in the proceeding before me as lot 13. This is a site of over 1500 square metres. It is remarkably flat for a piece of hill terrain. It is up a right of way and there is no question but that in 1986 it had extraordinary views over a substantial part of West Auckland. Some people have said it had a 180 degree view, others have suggested it hada280 degree view. Ifone stands on the site there is a hill rising to the west moving towards the north, but still a pleasant sort of outlook, although one which will undoubtedly be built up as this is an area in which there is constant construction.

There was then available an unobstructed view (but for a very large Oak tree which is on the site and one which is on adjoining land) past Kauri Point, taking in the Auckland Harbour Bridge and the Harbour either side of that, the downtown city scape including parts of the wharf area, moving round to the southeast and south, a pleasant view across water, of residential suburban Auckland, until eventually in the southern aspect there is included as a back-drop, the Waitakeries.

At the time that the Canavans purchased, they had it all to themselves. The previous owner (the defendants in this proceeding) had owned a substantial

block of land which they were subdividing and developing. For those who knew it in that pristine state, anything which occurred thereafter was going to be a detraction.

Although it was initially in issue, there is no question but that as part of the contract between the plaintiffs and the defendants there was agreed a building height restriction which is pertinent to this proceeding on what is described as lot 12, There are also building height restrictions on lots 15 and 16 although those two sections remain unbuilt upon at this stage.

I do not think it is necessary for me to traverse the legal negotiations. There is no question that there was an obligation on the defendant to register against the title to 12, this easement. In the last month it has been accepted, that not only was that not registered, but that the defendants constructed and have on-sold to a man called Bishop, a house on the property which is a little over a metre over the height restriction.

A metre may not seem a great deal and it is difficult in words to paint the picture of what is involved in that infringement. But having been to the site with counsel before the formal hearing in Court began, and a second time with counsel and all witnesses (because I was having some difficulty in following what various expert and lay witnesses were saying) it must be immediately appreciated that this metre removes from the lot 13 a critical view. It is dependent on whether you are Mr Canavan's height or Mrs Canavan's height, but a view in any event of the downtown city area, and if you are tall enough it includes a water frontage to it. It is a view which although attractive by day, is clearly magical by night. The experts before the Court were unanimous that what was seen from that aspect was of great critical importance.

There was an application for an injunction heard in November and December of 1989. That relief was refused. At this stage it was not conceded that the building was in fact in breach of the contractual arrangement. There were other problems seen by the learned Judge including the fact that there had been an on-sale to a third party and there were problems as to how remedial work could in fact be carried out.

Before this Court, because of concessions made in November 1990, the matter has fallen to the simple question of what is the quantum to which the plaintiffs are entitled for the breach of the contractual arrangement which they had with the defendants. That as far as special damages are concerned is a question of determining the difference in value as a result of the breach. There was an additional claim for general damages for the vexation, aggravation and distress which the plaintiffs have suffered.

I have heard from three experts. Mr Hardwick and Mr Rhodes were called by the plaintiffs. Mr Godkin by the defendants. Each of them have provided what they described as before breach and after breach valuations as at December 1989. It has been accepted before me that that is the date at which the value of the loss could be determined.

The valuers were all of the opinion that before the view was interfered with, this property had a value of $350 to $360,000 and that included the land value of, in two cases, $115,000 and in one case $105,000. The after valuation ranges from $290,000 to as high as $310,000 and the land value now is said to be in two cases $75,000 and in another case $70,000.

Mr Hardwick and Mr Rhodes, by slightly different routes were of the view that there needed to be in addition to the loss in land value, a further allowance made for over-capitalisation. So that in Mr Hardwick's case he concluded that the difference in value was about $60,000 - in Mr Rhodes case $67,000, and Mr Godkin (called by the defendants) said that the difference in value was about $40,000 but that was a value which was attributable not only to the infringement on lot 12, but also to the construction of a rather higher house on lot 11 which is on the right hand side of lot 13 as one looks towards the Bridge and nearer to the lot 13 house, but adjacent to lot 12. He talked about apportionment as between the two properties only one of which was the responsibility of the defendants.

I have had the benefit of some interesting cross-examination as to how you value real estate; some extraordinarily frank evidence as to the fact that it is an art, but an art which has a sales related component at its core.

I have heard and seen each of these experts and I have had regard to the evidence which each of them has provided of comparable sales in that area, although in every case it becomes a question of what is an apple and what is a lemon when you are trying to compare a piece of land which is slightly bigger or slightly flatter or slightly nearer the water each of them has a variation of their own.

There are some points about this section which in my judgment are of particular importance.

The first is its size. It is substantially larger than the bulk of the sections in that area.

Secondly, as I have said, it is substantially a flat section although it drops away at the back where the house becomes two-storeyed. What I have described as the back is really the front door, but I accept the argument that the true front of this house is facing the view down the Harbour for that is the focal point.

Thirdly, although it will undoubtedly suffer somewhat when building is commenced up to the left of it and up to the hillside, it enjoys a degree of privacy.

Fourthly, it has on it two magnificent trees - The Oak to which I have referred and a good-looking Pohutakawa.

Fifthly, it still has, to someone who does not arrive with the "baggage" of what was previously available, an extraordinary panoramic view of a large part of Auckland, including water and the Harbour Bridge, some of the city area and lots of suburbia. One of the issues I have had to consider is how much of that is what the experts have called a "borrowed view". That has led to some interesting difference of opinion over notional orpossible fences being built which could interfere with some or all of the view.

Mr Morley was of the opinion that I should simply take the site as it is and ignore what else could occur. I do not think Mr Atkinson wanted to go to the extreme, but he did indicate that there is a right under the existing building ordinances in that area to build a fence to at least 2 metres (maybe 2.2 metres) which could undoubtedly have seriously interfered with the enjoyment of the view from lot 13.

I have reached the view that what I should look at is the realities of what has occurred and what is likely to occur. Having been on site and noted particularly that in respect of lots 11 and 12, there is an immediate drop-away at the boundary of at least a metre, I have concluded that because as the 12 and 11 boundary with 13 is a north-western boundary (and although I can understand that there may be a desire to create some privacy with those places) it is unlikely that a fence would be constructed there at much more than a metre. In other words, a fence which would in fact interfere with the view is not a real possibility. I have reached the view that one should not discount because of theoretical possibilities.

What in fact has been lost on the site is as I apprehend it, an important issue to be

reached. If one sits in the sitting room of the house there is still a view of water and the Bridge and a restricted view of the city.

It is a little impaired at the moment because the Oak tree needs trimming, but there is still a view left there. I am persuaded beyond any doubt that it is a restricted view from that important point. Similarly, there is a window seat at the front of the main bedroom which would naturally be a place to which one would gravitate. There are restrictions on the view from that position.

There has been built by the Canavans a very attractive pool area with paving around it. I have not been persuaded that someone sitting in that area would in fact have enjoyed any particular sea or city view even without the breach by the house in lot 12. The Canavans obviously had to create a fence around their pool and in my judgment, the view is virtually taken by that when in a sitting position.

Over and against all that there are still places here one can stand and get spectacular views. No doubt however a purchaser would be concerned with what they were going to be able to appreciate from the position in which they were doing their living in a normal sort of way.

I have regard to what the valuers have said. I have regard, perhaps more than any of the experts, to what in my judgment still remains. I have concluded that there is a degree of over-statement in the diminution of the value of the land, particularly when one looks at what the sections adjoining (that is 15 and 16) actually sold for. They are not in the same league as this much larger and more interesting section.

Accordingly when weighing the view which still exists and assessing that alongside the available sales evidence, I have concluded that as far as the land itself is concerned, the appropriate allowance to make for diminution of value is a sum of $25,200.

There is a separate issue of the value of the potential loss from over-capitalisation. When Mr and Mrs Canavan bought the house, although it was not old, it was not in the best of condition.

Because they had this magic view, they were of the opinion that it made sense to turn thathouse into ahigh level executive home. They have done that with extraordinary success.

They have built the pool; they have renovated the house. The danger now is because the view which was undoubtedly the greatest selling point, has been restricted, there is a danger that they will not reap the proper benefit of the time and effort which went into that renovation and extension process

One of the difficulties in this matter is that the initial purchase of the run-down property in 1986 at $175,000 was while the property spiral was going up if not already in orbit. I have heard evidence about a value put on the property in 1987 and attempts to sell at that time. Frankly, I have concluded that none of that helps. It was a period in which reality rather went out the window as far as prices and values were concerned. I am rather more assisted by looking at the realities of what properties are selling at now.

I conclude on balance that because of the glorious view (albeit not such a good view, which still exists) that most of the time and effort will in fact be repaid upon eventual realisation. But I cannot ignore the evidence of the experts that there is a factor which ought to be taken into account.

As best I can put any sort of figure on that, I am of the view that there is a sum which I quantify as $10,500 which ought to be allowed in addition to the figure previously referred to. I therefore am of the view that the plaintiffs are entitled to a total sum of $35,700 in respect of the breach of contract and the effect which that has had on the value of their property.

There is an application for general damages which relates to the vexation, distress and aggravation which has been created by this matter.

Mr Atkinson accepts that *Addis v Gramophone Co Ltd* [1909] AC 488, which once would have totally determined such an issue, is now subject to reconsideration. There have been a number of recent decisions where Courts have looked at the reality starting from the fundamental issue of foreseeability. When one looks at the history of this matter I am of the view that the plaintiffs do bring themselves within such a category.

I have had regard to my own decision in *Four Aces Cleaning Establishment v Barrell & Anor* (A 27/82, Whangarei Registry, 3.10.90) and the almost contemporaneous decision of FisherJ in *Monkley v Guardian Royal Exchange of NZ Ltd* (CP 209/88, Hamilton Registry, 23.8.90).

These parties, as part of the contract by which Mr and Mrs Canavan acquired number 13, made a deal about what was to happen on 12.

The defendants (I accept not deliberately but nonetheless in a way which has effected the plaintiffs) constructed this dwelling in a way which infringed the plaintiffs' rights. When the question was raised the plaintiffs were given assurances that all was fine.

Still anxious, Mr and Mrs Canavan went and employed a surveyor. His clear evidence was not accepted by the defendants.

The constant aggravation of this matter in my judgment is a situation which must have been properly within the contemplation of a person in the position of the defendants.

Mr Atkinson is right when he says that this sort of breach can tend to draw to itself (like a light does moths) everything else that is going wrong. One needs to be careful to keep matters into their proper perspective. But bearing in mind the decisions that are reviewed by me in Four Aces and by Fisher J in *Monkley,* in my view there has been established in the circumstances of this case a basis for a moderate payment for each of the plaintiffs in respect of the general anguish, suffering, stress and inconvenience to which they have been placed.

Under that head I make an award of $3000 to each of the plaintiffs. A total of $6000.

I have discussed with counsel whether within that confine I ought to have been looking at some of the actual expenses which have arisen attendant upon this proceeding.

I have been persuaded that the more appropriate course is to invite each counsel to file memoranda on the question of costs and disbursements attendant on this proceeding.

I have already indicated to them my concerns in this area. Until I have the benefit of their considered opinion as to the appropriate course and an opportunity to consider actual figures which are involved in the totality, it is not appropriate for me to comment further.

I invite the plaintiffs to file an initial memorandum on the question of costs, disbursements and interest by 21 January. The defendants memorandum in reply is to be filed by 1 February. Mr Morley may reply by 8 February.

Solicitors

Hesketh Henry, Auckland for Plaintiffs
Hunt, Hunt & Chamberlain, Auckland for Defendants

;Legal Decision

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
Cp 2762/88

BETWEEN D G GREENFIELD Air Steward and ANNE SANDRA GREENFIELD Secondary School Teacher of Ridge Road, Albany, R.D.
Plaintiffs

AND THE RODNEY COUNTY COUNCIL
Defendant

Hearing: 10,11,12 September 1990

Counsel: Mr G M Illingworth and Mr A Braun for Plaintiffs
Mr R W Worth for Defendant

Judgment: 12 December 1990

JUDGMENT OF GAULT J

In 1981 the plaintiffs purchased 1.3521 hectares of vacant land at Riverhead. The land, which is Lot 1 on DP 84523 (North Auckland Registry), was originally in the Waitemata County but in 1974, by Order in Council, it was included in the Rodney County and it is accepted that the defendant assumed the duties, obligations and liabilities of the Waitemata County Council in relation to the land.

The land is elevated above, and is bounded by, a winding section of Ridge Road which was constructed in 1929. It is an unsealed road the formation of which involved cutting batter slopes along the northern side. Neither the metalled carriageway nor the batter extended to the boundary of the plaintiff's property: an area of road reserve of varying width extended from the top of the batter to the boundary.

After some land clearance, the plaintiffs built a house on their property. This commands a panoramic view to the south across rural land in the foreground to West Auckland and extending to the Waitakere Ranges in the west and the upper reaches of the Waitemata Harbour in the east.

Descriptions of the general topography given by engineers were at variance, particularly with reference to the height and slope of the cut batters. I accept the evidence of Mr Gulliver based on his measurements. On the northern side of the carriageway, in the area with which this case is concerned, the road cuttings varied in vertical height up to a maximum of about five metres. The slope of the cutting varied from about 56 degree to near vertical. From the top of the cuttings the land rose gently (about 20 degrees to the horizontal) to about 12 metres inside the plaintiff land where it flattens out to form a level platform. The dwelling is about 20 metres back from the road boundary on this platform.

On 14 February 1988, probably at some time during the afternoon, four landslips occurred along the Ridge Road batter and in two cases the slip scarp extended four metres and seven metres respectively into the plaintiffs' property. One of the slips lies directly between the plaintiffs' house and the road and this is the principal source of the present proceeding. This main slip is approximately 30 metres wide and 15 metres deep. It deposited about 350 cubic metres of spoil onto the road. It extends to within 17 metres of the house.

Bedding planes, which separate the successive layers of sediment, are exposed in the face of the slip. The angle of these planes, dipping down towards the road, was measured at about 30 degrees to the horizontal. They are thus adversely oriented for stability and appear to have influenced the mode of the slip failures.

The slips exposed in the slip faces consist of clay and sandy silts of the Waitemata group.

Apart from the four slips that occurred on 14 February 1988 there are older slips on other parts of the road batter below the plaintiffs land indicating more extensive stability problems.

There was intense rainfall in the area on the afternoon that the slips occurred. Mr Hessell, a well-qualified and experienced meteorologist was Chief Meteorologist in Auckland at the time. His evidence was that the rainfall recorded at the nearby Whenuapai airbase was noted at the time as a once in twenty years event and he regarded the measurement of the rainfall as on the low side because of the measuring equipment used. His subsequent investigations of rainfall recorded by the Water Board at other nearby locations disclosed rainfall of even greater intensity in the four hour period between I p.m. and 5 p.m. on the day in question Comparisons with previous rainfall events are not simple because of different time periods over which rainfall was recorded, and a lack of historical data from two of the locations. However, the precise likely recurrence of rainfall of this intensity is not vital because it was not established at what time of the afternoon the slips occurred. It is sufficient to record that the 14 February 1988 rainfall can be compared with an event recorded at Whenuapai in February 1966 when 150mm fell in two hours and that exceeded the amount for which statistical scales indicate specific return periods. At Whenuapai on 14 February 1988 hourly rainfall was recorded as:

Between noon and 1 p.m.	38 mm
Between I and 2 p.m.	81 mm
Between 2 and 3 p.m.	86 mm
Between 3 and 4 p.m.	34 mm

It was an extraordinary rainfall event.

The plaintiffs claim that subsidence of substantial portions of their land resulted from the removal of support by the defendants and its predecessor in forming the cut banks at the time of the construction of the road and in subsequent maintenance activities.

They seek relief in respect of the subsidence that already has occurred and in respect of further subsidence said to be likely.

In *Blewman v Wilkinson* [1979] 2 NZLR 208, Richardson J. said (p.212)

> ..Byrne v Judd *(1908) 27NZLR 1106 established that an owner of land has the right to have his land remain in its natural stare, unaffected byany actdone in the adjoining or subjacent land, and accordingly he has a right of action against a former owner of the neighbouring land whose excavating has caused his land to subside. His cause of action is not complete unless and until damage occurs and his claim is against the original excavator even if the subsidence may not have occurred until he has ceased to own the neighbouring land. It is a case of strict liability and negligence need not be present.*

There are comments to the same effect in the judgment of Cooke J. (as he then was) at p.209 and Somers J. at p.215.

There is a recent application of the principle in *Attorney Genera l v Whangarei City Council* [1987] 2 NZLR 150.

The plaintiffs seek to invoke this well established principle of law. For the defendants, Mr Worth, relying on *Blewman v Wilkinson* submitted that

> *Where it is manifest that land which provides support to other land has been excavated, the original excavator (or his successors in title) is not under a strict non-contractual duty to a landowner on whose land subsidence occurs because of the excavation. The principles of negligence instead apply and there is no cause of action pleaded in negligence against the defendant."*

In *Blewman v Wilkinson* it was held that the principle in *Byrne v Judd* did not extend to impose strict liability on a subdivider in respect of excavations affecting the support of other land in his ownership for damage occurring after that other land had been sold.

In the present case there is no suggestion that the excavation, by cutting the road batters, occurred while the road and the plaintiffs' land were in the same ownership. A similar argument seeking to extend *Blewman v Wilkinson* and restrict *Byrne v Judd* was unsuccessful in *Attorney General v Whangarei City Council.*

There is a right to have the benefit of support from adjoining land and, as was said by Lord Blackburn *inDalton vAnaus* (1881) 6 App Cas 740, 809

> *And this is a right which, in the case of land, is given as of common right: it is not necessary either in pleading to allege, or is evidence to prove, any special origin for it: the burden, both in pleading and in proof, is on those who deny its existence in the particular case.*

I have not been persuaded that there is any reason in this case to depart from the general principle.

It is necessary then to determine whether anything the defendant or its predecessor did on the neighbouring land caused the subsidence.

While there was some difference in emphasis in the evidence of the engineers, I conclude that there were a number of factors contributed to the slips. The general area of the slip is subject to groundwater seepage concentrations. This is indicated particularly by the large unstable basin of land below the road. The bedding planes in the area of the slip are adverse for stability and showed evidence of ground water being transmitted through them.

At the time when the ground was comparatively dry, and probably with some cracking, the unusually heavy rain would have penetrated the soil quickly raising the ground water levels, generating pressure for movement and leading to the opening of tension cracks, which in turn filled with water from the continuing run-off until the whole section of the soil mass slid down along the bedding plane. This movement was unrestricted because of the absence of toe support at and above the level of the bedding planes as a result of the road batter cutting.

Mr Gulliver emphasised the oversteepened road batters in the area of unfavourable geology, providing inadequate support for the land above. Dr Toan expressed the view that the cause was the exceptional rainstorm. He acknowledged however, that the other factors were contributing causes but emphasised the length of time the cutting had been there without failure. He felt unable to express any opinion as to whether the slip would have occurred had the road cutting not been there. He said that would be a matter for conjecture or guesswork.

Road batter slopes necessarily vary according to geological conditions, including soils and ground layers and natural drainage patterns. There was evidence that in clays in the Auckland area, cuttings of 1/2:1(63 degrees) are not uncommon. At the time Ridge Road was formed there would have been nothing unusual in the batter angles. It would have been a typical rural road. Even today compromises between stability, safety and cost restraints might well result in a similar formation. However, the wisdom or otherwise of this particular cutting is not relevant if it was causative of the slip.

Mr Balch, an independent engineer, said that many engineers argue thatbatters into natural ground should be cut at as steep angles as will be likely to stand, so reducing the volume of earthworks and also new surface exposed to weathering and slips.

He said also most slips occur within a short time of initial construction, particularly in the months of February and March during the high intensity storms common in that period but also following prolonged wet weather during winters after construction. He said the incidence of slips in succeeding years is generally not so significant.

Dr Fendall, also an independent engineer, on the other hand was of the view that where the slope is steeper than is prudent in the circumstances, failure is just a matter of time.

Withdrawal of support gives rise to strict liability. The right to have support is not affected by the frequency of events that trigger collapse. Excavation carries with it risks of liability upon the occurrence of damage. Clearly the excavation must be a significant and direct contributor to the subsidence. I consider that a "but for'" test can be of assistance so long as it is borne in mind that the damage must be a direct and natural consequence of the excavation.

In the present case I accept the evidence of the engineers Dr Fendall and Mr Gulliver (with which I do not understand Dr Toan to be in substantial conflict), that the cutting of the road batters was a cause of the slips.

The evidence did not support the claim that the regular grading of the road over the years, and the clearance of plant growth along the lower parts of the batter slopes, significantly contributed to the slips and I understood Mr Illingworth to accept that in the course of his submission.

Mr Worth submitted that the right of the landowner to enjoy his own land unaffected by any act done by way of excavation on the adjacent or subjacent land is limited to land in its natural state. That proposition is correct and is supported by *Byrne v Judd.* Mr Worth submitted that in this case the plaintiffs' land is not in its natural state. He referred to evidence that the land had been cleared at some time in the past to pasture land, although there has been some reversion.

The right to support is limited to land in its natural state in the sense that by development, construction of buildings and the like, the landowner cannot impose a greater obligation on his neighbour. It is taking that point to the absurd to suggest that the right is enjoyed only in respect of land in its virgin state, even if that could be identified.

There is no suggestion in the evidence that the use and development of the plaintiffs land in any way increased the likelihood of the slips and I reject this argument.

Mr Worth next submitted that a local authority, having the control of a highway, is not liable for damage arising out of non-repair of a road non-feasance as distinct from misfeasance. He relied on the decision of the Court of Appeal in *Tarry v Taranaki County Council* (1894)12NZLR 467.

The plaintiffs' claim is not based upon any obligation on the part of the defendant and its predecessor to maintain the road batters so as to preserve support for the plaintiffs' land. The cause of action comprises the two essential elements of the making of the excavation and the.esulting damage to the neighbouring property. It is not a claim based on mere non-feasance.

It was argued that there was no element of misfeasance because, at the time the road was formed, the batter formations were typical of the period. However, to accept that argument would be to equate the cause of action to one in negligence and the authorities already referred to do not do that.

Byrne v Judd makes it clear that the liability rests upon the person who made the excavation and continues notwithstanding the sale of the land on which it is made. A subsequent owner has no

liability. It was presumably with this in mind that Mr Worth applied prior to the commencement of the trial, to amend paragraph 8 of the statement of defence to deny that the road was formed by the WaitemataCounty Council whose liability the defendant has assumed. I was told that advice of the intention to seek this amendment was forwarded to counsel for the plaintiffs on 31 August, some ten days before the trial, but was not received by him because of his absence from his chambers during that week.

In the original statement of claim filed on 30 November 1988 it was alleged that the defendant, or its predecessor the Waitemata County Council, formed the road and thereby removed support from the plaintiffs' land. The allegation was denied in the statement of defence filed on 3 February 1989.

Subsequently, in an amended statement of defence filed on 16July 1990, the pleading was altered to expressly admit that the defendant or the W aitemataCounty Council formed the road and in so forming the road cut an embankment around the perimeter of the plaintiffs' land but otherwise deny the plaintiffs' allegation so as to put in issue whether the forming of the road and the cutting of the embankment removed support from the plaintiffs' land.

With a view to ensuring that civil proceedings are properly ready for trial, Judicial conferences are held. In this case there were conferences before Chilwell J. on 16 May 1990 and 26 July 1990 and at neither of these was reference made to the possibility of a defence based upon construction of the road not by the Waitemata County Council but by the Crown. Mr Illingwoth submitted that to give leave to amend the defence immediately before trial would be to defeat the whole purpose of the judicial conference procedure.

This was a matter which was within the competence of the defendant to investigate from the outset. The pleading was changed from a denial to an express admission. The case has been prepared by the plaintiffs on the basis of that and, in the circumstances, I declined leave to retract the admission.

Leave was however given to the defendants to amend the statement of defence expressly to rely upon the defence that a claim for nuisance is excluded where itarises from work undertaken pursuant to statutory authority and I will deal with that next.

Relying upon *Nobilo v Waitemata County* [1961] NZLR 1064, Mr Worth submitted that the defendant cannot be held liable to the plaintiffs in nuisance. In that case Haslam J. was concerned with damage said to have resulted from the discharge of water onto the plaintiff's land as a result of the defendant Council having sealed the surface of an adjacent road.

He held that where a local authority acts under an enabling section of a statute and carries out a public work which causes damage to a land owner, in circumstances which entitle him to claim compensation under the Public Works Act, his only remedy is to claim such compensation and he cannot sue for damages.

Mr Worth submitted that the formation of Ridge Road was a public work carried out under the statutory authority of s.113 of the Public Works Act 1928 and so could have given rise to a claim for compensation for injurious affection under s.42 of that Act. Section 45 of the 1928 Act imposes a limitation period for compensation claims of twelve months following completion of the work. *InNobilo v Waitemata County* Haslam J.said (p.1069)

> *The mere fact he may now be outside the time limit for pursuing such a remedy does not invalidate the application of the principle.*

The current provision corresponding to s.45 is s.78 of the Public Works Act 1981 under which the limitation period is two years and that applies even in respect of public works carried out by local authorities under the authority of the Local Government Act 1974 by virtue of the operation of s.240 of that Act.

I accept that the formation of the road batters constituted a public work but I am not satisfied that there was a claim to compensation so as to render applicable the principle in *the Nobilo* case. Haslam J. there was dealing with a claim in nuisance where the cause of action was complete within the limitation period.

In the present case involving withdrawal of support to land, the cause of action was not complete until damage was suffered, in this case long after completion of the work.

The *Nobilo* case is quite distinguishable and I find that the plaintiffs are not precluded by the fact that the excavation was carried out as a public work pursuant to statutory authority.

I was referred to S.242 of the Local Government Act 1974 which reads

> *"Nothing in this Act shall entitle the council to create a nuisance, or shall deprive any person of any right or remedy he would otherwise have against the council or any other person in respect of any nuisance."*

The same provision as s.190 of the Counties Act 1956, also was considered by Haslam J. in *theNobilo* case. Applying the decision in *Irvine & Co. v Dunedin City Corporation* [1939] NZLR 741, he held that notwithstanding such a provision no action lies against a county council for a nuisance which is necessarily or inevitably involved in the construction and maintenance of an authorised public work and which would found a claim for compensation. Even if it were to be argued thtt at the time the cause of action arose the defendant under the statutory authority of s.238(c) of the Local Govemment Act (to erect, construct and maintain public works), it is my judgment that the plaintiffs areentitled to proceed against the defendant in nuisance, relying on s.242 because it could not be said that the oversteep batter formations along Ridge Road which failed to support the plaintiffs' land were necessarily or inevitably involved in the construction or maintenance of the authorised public work. Accordingly I find against the defendant on this argument.

The plaintiffs have sought alternative forms of relief. In brief their first preference is for reinstatement of, and support for, the portions of their land that have subsided (or at least that lost in the main slip).

They seek a mandatory injunction directing the defendants to build retaining walls. Alternatively they seek damages assessed as the cost to them of reinstating their land. They seek also general damages including damages for emotional distress.

The engineers are agreed that some further ground at the top of the main slip is likely to fail. Having regard to the nature and position of the bedding planes they do not consider that further slips will extend further into the plaintiffs land than a point approximately 7.5 metres from the house.Accordingly the house is not in danger. A substantial area of lawn between the house and the main slip at present is at risk.

The extent of risk was described as probable and only a matter of time although Dr Toan expressed the opinion that further substantial movement would require an event of at least similar severity to the rainstorm that occurred on 14 February 1988.

I found his assessment of the risk expressed in that manner somewhat difficult to reconcile with his preferred recom-

mendation to the council to acquire for public road the land subject to further risk, presumably to avoid potential future liability. Such a course would seem to be somewhat extreme if the risk were as minimal as he suggested.

Dr Toan recommended to the defendant the acquisition of the land and only minimal reinstatement work. He suggested a budget figure of $10,000 to allow some minor repairs to be made to the affected area, such as clearing operations and placement of rock spalls where appropriate.

Dr Toan also gave evidence of alternative methods of reinstating the land by either a tied back pole wall or a reinforced concrete cantilever wall. He estimated the cost of construction for such reinstatement of the main slip to be in the order of $90,000 with similar costs for the other slips. He did not favour these alternatives because they would not finally resolve the problem of possible further failure in the areas of the batter unaffected by the slips presently under consideration.

Mr Gulliver expressed the opinion that a preferable long-term solution would be to reduce the battering to a safe angle of about 26 degrees. This of course would require the road boundary to be shifted further into the plaintiffs land and so involve acquisition of part of the land by the council.

He said that in the meantime it may be satisfactory to trim the existing slips, plant them in bush, provide toe protection and improve roadside drainage. This, he said, would still leave the risk of other or further failures.

Mr Gulliver substantially agreed with the views expressed by DrToan in relation to requirements and costs for retaining walls. He agreed also that the walls would not remove the risk of failures in other sections of the road banks.

On 4 September 1990, within a week of the commencement of the trial, the defendant gave notice to the plaintiffs of its intention to acquire an area of 1387 square metres of the plaintiffs' land adjoining the road reserve and extending to within 7.5 metres of the dwelling. The plaintiffs say they will resist the proposed acquisition and it is not for me to express any view as to whether it will proceed. The plaintiffs say that the loss of the level grass area between their house and the road will seriously affect their use and enjoyment of their land.

The distance between the proposed boundary now and the house will mean that the property will no longer conform with the operative zoning requirements. They say further that if the road battering is recut to the suggested safe angle, bringing the bank to the proposed new boundary, they will suffer loss of privacy and increase in dust and noise from the road. They say in that eventuality in all probability they will move away.

In fact the present slips are not visible from the plaintiffs' house. Along the outer edge of the lawn, immediately above the slips, there is a line of scrub and immature native bush which screens the slips and the road beneath them. The height of this bush is such that it does not interfere with the outlook across it from the house. The reality is that the suggested remedies will leave the plaintiffs in a worse position than they are now.

They are, however, anxious to secure reinstatement of the land, particularly so as to avoid the risk of any further slipping extending back towards the house and past the line of bush. They maintain that the way to achieve this result is by requiring the council to reinstate their land by the construction of retaining walls at or near the boundary.

For the defendant it was submitted that a mandatory injunction requiring reinstatement of support at the boundary should not be granted on the ground that the cost would be out of proportion to the value of the land and that damages assessed by reference to loss of value of the land will provide a sufficient remedy. It was submitted further that the risk of further slips is not such as to meet the requirement for an injunction expressed by Lord Upjohn in *Redland Bricks Ltd v Morris* [1970] AC 652, 665 as "a very strong probability upon the facts that grave damage will accrue to him in the future". Of that test Cooke J. (as he then was) in *Grocott v Ayson* [1975] 2 NZLR 586, 588 said

> *But it would be a mistake to elevate those words into an indispensable test, asLord Upjohn himself indicated by his prefatory remarks and as is demonstrated by Hooper v Rogers [1975] Ch 43: [1974] 3 A11 ER 417. The latter case also shows that it would be a mistake to concentrate on imminence.*

In *Hooper v Rogers* Russell LJ, with whom the other members of the Court of Appeal agreed, said that an injunction is not premature when there is a proven probability of damage.

It is important to bear in mind that any mandatory injunction directing reinstatement mustbe sufficiently precise to inform the defendant as to what is to be done. This was the reason for the discharge of the injunction *in Redland Bricks Ltd v Morris.*

Mrlllingworth submitted that because the property involved in this case is the private home of the plaintiffs, having unique characteristics, the remedy of reinstatement should be ordered in terms of one or other of the alternatives presented by Dr Toan for the construction of retaining walls.

He relied upon *Evans v Balog* [1976] 1 NSWLR 36 and other Australian negligence cases indicating that the appropriate test is one of the reasonableness of the plaintiffs' desire to reinstate the property. He submitted that only by reinstatement can the plaintiffs in this case secure fair compensation.

Referring to the discretion to be exercised in respect of the grant of a mandatory injunction, Lord Upjohn in *Redland BricksLtdvMorris*said (p.666)-

> "Unlike the case where a negative injunction is granted to prevent the continuance or recurrence of a wrongful act the question of the cost to the defendant to do works to prevent or lessen the likelihood of a future apprehended wrong must be an element to be taken into account:
>
> (a) where the defendant has acted without regard to his neighbour's rights, or has tried to steal a march on him or has tried to evade the jurisdiction of the court or, to sum it up, has acted wantonly and quite unreasonably in relation to his neighbour he may be ordered to repair his wanton and unreasonable acts by doing positive work to restore the status quo even if the expense to him is out of all proportion to the advantage thereby accruing to the plaintiff. As illustrativeof this *see Woodhouse vNewry Navigation* Co. [18981 1 I.R. 161:
>
> (b) but where the defendant has acted reasonably, though in the event wrongly, the cost of remedying by positive action his earlier activities is most important for two reasons. First, because no legal wrong has yet occurred (for which he has not been recompensed at law and in equity) and, in spite of gloomy expertopinion, may neveroccuror possibly only upon a much smaller scale than anticipated. Secondly, because if ultimately heavy damage does occur the plaintiff is in no way prejudiced for he has his action at law and all his consequential remedies in equity. 0

> So the amount to be expended under a mandatory orderby the defendant must be balanced with these considerations in mind against the anticipated possible damage to the plaintiff and if, on such balance, it seems unreasonable to inflict such expenditure upon one who for this purpose is no more than a potential wrongdoer then the court must exercise its jurisdiction accordingly. Of course, the court does not have to order such works as upon the evidence before it will remedy the wrong but may think it proper to impose upon the defendant the obligation of doing certain works which may upon expert opinion merely lessen the likelihood of any further injury to the plaintiffs land."

In this case the damage that has so far occurred has not seriously interfered with the use and enjoyment of the plaintiffs' land. This is a rural area. The cost of reinstatement at the boundary will be high and this course is not favoured by the engineers.

I do not consider a mandatory injunction is justified in the circumstances to direct that reinstatement. The appropriate remedy is an award of damages for loss in the value of the plaintiffs' land.

Of much greater concern for the plaintiffs is the risk of further slipping at the top of the main slip which would greatly interfere with their enjoyment of their land. I am satisfied on the evidence that the probability of this meets the test for a mandatory injunction.

However, the Court is not in a position to give sufficiently precise directions as to the work necessary to stabilise this area. Mr Gulliver referred to trimming existing slips and providing toe protec lion. DrToan referred to the placement of rock spalls where appropriate.

I asked Dr Toan about the possibility of retaining the area at risk. He agreed that it was a possibility but referred to the difficult task of undertaking the work without damaging the present vegetation because of the need to approach from the top. Vegetation is easily replaced and this does not appeal to me as a reason for not furtherpursuing thispossibility. Such work must be accepted as not necessarily providing a long term solution but these is to be borne in mind that if there should be further falls in the future the plaintiffs are not precluded from further claims.

I am satisfied that it shouldbe possible to specify some reasonable amount of work that will lessen the likelihood of failure and retain for the plaintiffs the attributes they value without the need for full restoration at the boundary.

In the absence of evidence however, I cannot direct such work with precision and I am really no better placed to assess damages in lieu of an injunction so as to enable the plaintiffs to arrange the necessary work.

The estimate of $10,000 given by Dr Toan included clearing operations which were not specified and may or may not have been done in part. I prefer to adopt a course designed to ascertain what is required and ensure that it is done, rather than attempt an assessment on inadequate evidence.

Accordingly I find the plaintiffs are entitled to reinstatement to the extent of the provision of reasonable support for the land at risk at the top of the main slip, being the hatched section identified on the third diagram attached to the report of Dr Toan's firm being Document 14 in the agreed bundle.

Itmaybe that theparties will be able to agree upon what is necessary and by whom the work is to be carried out. Failing agreement prior to 15 January 1991, the plaintiffs may submit evidence in affidavit form as to the quoted cost for the necessary work. That evidence is to be served on the defendant. Any submission may be made in writing by 25 January, after which I will assess an appropriate award of damages.

The plaintiffs are entitled in any event to be compensated for lost in value of their land as assessed by the valuer Mr Guy at $7,000.

Citing *Fleming v Bank of New Zealand* [1900] AC 577, Mr Worth submitted that the plaintiffs are not entitled to special damages, being costs incurred by them in obtaining engineers' and valuers' reports.

In *Fleming* it was held that special damages could not be awarded where there was no pleading. In this case, in the amended statement of claim, paragraph 13.3 alleges that, as a result of the removal of support the plaintiffs have suffered, or will suffer, loss being costs and expenses they have incurred or will incur. No particulars of loss were set out but no objection was taken at the time to evidence proving the expenditure amounting to $4,171.78

This is not a case where there was no pleading. There was a pleading albeit inadequate, towhichnoobjection was taken. In the circumstances I find that the costs and expenses wereproperly proved. I have considered whether the expenses should be regarded as in part witness' expenses which should be dealt with more appropriately in connection with costs rather than damages.

In my view the fee of Mr Guy for the valuation report is referrable to evidence he gave in support of the plaintiffs' claim rather than to loss resulting directly from the withdrawal of support.

The fee of Engineering Geology Limited (Mr Gulliver's firm) falls in the same category.

On the other hand the fee charged by Mr Fendall was for inspection reasonably soon after the slip occurred and was justifiable for the purpose of securing independent assurance of the safety of the house. That fee of $411.30 in my view may be claimed reasonably as damages. The other fees must be dealt with in conjunction with costs.

The plaintiffs also claimed general damages for what comes down to emotional distress.

The evidence disclosed that they were assured within days of the slip that the house was not in danger. The slips are not visible from the house as previously indicated.

While I accept that they have experienced frustrations with the manner in which their complaints have been dealt with by the defendant, I do not consider that this is a case appropriate for an award of damages for emotional distress over and above the other relief to which I have held them entitled. Accordingly there will be no award under this head.

Costs are reserved, as is leave to apply generally-

Solicitors : Skeates & Simpson, Auckland for Plaintiffs
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