

VALUERS' JOURNAL

MARCH
1995

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The NEW ZEALAND VALUERS' JOURNAL is the official publication of the New Zealand Institute of Valuers. The JOURNAL is published quarterly and the Editorial Board welcomes researched articles from qualified individuals concerned with valuation, business management of a valuation practice and property related matter.

Each article considered for publication will be judged upon its worth to the membership and to the profession. The Editor reserves the right to accept, modify or decline any article. Any manuscript may be assigned anonymously for review by one or more referees. Views expressed by the editors and contributors are not necessarily endorsed by the New Zealand Institute of Valuers.

All contributions should be typewritten on one side only of A4 sized paper and must be suitable for scanning. Computer disk copies (IBM compatible) are welcome. Original photographs, diagrams, tables, and graphs (including values creating any graphs) and similar material intended to illustrate or accompany an article should be forwarded separately with the text. The approximate places where illustrations are to be inserted through the text should be clearly shown in the manuscript.

A brief (max 60 word) profile of the author, a synopsis of the article and a glossy recent photograph of the author should accompany each article.

Complete editorial policy review process and style instructions are available from the Editor. Deadline is two months prior to each quarterly publication.

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This issue contains a report on the revised handbook of Valuation Standards. Many years of work have been put in by a committed team which carried the authority and endorsement of National Council. As the Chairman of the Standards Committee, Iain Gribble, points out their work is "an evolving task" and new standards and guidance notes will have to be prepared, and will be issued, as they are developed. All the participants work is to be commended. Basic structures have either been revised or new structures have been put in place to help us secure our credibility in the modern market place. We must be careful that we don't become complacent about our own new structures and overlook the changing needs and demands of our evolving markets. Even today's market is far more demanding, faster changing and much more sophisticated than that of just a few years ago. It is a market place increasingly dominated by technology and one in which the more successful participants believe that information is wealth. Surely there are many opportunities for those whose business it is to collect, store and analyse information relating to the property fields.

In this issue Rob Bell writes of the growing power and opportunity of "Internet", which is a part of the global communications system that is not only changing the way that people do business but one which is already influencing the future of most of us who service those business's. Rob Bell feels the speed of change in the technological revolution is such that it is well nigh impossible to predict which new skills will emerge as relevant to valuation practice in the future. There seem to be two certainties about the technological changes however, one : that the "global village" is here to stay, - the other, that familiarisation with technological evolution is an essential component of lateral thinking. Equally essential is for the practitioner to understand at what stage one's clientele are in this whole evolutionary process.

It's not just by coincidence that Terry Boyd, in his article on the "Importance of Market Analysis" suggests that too much

emphasis is still being placed on methodology at the expense of meaningful advice to the client. Adrian Brady in the second of last years excellent articles lamented the neglect of the client in our efforts to concentrate on quality and quantity in our report presentation. It seems that we still have a lot to learn about our clients information needs, *for example* to some clientele analysis of the market behaviour will be of far greater benefit in a report than the Current Market Value and the 26 other items specified in, say, Practice Valuation Standard No 3.

This is not meant to imply that quality standards nor well tested structures should be neglected. They are still basic to every exercise. As a mature profession we must however accept that there is another level above that of the basics and that involves our relationship with the client. "Real contact with the client" doesn't mean getting into bed with the client. It means getting close enough, in a business sense, to be able to fully understand the clients' needs. It is an appreciation of why the client commissioned the particular valuation report in the first place. This might only involve a phone call, but it may require the valuation adviser/consultant to have a much wider knowledge of the clients' financial and management parameters if economically sound and beneficial advice is to be given. It results in "adding value". Some of our members have been doing it for years, as have the forward thinking members of other professions.

As a professional group we have to be prepared to brush up our, client relationships. In doing that we need have no fear of what our peers might think of us so long as we don't lose sight of the cornerstones of our profession Integrity and Fidelity. Our Marketing Committee's Research Report confirmed some really positive images of valuers. Many other professions today would give their eye teeth to be credited with even one or two of these virtues and not have to pay big money for the privilege. Words proffered such as: trustworthy, honest, reliable, unbiased, independent impartial and informed suggest that the standards appurtenant to our

Continues over page

Editorial Continued

Founders ideals of Integrity and Fidelity, are still important to the business community of today. Through our individual actions our profession as a whole has not let these important clientele down.

A fervent supporter of "caveat emptor" Dr Fischer Black (sometimes known as the derivatives guru) said "a salesman gives customers a little information, but his key function is persuasion often the aggressive salesman talks somebody into something that if he had more time to think about he wouldn't buy that is the

way it is." How many "consultants" in the property related fields behave like that? How many sale advertisements describe anything but warm fuzzy features of any property. We all know that there is a downside on even the best real estate.

Who is out there, but the valuer, to provide reliable unbiased information on real property? What are we doing as a body to satisfy the public that, by taking a little more time and seeking meaningful advice, buyers can often save themselves thousands of dollars on an average transaction? Adrian Brady suggests a mindset

may have occurred within the profession that was slow to recognise the macro environment that has developed and the opportunities it is able to afford. If this is the case then one would hope that awakened members will not be slow to press for a co-ordinated strategy which builds on the Valuation Standards now in place, incorporates the positive features of the Market Review and includes in our education programme the wider skills now required, such as marketing, business information systems and developing sound client relationships.

From The President's Pen

This is my last contribution to the "President's Pen" column as I leave office in April after two years at the helm. It has been a challenging and difficult time, dominated by the merger discussions, as well as the evolving needs of the profession in education, services delivery, and standards development. More recently, the marketing and public perception of valuers has also come under review.

All living organisms - including professional bodies - must continually adapt and change. It is, after all, a sign of life. However, a surprising proportion of the valuation profession appear to be philosophically opposed to changes that better reflect the business environment of the 1990s. It is no secret that I remain an enthusiastic proponent of a wider based property profession, having put some years and a high level of commitment into discussions and negotiations with both rural (SFM) and urban (PMI) management bodies. Sadly, NZIV members in 1994 twice voted against amalgamating our interests, the poor referendum responses and degree of negativity generated amongst some members both being major personal disappointments. I fear that we have let slip an excellent opportunity to build a strong and united land professionals grouping, a move that amongst many other advantages would have recognised that our tertiary institutions are now educating property graduates, with later specialisation being dependent upon the specific career chosen. In the absence of far reaching change, the new Institute leadership will need to develop a future path that properly fulfils the needs of all the membership, not just those practising valuation on a

day to day basis. For my part, I have no regrets about the effort and time devoted to merger initiatives over the past few years, and I leave office with the highest regard and respect for our kindred organisations. Continuing goodwill, liaison and cooperation at branch level may bring about the inevitable in due course, as entrenched attitudes soften and more recent university graduates exert their views and influence. However, the extended debate on future directions has been helpful to the Council in bringing about an acceptance of the need for some changes to the way the Institute operates, although the pace of change will now be dictated to some extent by the restrictions of an outdated Valuers Act.

As to the other matters that have loomed large in the past two years, the move towards mandatory CPD is proceeding; practice valuation standards continue to evolve; and changes to the way we deliver electronic sales data are being considered. The contribution of staff and our elected representatives in these areas is immense and ongoing but I must pay particular tribute to Graeme Horsley and Ted Fitzgerald. Graeme stepped down late last year from his involvement with TIAVSC, having chaired that group through the enormously difficult task of achieving internationally acceptable definitions of value that are essential to the worldwide credibility of the valuation and appraisal professions. Ted has now retired from the Council after a tremendous contribution, particularly in the development of electronic data for members. Both have been recipients of the Harcourts Award for their efforts.

J P Larmer

On the issue of marketing, the MRL research will be used to develop marketing and public perception strategies, bearing in mind that we are now looking to a future where there will be a degree of competitiveness between property professional bodies, while financial planners, accountants, bankers, and economists also interact and compete within our field of expertise.

Finally, while the commitment has been considerable, I have appreciated the opportunity to represent the Institute in various forums both in New Zealand and overseas; to meet a large number of members at branch meetings and seminars; and to have an input into matters that I believe have been of vital concern to the present health and future direction of our profession. The Chief Executive Officer, John Gibson, and his staff have provided dedicated support and backup that I gratefully acknowledge. I must also thank Councilors during my term who have considered, debated and, from time to time disagreed, but always in an excellent spirit and putting their very best efforts into governance of the Institute.

Tena koutou, Tena koutou,
Tena koutou katoa.

The Editor's Mailbox

The Editor

As a non-practising valuer I have been particularly interested in some recent articles appearing in your Journal - not only because they provide insight into current issues facing the profession, but also because in themselves the contributions are thought provoking and profoundly relevant.

The articles I refer to are: "Change The Key word for Valuers" by T P Boyd (September 1994 issue); "Marketing - Valuers' Myopia" by A J Brady; and "Valuations for Mortgage Security and Accounting Information Purposes" by R T M Whipple (both June 1994 issues).

In essence Professor Boyd questions our traditional concept of market value and, more particularly, explains that the valuers role is changing to that of a property consultant who can advise on market analysis, action planning, and project management.... in addition to, or instead of, providing single figure valuations.

Along similar lines, and to cut a long story very short, Dr. Whipple very convincingly argues that "there is no one value for all purposes." He endeavours to resolve the many dilemmas that this presents for thinking valuers and makes it obvious that if one gives a single value its context and limitations must be clearly understood.

Adrian Brady's paper is concerned with the fact that valuers are preoccupied with their 'product' rather than their market and tend to focus on improving that existing product instead of expand-

ing or changing it to meet the market. In many respects these articles have more substance and significance than the research report "How Valuers are Perceived" recently prepared for the Institute. But the report does confirm some of the same concerns, especially the narrow focus and perception of valuers and valuations.

All this material points to a pressing need for the profession, and our Institute, to re-examine its identity and reappraise its services. Perhaps the second merger proposal was an ill-conceived attempt to do exactly this? If so, then its rejection is all the more reason to maintain the momentum for change but not just for change's sake.

For example, do we need to slightly expand or alter the name of the Institute? We can do this without a merger if we feel that the services and skills on offer have broadened to such an extent as to make our present description too narrow. Of course, any alteration to our name and image must be preceded by an actual expansion of our function and available expertise. I am too remote from valuation practice to know if this has yet occurred, but feel certain that it is essential if the profession is to flourish.

Bearing in mind that real property remains the single largest investment of most individuals, and is the principal fixed asset of many companies, local authorities and even central government, it seems obvious that there must be enormous demand for informed understand-

ing of the property market, cycles and trends. Is there any reason why this understanding cannot be implicit and explicit in individual valuation reports, as well as in general or periodic commentaries that valuers might supply to clients?

Speaking from my own point of view as a sometime valuer, investment analyst, and property owner, this has always seemed to be the essential but missing ingredient of many valuations. Why should it be left to clients to fathom the context of valuations presented with seemingly great precision as single, all purpose figures? As well as properly analysing and explaining the market, why should not valuers also be in a position to normalise the market in the way that share market analysts endeavour to do by examining yields, risk, global trends etc?

I even wonder if the question of job satisfaction is at issue here too. Do valuers enjoy their work? Could it be improved by expanding the focus to include 'macro' as well as micro analysis? I would be very interested to learn the views of other members on these matters. Thank you, and your contributors, for providing such informative and topical material in the Journal.

J B C Lenart ANZIV
Nelson

(Abridged - Ed)

I

Tribute To The Retiring Editor

Members will be aware from the editorial comment in the December 1994 Valuer's Journal that the Editor for the past six years, Trevor Croat has retired.

Trevor took over as editor of the Journal in late 1955 and I wish to acknowledge his tremendous contribution over the past six years. The position is a demanding one, the New Zealand Valuer's Journal being the profession's first published journal.

Trevor has brought a high degree of dedication and professional input to the position. The changes undergone have been in no small part his input as Editor backed by the Editorial Board, which have resulted in an up-dated cover design plus a layout and format that is right up to the best modern standard.

Trevor joins a distinguished troop of past Editors and on behalf of the Council

and members I wish him well in his future endeavours and thank him for his efforts on our behalf.

The new Editor is Bill Harrington. On behalf of the Council I welcome Bill to the position of Editor and look forward to its presence at the next Council meeting.

John Lanner
President

Personality Profiles

John Larmer Taranaki

John Larmer, NZ Institute of Valuers councillor for Taranaki is about to complete his two year term as President of the Institute.

John holds both the Diploma in Agriculture and Diploma of Valuation and Farm Management. He was made a Fellow of this Institute in 1984, he is a Fellow of the Arbitrators Institute and is a Councillor of the NZ Society of Farm Management.

John comes from a farming background. He grew up on a mixed farming property in the Wairarapa and then was selected as a Rural Field Cadet which involved a further five years of intensive practical farming training throughout New Zealand. He managed a dairy farm for a while before taking up a Farm Appraiser position with the State Advances Corporation at Whangarei. He was later transferred and promoted to New Plymouth as Senior Farm Appraiser.

In 1973 John resigned from the State Advances Corp and having seen a need for wide ranging property advice in Taranaki he established his own practice in New Plymouth which eventually expanded into a partnership with Roger Malthus, Phil Hinton and associates. Larmer's, as the partnership is now called is widely known and respected throughout New Zealand.

John is an acknowledged expert on the effect of pipeline easements and oil well sites on farmland as well as a specialist in Maori land issues particularly leases under the Maori Reserved Land Act. He acts as adviser and valuer on many land issues and has ongoing tribunal and litigation commitments.

Together with his wife, Stephanie, he owned a kiwifruit farm in Taranaki for some years before getting almost wiped out by cyclone Bola. The risks of farming are part and parcel of the way of life and as John says " The farming experience was all positive, especially for the bringing up of their three children". Two sons now attend Massey University and their daughter is practising law.

John acknowledges the tremendous support of his wife and his family. He is looking forward to spending more time with Stephanie after he steps down as President in April. He is also planning to play some social tennis and to perhaps get involved in a small forestry venture.

Chris Orchard Nelson/Marlborough

Chris Orchard, the New Zealand Institute of Valuers Councillor for Nelson/Marlborough since 1994, sees the Institute as an important vehicle for setting standards and providing authoritative information. "Without these, the respect presently conferred on most members of the profession could be eroded' he said.

He would not be comfortable with deregulation of the NZIV in the present business environment. However he sees a real opportunity available for the valuation profession to become a far more prominent and necessary component of the property industry in the future. Chris maintains that "Effective marketing will be critical to us all".

Chris was born in Blenheim. He commenced his valuation career as an Urban Cadet with the Valuation Dept in Wellington in 1977. Registered in 1982 he then completed his rural examinations after gaining practical experience in the Wairarapa. He was appointed District Valuer (Wellington) in 1985 and moved on to become Senior District Valuer before leaving the Department in 1987 to return to Blenheim and join in partnership with Ian Lyall of Hadley & Lyall.

Chris says that work in Marlborough is diverse, ranging from commercial, industrial, and residential valuations through investment advising to small holdings and coastal holiday homes in places like the Marlborough Sounds. This makes specialisation difficult but he admits "to rather enjoying the diversity of work that the region offers". Chris is married to Karola. They met whilst Chris was on a European Tour in 1990/91. Karola was the tour director. They now have a son, Campbell. Karola is gradually becoming accustomed to provincial New Zealand: She has been working as a marketing consultant with Challenge Realty.

Chris says that he feels privileged to have had the opportunity to train and practice as a valuer.

Charles Hazlitt Upham

1908 1994

Dip VFM VC & Bar

Charles Upham was a foundation member of the New Zealand Institute of Valuers. He was certainly one of the most distinguished members - and probably one of the proudest.

Any valuer meeting this legendary figure could not help but be impressed with his modesty and his willingness to share that he had once been a valuer himself. To meet with Charles Upham was always something special. He spoke fondly of his years as a valuer and of his days as a student at Lincoln College. Quietly he would entertain with his reminiscences of valuers past, farms large and small, dogs, horses, sheep and about anything and everything that had to do with the land. He was a great raconteur, the more so because of his unashamed use of the earthy adjectives. As his biographer' said of him "the choicest oaths seemed to drop ... as an inoffensive and natural accompaniment to the discussion.

Charles Upham joined the Valuation Department Timaru in 1937. He had graduated with a Diploma of Agriculture from Lincoln College in 1930 and spent the next six years as a musterer in the South Island high country. This practical experience, as most VFM graduates discovered, was invaluable. His military colleagues maintained that his mustering and valuing background allowed him to quickly recognise the lie of unfamiliar land during his heroic attacks on enemy forces at Greece, Crete and Egypt thereby saving lives or gaining advantage for his New Zealand Division.

To his fellow valuers Charlie Upham's physical toughness was well known. Cliff Muir, who was later Senior Field Officer with Lands & Survey Christchurch worked with Charlie at Timaru. Cliff would tell of the times when the valuing team had spent a hard day in the South Canterbury hills. The valuers would return late to the office thinking only of a hot meal, a bath and a warm bed. No such luxuries for Charlie. He would stretch out on the largest table in the Timaru Valuation Office and go straight to sleep, ready for another early start next day. Other times, on backcountry stations, Charlie would be first to volunteer to sleep on the floor, if beds were in short supply.

A few years later, recovering from severe wounds in an overcrowded prisoner of

war hospital in Italy, Charlie would again put aside his own personal discomfort by exerting himself to help his other room-mates lying silent and depressed in their convalescence and confinement. Fellow prisoners said "He would talk quietly about the ways and the winds of Canterbury, of the snows and the swamps in the uplands, of the sheep and the horses and the rivers running blue with the ice from the far mountain tops. And the others listening in the darkness, transported to those happy lands of home and they felt the comfort of nature and friendship ... and some slept then." On Crete, where he won his first Victoria Cross and was badly wounded, he painfully made his way across broken ridges to a few mules that had been left closely tethered by the local farmers. The mules had no food, they would soon die. Because he had always loved animals and could not bear to see them suffer, Upham untethered them and set them free to forage in the grass.

Sir James Stewart told of similar compassion and courage when he paid tribute at the state funeral service in Christchurch. In 1939 Charlie was granted leave from the Valuation Department to return to Lincoln to take the Diploma of Valuation and Farm Management course. He had no trouble with the exams and it was only his entering military camp before the end of the year that probably cost him the chance of becoming gold medallist for 1939. There have been many stories told by fellow students of Charlie at Lincoln both then and during the 1930 Dip Ag course. His complaints about the quality of the College coal and his motor cycle encounter with an elderly man near Prebbleton are now legendary.

One can only speculate how far Charles Upham might have progressed in the valuing profession had World War II not intervened. He was a South Canterbury delegate to the Canterbury Provincial Conference of Valuers when the NZIV was formed in 1939. His Supervising Valuer at Timaru reported at the time "He is very conscientious, very obliging, and anxious to get on. I find that he is inclined to be easy in his values, but every month seems to be increasing his efficiency." The Valuer General when visiting Timaru once made the mistake of asking Charlie his opinions. As always, he gave them freely,

embellished with some of his renowned high country phrases. The Valuer General replied (apparently somewhat sadly) "Upham- you'll never make a civil servant." and Charlie, blunt and totally honest man he was, couldn't understand why. His war colleagues report a single mindedness of purpose so far as his hatred of the enemy was concerned. To Upham, the truth was clear and simple the Nazis were evil. Many felt that he was quite prepared to beat the German Forces on his own, if he had to. He took risks, many dangerous risks, but always calculated risks. He always did his homework. You don't just open the door of a staff car full of German soldiers, throw in a grenade and then close the door again, without first calculating the risk. Nor do you jump from a speeding train in the middle of Germany, even to escape imprisonment in the infamous Colditz Castle, without calculating the risk. Upham backed his own judgement and survived, not just once but many times.

A fellow Officer said of Upham " he had a determination to grasp the whole of a subject, to thrash out any problem to its conclusion, to match his own reasoning against the reasoning of others, and to adhere like a limpet to the final decision he came to."

These are all attributes of a successful valuer.

The feelings of a generation might well have been expressed by a correspondent writing to "The Press" after Upham died. on November 22nd 1994. . . "We would do well to remember that compassion and duty, loyalty and service were the values for which he gave his all. No call of cash register or self preservation drove him on, only a deeply felt and understood sense of what was right." Or from "The Dominion" editorial which concluded its tribute to Charles Upham with the words . . . "Now, in an age when the word "hero" is bandied about for those on the sports field or thought of as an outdated ideal as self comes before country, Charles Upham may be described as the last of the real heroes, even though it is a description to which the soldier would never have subscribed".

He was a true hero, a fine man and a worthy New Zealander.

I Kenneth Sandford, "The Mark of the Lion" 1962

The Importance Of **Market Analysis**

In Property Valuations

By Dr. T.P. Boyd

"Until recently, the appraisal fraternity has failed to recognise that appraisal is a behavioural science. There has been too great a preoccupation with the property object and with methodology and not enough attention to people and how they make their real estate decisions".'

These comments were made by Richard Ratcliff, a leading valuer and educator in the United States in the 1960s and 1970s. He was a founder of the contemporary school of valuation thinking which strongly argued that valuers should understand the function they performed and avoid "the institutionally enforced rigidities" traditionally affecting the profession. He stressed that the task of the valuer was the prediction of probable market price behaviour and that valuers should use statistical inference or market simulation to assess market price. While acknowledging that valuers today are attempting to predict market behaviour, the criticism that too much emphasis is placed on methodology and inadequate attention given to market behaviour is still valid today. The simple statement that "valuation is market analysis" needs reconsideration and emphasis placed on the interpretation of market data used in valuation methodology. Much has been written internationally about the accuracy with which market value can be determined and there is increasing acceptance that valuer clients are better informed by being advised of the level of accuracy achievable in a valuation exercise. The accuracy of

the valuation figure is directly related to the quality of the market data, because the valuation process is based on inference or simulation of the market. Consequently the interpretation of the market data is a major determining factor in the correctness of an assessment of value. Hence it is crucial that market analysis is as accurate as possible and valuers must have comprehensive and up-to-date market data as the initial step in the appraisal process.

The valuation texts place emphasis on the major valuation approaches but there is inadequate consideration of the input into these models which are crucial components of the valuation exercise. The selection and estimation of the correct variables as well as choosing the correct model are essential valuation skills. The valuer must be a property market analyst and this paper will draw attention to the available market data and propose ways of analysing the data. Valuation reports in New Zealand contain limited market data and seldom contain detailed market analysis but fortuitously there is a growing awareness of the importance of market information and analysis.

Dr Terry Boyd is Professor of Property Studies at Lincoln University, Canterbury, New Zealand.

He has held lecturing positions in South Africa and Australia and has practised as a valuer, specialising in portfolio valuations for property companies and property unit trusts.

This paper was presented at the NZIV Continuing Education Seminar held at Lincoln University in August 1994.

Market Data

The valuer needs a comprehensive understanding of the local economy and its impact on the property market. The local economy is influenced by macroeconomic factors and hence the valuer should have a sound appreciation of the key national economic indicators. A study of the national balance of payments and the major components of the capital, labour and natural resource markets are essential. In New Zealand, as in most countries, there are four major sources of property market data which are readily available to valuers. These sources, which are explained over page, are:

- primary statistical data
- analysts' reports
- transaction data
- market involvement

PRIMARY STATISTICAL DATA

It is possible to obtain statistical data on population domestic production and capital markets in all developed countries but the level of data applicable to property markets varies greatly between countries. In New Zealand, Statistics New Zealand regularly produces figures on the National Accounts and the capital, labour and natural resource markets. In addition to the published indicators of foreign investment, fiscal balances, key interest rates, inflation, exchange rates and employment, there are some property related statistics included in the data. The most useful property figures include building (housing and other) permits and authorisations, housing and other building costs, house price indices and surveys of income and housing costs and amenities.

In addition to the Statistics New Zealand data there are regular reports on financial rates and indices from the Reserve Bank and many other financial institutions. Information on interest rates and the historic trends of the financial markets is readily available and many financial analysts make predictions on the trending of financial rates. The information on the financial markets has particular relevance to investment evaluations and is more readily available than data on the property markets.

The NZIV publishes STATSCOM3 which is a quarterly publication summarising the property data available from Statistics New Zealand and other statistical publications as well as building costs assessed from actual developments; it is an essential tool for practising valuers.

ANALYSTS' REPORTS

There is limited secondary data available on property in New Zealand which is produced by property market analysts, such as the major real estate agency companies and researchers. Supply and demand indicators and trends of expected returns, rents, and capital values are produced at regular intervals for the major urban centres in New Zealand, often included in Australian or Asian data. These studies form a valuable source for valuers but their limitations in terms of size of sample and, at times, lack of rigorous statistical testing should be appreciated by the users of this data.

The real estate companies are not the only researchers of the property market and various economists, consultants and financial institutions also undertake real estate studies. In New Zealand and Australia, Building Owners and Managers Association (BOMA) is an industry group which has collated data on property portfolios in the major cities for the past ten years and produces the BOMA property index which is an indicator of the returns on total capital from property within various use and location categories. In New Zealand the BOMA property index

Figure 1
CBD Property v. Other Asset Classes: Dec. 84 Dec. 92

Sources: Y.1 Ordinaries: Ausralian St. k gecu mul %'s, ries
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will be published shortly. Figure 1 shows the historic trends of property and non-property asset types in Australia. Recently BOMA commenced specifying the risk component of property investments and related property risk to the risk of other asset types and their risk-return diagram is included as Figure 2.4

Such an analysis is commendable as risk evaluation is an integral part of the valuation process. However the risk comparison with other assets is complicated by the fact that property valuations are used to measure property risk while actual price is used to measure the risk of other assets and valuation smoothing causes distortions in the comparison.

Valuers have a responsibility to study all market data including analysts' reports but care should be

exercised to ensure that the bases for the studies are logical and credence is given to well explained and documented reports. Where possible, valuers should develop their own local market commentaries and analysis and produce indices of market change; these studies should form an integral part of their valuation reports.

Figure 2
Annualised Returns and Volatility: Dec. 1984 Dec. 1992



TRANSACTION DATA

Valuers traditionally rely heavily on sales information as the basic market data. New Zealand is fortunate in having nationally produced records of every property transaction and these records are readily available to all valuers. Unquestionably it is useful to study transactions as they are a record of the past market performance, but, it is essential that correct inference is drawn from sales and leasing information. Transaction data require adjustment to make them as comparable as possible with a property being valued.

Firstly it should be noted that sales data relate to past sales and property markets are notorious for changing very rapidly at certain times within the property cycle. Hence adjustments may be necessary for time differences as well as other differences between the subject property and a sale property. Further, many of the factors influencing the sale price are unknown and additional information on sale conditions should be obtained whenever possible. Adjusting transaction data means simulating the motivation and evaluation techniques of the parties involved in the transaction. Examples of sales adjustments will be demonstrated later in this paper under the heading of market analysis.

Market Analysis

Having outlined the basic data and knowledge available in the New Zealand market place, it is pertinent to describe aspects of the analysis that will assist in correctly interpreting the market forces.

The analysis of comparable sales and other market data is dealt with in most appraisal texts.¹ However there is a need to continually explore innovative and practical

The sale price will be strongly influenced by the attitude and vision of the buyer and seller. It is probable that the benefits which the purchaser perceives from a property will have the greatest bearing on the sale price and for this reason it is imperative to study the sale price from the viewpoint of the purchaser. Purchasers of investment property will, generally, base their evaluation on the potential income flow from the property. The astute purchaser uses the historic income as a guide but is unlikely to simply assume that the historic income will continue unchanged; greater emphasis will be placed on the most

techniques aimed at analysing the markets more accurately. While regular articles on market analysis appear in the major appraisal journals, they are not as frequent as the importance of the subject warrants. Recently *The Appraisal Journal* has published papers on capitalisation rate adjustments and innovative and quantitative methods of sales analysis. R. 9, 10

The key role of market analysis in the valuation process infers that valuers should

THE VISION OF THE PURCHASER probable income stream in the immediate future. This requires the examination of any existing leases and probable changes in rental income in the future. Certain investors, in particular the institutional and major property investors, will not limit their examination of potential income stream to the forthcoming year only but will examine a future time horizon of 5 or 10 years. It follows that an analysis of sales of investment property requires the examination of the potential future income stream from the sale properties, as anticipated by the purchasers. The relationship of sale price to historic income is an inadequate and, at times,

MARKET INVOLVEMENT

A comprehensive knowledge of the market is best obtained by an involvement in the market. This does not imply that the valuer should be an agent or market dealer as this is not desirable but an intimate knowledge and understanding of market forces requires a degree of involvement in the market such as regular contact with buyers, sellers and real estate practitioners. The changing trends of demand and supply is best perceived by direct contact with the market players. Many experienced real estate agents and other practitioners are able to accurately, estimate the market value of a property because of their intimate knowledge of market forces; this is particularly true for residential real estate where the non-financial aspects play a major role in the desirability of the property.

This fourth source of market data may be considered by certain professionals as not essential and not an accepted requirement of valuation practice. I would argue that it is an essential activity of a valuer and highlights the need for relevant experience. It is extremely dangerous for a valuer to value outside of his/her field of expertise as this involves the simulation of a market when the market processes are unknown and the likely end result is a negligence claim against the valuer. Surveys of investors are a part of the market involvement process and several surveys of investors and market sentiment have been undertaken recently in Australia.⁵

be continually examining the application of market data to a subject property. The interpretation of market transactions is a crucial field of investigation and three aspects of the process are highlighted here and illustrated with the aid of a case study; they are:

- the vision of the purchaser
- market based capitalisation rates
- discount rate determination from risk/return profiles.

misleading indicator of current market conditions. Unfortunately too often sales records in New Zealand are described in terms of the initial yield (overall capitalisation) rate based on historic net income. It is not an easy exercise to estimate the future income stream anticipated by the purchaser but within the marketing period it is usually possible to obtain the information available to purchasers and this includes details of the leases and other contracts; this information should be collected prior to sale and the sale price analysed after the sale based on the expected evaluation approach of the purchaser.

An analysis of comparable sales in an Australian Central Business District (CBD) area was undertaken by the author as part of a valuation exercise of a major CBD office building. As the valuation approach for this type of property (value in excess of A\$20

Million) usually includes a discounted cash flow exercise, the sales were analysed as cash flow exercises with income projections over a 10 year period. Figure 3 is the cash flow analysis of comparable property "D" which sold in April 1992 for A\$40 Million. The exercise indicates that the purchaser was probably expecting an internal rate

of return of approximately 14% p.a. over a 10 year holding period and the yield rate on initial income was approximately 7.4%. Further performance parameters calculated were the standard deviation and the coefficient of variation of the net income flow over the period, the purpose of these figures will be referred to later.

Figure 3
Comparable Sale Analysis - Expected Return

Sale "D" Cash Flow Analysis

PROPERTY DESCRIPTION: Global Assumptions

1. Time Horizon is 10 years starting from date of sale
2. Total Purchase Transfer costs are: 4.50%
3. Total Sales costs are: 2.50%
4. Rent and expense escalation rates are shown in Cash Flow table.
5. Ground floor leased after 1 yr, balance of office space leased after 1 & 2 yrs.
6. Terminal value based on net income in year 11 and terminal cap. rate.
7. Terminal Cap. rate chosen 8.50%

PERIODS	0	1	2	3	4	5	6	7	8	9
	4/92-3/93	4/93-3/94	4/94-3/95	4/95-3/96	4/96-3/97	4/97-3/98	4/98-3/99	4/99-3/00	4/00-3/01	4/01-3/02
PURCHASE										
Purchase Price	-40,000,000									
Transfer Costs	-1,800,000									
TotalPurchase	-41,800,000	0								
INCOME										
Income Esc. Rate		2.00%	2.00%	8.00%	7.00%	6.00%	6.00%	6.00%	6.00%	6.00%
Gross Market Inc	3,977,111	4,056,653	4,137,786	4,468,809	4,781,626	5,068,523	5,372,635	5,694,993	6,036,692	6,398,894
Vacancy Factor	4.00%	3.00%	3.00%	3.00	3.00%	3.00%	3.00	3.00%	3.00%	3.00
Gross Actual Inc	3,818,027	3,934,954	4,013,653	4,334,745	4,638,177	4,916,468	5,211,456	5,524,143	5,855,592	6,206,927
EXPENSES										
Exp. Esc. Rate		2.00%	3.00%	5.00%	4.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Expenses	-716,000	-730,320	-752,230	-789,841	-821,435	-846,078	-871,460	-897,604	-924,532	-952,268
RecoverableExp	42,280	43,126	44,419	46,640	48,506	49,961	51,460	53,004	54,594	56,232
Leasing Costs	0	-17,550	0	0	0	0	0	0	0	0
Cap. Exp/incentive	-2,00,000	-75,000								
Nett Income	2,944,307	3,155,209	3,305,842	3,591,544	3,865,248	4,120,351	4,391,456	4,679,543	4,985,654	5,310,891
SALE										
Sale Price										66,546,181
Sale Expenses										-1,663,655
Net Sales Price										64,882,527
Cash Flow	-38,855,693	3,155,209	3,305,842	3,591,544	3,865,248	4,120,351	4,391,456	4,679,543	4,985,654	70,193,418
PERFORMANCE PARAMETERS										
Initial Overall Cap. Rate	7.36%									
Expected IRR	14.22%									
Mean Net Income	4,035,004									
Std. Dev on NOI	761,722									
Coef. of Var NOI	0.19									

There were four sales in the vicinity of the property being valued and each sale was analysed on a cash flow basis using marketing material (investment reports) and making assumptions backed up by market knowledge. A summary of the weighted characteristics and performance parameters of the four properties is shown as Figure 4. This type of sales analysis forms a sound basis for valuation because it attempts to simulate the market activity and the

performance parameters resulting from expected rates of return for the sub-the analysis can be used to determine ject property.

Figure 4
Grading and Parameters of Comparable Sales (-1=best)

	ComparableA	ComparableB	ComparableC	ComparableD
Location grade	1	1	3	2
Quality of tenants •	1	2	2	1
Building quality grade	2	3	4	1
Saleprice/NLA	\$2,610/m2	\$2,446/m2	\$1,412/m2	\$2,982/m2
Sale date	June90	Oct91	Feb92	April92
InitialYield	7.15%	5.03%	6.57%	7.36%
Expected IRR	13.75%	14.82%	16.47%	14.22%
Std. Dev on NOI	827,568	432,997	494,545	716,722
Coef. of Var NOI	0.18	0.25	0.29	0.19

MARKET BASED CAPITALISATION RATES

The yield (income capitalisation) rate is used in conjunction with the cash flow approach to determine investment value in Australia. In situations where the DCF approach is the primary method of valuation, it is used as a check method and serves a useful function. The factors influencing the yield rate are extremely complex and need to be assessed from the market.

There are several ways of adjusting sales capitalisation rates and the major valuation textbooks refer to various methods. A simple quantitative grid approach is shown in *Figure 5* which uses the four sales referred to above and incorporates subjective

adjustments for time, vacancy levels, location, building condition and accommodation, quality of tenant and ownership structure. Amendments to the computed overall capitalisation rates result in a substantial narrowing of the range of comparable yield rates.

Also included in *Figure 5* is a property which was for sale at the time of valuation.

The same weighting should not be applied to properties "for sale" as completed sale properties, but they are still a useful indicator of the current state of the market. Unsold properties should be clearly tagged in any schedule of sales to differentiate them from sold properties.

When undertaking the adjustments shown in *Figure 5* the valuer should be acutely aware of the inaccuracies resulting from subjective judgments and ensure that the adjustment factors are not selected to minimise the difference in capitalisation rates. The sales adjustment schedule demonstrated here indicates that the yield (overall capitalisation) rate for the subject property would be between 7.9% and 8.45% if total reliance was placed on this exercise. However the paucity of sales and the subjective nature of tile adjustments suggest that the valuer should not rely solely on such a schedule; rather it should serve as a guide to his/her overriding judgment.

Figure 5

Selection of Cap. Rate: Sales adjustment grid

Property Ref	Computed overall cap. rate (yield)	Sale date	Time adj sale cap rate (yield)	If vacancy factor ± 4%	Location	Building condition accomodation	Quality of tenants	Not total ownership	Comparable Overall
									Cap. Rate (yield)
A	7.3%	June 90	8.3%	Nil	Nil	-0.25%	Nil	Nil	8.05%
B	7.0%	Oct 91	7.0%	+2.0%	Nil	-0.5%	-0.5%	Nil	8.0%
C	8.7%	Feb 92	8.7%	+3.0%	-1.0%	-0.75%	-0.5%	Nil	8.0%
D	7.9%	April 92	7.9%	Nil	-0.5%	+0.5%	Nil	Nil	7.9%
Property for sale at 10%				Nil	-1.5%	-0.25%	Nil	Nil	(8.25%)"
									"Not Sold

DISCOUNT RATE DETERMINATION FROM RISK/RETURN PROFILES

When determining the value of a property using a cash flow model the resultant value is expressed as the net present value, computed by discounting the expected future cash flows to a present value at a specified discount rate. The discount rate is a sensitive multiplier in the exercise and the accuracy of the valuation figure will be highly influenced by the accuracy of the discount rate. This rate is equivalent to the expected or targeted rate of return required by the purchaser and while many models have been proposed for its specification, it is essentially a product of the expectations and requirements of buyers and sellers and is too complex to formulate from any known financial indices.

The discount rate incorporates a risk factor specific to each investment and when determining this rate from market evidence it is necessary to assess the risk component of each comparable sale. A critical risk measure of an investment property is the net operating income trend over time, with linear growth trends demonstrating stability of income and hence low risk, and major variations of net income

being indicative of periods of vacancy or reduced income and therefore high risk.

The variation of the net operating income (NOI) stream over the period of a study is a good indicator of the level of risk of a property investment. The risk factor derived from the NOI may be expressed as the coefficient of variation of the NOI and the formula is:

$$\text{coef. of variation of NOI} = \frac{\text{standard deviation of NOI}}{\text{mean of NOI}} \quad (\text{CV of NOI})$$

Hence the cash flow analysis of comparable sales can readily produce an expected measure of risk and return for each property; being the coefficient of variation of the net operating income (CV of NOI) and the internal rate of return (IRR) respectively. These measures are assessable from the cash flow exercise and are best illustrated by use of a risk/return diagram.

Capital asset pricing models commonly utilise risk/return diagrams and computed capital and security market lines."

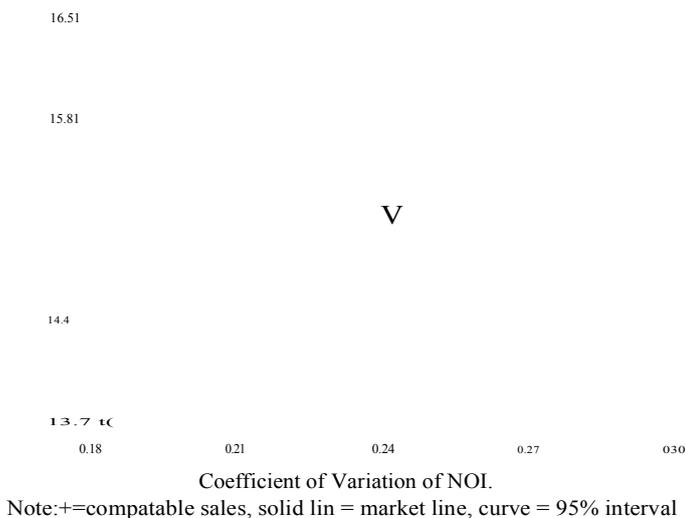
Discount rate determination from risk/return profiles continued

Using this concept it is possible to determine a property market line as a best fit curve for the risk/return positions of the comparable sales within, the risk/return diagram. An example of this exercise is shown in *Figure 6*. In this circumstance only the four sales mentioned above are available and hence the mathematically computed best fit line was based on limited data. The regression line was calculated using Statistix and the adjusted R2 was 0.868, indicating a reasonable fit but the predictability is restricted by the limited degrees of freedom.¹² Because of the uncertainty in the sales data it may be preferable to select a band which encompasses the risk/return points. The selected property market line, or band, is an indicator of the risk/return requirements of the market players as portrayed in the sales analysis.

The advantage of the property market line is that it can form the basis for selecting the discount rate to be applied to the property being valued. From the cash flow exercise it is possible to calculate the CV of NOI of the subject property which was assessed in the case study at 0.22. The discount rate for the subject property, which must be selected to calculate the net present value, can be read off the property market line in *Figure 6*; the discount rate (expected IRR) for a CV of NOI of 0.22 is approximately 14.6%. The conclusion is that a potential purchaser would require an IRR of 14.6% for the risk inherent in the volatility of the anticipated net operating income of the subject property.

This determination of the discount rate from market evidence provides

Figure 6: Determination of Expected IRR



the valuer with a market based estimate of the discount rate, but the degree of accuracy achievable in the exercise does not permit direct conclusions to be drawn from the data and the use of a property market band and a resultant range of discount rates may be an appropriate solution. In the case study exercise the author selected a most probable discount rate of 14.5% which was subsequently adjusted for time difference to 14.0%.

It is probable that valuers will be requested in the future to determine not only the market value, from the analysis of market data, but also the *investment value*. The concept and definition of an investment value is being debated internationally and the consideration of a longer term perspective of the market and the long term trend line is within the scope of valuers. Market analysts are already determining investment value indica-

Figure 7
Sydney CBD Prime Commercial Property Market Price v. Investment Value Market Price v. Investment Value (1991/92 prices)

AAA

Source: BIS Shrapnel

tors in Australia and an example from BIS Shrapnel¹³ for commercial property in Sydney is shown in *Figure 7*. Valuers will need to consider how to use market analysis to determine the investment value of properties classified as investment assets. This topic will, without doubt, be debated in the future.

Conclusion

This article is a re-examination of the importance of market analysis as the keystone of the valuation process. The pre-eminence of market analysis is stressed regardless of the approach used in assessing market value. The major sources of market information in New Zealand are outlined and incorpo-

rate primary and secondary market data and an intimate knowledge of the market forces obtained by involvement in the market.

Three key concepts in the analysis of market data are: the vision of the purchaser, the use of market based capitalisation rates and the determination of discount rates from risk/return

profiles. These concepts are illustrated using a case study valuation. It is acknowledged that there are other important techniques and processes within property market analysis and it is proposed that market analysis issues should be debated with a similar intensity to the current debate on investment valuation methodology.

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The solid line in Figure 4 is the regression line and the dotted curves are the 95% confidence interval for the renne'. ,n line.

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Young Professional Valuer of the Year

1995

Members are reminded that The New Zealand Institute of Valuers seeks nominations of suitable candidates for the Young Professional Valuer of the Year by the 30th November each year. Members are encouraged to identify potential nominees and where appropriate to advise their employers of the award. Information kits are available from the General Secretary.

Eligibility Criteria:

Nominations are limited to Members or Affiliates aged 30 years or less who have achieved outstanding significance within any one or more of the following criteria:

- professional participation within the NZIV
 - original research
 - original authorship
- and
- outstanding technical and/or professional excellence
- or
- significant contribution to the community that brings credit to the Profession.

Initial selection will be at Branch level with final selection made by the National Award Panel. There will be one national award each year and this will only be conferred if the candidate is worthy of it.

Previous Awardees:

1993 (inaugural) Marcus Jackson B.Sc., B.P.A. - Otago

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A Rural Perspective

by R V Hargreaves
& I A McCarthy

SOOV

Professor Bob Hargreaves is head of the Department of Property Studies at Massey University. He is a council member of the NZIV, chairman of the Editorial Board and is a member of the Land Valuation Tribunal.

Further analysis of New Zealand rural real estate trends from the Massey University team.

The value of farm land can be defined as the present worth of the rights to the future income from the property. The future income from farm land comes first from the annual cash flows and second from changes in the value of the property over time. In New Zealand the annual cash flows to farm land move up and down in response to fluctuations in the export prices for the main farm commodities: wool, meat and milk products. Farming cash flows are also influenced by the fluctuating interest rate component in debt servicing costs.

Rates of change in farm land values vary over time. These changes may have a far greater impact on return on investment than return from use in production. Farm values have increased markedly in recent years. A dairy farm that would have sold for \$400,000 in early 1992 would probably have fetched \$600,000 by late 1992 and \$700,000 in 1994. Rapid increases in land values like this have been seen periodically over the last three decades and it is a challenge to those in the industry to develop an understanding of the nature of the rural real estate market.

Furthermore, the most successful property investors are likely to be those with the ability to buy during cyclical down-

turns in the market and to sell during boom times.

The traditional view is that real estate cycles lag the general business cycle. This view has been formulated by analysing urban property markets such as housing. However, the urban lag effect is unlikely to hold true for farm land in New Zealand, because commodity prices in the farming sector are largely driven by export prices on the world market.

Recent evidence, under a relatively free-market regime, suggests that the rural real estate market leads rather than lags the general New Zealand business cycle.

This is because the health of the New Zealand economy is firmly linked to the performance of the land-based primary industries. Thus, if farming is doing well farmers will first bid up to the price of farmland. Later they will spend more money in the provincial towns and cities, thereby stimulating the urban economics and urban real estate markets.

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This paper was presented at the Fourth Australasian Real Estate Educators' Conference at Auckland University held at Auckland University in January 1994.

The Market Players

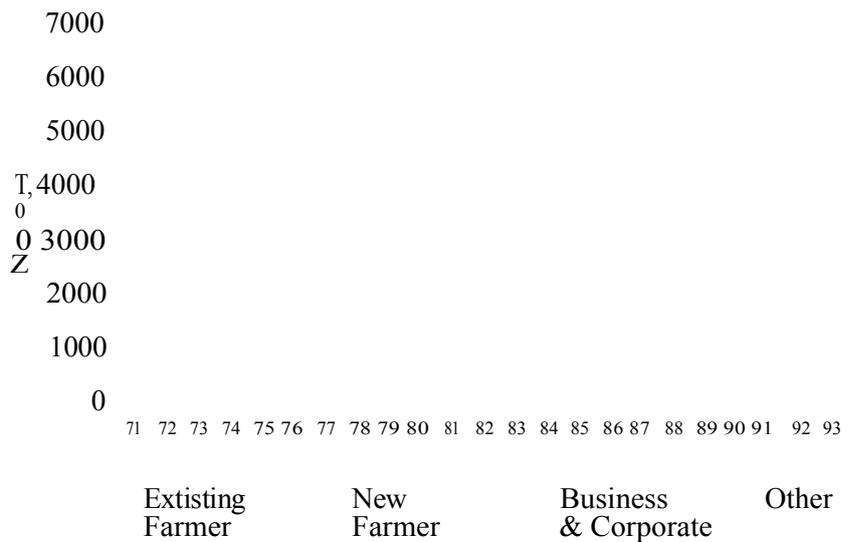
When considering real estate markets it is first necessary to find out who the players in the market are. Recent work of Janssen *et al* (1992) highlighted the importance of this in the residential market. Janssen found that in the housing market the people trading properties were likely to have different motivations and effects on the market than the new entrants.

Farm sales information in New Zealand is classified into buyer and seller types by Valuation New Zealand (1992). Existing farmers are those purchasing a replacement or additional holding. New farmers includes farm managers, sharemilkers and contractors who have not previously owned a farm but excludes business people. Business buyers generally do not personally farm the property. The other categories are central or local government, and buyers intending to use the land for non-farm purposes. The seller categories are split into farmers that are subdividing an existing holding and those that are not subdividing.

Figure 1 shows farm sales by type of purchaser over the period from 1971-1993. It is apparent that market is dominated by new entrants and existing farmers. In most years these two categories comprise over 80 per cent of the transactions. In the housing market owners generally have to sell their existing house so that they can trade up or down to another house. In the rural market some farmers may sell their complete holding in order to make a trade, but there is also a strong market for existing farmers to expand their holdings by purchasing neighbouring properties. The size needed for an economic farm unit continues to increase and thus the pressure on existing farmers to expand is likely to be on-going. Existing farmers sometimes also have the option of subdividing part of their home farm to release capital to purchase larger blocks of land in more remote localities.

The business and corporate type purchasers of farm land tend to receive considerable amounts of publicity in the media, but numerically this group is not very significant.

Figure 1
Farm Sales by Type of purchaser



Survey work carried out by Percy (1987) showed that new farmers were strongly motivated by a desire to own their own properties and were often willing to accept very low rates of return on their investments. The effective demand from this group of potential buyers will tend to be dictated by the policies of the rural lending institutions. These policies are governed by the supply of funds available for rural lending and the viability of the lending proposal. When farming profitability is good the supply of funds avail-

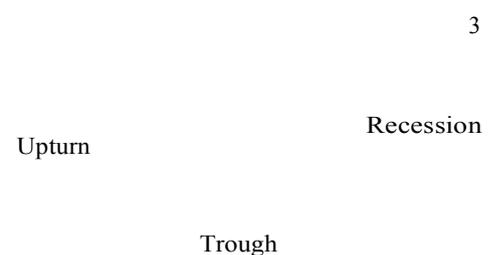
able for farm loans is likely to increase. Conversely, restrictive lending policies in times of a poor outlook for farming reduces the volume of farm sales. Existing farmers trading farms are simultaneously buyers and sellers in the market place. Every time they move results in at least two sales. This group is usually in a relatively strong financial position and not under any compulsion to move. This type of buyer is most active in the market when there is a positive outlook for farming.

The Six Stage Rural Market

Rural Market Clockface

Rural real estate markets in New Zealand are subject to cyclical fluctuations.

The stages of the rural market are shown on the clock face. The market currently appears to be at 10 or very close to 12 o'clock.



The Six Stage Rural Market

The landmark work of Ratcliff (1949) provided a model that identified a six stage housing market. This paper draws on the work of Ratcliff by proposing a theoretical six stage market for farm land in New Zealand. The paper then analyses historical farm sales information with the objective of seeing how well the theory fits in with the actual performance of the market. The paper then discusses the use of farm product prices and real estate sales volume as leading indicators to predict changes in farm land values.

Stage 1 - Trough

At this stage farm real estate prices are in a trough. Buyers are in no hurry to purchase, and sellers have to be very realistic about their asking prices. The main purchasers are existing farmers who are in a strong financial position and looking to expand, and farmers with strong equity positions. The sellers will be dominated by farmers who are in a difficult financial position and need to sell. In general the quality of units on the market is likely to be below average, since the stronger farmers on the better units do not sell in troughs. Lending institutions will use moderately strict lending criteria.

The first indication of an upturn in the market will be an expectation of an improvement in farm profitability. This is most likely to be signalled by higher export prices being realised for wool, meat or milk products.

Stage 2 -Upturn

There will be an improvement in farm profitability resulting from improved product prices, reductions in interest rates and cost structure, taxation incentives, increased subsidies for farming, improvements in farming technology, trade negotiations, or a combination of two or more of the above factors.

The volume of farm sales will increase before the price of farm land rises. This is because the unsold stock of farms on the market have to be absorbed before land prices will rise. The vendors associated with the unsold stock will generally be conditioned to selling out under expectations formulated during Stage 1.

Lending criteria will be more relaxed than that prevailing in Stage 1, since increased profitability normally means the purchasers do not require the same amount of equity capital.

Stage 3 Boom

There is a major escalation in both farm turnover rates and the price of farm land. In some case prices may increase 3-4 percent per month. The time that farms are on the market is very short. Auctions are frequently used as a selling tool. The quality of farms on the market improves as vendors who do not have to sell are encouraged to cash in on the high prices. Above average operators use this opportunity to trade up to a better farm. High prices for farm products means that farmers are spending money on development and consumer goods. The flow-on effect from this spending first stimulates the rural towns and then the economies in the larger cities. Lending institutions have a surplus of funds for lending and relax their normal lending guidelines. Rural lenders compete for new business as farm lending is seen to be a low risk part of their portfolio.

City investors get caught up in the general euphoria and scramble to buy farms. A number of public farming companies and syndicates are formed to capture this city money.

Buyers are less selective about the type of properties they purchase, and a larger than normal number of poor properties change hands.

Large numbers of farms are purchased for conversion to a higher and better use.

Stage 4 Peak

Demand becomes saturated and the volume of farm sales starts to drop off. Investors perceive that the current prices of farm land only offer a modest return on capital and there are other more attractive investment opportunities.

Lending institutions start to tighten their lending criteria. To keep prices up vendors offer more attractive deals such as low interest vendor mortgages or deferred payment schemes. The time taken to sell farms lengthens, and the poorer farms are very difficult to sell at current prices.

The outlook for farm commodity prices is less certain than during Stage 3. Syndicates and public farming companies are still being promoted.

Stage 5 -Downturn

Farm profitability declines due to a downturn in farm product prices, or increasing farm costs. Because most vendors still have expectations formulated during the upturn phase the farm turnover rate sharply contracts. A few vendors are under financial pressure and have to reduce asking prices to meet the new market level. Other vendors take their farms off the market because they are not in any hurry to sell and will wait for the next upturn.

Stage 6 Recession

Farm profitability continues to decline. This may be due to farm product oversupply on the world market. Supply continues to exceed demand, and buyers are very selective. City investors are no longer interested in buying farms. The volume of sales drops off quite dramatically. Purchasers decide to wait until the market has bottomed out before re-entering the market.

The absolute depth of the recession will normally be determined by events outside New Zealand. Lending institutions will generally be reluctant to force the sales of farms with nonperforming mortgages as widespread mortgagee sales may further erode security margins. Furthermore, lenders do not wish to be associated with negative publicity that can occur with mortgagee sales of rural land.

The Pattern of Rural Cycles

Figure 2 shows the changes in the Valuation New Zealand farm price index over the period 1960-1992. These figures are expressed in nominal terms and do not show an obvious cyclical pattern. However, when the data is expressed in real terms, and the effects of inflation are removed, then an obvious cyclical pattern emerges.

Figure 3 represents the same data shown in real terms. It is noticeable that during the period 1960-1992 the peaks occurred regularly at approximately 8 year intervals. It is also apparent that the shape of the waves shows very strong upward movement leading to a steep peak and a somewhat slower decline leading to the trough. After achieving a major peak in 1982 the market was in steep decline for the next five years. Much of this decline can be attributed to a major restructuring of the New Zealand economy that commenced in 1984 and resulted in the floating of the New Zealand dollar, as well as the removal of virtually all government subsidies to farming.

Forecasting the future length of rural real estate cycles is a difficult task. The previous patterns of approximately eight year cycles since 1960 is of some guidance, but it is apparent that the current cycle will be at least ten years. It is also difficult to forecast the absolute level of the peaks and troughs, since future economic conditions may be significantly different to those in the past.

The Factors Influencing Rural Markets
The general theory of real estate cycles discussed on the previous page can be simplified into a model that considers the interaction of farm product prices, farm turnover rates and farm real estate prices over time. In theory in the short run, increased farm profitability is most likely to occur because product prices have increased. Increased product prices will lead to an increased volume of farm sales, and increased sales volume will signal that real estate prices are shortly to move up. Bidding up the price of real estate will decrease the annual cash returns and profitability for new entrants causing the volume of sales to drop off. A decrease in sales volume is a signal that the market is nearly peaking.

Figure 2
VNZ Farm Price Index

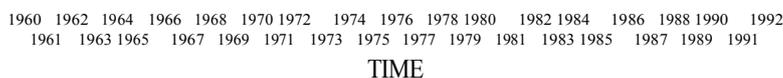
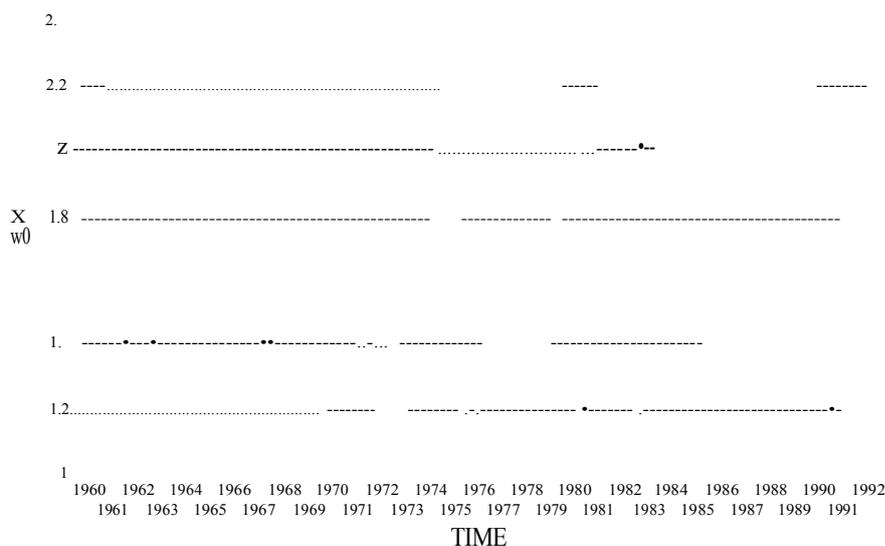


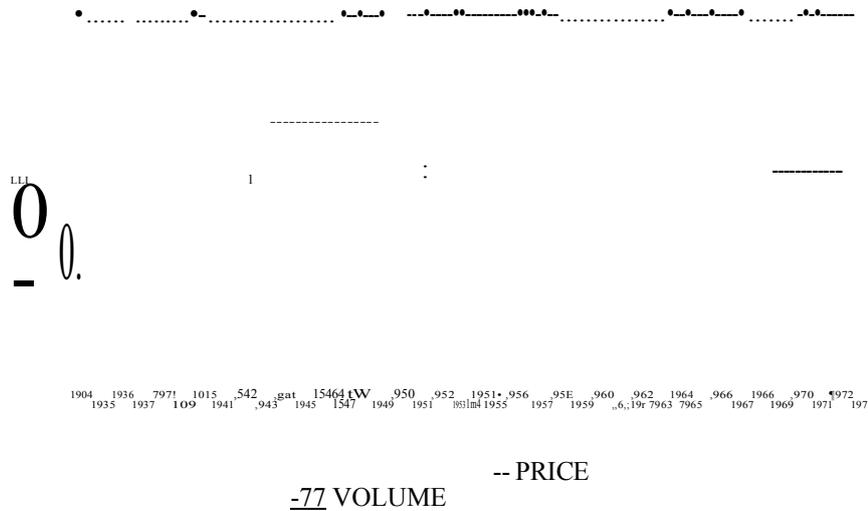
Figure 3
VNZ Farm Price Index (Real)



To test the turnover versus price relationship, the annual percentage changes in sales volume and average selling prices have been graphed over the 40 year period 1934-1973. This data was drawn from the New Zealand Official Yearbook (1992) series. These relationships are shown in Figure 4. Like most theoretical models the actual performance of the model appears to be quite variable. For example, during the late 1950's and during the 1960's changes in sales volume occurred

about one year before changes were recorded in the average selling price. Past government intervention in the market during the land sales era (1942-1950) meant that the price of land was controlled at 1942 values. In an effort to minimise the effect of the land sales legislation many potential vendors kept their properties off the market. This meant that the sales volume in the years just before, and just after, the legislation was artificially high.

Figure 4
Percentage Changes in Rural Prices and Sales Volume



Real Estate Sub-Markets

The generalised view of the cyclical fluctuations in rural real estate presented above does not take account of the fact that the rural market actually comprises of a series of sub-markets that are somewhat independent of each other. For example, the market for dairy farms has been recently showing strong upward pressure while the market for kiwi fruit orchards has strong downward pressure. While the price of milk products is unrelated to the price of kiwifruit, there is a substitution effect in real estate when kiwifruit blocks are converted back to dairy farms. Similarly, high milk prices have encouraged conversions of some arable and fattening land to dairying.

...the rural market actually comprises of a series of sub-markets that are somewhat independent of each other...

there are a number of other variables that also influence the equation. New Zealand has a three year election cycle, and the large percentage price changes in 1974 and 1981 are partially a result of government stimulation of the economy in election years. Government intervention in the market place through the now defunct Dairy Prices Fixing Authority also had the effect of limiting the amount milk solids payout could be moved either up or down from one year to the next. During this period percentage changes in the milk price were less than percentage changes in the price of land. Since 1984 we have had a more free market approach, and product prices have fluctuated more than

Markets can be further segmented by location, whether the unit is economic, the overall quality of the property, and size characteristics.

The Dairy Farm Sub-Market

Dairy farm data has also been used to explore the relationship between the prices that farmers receive for their milk and the price they pay for farms. Dairy farms have been chosen because typically farm income is very largely from the sale of just one item (milk). Most of the other major farming types have a wider produce mix, and this makes this analysis more complicated: the price of sheep meat may have been going up while beef is falling and wool is static.

Figure 5 shows percentage changes in dairy farm milk solids payout and percentage changes in the VNZ dairy farm index over time. It is apparent that changes in payout do lead to changes in price, but as expected

Figure 5
Percentage Changes in VNZ Dairy Index and Payout

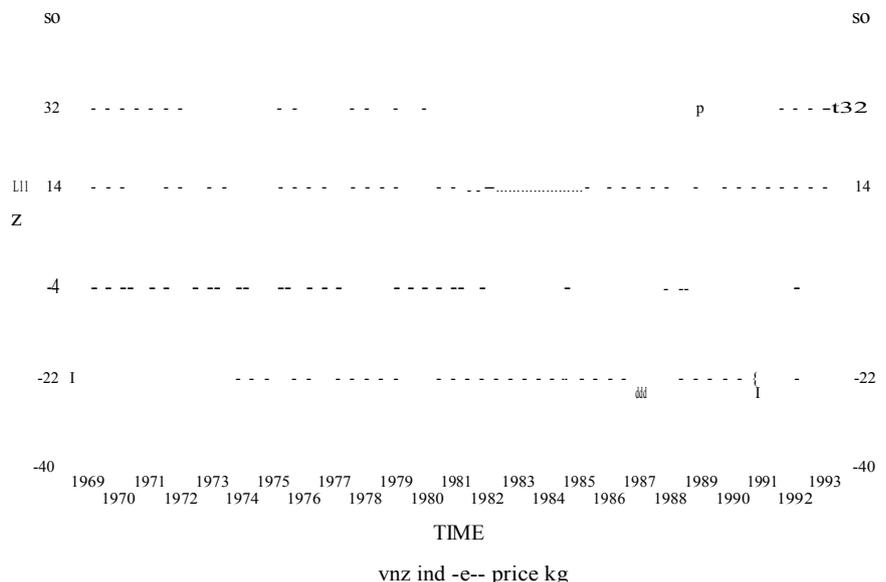
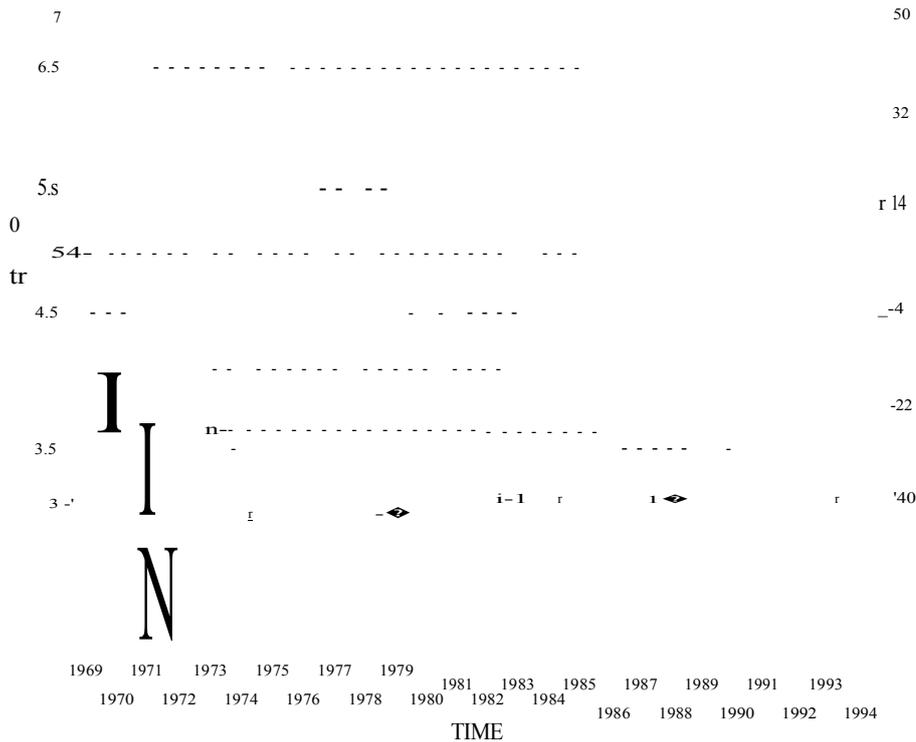


Figure 6

Ratio of Price Paid Per KG Divided by the Milkfat Price



the ratio of the price paid per kilogram divided by the price per kilogram. Over a 20 year period from 1969 this ratio has averaged approximately 5. To provide consistency the payout figure used is the payout from the Dairy Board to individual Dairy Companies. From a buyer's perspective the best time to purchase is when the multiplier is low. High multipliers indicate a longer payback period for the initial investment.

The turnover hypothesis outlined previously under *The Factors Influencing Rural Markets* was also applied to an examination of the relationship between dairy farm turnover rates and price changes to dairy farms. This analysis is shown in *Figure 7* and generally supports the view that dairy farm turnover rates peak about a year before land

Figure 7

Number of Dairy Farm Sales and Deflated VNZ Index



prices peak. Similarly, at the trough part of the cycle, upturns in the turnover rates occur *before* land prices have reached the bottom of the cycle. Dairy farm prices are expressed using a deflated Valuation New Zealand Dairy Farm index set at an arbitrary figure of 1000 in 1960. The gradual decline in the number of dairy farms sold over the period 1960-1992 is simply a reflection of the fact that the population of dairy farmers is gradually decreasing as the size of an economic unit keeps increasing.

The Sheep and Beef Sub-Market

Sheep and beef farming is the dominant form of land use throughout New Zealand. This type of activity is found over a wide range of soil types, topography and climatic conditions. Valuation New Zealand classify the easier country as fattening units and the more difficult country as grazing units. The New Zealand Meat and Wool Board Economic Service (1990) use a similar, but more detailed, classification system.

Figure 8 shows the percentage changes in wool prices and in real VNZ Grazing Farm indices over the 30 year period since 1960.

the price of dairy farm land. This is an expected result, since, when farmers formulate a view of future incomes, they should not rely just on the income from one or two years.

There is also the substitution effect, in that the land most suitable for dairy farming is also likely to be suitable for other intensive livestock enterprises. For example, deer farming, race horse studs, and maize growing all compete with dairying for good quality flat land in the North Island. In the 1970's maize growing was sometimes a more profitable use than dairying for land in the Waikato region.

Dairy farmers use the price paid per kilogram of milk solids as the benchmark indicator. This is the equivalent of a gross income multiplier. This multiplier is expressed in *Figure 6*, which shows

It is apparent that the linkage between wool prices and grazing farm values is much more tenuous than the linkage between milk prices and dairy farm. This is not surprising since wool is only part of the income for sheep and beef farmers. In recent years wool sales have accounted for only 30-40 per cent of grazing farm incomes.

The strong relationship between the after-tax net income for sheep and beef farms and land values was demonstrated by Davison (1992), using data compiled by the New Zealand Meat and Wool Board's Economic Service. *Figure 9* shows the relationship between the fattening farm turnover rate and the real Valuation New Zealand Index for fattening farms. Once again turnover rates appear as a good leading indicator that can be used to predict changes in land values.

Figure 8
Wool Price Grazing Farm Price Relationship

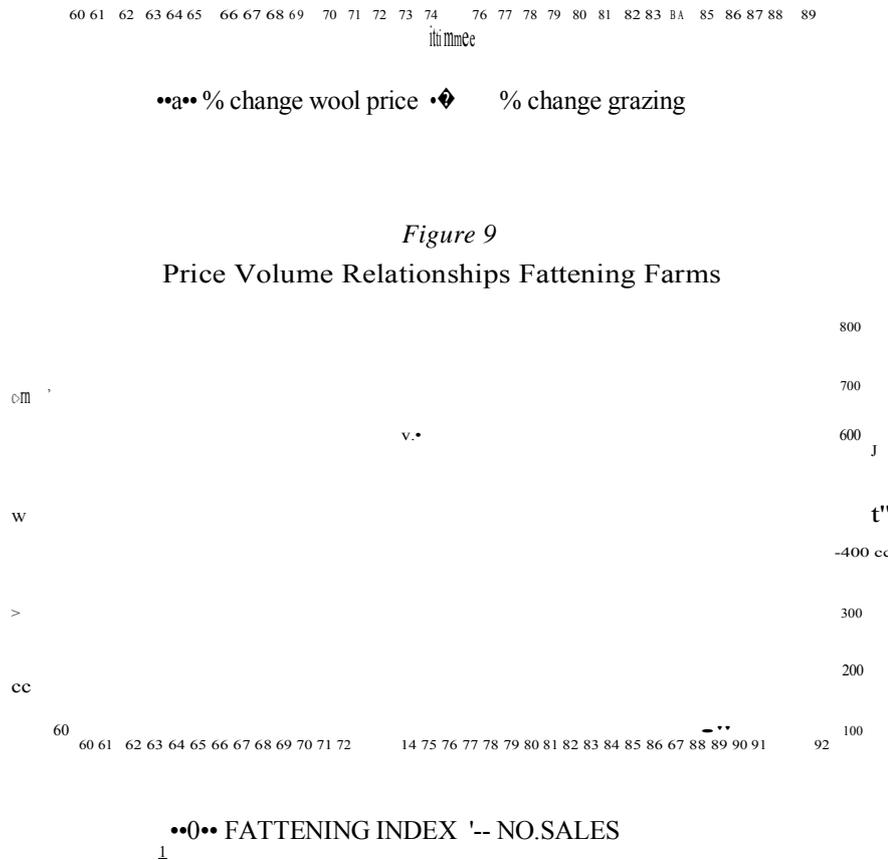
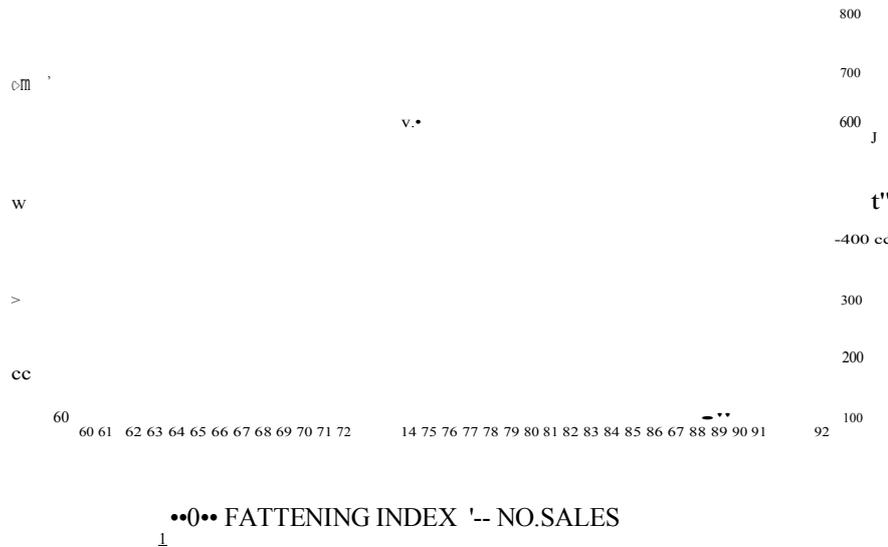


Figure 9
Price Volume Relationships Fattening Farms



Summary and Conclusions

The authors have proposed a six stage rural real estate cycle that is based on some of the ideas originally developed for urban real estate by Ratcliff. The key rural market players are identified. The role of existing farmers acting as traders is viewed as being an important dimension in the volume of sales variable. The rural lending policies adopted by the banks are also seen as playing a key role in determining the number of new farmers settled each year.

Inflation has tended to disguise the actual ups and downs in the property market. When farm prices are expressed in real terms, the evidence since 1960 suggests an 8-10 year rural real estate cycle. Theoretically, changes to farm prices in New Zealand are likely to be driven mainly by the changes to export farm commodity prices. This relationship is not always easy to establish since past government intervention has tended to distort the price signals observed by farmers. Farming in New Zealand is now relatively free of

government intervention, and the price signals observed by farmers are generally the actual world market signals.

This paper highlights the importance of using farm turnover rates as a leading indicator to predict changes in property prices. According to the data, which is analysed on an annual basis, turnover rates tend to move about a year before farm price movements. Turnover rates are a useful indicator for predicting both market upturns and market downturns.

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Rural Market

by John McDermott

Are the current levels of value sustainable?

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John is based in Christchurch. He holds the Diploma of Valuation and Farm Management and is a Registered Valuer.

This paper was presented at the NZIV Continuing Education Seminar held at Lincoln University in August 1994.

In the Pocket Oxford Dictionary sustainable is defined as: "bear weight of, support, especially for a long period; endure, stand; keep up. If one kept strictly to the topic it would be easy to produce arguments for and against the retention of ruling farmland values, and thus come up with a simple "yes" or "no" answer.

Unfortunately the subject itself is rather speculative and any conclusion is likely to be based on generalisation rather than specifics.

I have confined my comments to a lenders and borrowers perspective thus leaving the valuation aspect to others more qualified than myself

My comments are personal based on observations, and should not be taken as reflecting policy of my employer, the Bank of New Zealand.

The early 1980's land market The strong demand for farm land in this period was created by:

Concessional lending through the Rural Bank

Government backed incentives (Livestock Incentive Scheme/Land Development Encouragement Schemes)

Tax advantages (e.g livestock value writedown)

High inflation/low government controlled interest rates/wage and price freeze

Subsidised returns via SMP'S, government supported irrigation schemes etc

The changes effected by the Labour Government in the mid, 1980's included:

Commercialisation of the Rural Bank

Greatly increased interest rates due to removal of controls

The removal of subsidies

The removal of taxation loopholes

A focus on inflation reduction
Deregulation of the finance and banking industries

We are all well aware now that the country could not have continued operating with consistent budget deficits and while we may or may not agree with the methods of the incoming Labour Government in 1984 there is no question that the country was virtually bankrupt and there was little real choice.

Factors currently influencing farm values.

Factors contributing to the current levels of farm land values are generally accepted as:

- 1) An exceptional demand for dairy-farming country in the North Island. South Island demand was boosted by the conversion expansion of two large corporates.
- 2) Dairy farmers moving south to purchase larger land areas for conversion at about half the price they sold for.
- 3) Southern properties selling for conversion allowing vendor farmers on marginal sheep properties to move further north with cash to purchase.
- 4) A shortage of suitable land for dairy conversion in North Otago/ Mid Canterbury due to D.D.T residues.
- 5) Few top quality sheep and beef units being available for sale.
- 6) A continued strong demand for land from overseas investors.
- 7) Demand for lifestyle and forestry blocks.
- 8) Stable and affordable single figure interest rates during 1994.
- 9) Keen competition from financiers sometimes leading to individuals borrowing to unreasonable levels.
- 10) Relatively low inflation.
- 11) Improved sheep-meat prices, and consistent dairy returns during the latter part of 1993.
- 12) A perception that agriculture is the glamour industry of the 1990's.

Can these increases in values be justified??

A comparative analysis of one South Island sheep & beef property between 1980 and 1994 provides some interesting information (refer figure 1).

The table highlights the features constant to both time frames - high land values - low net profitability - a poor return on capital.

Three or four years after 1980 the situation changed dramatically. Will it occur again post 1994?

From a bankers point of view and with particular regard to this farm unit it is worth noting that in 1980 the Banks security was limited to a 5th mortgage over the land. There was no stock & plant collateral.

In 1994 the Bank holds a first mortgage plus full stock & plant security. There are no subsequent secured lenders. This arrangement affords the Bank control, comfort and greater protection from loss, should land values again fall.

Return on Capital

Figure 2 shows the return on capital over the last 13 years.

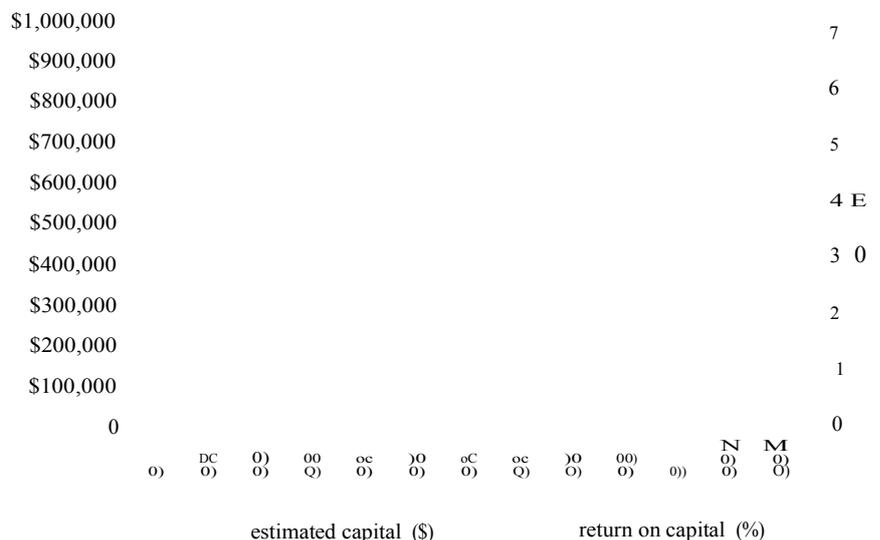
- Generally, as one would expect, the return on farm capital increases as the value of total farm capital declines, with land and buildings being the main component of total capital.
- The 1986 and 1989 years reflect low product prices. Despite increased capital values in 1990 there was a higher return on capital that year, a reflection of greatly increased revenue prices which were shortlived.
- With the return on capital peaking at 6.9% in 1988 and bottoming at 2.9% in 1983 the returns are consistently modest. Over the 1992 and 1993 years the average has been 4%, but the 1994 figure will no doubt trend downwards, possibly towards 3%.

Figure 1
Comparative Analysis of a South Island Sheep and Beef Property

		<u>1980</u>	<u>1993</u>
Land Area (ha)		1016	1016
Stock	Breeding ewes	5200	4500
	Ewe hoggets	2150	1100
	Rams/killers	<u>150</u>	<u>60</u>
Cattle	Total Sheep	7500	5660
	Breeding cows	140	105
	Mixed aged calves	120	30
	Bulls	5	5
	Total Cattle	265	140
	Total Stock Units	8165	6090
Value	Land & Buildings	1,260,000	1,800,000
	Stock	175,000	290,000
	Plant	<u>85,000</u>	<u>70,000</u>
	Going Concern Value	1,260,000	2,160,000
	Total Debt	308,000	390000
	Equity	952,000	1,770,000
		75.55	81.94
Earnings	Gross Farm Income	113,270	240,545
	Farm Working Expenses	51,270	122,345
	Wages of Management	15,000	30,000
	Net Profit Before Interest	37,000	88,200
	Return on Capital (before interest)	2.93%	4.05%
	Interest	30,950	46,955
	Interest as % G.F.I.	27.32	19.52
	Nett Return	6050	11,245
	Nett return as % of F.W.C.	0.48	0.52
	Indicative interest rates	8/9/11/12%	7.75/9.85%

N.B. Nett Return is before drawings and capital expenditure.

Figure 2
Return on Farm Capital



A Banker's perspective

From a bankers viewpoint the following trends are obvious:

- 1) The financiers input is currently low risk, because of the substantial equity, i.e cash contribution required of purchasers. On the other hand, depending on ones view of the longer term trend in farm values one could argue that the owners input is at risk.

This necessity to provide substantial equity in the form of cash or non interest bearing debt is highlighted by Figure 3, produced by Massey University's Real Estate Unit which appeared in a recent edition of the N.Z. Farmer.

Figure 3
Sheep and Beef Farms

	All Classes	North Island Finishing	North Island Hill	South Island Intensive Finishing	South Island Breeding and Finishing
Index 1 (For season ended)					
June 1990	100	47	87	62	118
June 1991	108	64	99	61	123
June 1992	106	59	85	79	99
June 1993	103	55	78	74	118
Monitor Farms 1993					
Size (hectares)	416	168	400	702	363
Stock Units	3,265	2,395	3,858	2,595	3,246
Value of Land and Buildings	\$642,300	\$626,600	\$650,500	\$664,330	\$696,700
Total Assets	\$922,000	\$847,700	\$975,400	\$864,600	\$946,400
Return on Total Assets	3.7	4.0	3.9	3.1	2.3
Equity required to purchase (%)	72.6	71.8	70.2	75.5	81.6

Assuming, even a modest short term gain from better management and greater inputs, the total maximum debt a prudent lender would place with the enterprise might be \$400,000 (with servicing @ 10% i.e \$40,000 p.a which is 25% of an easily achievable increased G.F.1 of \$160,000). There would be a built in safety margin if income could increase to say \$180,000 within 12 months. The purchaser would therefore have to provide \$1 million cash equity. On present day revenue parameters after allowing for farm working expenses of \$190,000, and wages of management of \$30,000 the purchaser would receive a return on his/her capital of \$20,000 or only 2.0%.

Further production increases in terms of performance and total carrying capacity could be achieved over time, but not without substantial expenditure in terms of regressing, capital lime and fertilizer, fencing, water supply and additional capital stock.

Obviously it is difficult to justify paying current market value for this unit if the value was relative to its earning capacity or based on a productive value basis.

- 3) In the 1980s many lenders lent to 66% of assessed current market value (i.e \$800,000 in the above example) but nowadays if an initial equity requirement of at least 70% is enforced the risk factor is greatly minimised.
- 4) This is why bankers are now less concerned with their security position if values fall than in the the early 1980's, as there is ample security margin provided by the borrower. There is also an improved control element. This reflects the move to "one stop shopping" or consolidation of finances with a single financier, and the safety provided by a first mortgage land security, as distinct from the lower ranking securities the banks held in the 1980s.
- 5) Banks today generally focus to a much greater degree on positive cashflows and strong earning capacity. However the competitive pres-

According to the above figures the average equity required over all classes is 72.6% and while no figures are produced for dairy farmers I would suggest the average would remain much the same. This is because the greater earning capacity of dairying has been reflected in the premium prices paid for dairying land, be it already operative or pre-conversion.

stricting the loan requirement in most cases, e.g a 1200 ha property I inspected recently was generating a Gross Income of \$140,000 or \$31 per s.u. It suffered from below average management, and carried 4500 s.u equivalent in sheep/beef/limited crop. Building improvements were modest and pastures mainly native and non productive. Stock performance was below average.

- 2) The rule of thumb limitation imposed by most financiers, i.e that debt servicing should not exceed 25% of Gross Farm Income (nett of stock purchases) is the critical factor re-

However based on recent sales the property if placed on the open market would probably sell for \$1,200,000 Land and Buildings, with an additional \$200,000 for stock! plant, i.e \$1,400,000.

asures in the marketplace have resulted in some over optimistic approaches to production budgeting, or

poorly based costings (especially with dairy expansions) have been accepted and in the short term viability is under major threat.

mand" and the "willing buyer/willing seller" concept.

In essence, the price of land must surely reflect its capacity to earn nett income. Based on current returns there is certainly no justification for further increases in farmland prices. Some of the factors likely to cause a downturn are already close at hand.

While I am comfortable, as a banker, that the Bank's money is well secured, and in most cases would be safe even if farm values reduced up to 50% I continue to have serious concerns about earning capacity.

"Few farmers are generating sufficient nett surplus to provide a reasonable buffer, and have insufficient capacity to withstand a major downturn."

Perhaps all bankers and financiers should be revisiting their lending guidelines and lowering their acceptable debt servicing levels. This would improve prospects of strong profitability and possibly help protect the purchasers own equity from eventual erosion.

Certainly the greatest risk lies with the individual or company purchasing land at current values, after all their equity is both more substantial and more "at risk" than those who traded their units two years ago.

Land purchasers continue to be attracted by the prospects of future capital gain, but where there is upside there will also be downside. Some will argue that some land in this country, due to proximity to urban areas or suitability for specialized usage, will never decrease in value but I remain unconvinced.

Acknowledgements:

* Pita Alexander, Farm Accountant, Christchurch. Massey University Real Estate Analysis Unit.

* Survey information based on the financial accounts of 191 farmers, comprising dairy, mixed, hill country, downlands livestock and flat land livestock. Return on capital based on nett farm profit less allowance for wages of management divided by the estimated conservative market value of land, stock and plant.

What is influencing today's farmland investment decisions?

- 1) An age old belief that what is dear today is cheap tomorrow.
- 2) The Salesman's stock phrase "land is a scarce commodity, they are not making any more of it".
- 3) High expectations from the GATT settlement, with increased "on farm" prices for dairy, wool, forestry, sheep and beef products expected to boost nett farm profits.
- 4) An expectation of further capital gain (due to the above factors).
- 5) An improving New Zealand economy, resulting in substantial cash investors available locally plus a rising overseas investor element. This ensures that there are plenty of buyers about with capacity to pay higher prices.
Overseas buyers are impressed by our "clean green image", our scenery and our way of life and apparently see those benefits as far outweighing the return on their investment.
- 6) The availability of ample finance at competitive and reasonable interest rates.
- 7) Continuing low inflation and stable government.

Factors likely to influence a downturn

- 1) Political instability as perceived by both offshore investors and within New Zealand.
- 2) Increased interest rates.
- 3) The expectations that GATT does not become the reality. This will particularly affect the dairy industry.
- 4) Non tariff trade barriers as a result of animal health (e.g. TB or pesticide residue issues).
- 5) Further problems/closures in the meat industry.
- 6) Increased cost of entry to dairy companies to fund further processing capacity.
- 7) Environmental restrictions created by the conservation lobby, with restrictions on the likes of nitrogenous fertilizers, reducing per hectare production and ultimately cash income/profitability.
- 8) Investor sentiment moving from rural property to commercial/residential, driven by the realisation that the return on funds invested in farm property is modest at best and future capital gains are limited.
- 9) Less available funding and/or a tightening of lending criteria by financiers.
- 10) A further strengthening NZ dollar reducing farm returns.

The first seven factors likely to influence a downturn are certainly possible and would probably lead to factors 8 & 9. Factor 10 is already a reality.

Certainly as we move towards the year 2000 we face a very critical period in relation to current farm values. The next five years will determine whether those purchasing in the last eighteen months were clairvoyants or fools.

I am very uncomfortable when I hear of dairyland being sold in the Waikato for \$25,000/ha or \$80/kg milkfat in Taranaki or \$400 per stock unit for a 3000 stock unit North Canterbury property. At \$7,500/ha for border-dyked units in North Otago, pre-conversion dairy farmers are now paying what I consider they should be paying for fully converted units, if they are to achieve consistent significant nett profitability. However this is a market with prices determined by "sale and de-

'eONTAHfNATED- LAND PRACTICE STANDARD

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This National Standard has been developed and adopted by the National Council of the Australian Institute of Valuers and Land Economists. It provides valuable guidance for people in the property industry on the increasingly important subject of land contamination. It is reproduced by kind permission of the AIVLE (Inc).

The National Council of the AXLE has adopted this Standard and recommends that it be used by its Members as a guide for the valuation and assessment of contaminated land in Australia. Australian Valuers and Land Economists are able to provide appropriate skilled advice in relation to valuation and property matters with the assistance of and in accordance with this Standard and bearing in mind the limitations referred to herein.

The purpose of this Standard is to provide guidance, outline information and issues, and indicate approaches in cases involving contaminated land. The Standard deals with broad examples of environmental contamination and their potential effect on value and marketability.

Many issues of land contamination are poorly defined and involve complex or unresolved matters. 'Formula' approaches to the valuation and assessment of contaminated land are not adequately developed. This Standard offers guidance on pertinent general concepts and concerns, and suggests approaches that are thought to have merit. It does not purport to provide a definitive coverage of the environmental issues which may arise, or the manner in which Members should deal with these issues. The appropriate procedures will vary according to the circumstances of each property being valued or assessed. Members should apply their own skill and judgement in applying the suggestions contained herein to their own practice.

Introduction

Increased environmental consciousness within the general community, recent environmental protection legislation, litigation associated with pollution and land contamination, and incidents where property users suffer financial loss directly or indirectly from such cases, have made the marketplace more aware of the potential adverse effects of chemical, radiation, noise and other contaminants in air, groundwater, soil and the overall environment. The market can overreact and prices may be artificially depressed. Further, limited information about a particular contaminant that is thought to be present on a property can cause a secondary 'stigma' effect on values. Conversely, the market seems to be increasingly aware that contaminated properties can be redeemed and redeveloped into valuable assets,

Clients, whether they are property owners, vendors, purchasers, financial institutions, receiver managers, holders of major or minor property portfolios, etc, often as a matter of consequence, will be looking to Members of the Institute for advice and Oruidance on how land contamination affects their financial security and asset value. Although Members cannot and should not promote themselves as authorities who are fully capable of measuring, recording and providing detailed scientific advice on behalf of the client, they should be able to provide some level of advice to the client about the commercial impact of suspected or evident land contamination.

Members of the AIVLE must take all reasonable care in these matters. Members who attempt to mitigate their respon-C, sibilities by adding a disclaimer saying

that the property has been valued or assessed "without regard to the question of presence of contamination" are not providing the level of best practice expected by clients and may not satisfy the standards of practice required by the courts. Therefore, the Institute recommends that its Members become sufficiently knowledgeable about the contaminants, laws and regulations associated with this topic and its effect on property values to meet the above standards. This involves Members qualifying advice, where appropriate, so as to properly inform the client of potential problems which may require further investigation, and thereby meet the Member's professional obligations. Property professionals will rarely be in command of enough evidence to completely rule out the possibility of land contamination. They can, however, through careful research and observation, provide advice about suspected contamination and the potential consequences on a property's market value. Environmental contamination can affect the full spectrum of property types, and must be considered in all valuations and other property assessments.

Definition

As defined by the Australian and New Zealand Environment and Conservation Council (ANZECC) and the National Health and Medical Research Council (NEMRC), a contaminated site comprises

" a site at which hazardous substances occur at concentrations above background levels, and where assessment indicates it poses or is likely to pose an immediate or long term hazard to human health or the environment".

Types of Contaminants and Examples

There is a wide range of potential environmental contaminants, varying from liquid and solid chemicals to corrosive gases, radioactive substances and pesticides.

Physical Contaminants

Each contaminant must be considered for its potential physical and non-physical impact. Examples of physical contaminants include asbestos, heavy metals such as lead, mercury, arsenic, cyanide and pesticides, but are not limited to these substances. Mining by-products can include nutrients and arsenic compounds amongst others. Unexploded ordnances have been another environmental difficulty associated with former defence force lands.

Organic compounds such as formaldehyde are problem sources. Coal tars from coal-using power house operations, asbestos, or PCBs can cause toxicity problems. These are but some examples.

Non-Physical Contaminants

These are contaminants that include no tangible, physical substance. However, they should be considered as 'real' as physical contaminants. A typical, problem could be forms of radiation, intense radio wave transmissions and excessive heat.

Radon

Radon is a naturally occurring radioactive gas that is released during decay of radioactive elements and sometimes found in granitic rock. There has been an increasing public awareness of this substance and its associated risks. It tends to be denser than air and may accumulate in basements and lower spaces of structures'.

Toxins in the Internal Home Environment

These comprise a long list of substances, including insecticides, lead based paint, wood preservatives, polishes, weed killers, bleaches and numerous other substances. Certain timber related or artificially produced materials used for home insulations, furniture and fittings may release formaldehyde or other traces of pre-

servatives that create health problems for some individuals.

Many of these home toxins are not structural but transient and may be removed through relatively low cost means.

Changes in Lists and Definitions of Hazardous Substances

Lists and characteristics of substances constituting hazardous waste and amounts of substances considered detrimental change frequently as new information becomes available. Such information is often available from State or local environment agencies. Preliminary lists are provided in Appendices I and 2. The ANZECC/NHMRC *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*, January 1992, also contain a substantial list.

Members should also pay close attention to environment-related court cases, many of which involve Federal courts and have the potential to affect value in new areas as new contaminants are determined.

Identifying and Quantifying Contamination

Information on possible contamination of the site is crucial to the property professional. The two main sources of such information are a Historical Land Use Survey and a scientific Survey of Environmental Contamination.

Phase I Survey: Background Research & Historical Land Uses

Previous owners and employees can be a good source of information on the property's history. Local councils can provide a wealth of information on more prominent properties, and a search of titles can provide some indication of former use. Many State governments have aerial photos that can assist in identifying some former uses. Government departments such as those involved with mining, public water supply, environment and health, may have regulating records and other useful information.

It is important to look for signs that suggest a former use, if not a present use, which may have lead to, or caused, some form of contamination. Following the preparation of a site history, the Member will need to complete a detailed site inspection. There are often telltale signs on

the site that can indicate the presence of some forms of contamination. The Member should look for disturbed or discoloured soils, disturbed vegetation, the presence of any chemical containers, or chemical odours, and check the quality of any surface water. In addition, the Member should look for any surface soils or earth fill that may have been introduced to the site from other locations. The potential for contamination from off-site sources should also be considered. An Environmental Assessment Checklist is provided in Appendix 3. The ANZECC/NHMRC *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites* include a useful chapter on identifying and quantifying contamination.

Members should remember, however, that their role and expertise is limited to the detection and preliminary identification of discoverable contamination by reasonable site inspection and enquiries of appropriate authorities. Detailed identification and quantification of contamination should be left to those who specialise in that field. Where, however, information is

available to the Member, this should be provided to the client together with a statement of the source (whether it be a neighbour, former owner or environmental expert) and an appropriate qualification.

Some States compile a register of contaminated sites which is maintained by the relevant State environmental authority and is available for public inspection. Where the Member discovers or suspects that a site may be contaminated it may be prudent to inspect the Contaminated Sites Register in applicable States. This will help to provide the Member's client with useful information, thereby enhancing the level of service provided and discharging the Member's professional obligations. Members should not be over-reliant on these registers as they are not exhaustive, especially in those States where they are not formally required by legislation.

A Member conducting an inspection of a property for the purpose of providing a valuation or other property report should be aware of the potential of site contamination of any property. During an inspection for this purpose, the Member should

attempt to identify from on-site observations any potential or actual contamination issues and report accordingly, recommending further expert advice where appropriate. Other site factors to initially consider include site layout and contours, sub-surface conditions, storage areas, geology, and hydrogeology. Water features and available wells suitable for sampling should also be noted.

A report on the site history of the property, provided by a suitable qualified expert, may address the following issues:

- (i) present and past land uses;
- (ii) processes and/or activities carried out on the site;
- (iii) major processes and/or activities that were carried out near the site;
- (iv) locations within the site of each process and/or activity;
- (v) duration of each process and/or activity;
- (vi) waste disposal activities;
- (vii) source and effluent migration pathways;
- (viii) presence and purpose of underground tanks;
- (ix) signs of spills of hazardous materials.

A Member needs to be aware of all these points and to do sufficient research to be able to establish whether an environmental expert should be recommended for engagement. The Member should also take detailed 'case notes', notes that may not be used in the final report but will nevertheless stand as testimony that the valuation or assessment was carried out with full regard for the potential presence of contamination.

If there are no obvious matters of contamination evident on inspection of a site and no environmental expert's Phase II Survey is made available to the Member, then the Member's report should be suitably qualified to reflect the limited extent of the Member's expertise in relation to environmental factors and to place the onus upon parties relying upon the report to make their own enquiries. Although any qualification used should be specifically worded to suit the particular circumstances of the valuation, the following clause provides an example of the type of qualification that should be made:

"A visual site inspection and (detail other enquiries, e.g. enquiries of local government authorities) has not revealed any obvious pollution or contamination. Nevertheless, we are not experts in the detection or quantification of environmental problems and, accordingly, have not carried out a detailed environmental investigation. Therefore, the valuation (or report as applicable) is made on the assumption that there are no actual or potential contamination issues affecting:

1. The value or marketability of the property; (or ...)
2. The site (... as applicable).

Verification that the property is free from contamination and has not been affected by pollutants of any kind should be obtained from a suitably qualified environmental professional. Should subsequent investigation show that the site is contaminated this valuation may require revision."

The Member should not hold himself or herself out as an expert in issues of site or other contamination.

Recommending a Survey of Environmental Contamination

Ultimately, only through scientific testing can the level of contamination be verified properly. Such testing can be both expensive and time consuming and cannot in itself provide a complete guarantee that contamination is not present.

If, after carrying out an investigation and inspection, the Member is concerned or suspects that the property is or could be subject to potential contamination that could either restrict the future use of the site or militate against a financial consideration, the Member is obliged to recommend that the client seek more detailed advice from appropriately qualified professions. Such advice should be formed having regard to both the current and future financial considerations as well as the future use of the site. A Phase II Survey by a specialist Environmental Engineer or Scientist or other suitably qualified professional may include any or all of the following:

- (i) historical land use survey;
- (ii) environmental risk inventory;
- (iii) evaluation of special contaminants such as asbestos, PCBs, acids, poisons such as arsenic, and radionuclides;
- (iv) remote sensing surveys;
- (v) surface soil and water samplings and laboratory analysis;
- (vi) sub-surface soil sampling and laboratory analysis;
- (vii) groundwater sampling and laboratory analysis;
- (viii) a health and safety plan.

Subsequently, it may be necessary for the appointed environmental consultant to move into a third phase of consultancy including site characterisation, the preparation of a preliminary remedial action plan with cost estimates, the conduct of negotiations with regulatory agencies, the design of remediation systems and continuing management, and the development of suitable future monitoring arrangements.

Where detailed information cannot be obtained, the Member should value on the basis that a property is free of contamination, and qualify that value on the basis that some contamination may be present that could have an impact on the value. The following provides an example of the type of qualification which may be appropriate in these circumstances:

"From our inspection of the property we consider that there is (or could be) a potential for (detail past/current contamination) to exist and would recommend that advice should be obtained from a suitably qualified environmental professional. Please note that our valuation has been assessed on the basis of no on-site contamination. Should the abovementioned environmental advice reveal any contamination our valuation may require revision."

The greater the perceived risk of contamination being present, the stronger the 'qualification' and the more specific should be the accompanying advice.

Remediation Practices and Techniques

The practice of remediation of environmentally contaminated property is rapidly changing. New techniques are being developed, new standards are being set, both by the professions themselves and those who legislate standards.

Remediation has been defined as "an act of attempting to moderate the severity of the contamination of soil, groundwater, service water or buildings by various measures and methods". Note that remediation can include measures that alleviate the effect of contamination without destroying or removing the contaminants, as with 'clean-up' technologies.

The influence of remediation or clean-up on value will depend on such factors as whether the contamination is contained (restricted) on-site, the EPA controls affecting it, the length of time required to

make good, and the possible need for further analysis and monitoring after the remediation process.

Remediation techniques could involve removal of affected soil from the site and replacement with clean fill, the extraction and 'airing' of hydrocarbon-affected soil from lower depths, the pumping out of contaminated groundwater or chemical neutralisation, e.g. the use of lime to neutralise high acid content, and a wide variety of other measures. One difficulty with soil removal is that local authorities tend to be reluctant to allow disposal of contaminated soil.

The new technology that is becoming available may potentially reduce the extent of the negative effect of contaminants on property value. Technology that permits safe, efficient and inexpensive clean-

up of contaminants tends to minimise impact on value. However, clean-up costs can still be prohibitively expensive because of difficulties in disposing of contaminated soil, toxic waste and chemicals. Members should keep abreast of technological advances relating to this topic. The ANZECCINHMRC Guidelines provide a site-specific approach to the management of contaminated sites, and indicate that remediation can be tailored to the actual proposed use of the land. Such awareness will assist the Member in advising appropriately on the potential risks associated with contaminated sites and the need for their clients to seek further information from appropriately qualified experts. Nevertheless, as previously referred to, Members should avoid giving advice outside their area of expertise.

Impact on Property Value: General Areas of Cost Impact

Depending upon the relevant legislation, it is usual that the responsible party bear the clean-up costs of contaminated properties. Where responsibility cannot be determined, the chain of title is generally followed with the current owner most likely to be liable.

Remediation costs can range from mild instances requiring low expenditure with little impact on value, to severe cases where virtually no use of the property is possible for the present or foreseeable future and prohibitive costs are needed to correct the problem. The degree to which contamination affects the present and future utility of the property must be established. *Due to the specialist work involved in assessing the type, extent and cost of remediation, Members are strongly advised not to provide their own estimate.*

Initial Survey Costs

The first cost associated with environmental contamination is the cost of discovering the extent of any problem.

The cost to remedy a particular problem is normally the major cost to be determined but there is a tendency to either understate or overstate the impact on value. For example, property may be able to maintain an income stream while remediation costs are incurred and these costs may be amortised over a longer period than indicated at first sight.

The cost to remedy a contamination problem includes all costs resulting from and associated with the clean-up. These include the cost of the physical clean-up, monitoring remedial measures, legal fees and continuing costs. Costs may also involve a capital improvement such as a more efficient, less polluting system that enhances residual property value significantly.

Members are encouraged to develop and maintain files of clean-up cost information. This information should not, however, be used to give detailed environmental advice or cost estimates to clients. Appropriate experts should be retained for this purpose.

Physical Clean-up and/or Remedial Costs

This can involve a variety of techniques such as simply removing and replacing contaminated soil (recognising that an acceptable location to receive contaminated material is often very difficult to find), extracting harmful chemicals in groundwater by pump extraction, or isolating and permanently sealing off contamination. Neutralising the contaminants with special chemicals is a possible solution in some cases. Environmental engineers and other experts can explain the options for remedial work or hazard reduction and provide cost estimates for

undertaking this work.

Legal Costs

Legal costs associated with contamination may be considered part of the cost to cure the problem. The extent of these legal costs will vary according to the circumstances of each particular property. Members should refer to these costs in their valuation, where appropriate, and ensure that they are addressed by any expert environmental report obtained. The potential for litigation or pending litigation may affect marketability and further affect value by deterring prospective buyers. Such effects will usually be included within the Stigma component of environmental liabilities. Alternatively, Members may include a separate "contingency figure" to cover these effects. Such a figure should either be provided by an environmental expert or estimated by the Member following suitable enquiries of solicitors. It should always be qualified to inform the client that it is a contingency figure only and that it may not reflect the costs actually incurred should litigation eventuate.

Continuing Costs

Final costs are often unknown before the completion of any clean-up. These costs often exceed original estimates, especially when future, more stringent regulations

are anticipated. In addition, perceived or actual risks remaining after completion of clean-up may result in higher insurance costs. Members should ensure that figures obtained from environmental experts make allowance for these continuing costs and that these costs are appropriately spread over a period corresponding to anticipated plant or improvement life or the period of the remediation.

Indirect Costs

These can include anything that affect the property's income producing potential during or after the clean-up. For example, tenants may not be able to live in a rental unit during lead paint removal. Another example would occur if one portion of an industrial plant could not be used because of toxic contamination and an intermediate product manufactured in that area was no longer able to be produced on-site. Additional expenses would be incurred and the operation's earnings could suffer accordingly. Holding costs, due to delays in development caused by the need for prior remediation, are another form of indirect cost.

Financing

There can be an adverse effect through financiers requiring higher interest rates where there is a perception that a property may be secondary due to the effects of contaminants.

Indemnification Agreements

Some indemnification agreements, as set out by the seller, agree to retain responsibility for current and future costs related to environmental contamination. From the point of view of market information, the transfer figure would need to be discounted.

Stigma

This is an intangible factor that may not be measurable in terms of cost to cure but may have real impact on market value. It arises from the effect of present or past contamination upon the market's perception of the property and represents a discount, beyond the direct and indirect costs likely to be incurred, required to compensate for the risks associated with contaminated or previously contaminated property.

Stigma makes property less desirable, even when a complete remediation or clean-up has been carried out. That is, where there is a market perception that a property is or has been contaminated, despite the availability of information that clean-up has taken place, the market will often pay less than normal unaffected values. This situation is similar to obsolescence and represents a lingering detriment to a property. In some cases the stigma effect is transitory.

The stigma effect on value may be out of proportion to the cost to cure the problem, and can persist at varying levels for many years.

Main Causes of Market Value Loss

There are three broad categories of market value loss caused by land contamination:

- (i) cost including consultancy and monitoring costs;
- (ii) liability to the public; and
- (iii) stigma.

Assessment and Valuation Approaches

The presence of contaminants within a property may not necessarily reduce its value within the land use class or industry in which it is operating. For example, an industrial tailings pond having protective confines within land may contain toxic compounds that form part of a valuable industrial process for which there is a long term market demand. Special licensing generally accompanies these processes and the property can continue to be used as it is.

Once a Member becomes aware of contamination or suspects a property has contamination, there are four main approaches to choose from:

- (i) Unaffected Valuation Basis;
- (ii) Affected Valuation Approach;
- (iii) Environmental Balance Sheet Approach;
- (iv) Comparative Approach.

Unaffected Valuation Basis

Provide an evaluation on an unaffected basis, together with an outline of the preliminary indication of actual or possible contamination and the inclusion of a qualification indicating that the valuation in-

cludes an assumption that the land is not contaminated and recommending that expert advice be obtained before reliance is placed upon the valuation.

Affected Valuation Approach

Assuming the client's approval is first obtained, have the extent of contamination assessed by appropriate environmental consultants with inclusion of costings for various remedy options and then calculate the property's discounted value. This process would include consideration of the liability for cleaning up adjoining properties that may be affected, plus the influence of any residual market 'stigma' after the anticipated contamination remedy.

Where a discount for environmental factors is applied by a Member, it is always preferable to give the client information as detailed as possible as to how the final valuation figure is reached. Therefore, the use of the Environmental Balance Sheet Approach described below is generally to be preferred. Nevertheless, in some circumstances it may not be possible to adopt that method. In such circumstances the Member should state clearly in the

valuation report that the discount applied was arrived at based upon information obtained from an environmental expert and that the Member has not formed an opinion as to the truth or falsity of that information. A copy of the environmental expert's report should be annexed to the valuation.

Environmental Balance Sheet Approach

This is a method to build-up a profile of the property's attributes in terms of positive and negative factors affecting the property's current market value, and is complimentary to the Affected Valuation approach detailed above. For instance, the asset entry would be the value of the property as if it had no environmental impairments whilst the liability entries would be environmental offsets to value including:

- (i) the cost of determining if a problem is likely to be present, i.e. a full or partial environmental investigation before purchase;
- (ii) costs associated with quantifying the magnitude of the problems from

an environmental consultancy viewpoint and developing alternative courses of action, from which an owner can choose to thoroughly identify and remedy a problem situation;

- (iii) the estimated cost of putting an appropriate management plan and remediation strategy into place;
- (iv) the actual cost of pumping-out or of locating pollutants and so on;
- (v) the cost of liabilities imposed on the owner as a result of prior actions, such as licensing breaches, etc;
- (vi) the calculated present value of future remediation, management, and related costs affecting future cash flows to be derived from the property;
- (vii) an estimate of offset to value resulting from perceptible effects, i.e. the stigma or negative intangible offset which can prove difficult to quantify.

The net worth under this method is represented by the owner's impaired position. As some of the above negative effects will have a time deferment factor, it is suggested that Members consider a discounted cash flow approach where appropriate. An example of an Impaired Value Opinion Balance Sheet is shown in Appendix 4.

Members should not provide their own estimates of environmental costs. These figures should be obtained from a suitable environmental specialist and a copy of that expert's report should be clearly annexed to the valuation. The Member should make it clear in the valuation that these figures have been obtained from an environmental expert and that the Member has not formed an opinion as to the accuracy of those figures. A failure to include a qualification to this effect could result in the member being held to have adopted these figures. A qualification in the following form or to a similar effect may be appropriate where this method is adopted:

"The Impaired Valuation Opinion contained herein has been calculated by subtracting the Total Environmental Liabilities of the property from the Unimpaired Valuation Opinion. It has been provided in this form for conven-

ience only. The figures which comprise the Total Environmental Liabilities have been obtained from (state name of the environmental expert) on instructions from you. A copy of (the environmental expert's) report is annexed to this valuation as Annexure "X". (The Member) has not formed an opinion as to the accuracy of these figures and accepts no responsibility for them. Any enquiries in relation to these figures should be directed to (the environmental expert) directly."

Comparative Approach

Assessment of the 'unaffected value' indicated above would, where sales are available, involve the comparative approach. It is also advisable to use the comparative approach in the assessment of environmentally contaminated property. There are only limited instances where direct comparison of contaminated property sales can be made, but efforts should be made to establish whether this sales data is available just in case the comparative approach can be applied. Members should, however, use great caution to ensure that the properties being compared are truly comparable. Members should not make judgements as to the comparability of contaminated sites without access to the reports of suitable environmental experts in relation to both the subject property and any properties sought to be used as comparables. There have been instances where the cost of remediation exceeds the normal market value (unaffected) of the land and this infers a negative land value. The established practice is to adopt a figure no less than zero value. On that basis a Member would advise that there was a nominal or 'nil' value and comment regarding any additional liability for clean-up costs required for the land.

Members should consider future liability, particularly in terms of highest and best use, when completing these valuations. Client considerations are important. For example, mortgagees can be particularly worried by the prospect of contamination and should be informed about the slightest suspicion of contaminants on any property. Similarly, in valuing for the purchaser, it is prudent to know their intended purpose in case contamination or other on-site and off-site factors may affect their proposal.

Potential Problems for Lenders

Lenders have potential exposure to risk through land contamination as follows:

- (i) loss of market value of collateral (property);
- (ii) a borrower's inability to repay loans because of clean-up costs;
- (iii) lender's liability for clean-up costs following foreclosure of a mortgage, entering into possession as mortgagee in possession, or even exercising control under a scheme of arrangement.

Recent legal proceedings in the USA suggest that a lender may be jointly responsible for environmental contamination by reason of its participation in the financial management of a business involved in a polluting process.

Legislation

Legislation affecting property contamination and related environmental matters is increasing in this country and overseas. Members who are acting for the vendor of a property should recognise that certain State legislation embodies the principle that in matters of land contamination the polluter pays', and this means that if a vendor has caused the land being valued to be contaminated, they may not be able to avoid responsibility for subsequent remediation even though the property has been sold. Members should refer to their own State legislation in this regard.

Indemnity Insurance

Members should be aware of any exclusions within their professional indemnity insurance policy related to pollution, contamination or specific contaminants. Some policies do not provide cover in relation to claims arising from or in connection with these matters. For example, many policies exclude liability for claims arising from nuclear radiation. Furthermore, a Member may in some instances not be covered by a policy where the Member has failed to confine himself or herself to their field of expertise. Members should consult their professional indemnity insurance Brokers in this regard.

Appendix 1: United Nations Hazard Classes

1. Explosives
2. Flammable Gas
3. Non-Flammable/Compressed Gas
4. Poison Gas
5. Highly Flammable Liquid
6. Flammable Liquid
7. Flammable Solids
8. Substances Liable to Spontaneous Combustion
9. Substances Emitting Flammable Gases when Wet
10. Oxidising Agents
11. Organic Peroxides
12. Poisonous (Toxic) Substances
13. Infectious Substances
14. Radioactive Substances
15. Corrosives
16. Miscellaneous Dangerous Substances

The categorisation of contaminating substances into these "Hazard Classes" has been provided by the United Nations. These classes are not necessarily exclusive. Members should not confine their attention to substances falling within these classes.

Appendix 2: Potentially Contaminating Activities, Industries and Land Uses

- I. Abattoirs and Animal Processing Works
2. Acid/Alkali Plant and Formulation
3. Agricultural Activities (Vineyards, Tobacco, Sheep Dips, Market Gardens)
4. Airports
5. Alumina Refinery Residue Disposal Areas
6. Asbestos/Asbestos Production
7. By-Product Animal Rendering
8. Bottling Works
9. Breweries
10. Brickworks
11. Car Wreckers
12. Cement Works
13. Cemeteries
14. Ceramic Works
15. Chemical Manufacture and Formulation
16. Coal Mines and Preparation Plants
17. Defence Works
18. Docks
19. Drum Reconditioning Works
20. Dry Cleaning Establishments
21. Electricity Distribution
22. Electroplating and Heat Treatment Premises
23. Ethanol Production Plants
24. Engine Works
25. Explosives Industries
26. Fertiliser Manufacturing Plants
27. Gasworks

28. Glass Manufacturing Works
29. Horticulture/Orchards
30. Industrial Tailings Ponds
31. Iron and Steel Works
32. Landfill Sites
33. Limeworks
34. Marinas and Associated Boat Yards
35. Metal Treatment
36. Mineral Sand Dumps
37. Mining and Extractive Industries
38. Munitions Testing and Production Sites
39. Oil Production, Treatment and Storage
40. Paint Formulation and Manufacture
41. Pesticide Manufacture and Formulation
42. Pharmaceuticals Manufacture and Formulation
43. Photographic Developers
44. Piggeries
45. Plant Nurseries
46. Plastic or Fibreglass
47. Power Stations
48. Prescribed Waste Treatment and Storage Facilities
49. Printed Circuit Board Manufacturers
50. Properties Containing Underground Storage Tanks
51. Radioactive Materials, Use or Disposal
52. Railway Yards
53. Research Laboratories
54. Sawmills and Joinery Works
55. Scrapyards
56. Service Stations
57. Sewerage Works
58. Smelting and Refining
59. Sugarmill or Refinery
60. Tanning and Associated Trades (eg Fellmongery)
61. Timber Treatment Works
62. Transport/Storage Depots
63. Tyre Manufacturing and Retreading Works
64. Waste Treatment Plants in which Solid, Liquid Chemical, Oil, Petroleum or Hospital Wastes are Incinerated, Crushed, Stored, Processed, Recovered or Disposed of.
65. Wood Storage Treatment
66. Wood Treatment Facility
67. Wood Preservation

Other Activities, Industries and Land Uses

- I. Sites of incidence: road or rail spillages involving hazardous substances; fires involving hazardous substances.
 2. 'Hot spots' of likely contamination by agricultural chemicals and their by-products, e.g. spray mixing sites; sheep and cattle dips; pesticide disposal sites.
- The above lists are illustrative only. They are not intended to be exclusive.

Appendix 3: Suggested Environmental Assessment Checklist³

The following Checklist is not intended to be exhaustive. It is included to illustrate the type of factors Members should be aware of when undertaking a visual inspection of a property. Members should exercise their own professional judgement in deciding what factors are relevant to the particular property being valued. Hazardous Materials, Storage and Disposal

- I. Are there any drums, tanks or other holders of hazardous materials like chemicals, pesticides, cleaners, solvents on the property?
2. If so, is there any indication of spills, leaks or discharges to the ground from the drums, tanks, other holders of hazardous material?
3. Are there any areas observed with stains on the ground or with dead or stressed vegetation?
4. Is the facility on the property a generator of hazardous waste?
5. If hazardous waste is generated at the property, does it appear to be improperly monitored or not transported off the property by professional hazardous waste disposal contractors?
6. If the property generated hazardous waste, does it have statutory environmental authority approval, or is it licensed to do so?
7. Does the property appear to have any pits, ponds, lagoons (other than normal water retention ponds required by some local councils) or other dumping areas?
8. Is there any evidence of radioactive products being utilised on the property?
9. Does the facility appear to be free of any obvious sources of air emissions that have chemicals odours, fumes or mists?
10. Does the facility appear to be free of any noise pollution and are controls in place?
 11. Is there any evidence of any source of infectious waste (medical pathological wastes) on the property?
 12. If there is any source of infectious waste, are facilities for its disposal inadequate or not functioning properly?
 13. If the current use of the property does not indicate any of the above, could prior uses of the land involve hazardous materials, storage and disposal?
 14. Is the property registered on any Government register of contaminated land or its equivalent?

15. Are the existing or past operations on the property subject to local environmental concerns expressed by the local community, Council, Health Department or EPA?
16. Do the existing operations comply with current regulatory permits and licensing?
17. With reference to storage of hazardous chemicals, are the storage structures designed to minimise contamination in the event of fire or natural disaster?

Management Controls: Hazardous Waste

1. Does this facility have a policy document and is it available to all staff?
2. Does the facility have an action plan in place for monitoring and reviewing environment controls?
3. Does the facility have an emergency plan and/or procedures in the event of a spill, explosion or break down?
4. Are copies of licenses and/or registrations easily visible and are they up to date?
5. Verify the current status on any current orders.
6. Verify the status on current audits.

Extractive Industries

1. Is there any extractive industry currently being operated on the site?
2. If yes, is there an Environmental Impact Statement available for perusal?
3. If yes, is there a current Development Approval available for inspection?

Asbestos

1. Is asbestos apparent on the property?
2. Does a walk through the facilities reveal any obvious evidence of asbestos in ceilings, pipes, ducts, roofing, boiler insulation or structural beams, etc. that appears to be fireable, flaking or damaged?
3. Were the facilities on the property constructed prior to 1980 when the use of asbestos was banned?
4. Has an asbestos survey/audit of the facilities been conducted?
5. Did the survey find the buildings to be free of asbestos containing materials?

Polychlorinated Biphenyls (PCBs)

1. Is there any electrical equipment (transformers, capacitors, etc) that contain polychlorinated biphenyls (PCBs) on the property?
2. If PCB containing electrical equipment is presently on the property, is there any evidence of leaks or spills on the ground near the equipment?

Underground Storage Tanks (USTs)

1. Are there any underground storage tanks (USTs) containing petroleum

products or hazardous chemicals on the property?

2. If USTs exist on the property, are leak detection equipment or secondary containment systems not installed on the tanks?
3. Have they ever been tested for leaks?
4. Has there ever been an incident of a leak, spill or discharge?
5. Have the owners or lessees of the property undertaken any environmental audit pertaining to underground storage tanks on the property?
6. Have the proper registration forms been submitted to the designated regulatory authorities?

Land Fills

1. Is there any evidence that the site is currently being filled or has been filled?
2. Have the filling operations been approved by Council and the EPA?
3. Do the filling operations allow for putrescible, non-putrescible or toxic wastes?
4. Do the filling operations require a licence and/or Performance Guarantee and License from the EPA?

Agricultural-Type Properties

1. If the property has previously been used for horticultural, orchard or market garden purposes, is there any his-

toric evidence of past land uses having involved persistent pesticides such as dieldrin or DDT?

2. Are there any environmental audits available evaluating the presence of pesticides?

Former Defence-Oriented Property

1. Does the land contain unexploded munitions, radioactivity or other hazardous substances that could be associated with defence works?
2. Is there any information available from the Department of Defence or local authorities regarding the presence of unexploded munitions?

Environmental Hazards on Adjacent Properties

1. Do any adjacent properties appear to have any improper storage or dumping of hazardous materials, drums or containers that could impact on the value of the subject property?
2. Are there any landfills, dumps or other waste disposal facilities within one kilometre of the subject property?
3. Is there any indication of operations such as gas stations, chemical plants, bulk storage tanks, manufacturing plants or other land uses which potentially involve land contamination (as outlined in this document), on any of the adjacent properties?

Appendix 4: Sample Environmental Balance Sheet

The following is a relatively simple non-costed Environmental Balance Sheet for example purposes.

Impaired Value Opinion Balance Sheet

UNIMPAIRED VALUE OPTION	\$
ENVIRONMENTAL LIABILITIES:	
Due diligence/initial environmental consultant's costs	\$
Quantification and alternative strategy development costs	\$
PRESENT VALUE OF ACTION COMPONENTS:	
Remediation/clean-up action costs	\$
Monitoring costs	\$
Notification, training and recordkeeping	\$
Allowance for emergency response actions	\$
Legal costs	\$
Licensing costs where applicable	\$
SUBTOTAL: Present value of action plan	\$
Estimated negative intangible (stigma) impact	\$
TOTAL ENVIRONMENTAL LIABILITIES	\$
OWNER'S IMPAIRED POSITION*	\$

* The GREATER of Zero or Unimpaired Value, LESS any Environmental Liabilities.

Australian and New Zealand Environment and Conservation Council, National Health and Medical Research Council, *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*, January 1992, p.2.

² Research on Radon is being conducted by Murdoch University, WA.

³ The AIVLE gratefully acknowledges the assistance of the NSW Property Valuation Department of the Commonwealth Bank of Australia in the preparation of this Appendix.

Arbitration Awards - A Matter Of Law

by John Wall

John Wall has been a regular contributor to the Valuers' Journal and has always taken a particular interest in Arbitration.

John is a partner in the Wellington Firm of Wall Arlidge Ltd. He is a Fellow of the NZ Institute of Valuers, a Fellow of the Chartered Institute of Arbitrators and is one of the two Registered Valuer appointees to the High Court of New Zealand.

Over a considerable number of years the Arbitration process in New Zealand has worked successfully in the valuation sphere.

While the Arbitration Act 1908 is a relatively small Act when compared with some other Acts, it is quite clear in its intent and has been amended very little since its original form. The exception being the Arbitration Amendment Act 1938.

In valuation arbitrations the Umpires appointed have in the main been from either the legal or valuation professions by agreement between the parties or where the parties cannot agree, which has happened in the immediate past, by application to and appointment by the Court, except where the lease provides in the absence of an agreement to be appointed by the President of either the District Law Society or the New Zealand Institute of Valuers.

As a result of such applications to the Court where it is considered that the arbitration will revolve around matters of law, legal umpires have received preference over valuation umpires.

Under the Arbitration Act 1908 Section 2 "Arbitrator Includes Referee and Valuer." Section 6 of the Arbitration Act 1908 refers to the Appointment of Arbitrator or Umpire (1) in any of the following cases:

- (a) Where a submission provides that the reference shall be to a single Arbitrator,...
- (c) Where the parties or two arbitrators are at liberty to appoint an Umpire [or a third arbitrator] [or where two arbitrators are required to appoint an umpire]...

... Any party may serve the other party or the Arbitrators, as the case may be, with written notice to appoint an Arbitrator or Umpires [or a third arbitrator].

Thus the terms referee, valuer, arbitrator, umpire or third umpire under the Arbitration Act are synonymous.

Section 6 of the Arbitration Amendment Act 1938 provides:

6. Provisions on the appointment of three Arbitrators.
- (1) Where a submission provides that the reference shall be to three arbitrators, one to be appointed by each party and a third to be appointed by the two appointed by the parties, the submission shall have the effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.
- (2) Where a submission provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in the last proceeding subsection, the Award of any of the two arbitrators shall be binding.

An Award must deal with the matters submitted to arbitration and only those matters.

It must be clear in its intent, capable of being enforced and signed by the person publishing it.

Russell on Arbitration puts it this way "An award, in order to be valid, must be final, certain, consistent and possible, and must decide the matters submitted, and no more than the matters submitted."

Once the award has been published the umpire becomes *functus officio* - ceases to exist and cannot alter it although he/she has the power under Section 8 of the Arbitration Act 1908 Clause (c) to:

"...correct in an award any clerical mistake or error arising from accidental slip or omission."

To discuss the award the umpire does so at his/her personal peril.

During recent years aggrieved parties to an award have sought to set aside awards by application to the court on various grounds, the two most common being that either the Arbitrator or Umpire has misconducted himself or the award has an error on its face.

Section 11 of the Arbitration Act 1908. Power to remit award. -

- (1) In all areas of reference to Arbitration the court may from time to time remit the matters referred, or any of them to the reconsideration of the arbitrators of Umpires.

Section 12 of the Arbitration Act 1908. Power to remove Arbitrator or set aside award:

- (1) Where an Arbitrator has misconducted him/herself [or the proceedings] the Court may remove him/her.
- (2) Where an Arbitrator or Umpire has misconducted himself [or the proceedings], any Arbitration or Award has been improperly procured, the court may set the award aside.

Of all the arbitrations held and awards published there have only been a minor number of awards set aside as the Court has been reluctant to upset awards. The majority of challenges to valuation awards have been to those published by Valuer/Umpires.

In *Manukau City Council v the Fencible Court Howick Limited* (1991) Cooke P. had this to say

"(a) where the parties have agreed to Arbitration the Court should not allow the finality of the award to be destroyed except for truly compelling reasons.

(b) post-arbitral litigation is not to be encouraged.

(c) at the present day there is a strong judicial respect for arbitration as a valuable mode of dispute resolution. Where an expert Arbitrator or Umpire has acted impartially (and here the challenge to the Umpires conduct has not been renewed on appeal) the court should be slow to be persuaded to strike down the decision. The mere possibility of a different result should not normally be enough to justify judicial "intervention." There should be no assumption that an error in expounding the meaning of the contract was or may have been material. The onus should be the other way. In my opinion the court should not set aside an arbitral award on the ground of error of law unless satisfied affirmatively that the error made a difference to the decision or at least probably did so.

In *United Sharebrokers Limited v Landsborough Estates Ltd and Anor* in 1991 Tipping J. stated:

"No doubt what constitutes current market rental is not an easy matter to determine in those circumstances, but do not regard that essential question as being simply a question of law. It is in reality a mixed question of fact and law. The key point for present purposes is that the Umpire is not shown to have misdirected himself in law, or to have overlooked any relevant principal of law in coming to his assessment of current market rent. Indeed the matters in which an expert Umpire is obliged to take into account in a case of this kind are essentially a question for his expert assessment after having listened carefully to the evidence and representations that the parties wish to put to him."

In *Continieau Investments Limited v Telecom Corporation of New Zealand Ltd Barker ACG* went on to say:

"Bearing in mind the cautions of the Manakau City case, I consider there are no grounds for upsetting this award or for ordering it to be remitted to the Arbitrator for further final consideration. The parties got what they bargain for - an impartial and expert assessment by an Umpire who took into account all relevant matters and approached the determination of the current market rental on an appropriate basis."

Again in *United Sharebrokers Ltd v Landsborough Estates Limited* Tipping J had said:

"There is in the present case no suggestion of procedural irregularity. It seems to me that the Lessees complaints on this aspect of the case boil down essentially to the proposition either that the Umpire effectively ignored the submissions and evidence presented by Mr Baker or that he gave insufficient weight to them. I asked Mr O'Brien whether he had any authority to support the proposition that it was misconduct if an Umpire could be shown to have ignored, in the sense of giving no or insufficient weight to certain evidence. Mr O'Brien indicated that he had no authority directly on that point."

That is hardly surprising because in my judgement it is entirely for an Arbitrator or Umpire as to what weight, if any he gives to the evidence presented to him, and indeed to the submissions

which are tendered on either side." The question of whether an award should incorporate reasons has been raised on numerous occasions and it is a matter that should be fully understood by the Umpires and the parties involved either in the written submission to arbitration or at the commencement of the actual arbitration.

"An award with reasons" does not necessarily mean "an award incorporating reasons."

Many non-legal umpires in order to distance the award from the reasons for the award have annexed the reasons to the actual award and stated that "these reasons do not form part of the award."

And further in *United Sharebrokers Ltd v Landsborough Estates Ltd* it was stated by Tipping J.

"In his award the Umpire accords that he has fully considered the lease document, the procedural matters referred to and the letter from the Lessors Solicitors, the Valuers initial submissions and their counter submissions and he then goes on to set the rental figure. Mr. O'Brien contended that the seven pages of notes outlining the Umpire's approach to the matter and his process of reasoning did in this particular case form part of the award. He recognised that he started off with a preliminary difficulty in that the Umpire indicated right at the start of the notes that they were not intended to be nor should they be taken as part of the award."

Mr. O'Brien pointed to the fact that in the letter of instructions the Umpire was required to make his determination in writing giving reasons for and the basis of his determination. It was suggested that if the Umpire had not published reasons he would have been guilty of misconduct but that does not necessarily mean the published reasons were required to be published as part of the award. Mr. O'Brien recognised that a statement such as that made by the Umpire in the present case to the effect that the accompanying reasons were not intended to be part of the award, would often be decisive of the matter."

The requirement of giving reasons was introduced in the procedural letter to the Lessors solicitors already mentioned. That letter did not expressly require the reasons to be given as part of the award. In the same way as in a

case of doubt the Court will presume that an Arbitrator did not intend to incorporate his reasons in the award, so in my view if the parties simply state that reasons are to be given without expressly stating whether or not the reasons should form part of the award, the Arbitrator or Umpire will not have misconducted himself by coming to the view that the reasons are to be given outside the award.

It is my judgement therefore that the Umpires Award in the present case does not include seven pages of notes. That being so Mr. O'Brien acknowledged that he could not advance the submissions any further because there is beyond doubt no error of law on the face of the arbitrators award, if one excludes the seven pages of notes."

However there is a fine line between what is considered to be part of the award and what is not as was determined by the Court in the *Manukau City Council v Fletcher Mainline Limited* (1982) where the judge determined that the 10 additional pages formed part of the award.

He relied upon the following features to reach this conclusion.

- "(a) the fact that the two documents were issued contemporaneously.
- (b) the fact that they were stapled together in one physical bundle.
- (c) the fact that the content of the annex is expressly described as "reasons... for my award."
- (d) the fact that the annex itself concludes with wording in a formal manner as to the result arrived at by the umpire.
- (e) the fact that there is no express disclaimer in the annex to exclude it as a relevant part of the award - this notwithstanding the reasonably well known and understood principals in this regard."

Most Valuer Umpires that have conducted a number of arbitrations have had one or more of their awards challenged at some time, and it is heartening at the support the Courts have given to those decisions and their consistent reluctance to either remit them back to the Umpire or set them aside. So provided Valuers acting as Umpires continue to abide by the basic rules of arbitration, and give each party a full and fair opportunity to state their case, they have little to be concerned over if one or both parties to the arbitration are aggrieved by the resultant award.

NZIV Valuation Standards - Report On 1994 Review

Subsequently the Standards Committee has issued Practice Valuation Standards covering the valuation of residential, rural and suburban commercial properties as well as residential properties for mortgage purposes. The Committee has also issued Non Binding Statements.

These developments all related back to objectives set in the late 1970's by NZIV when it was agreed that Standards should be introduced for the benefit of all members, and users of our services. One of the objectives at this time was to provide the mechanisms for proposing, formulating and modifying standards so that they could be responsive to pressures and requirements.

TIAVSC has itself undertaken a review of Asset Valuation Standards and as well, considered Standards relating to the valuation of other assets, not confined to those for financial reporting purposes. Graeme Horsley, who is our representative on TIAVSC, has had a significant input into the development of the Standards, and he has been supported by input from individual New Zealand Committee members as well as other members of the Institute who have a particular interest in these matters.

TIAVSC issued a booklet headed "International Valuation Standards" Nos 1-4 as well as a "Preface to Standards" in June 1994. This publication, which is available through our National Office notes in the Chairman's foreword that the revised Standards "have restructured, re-explained and modernised earlier published Standards" although the underlying principles have not changed. It is further noted that "the principal reason for revising the earlier Standards was to provide more explicit explanations for various bases of valuations, and that the Standards reflect the collective thoughts, experiences and professional judgements from more than 30 nations."

During 1994, Council agreed that four Standards and Preface should be adapted for use in New Zealand, and Council also agreed to update and replace the existing Asset Valuation Standards. The four Standards are as follows:

- Standard 1: Market Value Basis Of Valuation Standard
- 2: Valuation Bases Other Than Market Value Standard
- 3: Valuations For Financial Statements
- Standard 4: Valuations For Loan Security, Mortgages And Debentures

It was decided at the same time to also review and update the NZIV Practice Valuation Standards, Guidance Notes/Background Papers and Non Binding Statements. As a result of this, it was agreed that a "NZIV Technical Handbook" would be introduced which would incorporate the:

- Valuation Standards (previously Asset Valuation Standards)
- Background Papers
- Practice Standards (previously Practice Valuation Standards)
- Guidance Notes (previously Non Binding Statements & Recommendations)

Discussions have been continuing with the NZ Society of Accountants.

Changes

The major changes can be summarised as follows:

- | | |
|--|---|
| 1 Practice Valuation Standards | generally unchanged but have been upgraded |
| 2 Guidance Notes/Background Papers | developed into new valuation standards some have been omitted |
| 3 Discussion Paper: Net Replacement Cost | developed into new background papers |
| 4 Non Binding statement | new guidance notes issued |
| 5 Code of Ethics | unchanged meantime but to be updated 1995/96 |

Lain Gribble is Chairman of the NZIV Standards Committee, Junior Vice-President of the Institute and Auckland Branch Councillor. He is in private practice in Auckland and is a Fellow of the NZ Institute of Valuers.

by Lain Gribble

The NZIV Asset Valuation Standards and Background Papers have now been revised. They are being reissued as part of the "NZIV Technical Handbook".

Terminology has changed and the former Asset Valuation and Standards have now been replaced.

Background

The NZ Institute of Valuers is a member of TIAVSC (The International Asset Valuation Standards Committee), and over many years has taken an active part in the framing of Standards for the adoption by member associations in various countries. Our Institute appointed an Asset Valuation Standards Committee in 1984 with the role of implementing the introduction of Asset Valuation Standards. This resulted in the compilation of a series of papers for use by Valuers incorporating Guidance Notes and Background Papers. These closely followed the International Series. They were initially published in March 1985 and revised in June 1988.

Costs

The Technical Handbook will be available to all members at a discounted cost of \$65.00 including GST. The cost to non-members will be \$117.50 incl GST. For the papers provided on disk the cost is \$17.00 (incl GST). The disk is only available with the hard copy of the Technical Handbook. Costs have been closely monitored. The writing of the Standards for NZ conditions was carried out by professionals who tendered for the work.

Format

The Technical Handbook will be made available in a loose leaf, hard covered, A5 format which will permit ease of updating.

Seminars

Seminars relating to the new Standards will be run later in 1995 or as soon as members have had the opportunity to consider the new format in detail.

It cannot be emphasised enough that with the pressures now on our profession, Standards must be maintained. This Technical Handbook will provide the background in detail for most valuation tasks. Many non Valuers are already interested in these updated Standards. We believe that clients, once aware that the Standards have been updated, will expect their Valuers to comply.

New Guidance Notes which will be incorporated within the Handbook are recommended. These include Guidance Notes relating to the valuation of contaminated land, the use of discounted cash flow in property valuations and letters of engagement. Further Guidance Notes are still to be developed, one relates to the valuation of new house properties.

TIAVSC is considering a further ten International Standards, a number of which have been received by the Standards Committee and are being considered for their application in New Zealand. These include:

- Valuation of property, assets and insurance undertakings and pension funds
- Intangible asset valuations
- Going Concern Basis of Valuation
- Consideration of environmental factors in valuation
- Valuation of Public Sector infrastructure and heritage assets for financial statements and related accounts
- Plant and Machinery Valuation

These form part of the continuing involvement of the Standards Committee, with the development of "best practice" advice for members.

I take this opportunity to thank members of the Institute as well as fellow Committee members for their assistance in the development of these Standards, Guidance Notes, and Background Papers.

Release of New Zealand Institute of Valuers Valuation Standards

Joint Statement by New Zealand Institute of Valuers and New Zealand Society of Accountants

The New Zealand Institute of Valuers (the Institute) and the New Zealand Society of Accountants (the Society) have agreed to liaise in ensuring consistency between the NZIV Valuation Standards and the relevant Financial Reporting Standards of the NZSA.

The objective of co-operation between the parties is that the financial reporting standards which deal with valuation issues and the Institute's Valuation Standards be made consistent within the next two years.

The Institute has recently revised their standards in line with those issued by the International Valuation Standards Committee earlier in 1994. The agreement between the Society and Institute arises because it is considered that the prescribed specific methods to be used for valuations may in limited circumstances be inconsistent with the new reporting requirements under the Financial Reporting Act 1993.

The Society is at present reviewing SSAP-28: *Accounting for Fixed Assets* and SSAP-3: *Accounting for Depreciation* and will in due course commence a review of SSAP- 17: *Accounting for Investment Properties and Properties Intended for Sale*. Both SSAP-28 and SSAP-17 at present make explicit reference to the NZIV Asset Valuation Standards.

The NZIV has been a member of the International Valuation Standards Committee (TIAVSC) since its inception in 1981. The Institute issued its first Asset Valuation Standards, based upon the international body's work, in 1985 revising the standards again in 1988. This third revision now being published to members of the profession and the public is a substantial review and rewrite of the Standards, and as with former editions is based upon the international body's work. The rewriting of the Valuation Standards marks a significant step for the Institute consistent with the internationalisation of valuation and accounting practices.

While the Institute has decided to issue the revised Valuation Standards, it acknowledges the Society's concerns and has accepted the Society's invitation to participate in the review of valuation aspects of the relevant Financial Reporting Standards. The Institute has also agreed that following that process it will make any necessary revisions to the Valuation Standards.

The Society and Institute draw the attention of their members to the fact that requirements of generally accepted accounting practice, as defined in the Financial Reporting Act 1993, may in certain circumstances override the requirements of the recently issued Valuation Standards.

RJO Hoare President NZ Society of Accountants	John P Larmer President NZ Institute of Valuers
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INTERNET

An Introduction

by Rob Bell

Rob Pell, FRICS, FNZIV, FPML, AREINZ, Dip Surv, Dip Urb Val, MPA (Hons) is a Senior lecturer at the University of Auckland. He is the author of Investment Property published by the NZIV.

Many of the skills learned by those in the valuation profession today are rooted in traditions of the past some of which will bear little relevance to how we will go about doing the job in the future.

Take just one aspect of communication. All of us would have been taught handwriting skills at primary school but few of us would have been taught keyboarding skills. Yet most of us would use a PC and the only way we can communicate with it is via the keyboard!

Nowadays we mainly correspond using computer word-processor generated documents. We achieve this using assistants skilled in techniques used to translate our scribbled handwritten notes, our dictaphone voice records or their own shorthand notes into readable text. Soon the voice-to-text computer secretary will arrive and we will by-pass this part of the correspondence process.

Likewise we can expect change in how we process information. We are said to be

moving from the 'information age', which centred around data collection, to a new 'communications age' which will centre on sharing information. A computer network, named the Internet, illustrates this evolution. The data stored on each of the various computers connected to it represents the information age. The means by which we are able to access this data from almost anywhere represents the communications age.

Communications age technology is now significantly impacting on the way we do business in today's global economy. Intellectual capital is said to be a prerequisite for operating in this environment.

This 'buzz' phrase is used to describe those intangible assets of skill, knowledge and information which make for business success today. Knowledge is a key component and one means of gaining this is to access an ever expanding base of global knowledge and information via the Internet.

The Internet is a system allowing computers to connect to each other from virtually anywhere. It is an information technology which will increasingly affect how we do business, educate, shop and spend our leisure time in the very near future. To become skilled in 'surfing the net' requires an investment of time and energy but those who wish to avail themselves of the resources offered by the Internet will undoubtedly find this well spent

Technological evolution clearly shows us that everything we know today will shortly have changed again. The rapidity of change is such that it cannot be predicted with any certainty as to which new skills will emerge as relevant to valuation practice in the future. For the present, however, gaining skill in using the Internet is a good start to embarking on a journey to the future. Familiarisation with this technology should encourage a capacity for the flexible inventive thinking needed to act in today's ever-changing business environment.

Use of the Internet in New Zealand

New Zealand was a slow starter to the Internet and we were not even connected until 1989 when an international gateway was established at Waikato University. Since then it is estimated that more than 300 organisations and perhaps about 100,000 individuals have access with current expansion at around 15% per month. From these inauspicious beginnings it now appears that we have the highest rate of Internet growth in the world, followed by Denmark!

The basic backbone of the Internet in New Zealand is TuiaNet, an organisation made up of the Universities, Crown Research Institutes and a few other bodies. Cur-

rently all Internet traffic enters New Zealand via Waikato University in Hamilton. This link is paid for by TuiaNet using a per-byte charging scheme on all Internet traffic generated by each site in New Zealand. Traffic within New Zealand is also charged but at a lesser rate.

Whilst the Universities have been at the forefront of Internet use in New Zealand other educational users are catching up fast. Some of our primary and secondary schools came on-line in 1994 when the Ministry of Education began a pilot scheme for 150 schools in Auckland and a further 150 throughout the country to have Internet access. Besides educational establish-

ments various government departments, local authorities, corporates and private citizens use the Internet.

Many New Zealand Internet sites allow public access to data held in their computer archives which is deemed to be in the nature of public domain information. Wellington City Council' allows access to certain administrative information eg committee agenda, Council by-laws and the like. In addition since 1992 it has given its ratepayers free access to the Internet via their Citynet system. Victoria University maintains meteorological records and you can access the latest weather map4 from this archive and download it onto your computer.

What Makes Up The Internet?

Most of us will work on a personal computer (PC) which is wired to others, usually in fairly close proximity, to make up a group called a local area network (LAN). The PCs can be loaded with software giving the ability to share information with each other and they also share other devices on the network such as printers. The smooth running of the network is the responsibility of the LAN administrator. A dedicated computer, called a server, controls traffic usage on the network and also provides a store of data and applications for sharing with the networked PCs. Such a network may be connected to others of the same type, via devices called bridges, to form a larger but effectively single network called a *wide area network* (WAN). LANs and WANs generally cater for the computing requirements of the one organisation. A corporate WAN, for example, may comprise the head office with various departmental LANs, some possibly located in different buildings and remote locations such as regional and branch offices.

Such a network, having been set up and resourced by the organisation for its own particular purposes, will normally have both usage and access controlled in some way. Individual users of the system are usually given access to other computers on the network by means of a security *password*, thus keeping information secure from unauthorised use.

The Internet is open to anyone who has access to it and can be both a 'free' service and a commercial one. It can be thought of as an enormous WAN, where thousands of computer networks interconnect via devices called routers over telephone lines, satellite links, wireless phones and high-speed fibre optic trunks to form a global network of networks. Many of the organisations connected to the Internet, however, have routers called *firewall routers*, which prevent full access to the internal network by those from the outside.

Just as if phoning overseas, when unbeknown to us we will be using many different phone company exchanges and wired networks, so it is with the Internet. We pay the cost of the call to our local provider who will have made arrangements with other providers regarding the cost of through traffic. We do not necessarily know, or for that matter care, how our call got to the other side of the world just as long as it did.

The Internet actually had its origins in a US Department of Defense (DOD) project named the Advanced Research Projects Agency (ARPA). This was formed in 1969 to link various DOD establishments, military contractors and University military-funded research departments together over a *national computer network* called ARPAnet.

A set of protocols, called *Internet Protocol* (IP), was developed to enable chunks of data, called packets, to be sent across

the networks. IP networks were connected using routers and the key to the networking system was a scheme of *dynamic rerouting*. If one establishment became disrupted, perhaps as a result of an enemy attack, the traffic on it could be rerouted automatically to other links.

Eventually other Universities linked onto the network which became sufficiently large that it had to be split into two with the military part now called MILnet. Later the National Science Foundation in the USA formed its own competing network with a central *backbone* established throughout the country. Called National Science Foundation Network (NSFnet) it offered a better service than ARPAnet and eventually superseded it. Until 1 November 1994, it was federally funded and up to now has only permitted traffic related to research.

Other independent commercial networks have been developed to cater for other forms of traffic. Commercial on-line services and Bulletin Board Systems (BBS) connect to the Internet using devices called *gateways* enabling translation of data across networks employing differing protocols. A five member Commercial Internet Exchange (CIX) Board now offers an alternative commercial backbone to NSFnet with greater bandwidth. It is estimated that the CIX networks now account for up to 80% of the Internet's users of whom approximately half are commercial users.

The Internet has adopted various conventions, or protocols, these are discussed in detail later in this article, as a means of enabling specific services to be provided including:

- *Electronic mail (e-mail)* to send mail electronically from one computer to another using a specific address.
- *File transfer protocol (FTP)* to transfer ascii and binary files from one computer to another.

- *Telnet* to enable access from one computer to a remote one as though you were a local user.

To gain access to the Internet you require either:

- A computer that is part of a network that connects directly with the Internet.
- A *terminal* that is connected to a *host* computer that is connected to the Internet.

- A PC with modem to connect to a host computer that is connected to the Internet.

The application used by your host computer to communicate with others is called the *client* program and the computer that it contacts is called the server computer. Once connected to the Internet there are a wide variety of applications, mainly freeware, which can be used as tools to search it. According to the operating system your PC runs, and hardware constraints, you select a client that suits you best.

Information Systems on the Internet

Essentially there are three main systems used on the Internet, namely Gopher, World Wide Web (WWW, also abbreviated to W3) and Wide Area Information Servers (WAIS) with a fourth, Hyper-G, having recently been launched and now starting to be used at a number of universities. The three main systems are now described with screen snapshots of selected client interfaces running on a Macintosh PC as examples.

Gopher

The Gopher software was originally created as a campus-wide information search and retrieval system. Both it and the Internet Gopher protocol were developed at the University of Minnesota. Ease of use and implementation has made Gopher increasingly popular on the Internet with at least 3000 computers, called Gopher servers, now set up around the world. Information stored on many kinds of non-Gopher servers is also available via special Gopher servers that act as gateways or protocol translators.

Virtually any popular computer (Mac, Unix box, PC, or larger computer) can be used as a server. Servers do not just contain files, directories and searchable databases; they can also contain references to other servers. To retrieve and search this information, you need to run a Gopher client application on your computer. There are several distinct types of Gopher resources namely, Text Files, Images, Menus, Indexes and some Movie files.

The original Unix based Gopher application menu has a hierarchical tree structure where you start at the top of a set of general topics, select a topic to take you down to the next menu and thus continue to traverse until you find the information

you want. Although Gopher is an effective system it is a decentralised one and thus does not provide consistency from one server's menu to another.

To open Gopher you typically might use a *terminal emulator* application on your PC to log onto your host computer, and then type the words 'gopher'. From there your host connects to the 'mother' Gopher at Minnesota and you are then presented with the interface shown in *Figure 1*. This shows the Unix version of the Gopher menu with the Mac running in VTIOO terminal emulation.

It is then a simple matter to *navigate* through the system by selecting the appropriate index number on the menu. Eventually you get to where you want, at which

point you will generally have selected a file. Its contents can then either be downloaded, captured from your screen or forwarded as e-mail. Getting to where you end up may have involved Gopher taking you automatically to various other Gopher servers or to a variety of non-Gopher services such as FTP, Archie, WAIS, USENET news, etc.

Within Gopher you can undertake searches using search strings either of the server to which you are connected or, through a VERONICA server, across the Internet. Veronica undertakes searches of all Gopher menus that can be accessed from the 'mother' Gopher but searches are limited to the titles of the various documents rather than their contents.

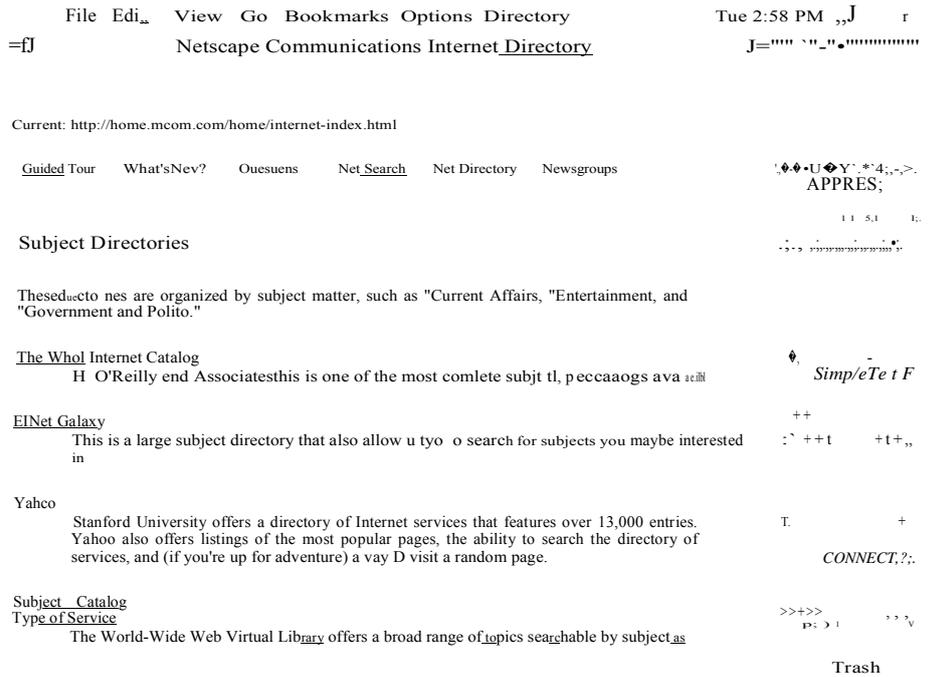
Figure 1

```

File Edit Session Network Connections          Tue 2:55 PM Ij
Cull                                           J=
                                           s HD
Root gopher server: gopher.tc.umn.edu
-->, I. Information About Gopher/
2. Computer Information/                      ES<
3. Discussion Groups/
9. Fun & Games/
5. Internet file server (ftp) sites/
6. Libraries/
7. News/
8. Other Gopher and Information Servers/
9. Phone Books/
TO.Search Gopher Titles at the University of Minnesota <?>      leTe,Sk
11.Search lots of places at the University of Minnesota <?>
12.University of Minnesota Campus Information/
                                           d/inFC;
                                           VNE 7%l
Press  for Help.  to Quit.  to go up a menu          Page: 1/1
                                           15 Ti
Etce/=: M nrd E,tnPnce. v BBS' Uni ARA ; Fe(c,5 ; Npn s Ccohe r/nra P/eon Tresh , ,.

```

Figure 2



The WWW was developed at the European Laboratory for Particle Physics in Geneva and is a more intuitive system than Gopher operating in a hypertext and hypermedia environment. It is based on an organisational structure reflecting relationships between pieces of information and is able to handle graphics and sounds as well as text. The interconnections are made via the Internet with information held on different Web servers.

Hypertext Transport Protocol (HTTP) is the network communications protocol for identifying, sending and receiving WWW documents. The client software for viewing Web documents and navigating hyperlinks to other servers is called a browser. A Uniform Resource Locator (URL) provides a uniform naming convention to a wide array of Internet services. Thus servers can also allow for access to files using FTP, NNTP (the Internet news protocol) and Gopher. A browser, such as Mosaic Netscape presents you with the interface shown in Figure 2.

Browsers display Hypertext documents having pointers to other text, letting you deal with the pointers in a transparent way since you select the pointer and are presented with the text that is pointed to. Hypermedia is a superset of hypertext and is any medium with pointers to other media. This means that browsers might not just display a text file, but also images and animations as well as creating sounds. Where the server has search capabilities a browser will permit searches of documents.

Each Netscape page provides opportunities to point and click your way to other pages of information on the Internet. Highlighted words and images in the content area of a page are links that bring new pages to the screen when clicked on. Toolbar buttons activate the most commonly used Netscape features. Directory buttons link to pages with information and tools for browsing the Internet. Pull-down menu items activate the same features as toolbar buttons plus additional features.

The Location: /Go to: text field shows the location of the current page and can be used to enter the location, the URL, of the page

you wish to go to next. The status indicator animates to show when a transfer is in progress. A blue colourbar indicates a secure document and a grey colourbar an insecure document. The status message field shows you information about a targeted page or a transfer in progress. When you point the cursor over a highlighted link, the status field displays the location of the targeted page, the progress bar fills with colour as a transfer operation completes its progress and the title bar shows the name, if any, of the current page.

Netscape can be used to read USENET news articles, to post articles of your own, to reply to existing articles and to have your reply sent to the individual author of the article or to the whole newsgroup. There are several different views each representing a different level of detail or functionality. Subscribed Newsgroups shows a listing of all the USENET groups that you have subscribed to, lists the number of unread articles in each newsgroup and allows you to subscribe and unsubscribe to newsgroups.

Newsgroup Listing shows a list of all unread articles in a threaded format that groups all articles that are related to each other in a compact ordered listing. Article Listing allows you to read the article, post a reply to the newsgroup or send a mail reply to the original poster. The article may also contain hypertext links to other articles or places on the network. News Posting allows you to post a new article to a newsgroup. News Followup allows you to reply to an existing news article and have the reply posted to the newsgroup.

Netscape also provides for the browsing of FTP servers and you can navigate directories, view files, and download useful programs using a simple point and click interface. The type, size, date and a short description of each file is shown in the directory and clicking on a directory link moves you into that directory. Clicking on a text file displays the file, and clicking on a binary file or program will automatically download the file or program and put it on your local computer in a directory of your choosing.

Wide Area Information Servers

WAIS is a query-oriented system which was developed to provide access to proprietary databases. With WAIS you enter a text search and the search engine looks at the contents of documents, rather than just the titles of documents, and you then choose from the resulting list. The search engine relies on precalculated indexes for information stored on WAIS servers but which must be reindexed when information changes. Each WAIS source file, or Mosaic URL, describes how to contact a particular server, and what to search while there.

You commence a search with a few words that you would expect to find in a paragraph or passage of the document you're looking for. Single-word searches often dredge up unexpected and unwanted material. Once something useful has been found relevance feedback is used, ie promising material already found is used as the basis for the next search. Relevance feedback rates the results of a search to guide further searching.

Using positive relevance feedback the user can indicate documents or sections of documents which represent the desired kind of material, and the search engine will extract terms from those to construct a new query. There are two classes of words which are ignored in queries. First, there are 'stop words' which are words chosen by the database administrator for their perfect lack of value in searching. Second there are also some words too common to be helpful in searches which are weeded out by the database software as the database is built.

When you mark a document for feedback in the WAIS user interface the engine receives a document identifier, not the text of the document, and uses it to look up a list of the searchable terms in the document. If there are more than 100, it selects the 100 rarest searchable terms and adds those to your query.

WAIS is Unix based but there are a number of other interfaces which can be used for searching and it can also be accessed using Gopher and WWW. The MacWais application presents you with the interface shown in *Figure 3*.

A Comparison of Gopher, WWW and WAIS

While all three of these information presentation systems are client-server based, they differ in terms of their model of data. In Gopher, data is either a menu, a document, an index or a Telnet connection. In WAIS, everything is an index and everything that is returned from the index is a document. In WWW, everything is a hypertext document which may be searchable.

In practice, this means that WWW can represent the Gopher and WAIS data models as well as providing extra functionality. Since a menu is a list of links a Gopher document is a hypertext document without links, likewise with searches and Telnet sessions. A WAIS index is a searchable page returning a document with no links.

WWW usage has grown far beyond Gopher usage in the last few months, according to the statistics keepers of the Internet backbone. However, since WWW browsers can also access Gopher servers this inflates the numbers for the latter. Certainly it would appear that WWW has long since reached critical mass with new commercial and non commercial sites appearing daily.

Figure 3

```

krile Edit Sources      Windows

This is the search report for the search you ran on Dec 11 23:48:50 1994.
It is a temporary file, and will expire about an hour after the search.
-----
Searching directory-of-servers...
Your query was,

    realGes to teBva luau on

The database contains 89,473 words in 544 documents
There are 9,790 different words

real occurs 5 times in 3 documents.
estate does not occur in the database.
valuation does not occur in the database.

The search found 3 documents      It took less than a second.
----- [ EI-                    •Unnemed Question

    |3|L|C|      i -Tell 1c About:
    Persond      real Bes totetval at ion
                                                    Rsk
                                                    /Bdl|/Ep;r;i

    Similar
    To:
                                                    19
                                                    OF
                                                    rONNEC7

Information Found      3 InlonnWium Sources Selected r- 0

Score Size  Headline
1000 3.6K (94/10/19) hst-weekly-timeline.src
1000 27.2K FY1 20/Krol i Hoffman/What is the Internet/May 1993
E,vicei. Min 999 353.4K EFF/Big Dummy's Guide to the Internet/Oct 1993
941 14.9K Artbase/Bibliography of Rrts Online/Jul 1991

```

Other Internet Resources

There are many resources available on the Internet which can be accessed using the appropriate client application. Some, such as the Talk application which enables you to undertake 'conversations' with others by typing text which is displayed on the screen of your PC are novel, but not necessarily particularly useful. Others, such as Archie, which enable searches for software over the Internet, are more useful but because of their popularity can be slow. Accordingly the resources selected for discussion below are by no means an extensive list but rather are those which will be found most useful.

Electronic Mail

Electronic mail is a common feature on most LANs and WANs nowadays with each particular organisation using networked mail applications for internal communication and also to outside networks. Most such networks will also have either direct connection to the Internet or to other networks having one or more gateways to it. E-mail is sent over the Internet using Simple Mail Transfer Protocol (SMTP) and is being increasingly used as a faster and cheaper alternative to the traditional post and to the fax.

Figure 4 shows the Eudora e-mail interface used by the writer's PC to view a letter, which had been sent earlier and stored on the host computer.

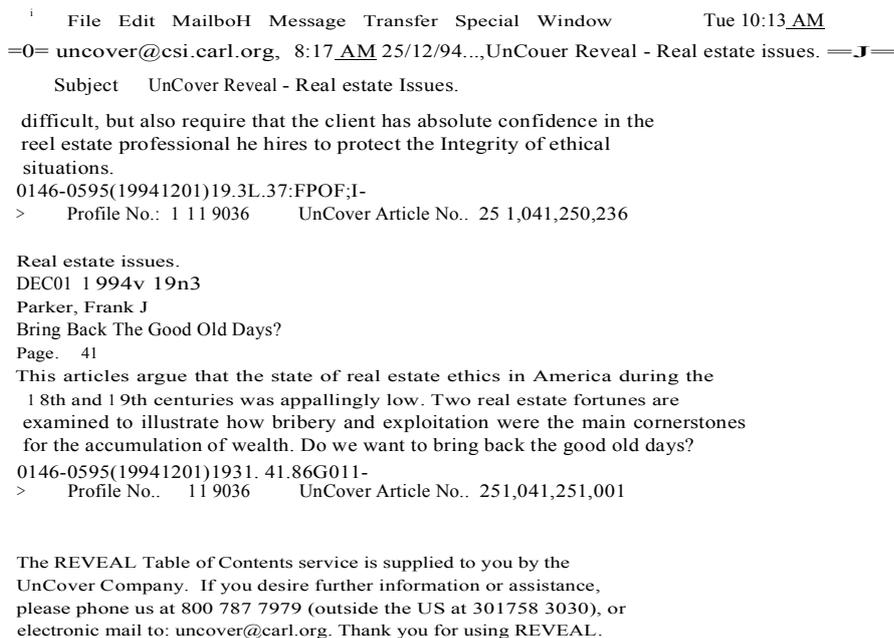
Client applications used for Internet E-mail can vary from simple text editors to those offering more comprehensive features, such as those which enable other electronic documents to be attached to the letter. Many commercial information provider services will send automatic e-mail letters to those on their mailing list giving updated information about a particular subject which is of interest. The recipient then replies by e-mail to order such information as may be required.

USENET News

USENET news is a collection of areas organised by topic called newsgroups. Each newsgroup contains articles posted by people from around the world who are connected to the Internet. It began in 1979 as a means to facilitate communications between the University of North Carolina and Duke University. Communication is via messages posted to special interest newsgroups.

As has been indicated previously, the WWW Netscape browser can be used to

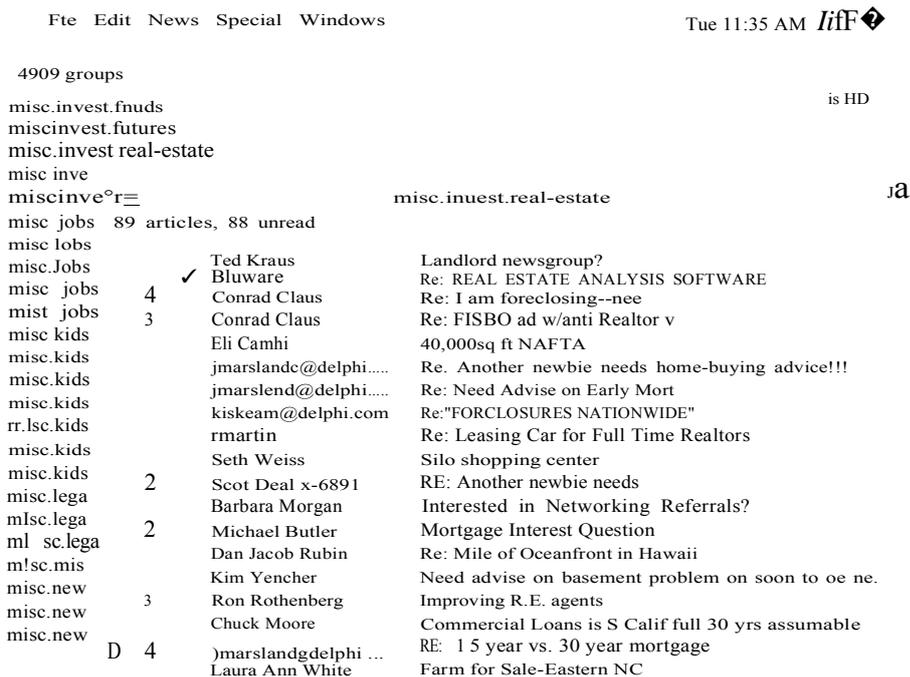
Figure 4



access newsgroups but there are other applications besides, most of which will check for news and automatically sort it for you. There are 4909 newsgroups at the time of writing but they are constantly changing, with groups added and deleted daily. Hundreds of thousands of new articles are added weekly. However, due to their specialised nature the contents of

most would not necessarily be of interest to any one individual. Insofar as valuation is concerned the only newsgroup to date of interest is entitled misc.invest.real-estate which contains fairly wide ranging discussion on property investment matters. Figure 5, which has used the NewsWatcher application to access USENET, shows a sample of the content of this newsgroup.h

Figure 5



Telnet

Telnet is an application which allows your computer to log in to a remote computer, called the host computer, at which point your computer acts as if it were a terminal of the host. It is necessary for your computer to use a terminal application to emulate the type of terminal the host can best communicate with in order that the correct control sequences are used and the two interact appropriately. Normally to Telnet to another computer on the Internet you will first log in to your local host computer which then Telnets you to the remote computer.

There are some organisations which hold information of such a nature that it is deemed by that organisation to be in the area of the public domain and thus available for sharing with any who wish to access it. Other organisations gather and store information for commercial purposes and will only allow access to subscribers who hold an account and pay for the service. Yet others stand somewhere between the two sharing some of their information gratis and charging for the remainder.

Where any such information is held on computer the organisation owning it may allow you to Telnet to them. Where the information is deemed public you may be able to log in without restriction, although in many instances you must register when first you log in. Otherwise you will have to obtain an account and pay for the information obtained. Telnet access can be obtained to the databases of many libraries, research institutes, local and central government and international organisations.

Figure 6 shows the interface presented to the BYU Telnet application when used in VT 100 emulation to Telnet to the Harvard library at telnet.hollis.harvard.edu via the writer's local host computer.

File Transfer

File Transfer Protocol (FTP) is a protocol that enables you to log into another computer on the Internet and transfer a copy of the file onto your computer. An almost infinite number of interesting programs, utilities, helpful advice and games can be found on Internet FTP sites. The archive wuarchive.wustl.edu FTP site is the most popular and most visited FTP site in the world.

It contains an extensive archive of DOS, Windows, Macintosh and UNIX programs and utilities, more than 3,000 Megabytes of data in all. All the programs and utilities can be down loaded free of charge. There can be difficulties in getting connected to wuarchive at times since it is so popular and it has a preset limit on the number of people that may visit it at any one time.

When using FTP to transfer files it is usual to log in using the password 'anonymous' unless you have an account. 'Anonymous' users will normally be restricted to certain directories. Many files contained in the directories will be encoded and compressed to take up less disk space. They will thus be faster to retrieve but will also require to be decoded and uncompressed at the receiving end.

Figure 6

```

File Edit Session Network Connections Tue 1:32 PM ?J
                                Ccu1 J'
Harvard University -- TELNET server - 112030-256, U3.5.46 4
                                0
                                sH
- Hit return to begin TELNET session. Terminal type will be UT100. I
                                E
                                To select a different terminal type, overkey !ut100,3278 below
                                with "show". Then enter followed by terminal type at the TS)
                                prompt.
- To obtain help at this screen, overkey !vt100,3276 below with
                                help" .l
- To exit TELNET server from this screen, overkey !vt100,3278 below
                                with "bye".
- To terminate TELNET session, enter "ESCxx". To obtain help during
                                TELNET session, enter "ESCh".

                                £,rcer

IS> vt100,32781
a
◆TPrn /Pd/Inh:ARA BBS WAIS Fetch' Nelrc' C"nphPr P/nsB/r //eN2+ CONNFC7 Trash

```

Figure 7

```

Kite Edit Remote Directories Customize Windows Mon 7:35 PM
230-The response 'user$host' is not valid
230-Next time please use your a-mail address as your password
230- for example: JoePrbell sl.p.ouckland cc.nz
2 -
230- Welcome to the Dartmouth College ftp server. Send comments or
230- complaints to ftpPftp.Dartmouth.EDU.
230- Your hostname and userid are logged for all transfers.
230- Ftp by email is available from this host. Send a message to
230- ftpmail8ftp.Dartmouth.EDU with the word "help" as the text.
230- You will receive a return message with instructions for ftpmai l.
230- Gu Fetch: ftp.dartmouth.edu billable
Fetch Copyright 01994Trustees of Dartmouth College
                                Close Connection afW
                                Status
                                Connected.
                                File
                                Put File..
                                Transfer C
                                Q Rutomatic
                                O TeHt
                                O Binary 2 1 2
14-10-11 11:11:11 TYI . . . P YY I NPH I Cnphei P/n◆a/r' TP/me/I /-e T rash
EICP' H/nod' Etpencet' [◆◆q5"UnIARA

```

Some files will be in text format, others in different format such as PICT, JPEG or GIF for images and QuickTime for digitised movies. Unless FTP is being used to transfer files across two computers of the same type conversion will be necessary. Figure 7 shows the Fetch application in use to locate and transfer a file from Dartmouth College, USA to the writer's PC at home in Coatesville, on the outskirts of Auckland.

Electronic Libraries

Valuers will find Internet access to libraries a particularly useful resource. You can find out what has been published about a particular subject you are interested in by using a variety of search methods. The range of subject information you can obtain is enormous and you are certain to come across publications, some entirely in electronic form, that you were never aware even existed.

Already most libraries, even of moderate size, have computer systems available on site which enable users to determine what information is stored and where it is located. Such systems can be relatively easily extended to cater for the user who is remote from the location and many have now been connected to the Internet. Significant library services include:

- The Online Computer Library Centre. This maintains Worldcat, a catalogue of 30 million books and periodicals

with location information for 15,000 libraries worldwide. Firstsearch is an online service providing access to 43 databases including Contentlist, a table of contents page from 11,000 journals in most subject areas including real estate. The service requires an account and can be accessed by Telnet.'

- The Colorado Alliance of Research Libraries. This maintains UnCover, a database of the content pages of around 15,000 periodicals including real estate journals. Contents may be browsed without incurring a cost then ordered by credit card for transmission via fax, e-mail, or by post. The service requires you to register and can be accessed by Telnet.R
- The Library of Congress. This is the largest library in the world and has a catalogue system calledLOCISwhich allows searches of all its books and US

government legislation. The service requires you to register and can be accessed by Telnet.9

Nearer to home there are library databases throughout Australasia which collectively contain references to more than 25 million books and other recorded information. Commercial services such as Ozline in Australia and Kiwinet in New Zealand provide access to various databases which index the contents of local and overseas journals.

A proposed National Document and Information Service (NDIS) estimated to cost some AUD\$10-15 million was jointly announced by the National Library of Australia and that of New Zealand on 10 November 1994. This is intended to extend and link the present services and provide for the electronic delivery of documents via the Internet within 2 years and will operate on a cost recovery basis.

How To Connect To The Internet

If your organisation is already connected to the Internet, but you do not have personal access, then first you need to persuade your network administrator to hook your PC onto your organisation's LAN if it is not already on. If your PC has insufficient hardware attributes eg CPU capability, RAM, spare hard disk capacity then you will need to have it upgraded or, perhaps, purchase a new computer. Then you need to be given an account on a host computer and your PC will have to be loaded with the necessary applications. You will then require some elementary training to gain familiarity with the applications you intend to use and also to note any required passwords.

If your organisation is not connected then you will have to convince it to do so. If the organisation comprises a sole practitioner then you will need to convince yourself! The resources you will then require are as follows:

An individual user

Anyone with a PC and modem can gain access to the Internet. A commercial "Internet connection provider" will establish an account with you and provide a connection via a phone number which your modem connects to. To enable your account to be kept secure the provider will give you a unique account number and you set up a unique password to use when accessing the account. You will require:

- A modem with a speed of 2400bps being the absolute minimum if all you want to do is read messages, but if you intend to download files you need a faster modem, say 14400bps.
- A computer which, for ease of use, should preferably have a modern graphical user interface (GUI) for its operating system, such as Mac or Windows, and for which there is plenty of ITP software available.

- Software with a terminal emulator being the minimum needed for accessing most providers this usually included with your modem or operating system and with cheap shareware or commercial packages readily available. Point To Point Protocol (PPP) is available for MS-Windows, Mac, Amiga, OS/2 and Unix platforms.

An organisation

A small organisation could choose to have an account similar to that for an individual, in which case hardware/software requirements will be similar, but larger organisations may wish to be directly connected to the Internet via leased circuits. The larger organisations requirements differ as follows:

- Hardware will consist of a dedicated gateway machine running some form of Unix giving route, firewall and protocol translation while acting as a mail,

news server, etc thus maintaining a link between the organisation's LAN and the Internet provider.

- Software will be very dependent on what the organisation's LAN runs along and according to security requirements and the level of access to be given to employees.

Conclusion

When viewed with the benefit of hindsight the past will always be a foreign place where things were done differently. A decade ago few valuers would have owned a PC and probably none a modem. Few of us would have imagined that before long it would be possible to send e-mail to anywhere in the world via the Internet. Or that it would be possible to access and operate a corporate mainframe or a work based PC from one's home. The Internet has brought about much of this change.

In 1988 it was estimated that there were 1 million individuals with access to the Internet. Today it is estimated that there are 20 million users with 3.2 million computers connected and it is expected that within 5 years there will be 100 million computers alone." Growth of the Internet and changing information technologies will obviously impact on the way valuers and other property professionals will market their services and do business in the future.

The so called electronic mall with direct on-line selling is now to be found on the Internet with access available to many overseas real estate listing services including The Real Estate Network, 2GEMS Global Real Estate Network" and Homebuyer Fair.⁴ No New Zealand estate agencies to date have availed themselves of this form of marketing. However, a company in Hamilton offers services which include title and company searches, local authority searches eg LIMs and other legal services using the Internet. These point the way to how real estate agency and property information will be marketed in the future.

Other things which we know in one form today will change completely. Libraries will change from buildings storing information kept on shelves, as books, magazines, journals, photographs, paintings, videos and sound recordings to `virtual

- Leased Circuits will provide a throughput of 28,800bps and give an organisation continuous connection to the Internet via a provider with a leased phone line costing around \$2000-\$3000 to set up and about \$100 a month to run at the cheapest level.

libraries'. These will provide on-line information stored on the library computer delivered electronically to wherever required. This will require greatly enhanced computer storage capacity but reduced building space for essentially only one electronic copy needs to be retained in the one archive as it can be electronically accessed from elsewhere.

The Internet is already an information network of almost unimaginable proportions but its present use as a valuation information resource is somewhat restricted. This is due to a relative lack of open access property information systems and of property specific commercial services. However, it is eminently suited for certain aspects of the valuer's work particularly for communication by e-mail, for library searches and obtaining economic information.

Gaining familiarity with the Internet in its present form should point to new ways of going about aspect of our business, working and learning. This should create a platform of knowledge from which it should be easier to up-skill when becoming familiar with the information technologies of the future

Valuers and other property professionals of the future will need to constantly update information technology skills throughout their lifetime. There will be a change in education and training methods and we can expect to see the professional institutes introduce new technology as a means of supporting the life-long learner. This will be achieved by distance education distributed electronically and able to be accessed remotely by the electronic umbilical.

Finally, using the Internet can be just plain fun. The term `cruising the Internet' conveys some of the sense of freedom and adventure that can be enjoyed when using this resource. Imagine the thrill when, from this remote end of the world using a \$2000 PC, you actually connect to, then control, a \$10m computer located in the

Options such as ISDN and microwave are also available in some areas and are much faster but the cost of these options, both in hardware and line rental, rises sharply as bandwidth increases.

USA. Or download a digital picture from the collection at the Louvre. Happy cruising!

Electronic References

For more information go to WWW at <http://home.mcom.com/home/about-the-internet.html>

`US Internet levies not applicable to NZ', *Network World*, 10 October 1994, p6.

- This can be obtained using WWW <http://www.wcc.govt.nz/>

This can be obtained using WWW <http://www.rses.vuw.ac.nz/1'..t,'meteorology.maps.html>

See on WWW at <http://www.ncsa.uiuc.edu/SDG/Software/Mosaic/flocs/whatsnew.html>

This can be obtained using FTP at <ftp://ftp.acns.nwu.edu/pub/newswatcher1>

This can be obtained using telnet <fscat.oclc.org>

This can be obtained using telnet <database.carl.org>

This can be obtained using telnet <locis.loc.gov>

To find these use WWW at <http://fac.trix.gen.nz/generalinternet.faq>

The Internet', *Business Week*, November 14, 1994, p 40.

This can be obtained using WWW at <http://www.csi.nb.ca:80/Celerity>

This can be obtained using WWW at <http://www.gems.comlrealstate/index.html>

⁷⁹ This can be obtained using WWW at <http://www.homefair.comlhomefair/nhwash/nhwash.html>

LEGAL ISSUES

Copyright Law

Update

by Ross Johnston

- Partner Kensington Swan Wellington

The Copyright Act 1994 came into force on 1 January 1995. Copyright law has considerable relevance to valuers because they are typically both owners and users of copyright works. Copyright owners have the right to control unauthorized exploitation of their works.

Users of copyright works must avoid infringing the copyrights of others.

This article provides a brief introduction to copyright law and explains key copyright concepts which valuers need to know.

Works Protected By Copyright

Copyright is a property right that can exist in a wide variety of different works. Two categories of works which are likely to be particularly relevant to valuers are:

- Literary works, which include written works and computer programs
- Artistic works, which include graphic works, photographs, sculptures, models and works of architecture, among other things.

Originality Requirement

In order to receive protection, a work must be original. The originality requirement is not demanding. A work is original in the copyright sense if it owes its origin to the author and was not copied from an existing work. Therefore a work can be original without being unique or novel.

Although a work can incorporate pre-existing material and still be original, the copyright on the work covers only the original material contributed by the author.

Examples:

A textbook on the valuation of commercial property is original in the copyright sense so long as the author did not create the book by copying existing material, even although many textbooks have already been written on the subject of commercial property valuation.

A sketch or photograph of a landmark building may obtain protection as an original artistic work even if the building has been drawn or photographed by others on many prior occasions.

Artistic or Literary Merit not Required

The expressions "artistic work" and "literary work" can be misleading. An artistic work does not need to have any artistic merit nor does a literary work need to meet any literary standard in order to qualify for copyright protection.

Example:

A valuer prepares an original report which describes in technical language defects in a building accompanied by

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illustrative sketch plans. This work would qualify for protection as a literary and artistic work notwithstanding that the technical language in the report does not stand comparison with the literary language of a novel by one of the Bronte Sisters nor the drawings with a sketch by Picasso.

What Does Copyright Protect?

A copyright owner has several different exclusive rights in the copyright work. By far the most significant right is the right to copy, duplicate or publish the work. Because this right is exclusive the copyright owner is able to prevent others from doing these acts without permission. Anyone who violates any of the exclusive rights of a copyright owner is an infringer. In general, unauthorized copying of a copyright work amounts to an infringing act, although there are limitations on protection, some of which are considered later in this article.

Example:

A valuer prepares a valuation report which he supplies to a real estate agent. No agreement is made concerning the transfer of ownership of copyright in the work to the real estate agent and the valuer, as the author of an original work, is therefore the copyright owner. The real estate agent would infringe copyright if he made unauthorized copies of the valuation report and distributed them to members of the public without the permission of the valuer.

The Copyright Act defines certain forms of secondary infringement relating to the distribution of the copyright work. In general, secondary infringement arises through the unauthorized importation, sale, leasing or hire of copyright works.

Remedies

The primary remedy available to a copyright owner against infringers is an injunction to restrain the infringing conduct. Other forms of relief include damages or an account of profits and an order for delivery up of infringing copies. In addition, criminal proceedings may be brought in some circumstances, including the case where a person sells without authorisation an object which he or she knows is an infringing copy of a copyright work. Upon conviction the infringer becomes liable to fines or imprisonment. The Copyright Act 1994 has substantially increased the level of fines from a maximum of \$50 for every infringing copy to a maximum of \$5,000 for every infringing copy. As a result, the threat of criminal prosecution is now a much more effective deterrent to deliberate copyright infringement.

How Does Copyright Arise?

One of the attractive features of copyright protection is that it arises automatically. Unlike other forms of intellectual property protection, such as patents and trade marks, no form of registra-

tion is required. There is, however, a requirement that some works should be recorded in a tangible medium of expression before protection arises. Copyright does not exist in a literary or dramatic or musical work unless and until the work is recorded, in writing or otherwise.

Example:

A valuation report delivered verbally would not attract copyright protection. However, as soon as the report is recorded in writing (whether by the author or by another person) copyright exists in the report as a literary work.

Although the use of a copyright notice is optional a notice can be beneficial in some situations. For example, where a name purporting to be that of the author appears on copies of a literary work as published or on an artistic work when it was made, it is presumed that the person whose name appears is the author of the work and that the work was not made in circumstances which exclude the author's right to be first owner of any copyright in the work. These presumptions make it easier for a copyright owner to prove his or her copyright if infringement proceedings are taken.

In general it is desirable for all copyright works to identify the name of the author and the date and country in which the work was first made or published. The presence of a copyright notice may deter would-be copyright infringers and reduces the scope for infringers to raise a defence that their infringement was innocent.

Ownership

In general, the person who is the author of a work is the first owner of any copyright in the work. Like many general principles, this rule is subject to a number of exceptions. For example, where an employee makes a literary or artistic work in the course of his or her employment, that person's employer is the first owner of any copyright in the work.

Another exception relates to commissioned works. Where a person commissions or agrees to pay for, the taking of a photograph or the making of a computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording, and the work is made pursuant to that commission then the commissioner is the first owner of the copyright in the work.

The above presumptions apply subject to any agreement to the contrary.

Example:

A computer programmer is asked to write software for a firm of valuers. The programmer agrees to accept a reduced price for the software development in return for the agreement by the firm to permit the programmer to retain copyright ownership so that the software can be licensed to others. In this

situation the computer programmer would be the first copyright owner and the presumption relating to commissioned works would not apply.

The first owner of the copyright is free to license the work or to assign ownership of the copyright to another person. An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.

Duration Of The Rights

In most cases, copyright in a literary or artistic work continues for a period of 50 years from the end of the calendar year in which the author dies. If the work is computer generated, copyright expires at the end of the period of 50 years from the end of the calendar year in which the work is made. Given that much of the documentation and computer software produced and used by valuers has a relatively short useful life, this term of protection is likely to be more than adequate. Once the term of copyright expires the work falls into the public domain and may be freely used or copied without permission.

Limits On Protection

The exclusive rights granted to a copyright owner are subject to certain exceptions and limitations. Copyright does not protect all elements of a work. Furthermore the Copyright Act contains fair dealing provisions which enable copyright works to be dealt with for certain purposes without giving rise to infringement.

Expression versus Ideas

Copyright protects against the unauthorized reproduction of a work's expression. The protection extends to translations and adaptations of the work.

Example:

A valuer's report is translated from English into Japanese for the benefit of an overseas property investor. Although the translation is prepared by a Japanese translator, the author of the original English report retains ownership of the copyright in the Japanese translation.

Copyright does not however extend to the ideas, procedures, systems, methods of operation, concepts, principles or discoveries incorporated in the work.

Example:

A valuer writes an article in the Valuers' Journal describing procedures and methodologies for valuation of a business. The valuer retains copyright in the article. As a result the valuer can prevent unauthorized reproduction of the article. She cannot, however, prevent others from using the procedures or methodologies described in the article for their own benefit.

Facts

Another significant exception concerns factual information. The facts disclosed in a copyright work are not protected, even if the author spent large amounts of time, effort and expense in obtaining those facts.

This point is of considerable importance to valuers because a valuer's report typically contains a lot of factual information. For example, most valuation reports include a compilation of facts such as Certificate of Title references, Lot numbers and DP numbers, recent Government valuations and the like.

Compilations of facts are protected by copyright only to the extent of the author's originality in the selection, arrangement and presentation of the facts. The facts themselves may be reused or repeated freely (unless the information is not in the public domain and has been disclosed in confidence). Original opinions or comments concerning factual material are however, protectable by copyright.

Independent Creation

A copyright owner has no remedies against another person who, working independently, creates a duplicate of the copyright work. Because the fundamental purpose of the Copyright Act is to prevent unauthorized copying of protected works, the independent creation of similar, or even identical, works, does not infringe any of the copyright owner's exclusive rights.

In this respect copyright law differs significantly from patent and trade mark law which provide the owner of the relevant rights with exclusive rights to use a trade mark or exploit an invention even where no copying is involved.

Fair Dealing Defences

The Copyright Act contains provisions which enable certain actions, which would otherwise amount to copyright infringement, to be undertaken for certain purposes without infringing copyright in a work.

Criticism or Review

For example, a fair dealing with a work for the purposes of criticism or review does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement. A "sufficient acknowledgement" means an acknowledgement identifying the title or description of the work and the author of the work (unless the work is anonymous or, in the case of an unpublished work, it is not reasonably possible to identify the author).

Example:

A valuer is requested to give a second opinion concerning a valuation report prepared by another valuer. In preparing her report, the valuer quotes extracts from the first valuer's

report verbatim. Even if a substantial part of the first report is reproduced, no copyright infringement will occur if the use of the quoted extract is fair and the first work is identified by title and author.

The use of verbatim extracts from an earlier report is likely to be fair where use of the material is reasonably necessary for the purpose of effectively critiquing the work. For example, it may be necessary to quote exactly extracts of a report in order to adequately convey to the reader the nature or meaning of information which is the subject of the review.

Research or Private Study

Another fair dealing exception which is likely to be relevant to valuers concerns use of copyright works for the purposes of research or private study. Fair dealing with a work for the purposes of research or private study does not infringe copyright in the work. In determining whether copying for the purposes of research or private study constitutes fair dealing in a particular case a court is required to have regard to:

- (a) the purpose of the copying; and
- (b) the nature of the work copied; and
- (c) whether the work could have been obtained within a reasonable time at an ordinary commercial price; and
- (d) the effect of the copying on the potential market for, or value of the work; and
- (e) where part of the work is copied, the amount and substantiality of the part copied taken in relation to the whole work.

The fair dealing provisions which govern research or private study specifically state that nothing in the section authorises the making of more than one copy of the same work, or the same part of a work, on any one occasion. Therefore there may be cases where the making of one copy for the purposes of research or private study would be a fair dealing but the making of multiple copies would not.

There are other fair dealing defences, such as provisions in the Act which permit copying for certain educational purposes and copying by librarians or archivists.

International Protection

New Zealand is a party to international conventions which provide international protection for intellectual property, including copyright.

This does not mean that the law governing copyright, is identical in every country which is party to the international copyright conventions. Instead, member countries are required to implement certain minimum standards and to accord to the nationals

of other member countries the same protection as they give to their own nationals.

Because New Zealand is a member of both major international copyright conventions, New Zealand authors automatically receive copyright protection in all countries that are parties to those conventions on the same basis as nationals of the overseas member countries.

Example:

A New Zealand valuer develops a computer program which is marketed in the United States. A software distributor in the United States makes unauthorized copies of the program and commences distribution in the United States. The New Zealand valuer is entitled to sue the US distributor under those provisions of US copyright law which prohibit unauthorized reproduction and distribution of computer programs on the same basis as if he were an American citizen. Although the software was developed in New Zealand by a New Zealand citizen, the applicable law is the law of the United States where the infringement took place. New Zealand and the United States are members of the Berne Convention for the protection of literary and artistic works and the Universal Copyright Convention.

Incidentally, the United States has only recently become a member of the Berne Convention. An important consequence of the adoption of the Berne Convention by the United States is that the requirement for compliance with formalities, such as registration of copyright, as a prerequisite to enforcement is no longer applicable.

Naturally the principle of reciprocity contained in the international copyright conventions provides protection in New Zealand for nationals of other member countries.

Example:

A valuation textbook written by an English author resident in Australia is reproduced without authorisation in New Zealand. The owner of copyright in the textbook will be entitled to initiate proceedings against the infringer in New Zealand.

Conclusion

The Copyright Act provides wide ranging protection for works used and created by valuers in the ordinary course of their business. It is therefore important that valuers should have an appreciation of basic concepts of copyright law relevant to their business. Although this article has endeavoured to identify and summarise some of those concepts, this area of law is complex and some of the concepts are stated in generalised terms. Advice concerning specific copyright problems should be sought from a legal advisor with specialised knowledge of copyright law.

Legal Decisions⁴⁰

Valuation of racecourse and environs Respondents' interest in land prescribed by statute - Method of valuation of reserve with limitations to use and alienation - Determination of valuation from notional sale - Whether Tribunal erred in rejecting method of valuation adopted by both appellants valuers and respondents valuers - Valuation of Land Act 1951, s2; Christchurch Racecourse Reserve Act 1878, s2; Reserves Act 1977, s67.

In The High Court Of New Zealand
Christchurch Registry

No. AP343/92

Between Valuer General
Appellant

And The Trustees Of The
Christchurch Racecourse
Respondents

Hearing: 29 June 1994

Counsel: GK Panckhurst for Appellant
GH Gould for Respondents

Judgment: 13 September 1994

Reserved Judgment Of Holland, J. &
Mr IW. Lyall

This appeal by the Valuer General is in respect of the valuation under the Valuation of Land Act 1951 of the Riccarton Racecourse and its environs. The valuation in question was made as at 1987. It has taken some while to get to this Court. It originally came before the North Canterbury Land Valuation Tribunal in March 1991 and the Tribunal had occasion to remark that it had "taken an unconscionable length of time to reach a hearing". Notwithstanding that remark, the Tribunal issued an interim judgment on 8 April 1992 requiring further evidence. The final judgment, which is the subject of this appeal, was delivered on 9 November 1992. It again appears to have taken an unconscionable length of time to have reached this Court. We are told that the appeal is of some importance as it involves principles relating to the proper method of valuation of Reserves which have limitations both as to use and as to alienation.

The Valuer General valued the property for the revaluation as at 1 July 1987 at \$7,600,000 of which \$4,400,000 was attributed to improvements. There has never been any dispute over the valuation of the improvements. The respondents objected to the land valuation of \$3,200,000. They negotiated with the Valuer General and he

agreed to a reduction of the land value to \$2,467,000. That was not acceptable to the respondents and the matter came before the Land Valuation Tribunal. The objectors contended before the Tribunal that the land value was just over \$500,000. The Tribunal determined that the land value was \$820,000. It is against that finding that the Valuer General appeals. There are some unusual features of the decision of the Tribunal in that its interim decision rejected the method of valuation adopted by all the valuers called on each side.

The respondents are trustees of the land subject to the provisions of the Christchurch Racecourse Reserve Act 1878 and the Reserves Act 1977. The land is vested in, and held by, them, for the purposes of racing pursuant to s.2 of the 1878 Act. It is a reserve under the 1977 Act. The Trustees are required under the 1878 Act to set apart a sufficient portion of the land for the purposes of a racecourse. They are also empowered to lease the land or any part thereof for any term of years not exceeding seven years "on conditions not inconsistent with the purposes of the racecourse". Section 67 of the Reserves Act 1977 empowers the trustees with the prior consent of the Minister of Conservation to lease to any racing club for a term not exceeding 33 years with or without provision for renewal for one or more further similar terms. Significantly the Trustees have no power of disposal of the freehold of the land.

The 1977 Act grants the public freedom of entry and access to the reserve, subject to the Trustees' power to make by-laws excluding the public from such parts of the reserve as may be necessary for planting or preservation of grass and when the reserve is used for racing purposes. The Trustees are empowered to grant the exclusive use and control of the reserve or of any part to any racing club when the

reserve is used for racing purposes.

There are several matters that are common ground between the parties.

- (1) The only matter requiring determination is the land value. Land value is defined in s.2 of the Valuation of Land Act 1951 as:-
"Land value', in relation to any land, means the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose, and if no improvements (as hereinbefore defined) had been made on the said land."
- (2) It is the marketable value of the owner's unencumbered estate or interest in the land which is to be valued, not the land itself. See *In re Hutt Park and Racecourse Board* [1907] 27 N.Z.L.R. 246 at 251.
- (3) The interest of the respondents in the land in question is the interest earlier described imposed upon the trustees by the Christchurch Racecourse Reserve Act 1878 and the Reserves Act 1977 and limited by the provisions of those Acts.
- (4) In order to determine the land value, an assumption of sale must be made notwithstanding that the actual owner has no power of sale of the land. Nevertheless the value must be on the basis that the fictional purchaser acquires the land subject to all restrictions as to use and disposal. See *In re Hutt Park and Racecourse Board* (supra) and *Thomas v Attorney General* [1918] N.Z.L.R. 164 at pg174.
- (5) The hypothetical purchaser might include the present owner - see *Valuer General v Wellington City Corporation* [1933] N.Z.L.R. 855.
- (6) The zoning of the land is a factor to be considered in arriving at its value - *McKee v Valuer General* [1971] N.Z.L.R. 436.
- (7) Any work, excluded from the definition of "improvements" in the Land Valuation Act which has improved the value of the land is to be taken into account in assessing the land value

and not by way of "improvements". The second proviso to the definition of "improvements" in the Valuation of Land Act 1951 is as follows:-

"Provided also that work done on or for the benefit of the land by any owner or occupier thereof in

- (a) The draining, excavation, filling, or reclamation of the land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling, or reclamation; or
- (b) The grading or levelling of the land or the removal of rocks, stone, sand, or soil therefrom; or
- (c) The removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or
- (d) The alteration of soil fertility or of the structure of the soil; or
- (e) The arresting or elimination of erosion or flooding -

shall not be deemed to be improvements on that land or on any other land."

The issue arising for determination on this appeal is the correct method of assessing land value of a reserve where the owner of the land does not have an unrestricted right of sale or lease of the land and, in this case, the use of the land is essentially restricted to a specified purpose, and to the rights of public to use the land. Particular difficulties arise because the restrictions on the owner are far more than mere restrictions of use which may frequently arise under the Resource Management Act 1991 but are contained in separate statutes and cannot be removed at least in so far as acquiring a power of sale is concerned without an Act of Parliament.

At the first hearing before the Tribunal evidence was given by four valuers, two on each side. They all adopted the same method of valuation, although reached quite materially different results. The method adopted was an attempt to determine the land value of the land with its present restrictions, and to add a sum making allowance for the possibility of the removal of, or amendment to, those restrictions. All four valuers were of the opinion that the first step should be a valuation of the land as if it were rural land on the assumption that any hypothetical purchaser would be a person or organisation intending to operate a racecourse and would either buy this land or other rural land. Each agreed that the appropriate commencing figure was approximately

\$1,113,000, being 121 hectares at \$9,200 a hectare. Although Mr Pegler, the second valuer called for the appellant, did not specifically value this piece of land, he gave evidence as to valuation principles and we assume from his evidence that he accepted the valuation of Mr Bunt, the other valuer called for the appellant.

The Tribunal was critical of the evidence of all the valuers. It decided that the method adopted by the valuers was wrong and it issued an interim judgment holding that to be the case. It directed that there be a further hearing at which the parties could call further evidence. The Tribunal in its interim decision, after referring to the evidence called on both sides, said:-

"Neither of these approaches are appropriate in the exercise of the valuation judgment the law requires in this case. In our view such methods should only be used for the limited purpose of a check of the restricted value. Neither valuer carried out a residential value which is an essential exercise in assessing a value of the 'chance of change'.

We conclude this interim judgment by saying that we have no evidence before us upon which the value of the land can be established. We therefore give the parties the opportunity of calling further evidence as to value, such evidence to be based upon the factual findings we have made and in accordance with the principles of law we have enunciated. We add in a desire to be helpful in that process, that matters which could be considered in reaching a conclusion as to the restricted fee simple value are those which the mythical buyer would receive, ie the same rights as the Trustees now have. These appear to be:

1. The value of the tracks constructed for racing and for training purposes. The racing track is, it seems, being used presently 21 times per year and the training tracks daily. It may or may not be proper to assess an appropriate charge for either or both usages which might be a basis of an assessment of such value.
2. The right to designate particular days on which the land is exclusively available for horse racing. The present payment of, (it seems) \$20 per race day, is in our view nothing more than a peppercorn rental and is not the true measure of the value of the designation of those days for racing clubs.

3. The provision of land (as distinct from the stables provided by the Canterbury Jockey Club) for use by resident trainers. This has a value which should be readily able to be assessed having regard to whatever payments are made to the Canterbury Jockey Club for use of both land and stables.
4. The provision of land for use by the Kennels Club and Bowling Club. This may or may not have a nominal value having regard to the land so occupied having a healthy recreational use.
5. The existence of land not immediately required for racecourse purposes which can be leased for farming purposes pursuant to the Reserves Act 1977. For the purposes of a 1987 value the subsequent (1992) need for additional parking need not be taken into account as a reduction to this area of land.
6. The provision of land for buildings necessary for raceday use, ie grandstands, raceday stabling, totalisator, catering, parking, administration, etc. By reason of the permanence of these structures the value of the land so used would perhaps have an annual value rather than a value confined to the 21 racing days. This value could also take into account as part of a notional ground rental the commercial uses to which some buildings are put outside racedays. We accept that land value is to be assessed void of buildings but land so occupied could be said to have a potential value for renting for such purposes.
7. The valuation will of course be of the 'land void of buildings but situated in the community with the amenities and facilities which have grown up round it' - *Valuer-General v Addington Raceway* (supra). As against those matters there are possible detriments to a potential purchaser. Among them could be:
8. The inability to raise any mortgage on the land.
9. The daily right of public use of the land.

There may be other factors impinging on value which we have overlooked. Valuers should not be deterred from what we have said from taking others which may occur to them into account."

As counsel for the appellant pointed out, s.20(8) of the Valuation of Land Act 1951 places the onus of proof of an objection on

the objector. It may well be that the Tribunal should have dismissed the objection on the grounds that they considered there was no proper evidence before them to consider the objection. No point of this nature was taken before the Tribunal and it is not taken before us. The appellant requires a ruling on the matter on the merits.

At the resumed hearing further evidence was tendered on behalf of the respondents by calling one of its valuers earlier called, Mr R.K. Baker, who gave evidence on behalf of himself and Mr Hallinan who had earlier given evidence. The appellant did not accept the opportunity of calling further evidence and maintained his stance that his original evidence was on the correct basis. Mr Baker endeavoured to give evidence to meet what was required by the Tribunal as to the income potential from the land, although still maintaining that the original method of assessment of both valuers called for the respondents was correct.

In his evidence at the second hearing Mr Baker adopted the respondents as being a potential buyer and obtained details and actual income. He also obtained details of income directly related to the usage of the land which the occupier, the Canterbury Jockey Club, received. These figures total \$56,626 per annum. He capitalised this figure at 12%, reaching a value in accordance with income receipts of \$472,000. The Tribunal considered the actual income receipts of \$56,626 per annum as being short of the potential income capacity from the land, increasing the potential rental figure to \$63,129. This they capitalised at a figure of 8.9%, reaching a total of \$720,000 and then added a figure of \$100,000 to recognise what they considered as the very small chance of a change of some of the land to its underlying zoning of residential. They accordingly reached a total of \$820,000 and determined this to be the value of the land. The Tribunal then as a check considered the alternative evidence, the methodology of which it rejected in its interim decision. They thereby reached a figure of \$1,000,000. The Tribunal, however, did not see fit to depart from its original and final assessment of \$820,000.

We are satisfied that the Tribunal erred in failing to apply the method of valuation presented by the four valuers and substituting their own. The reasoning of the Tribunal is essentially contained in the interim judgment. The Tribunal said:-

"We do not believe that the Trustees' interest in the land can be valued as a

fee simple estate. Nor do we consider that its value can be established by reference to comparable true fee simple estates."

In this respect the Tribunal relied on the judgment of Cooper J. in *In re The Hutt Park and Racecourse Board* (supra). The relevant wording of the judgment at pg253 was:-

"The appellant's estate or interest in the lands referred to cannot in law be valued upon the basis of an unrestricted estate in fee simple, but must be valued upon the basis of the limited powers of dispensation which the appellants possess by law over this reserve."

The case was one on appeal which appeared to be by way of case stated merely asking a question. The judgment does not in any other respect set out the method by which this interest is to be valued. There is nothing contained in the judgment which supports a valuation based essentially on income earning potential.

The Tribunal in its judgment relied on a decision of Perry J. in *Re an Arbitration between the Auckland Hospital Board and the Auckland Rugby League (Incorporated)* (1966) N.Z.L.R. 413 (known as the Carlaw Park case) in which it is stated that Perry J. specifically approved a passage from an Australian decision *Rosehill Racecourse* (1965), *The Valuer*, 406. The decision in the *Rosehill Racecourse* case was made available to the Tribunal. It is a decision of Else-Mitchell J. It does not appear to be reported other than in *The Valuer*. The Tribunal quoted a passage from the *Rosehill Racecourse* case. Else-Mitchell J. there rejected a valuation of lands subject to a restriction which first aimed to ascertain what value the land would have had if it had been free from restrictions. He then concluded:-

"I think the proper course is to inquire first what was the value of the land on the footing that there was no possibility of its ever being turned to other than recreational purposes and then how much extra should be allowed for such chance as there was of securing permission for (some other) use at some future time."

With respect, a careful examination of the decision of Perry J. does not disclose a specific approval of this passage in his judgment, although in principle we do not wish to be seen as criticising the conclusion of Else-Mitchell J. Perry J. in the Carlaw Park case said in relation to the *Rosehill Racecourse* decision the following at pg419:-

"The valuers are not entitled to place a valuation upon the land upon the basis of its possible underlying zoning depreciated by an allowance for restricted designation: see *Royal Sydney Golf Club* case, 2nd Report (supra) 391 per Kitto J. and the *Rosehill Racecourse* decision. The importance of the *Rosehill Racecourse* decision is that the valuers were agreed that, as here, the appropriate industrial zoning would have been the logical zoning if the restrictions were removed. Next, the valuers must have regard to the effect of the town planning scheme and they did correctly address themselves to the purpose for which the land must be used.

What has to be taken into account is the designated use, viz, private open space with the possibility of rezoning."

What both cases are authority for is that the initial step in valuation is not to consider the value of the land as if it had no restriction placed upon it. The *Rosehill* case was one of a racecourse surrounded by highly valuable industrial land. It could not be used as industrial land because of provisions of the relevant Local Government Act and the relevant town planning scheme. The valuer in that case had taken as his starting point a very high value of the land as if it were zoned industrial. Perry J. was dealing with an arbitration determining a proper rental of a lease in respect of land zoned as a "private open space - playing fields". In the case before him the starting off point for the valuation had been to treat the land as if it were residential land capable of subdivision.

Although in the present case the underlying zoning of the land is residential, the valuers have taken as their starting point the land with its restrictions, namely to be used as a racecourse and reserve and have regarded the appropriate basis as being rural land. With respect to the Tribunal, we consider that that basis is in accord with the decisions in the *Rosehill Racecourse* case and the *Carlaw Park* case and those decisions do not support the conclusion of the Tribunal that the method adopted by the valuers was wrong. Indeed the approach of the valuers appears to be specifically approved by Perry J. in the later passage of his judgment where he says at pg423:-

"The approach adopted, as I see it, has been this. A sports body could as an alternative buy a similar block of land elsewhere. On the present state of development of metropolitan Auckland the alternative might well be or

rather have to be land in the suburbs. That would normally be residential land, as industrial or commercial land almost usually bears an enhanced value and normally also, it would be a block of land not yet subdivided and perhaps presenting difficulties for subdivision. Such land would cost so much per acre. What would the same body be prepared to pay for land in an ideal situation but designated for the same purposes? That seems to me to be the approach of the umpire and the arbitrator whose valuation he adopted, and it seems to me to be a proper first approach to the valuation."

We are further persuaded that the method adopted by the Tribunal was in error in that it failed to have regard to the statutory requirement to value the land if offered for sale with no improvements on the land. The Tribunal directed the valuers to make their valuation taking this into account but in considering the income capable of being earned from the land both the valuers and the Tribunal have considered rentals with the buildings on that land and then deducted a proportion in respect of what they described as land value. Without the buildings on the land many of those operating the activities contemplated by the Tribunal would not have been interested in leasing the land at all.

In so far as the Tribunal has conducted a check method of valuation and considered the original evidence of the valuers, we note that the end result figure of \$1,003,150 failed to persuade it to increase its earlier assessment of \$820,000. The Tribunal accepted the starting figure of all valuers of rural valuation at \$9,200 per hectare but reaching a total of \$1,115,000 after allowing for the area actually being 121.4046 hectares. They added 25% for urban benefits of location and amenities and a further \$111,500 for the additional value of land preparations. They deducted 40% from this valuation for limited powers of disposition but added \$100,000 for the potentiality of change resulting in \$1,003,150.

This check valuation was not adopted by the Tribunal. Had the Tribunal done so we would have had difficulty in being persuaded that the decision was based on wrong methodology. The Tribunal in carrying out its check valuation expressed dissatisfaction with the conclusion expressing their concern as to what they considered to be the lack of relevant evidence as to the value of the chance of change and as to the value to be added because of the benefit of location and amenities. It was no more than a check valuation and, with respect does not ap-

pear to have been fully considered.

For the foregoing reasons, we are satisfied that the appeal must be allowed and the decision of the Tribunal quashed. It falls to us to consider now what was the proper land value on the evidence presented before the Tribunal.

As earlier stated, there was much more similarity of approach than difference between all four valuers called to give evidence before the Tribunal. Considerable difficulties existed because of the restrictions of use contained in the Christchurch Racecourse Reserve Act 1878 and the Reserves Act 1977. There are no comparable sales to be used as a starting point. The land is zoned Residential One but with a specific identification as being required for the "Riccarton Racecourse, horse training, racing and associated activities". Because the land is a Reserve there is no power of sale vested in the owners and the use of the land and powers to lease are substantially restricted. Mr Bunt, the District Valuer who was called for the appellant, valued the land as if it were zoned residential, without the restriction as to use, at approximately \$6,000,000. Obviously this is not the appropriate method of valuation for this owner's interest in the land, nor did Mr Bunt suggest it was. Nevertheless it emphasises the underlying value of the land if it were unrestricted fee simple.

What must be valued is the owner's estate or interest with the limited powers of use and restrictions on disposal applicable thereto. A prospective purchaser is accordingly likely to be limited to one who is either going to conduct a racecourse or lease the land for that and ancillary purposes. The prospect of a speculator as purchaser intending to dispossess the Racing Club and develop the whole land was so remote in 1987 as to be totally discounted. The fictional prospective purchaser would consider other available land which would undoubtedly be rural land. It was agreed by all valuers that the base valuation should be to value the land as rural land and that the appropriate measure was \$9,200 per hectare. Each of the valuers added to the total a percentage to make allowance for the advantage of the location and amenities of this site being only some 11 kilometres or so to the west of the city centre and being surrounded by land zoned residential and developed for that purpose. Mr Bunt allowed 40% in this regard. Mr Pegler, the Assistant Valuer General, did not specifically deal with amounts or percentages. Mr Baker for the Objector allowed 20%. Mr Hallinan also for the Objector allowed 10%.

We are of the view that a prospective purchaser of this property for a racecourse would recognise the additions of this land over other available rural land to the extent of paying a premium of 25% over the rural land value to achieve this particular site. There are obvious advantages to any organisation intending to conduct a racecourse to have this land in this location so close to the city centre but in these days of practically universal private motor ownership, position may not be so material as it once was.

Mr Bunt added to his value a further sum of \$111,500 representing the additional value of the land for racing purposes as a result of track formation, levelling, contouring, grading, drainage and grassing. Neither Mr Baker, nor Mr Hallinan, made any allowance in this regard. We have earlier set out the provisions of the second proviso to the definition of "improvements" in the Valuation of Land Act 1951. Such work is excluded from the definition and it follows that if there is any added value because of the work then it must be added to the land value. We accordingly agree with Mr Bunt that in respect of the 37 hectares of land improved in this regard for a racecourse an allowance of \$3,000 per hectare is appropriate though would not disturb the slightly greater figure of \$111,500 adopted by him.

Mr Bunt added to his total land valuation of \$1,670,000 a further \$797,000 representing what he considered to be the premium a prospective purchaser would pay to the base rural valuation in addition to the earlier sum added for the chance of changing the restrictions in use on the property in the future. He thus reached his total of a land value of \$2,467,000.

Mr Baker on the other hand, after adding 20% to the rural value for location and amenities, deducted 50% for the limited powers of disposition. He considered that such a deduction was justified and required by a number of earlier valuation cases. On this basis he achieved a land value for the property of \$665,000. Mr Hallinan adopted a similar reduction of 50%. He had added on only a 10% increase in respect of location and had made a reduction because of the inability to subdivide of 20%. The application of the 50% reduction because of the inability to sell and limited power to lease resulted in a figure of \$500,000.

Neither Mr Baker nor Mr Hallinan added anything for the chance of change or for the added land value because of work done to the land.

We consider that Mr Bunt is correct in his approach that a prospective purchaser

would add some premium to the purchase price beyond the rural value to allow for the chances of a change to enable residential development and sale of the property or part of the property. Nevertheless full regard must be paid to the fact that the land is a Reserve. The land was provided by the Crown. Although the title to the land is in the name of the respondents they hold the land as trustees under the terms of the relevant statutes. It is quite different from land absolutely owned where the only changes required would be those capable of being obtained under the Resource Management Act 1991 or the Town and Country Planning Act 1977. The probability is that if the provision for a reserve were revoked it would be on terms that the land returned to the Crown. The possibility of the respondents or their successors obtaining an unqualified right to dispose of the land and retain all or any of the proceeds of sale is not great.

The prospect of change in respect of part of the land may, however, not be so far fetched. The Christchurch Racecourse Reserve Act 1878 requires the Board of Trustees "to set apart a sufficient portion of the said parcel of land as and for the purposes of a racecourse...". The Board is empowered to lease the whole or any part of the land for any term not exceeding seven years "and on conditions not inconsistent with the purposes of the racecourse". No other powers or restrictions on the land are contained under the specific legislation but clearly the provisions of the Reserves Act 1977 apply. The 1878 Act does, however, provide that all moneys received by the Board for "the rents, issues, and profits on account of the said land" shall be applied in and towards the cultivation and improvement of the land and in rendering any part thereof set apart as a racecourse suitable for that purpose and in and towards providing prizes for races to be run on the racecourse and generally in and towards the encouragement of the breeding of horses.

There was no argument before us as to the interpretation of the Act in this regard. It is in our view by no means clear that in construing this Act standing alone, the Board might not be permitted to sell land obviously not required to be used for the racecourse. It certainly appears able to lease such land without any restrictions as to use provided that the use is not inconsistent with the purposes of the racecourse. It is obvious, however, that before a power of sale could be exercised by the trustees of any part of the land an Act of Parliament would be required because of the provisions of the Reserves Act 1977.

Mr Bunt in his evidence in relation to the possibility of removal of some or all of the restrictions relating to the use and disposal of the land considered that it is appropriate to divide the 121 hectares in two. According to his evidence the 70 hectares in general terms presently appropriated towards the racecourse as such is more than a generous provision. He says that the areas of relevant metropolitan racecourses are as follows:-

Ellerslie (Auckland) - 59 hectares
Avondale (Auckland) - 49 hectares
Te Rapa (Hamilton) - 51 hectares
Wingatui (Dunedin) - 55 hectares
Trentham (Wellington) - 45 hectares.

In his opinion it was appropriate to allow 71.4 hectares of the total 121.4 hectares as being essentially for racing while the additional 50 hectares were not. While some change of zoning would be required in respect of these 50 hectares the prospect of the owners being permitted to lease the land for residential or related purposes must, even in 1987, have been regarded as quite reasonable. There may be greater difficulties in obtaining an Act of Parliament to obtain a power of sale but such a prospect is not impossible. Mr Bunt considered that the difference in value between the rural zoning of this 50 hectares and residential unrestricted zoning and title would be \$3,888,000. He considered that a hypothetical purchaser would consider he had a 20% chance of obtaining this result. He accordingly added \$797,000 to his earlier valuation.

We agree that the land should be divided for this purpose and with Mr Bunt's evidence that of this 50 hectares, 45 hectares might be expected to realise \$98,425 per hectare and that the remaining 5 hectares, which has lesser potential, might receive \$20,600, producing a total of \$4,532,000. From that there should be deducted the base value of \$11,500 per hectare being \$9,200 plus the 25% earlier added on for location totalling \$575,000, making a difference of \$3,957,000. Bearing in mind all the difficulties in the path of a prospective purchaser achieving changes to enable the value of this part of the land to increase to this figure we consider that an allowance of an additional 15% of \$3,957,000 amounting to \$593,550 should be provided for. We have given consideration as to whether any addition should be made for the possibility of change in respect of the remainder of the land. We regard that possibility as negligible. We likewise reject the view of Mr Hallinan that a deduction should be made to the rural valuation because of what he de-

scribed as the inability to subdivide. There can be no exact formula for the value of chances of change in respect of both parts of the land. We consider it appropriate to allow a total sum of \$600,000 to the total figure to allow for the chances of change in respect of all of the land.

A real question arises as to whether a deduction should be made from the total figure because of the actual restrictions on the use of the land, and if so, how much. Both valuers for the respondent reduced their valuation by 50% on this account. Mr Bunt made no allowance.

It is true that deductions because of limited use have been made by way of a percentage in a number of the reported cases. They appear to have originated with the decision of the Wanganui Land Valuation Tribunal in *Wanganui Racecourse Trustees and Wanganui Jockey Club* Vol. 25 The New Zealand Valuer 292, a decision described by the Tribunal in this case as being in this respect "an intuitive one in the sense that no argument is put forward to justify it". We do not doubt that such decisions were appropriate in those cases where a percentage deduction was allowed, but in the number of artificialities to be considered in this exercise we consider it very material to have regard to the substantial reduction in the initial base figure from the residential underlying zoning to rural zoning. That decision made huge reductions because of the restrictions on the use and disposal of the land in rejecting residential zoning as a starting point. Nevertheless the rural zoning which was regarded as appropriate as the alternative available to a fictitious purchaser would result in an unrestricted freehold title. Some further reduction on this account is appropriate. We consider that the appellant and his valuers were in error in not making a reduction on this account.

The requirements of the Valuation of Land Act and the definition of land value obliged the Tribunal and us to determine a value achieved from a notional sale ignoring the fact that in its present state the land could not be sold. We therefore must assume the hypothetical purchaser to be a person able to acquire title to the land but with the restrictions existing on it including the inability to sell. Such a purchaser will almost certainly be a person or body intending to carry on a racecourse. The alternative available to that purchaser is purchasing rural land. We do not consider that as the fictional purchaser is likely to be a person intending to carry on a racecourse the restrictions requiring the purchaser to do so and the other restrictions

on disposition and the restricted rights of access of the public would warrant a deduction of as much as 50%. We do, however, consider that some such deduction is appropriate and we consider it appropriate to allow a deduction of 35% from the figure reached which of course is already a substantial reduction from the underlying zoning and obvious alternative use of the land of residential if it were not to be used as a racecourse. We accordingly determine the land value to be made up as follows:-

Base value of 121.406 hectares (a) 9,200 per hectare	1,116,925
Add for urban benefits of location and amenities 25%	<u>279,225</u> 1,396,150
Add for additional value of land preparation	<u>111,500</u> 1,507,650
Deduct for limited powers of disposition 35%	<u>527,650</u> 980,000
Add for chance of change	<u>600,000</u> 1,580,000

The decision of the Court is accordingly that the appeal is allowed and the order of the Tribunal determining the land value of the property to be \$820,000 is varied by increasing that figure to \$1,580,000.

The history of the litigation is unfortunate and the parties have been put to considerable expense. The initial land value assessed by the Valuer General was \$3,200,000. Following negotiations, and prior to a formal objection being considered by the Valuation Tribunal, the Valuer General agreed to reduce that value to \$2,467,000. Following two lengthy hearings before the Tribunal, an order was made that the appropriate figure was \$820,000. It has now been increased by us to \$1,580,000. No order was made by the Tribunal as to costs of the hearing before it. The Valuer General has been successful in his appeal against the decision of the Tribunal but we do not consider it appropriate to award costs to the Valuer General. This appeal has been primarily brought about because of what we consider to be the error of the Valuation Tribunal in its assessment in declining to make an assessment on the evidence presented by the respondent and the appellant and substituting its own method of valuing the property. In the circumstances we consider it appropriate to make no order as to costs of this appeal.

Solicitors:

Raymond Donnelly & Co, Christchurch, for Appellants

Meares Williams, Christchurch, for Respondents

Valuation of matrimonial property - Valuation of woolshed and yards on Maori leasehold land and adjoining land - Appellant had an interest in the land - Valuation of livestock brought to a marriage - Whether the woolshed and yards were fixtures to the land - Whether property derived from the original flock of animals brought to the marriage retained in character as separate property - Matrimonial Property Act 1976.

In The High Court Of New Zealand

Palmerston North Registry

AP 14/93

IN THE MATTER

of the Matrimonial Property Act 1976

Between JP Baker

Appellant

And I Baker

Respondent

Hearing: 6 September 1993

Counsel: CJ Walshaw for the Appellant

T Montague for the Respondent

Judgment: 10 September 1993

Judgment Of Heron J

This is an appeal from the Family Court (Judge Inglis QC) at Levin. A matrimonial property dispute, it concerns a marriage of nine years' duration, from which there were two children. The matrimonial property in question is farming assets, and the case concerns overall division of those assets.

Discrete questions of law pertaining to the treatment of certain of the assets arise for consideration in this case. Finally, and to some extent dependant on the outcome of the resolution of those legal questions, is the overall division of assets other than the matrimonial home and chattels. In the Court below the Judge found in favour of the wife, including the two assets in question in this case amongst the matrimonial property, and awarded her 40% of the assets other than the notional matrimonial home which was fixed at \$60,000 and divided equally. On this appeal the appellant seeks to have two of those assets removed from consideration as matrimonial property.

The first of the assets in question is a woolshed and yards on Maori land of some 19.79 hectares, and adjoining land of 99 hectares. Built in 1982 it comprises woolshed and covered yard comprising corrugated iron lean-to roof supported by wooden poles. The valuer thought as fixtures they gave the land added value of \$23,000 for the woolshed and \$11,000 for the yards. The valuer then considered

their value in their demolished state, allowing for the cost of removal from the property and the difficulties in transport.

He reached a value of some \$8,000 and \$3,000 respectively. Much of the material used in the construction of the woolshed was milled from the property and other second hand material was used. A great deal of the labour was provided by the husband himself.

A lease, which the husband described as governing the arrangement he had with the owners of the land of which he was one, is dated 16 May 1983. He makes the observation that at the date of separation there was only an oral arrangement with the owners. The lease itself provides for a fixed term which at date of separation had expired. Whilst it was suggested to me the lease was a perpetual lease, that is not provided in the agreement, and indeed rights of renewal are excluded. Of more importance perhaps is the deletion of any entitlement to compensation to the tenant for improvements. It seemed common ground that whilst the husband remained a part owner of the freehold that his occupancy of the land and the related use and enjoyment of the woolshed and yards was unlikely to be disturbed. This undoubtedly weighed with the Judge, and he was concerned that the diversion of matrimonial property by the creation of this asset and its resultant value in the hands of the husband thereafter had to be addressed. The Judge dealt with it in the following way:

"If the husband's lease allowed him compensation for improvements there would be little difficulty, for the value of the improvements created by the erection of the woolshed and yards would, as compensation, clearly be matrimonial property. Since the woolshed and yards would remain intact in that event their value for compensation purposes would obviously be greater than their demolition value. That simple answer is not available in the circumstances. However one cannot become mesmerised by the fact

that the woolshed and yards are fixtures or the fact that the land is Maori land, thus putting the husband's interest in the land as part-owner, and thus his interest as part-owner in the woolshed and yards, out of reach of the Matrimonial Property Act. The reality is that matrimonial property was expended on the construction of those facilities and is still represented in their present value. The reality also is that the husband continues to have the use and benefit of those facilities for the purpose of his farming operations: there has been no suggestion that the remaining part-owners would try to prevent him from using them. There are three ways of resolving the problem within the spirit of the Act. It is unrealistic in the circumstances to treat the expenditure on the woolshed and yards as if it were a gift by the parties to the owners of the leased land (who now include the husband in their number). But if it were correct to take that view, because the effect of the expenditure on the construction of the woolshed and yards was to place the matrimonial property so expended out of reach of the wife, I consider it reasonable to treat the transaction as amounting to an advance by the wife to the husband to the extent of her share in the original investment, depreciated to the present value of the woolshed and yards. On that footing it may be brought into account on a final division of matrimonial property. Alternatively her agreement to that investment, which effectively put matrimonial property out of reach, may reasonably be treated as a particular contribution to the marriage partnership, for the foregoing of an advantage in favour of the other spouse can be just as much a contribution to the matrimonial partnership as the conferring of an advantage on that spouse from separate property. Thirdly, the value of the woolshed and yards may be considered as a business asset, and since the farming business at the time of the separation was clearly matrimonial property, that value may realistically be taken into account as matrimonial property. The result is the same whichever view is taken. It has not been suggested that the value of the woolshed and yards as a business asset should be reduced to take account of any contingency in relation to the term

of the husband's lease. There is no evidence to indicate any likelihood of its termination during the useful life of the woolshed and yards."

The Judge ordered that the value (\$34,000) of the woolshed and yards be regarded as matrimonial property.

The valuer regards these as fixtures. Whilst there was some discussion about removal and or demolition there is nothing to suggest they were capable of being removed, and they must be treated as fixtures. The law is that such fixtures become part of the realty which is Maori land. If that is so then it is difficult to resist the conclusion that the Act should not apply. Section 6. Mr Walshaw submitted that the appellant had been required to include in matrimonial property a sum of money representing an item in respect of which he has no property rights at all. As a general proposition that is difficult to accept, as he has the undoubted enjoyment of the asset that has been created subsequent to the marriage, and for what would seem to be an indefinite period of time. It is correct that the Act cannot be used to affect Maori land. Perhaps treating it as a business asset, the latter view expressed by the Judge, is the most appropriate. It was included in the accounts of the husband's business on that basis, although Mr Walshaw says that was based on a misunderstanding that it was a movable. It was insured for \$40,000 and treated in other respects as a farm asset. Depreciation was claimed in respect of it.

Effectively severing the value of the improvements from the land is criticised by Mr Walshaw on the basis that in the few examples this has been done, e.g. *Fairhall* [1981] 4 MPC 55, where timber was treated as a separate asset from the land on which it was grown, the land was in fact the separate property of the husband. Here the land is owned by other persons, including the husband. I do not think this needs to be a distinction that should be critical. The reality is that the appellant does have a leasehold interest in land in which he also has a share of the freehold. In practical terms that is an asset, and it is likely to be of ongoing value to the husband. One cannot be certain about that, because the lease does not appear to be perpetual, and the interests of the other owners might at some point impede in that enjoyment. In arriving at a valuation I would be inclined to think it ought to be the subject of some discount. As Fisher (10.5) observes:

"Fixtures would seem to form part of

the realty to which they are attached in accordance with conventional property principles although the contrary possibility has been raised."

A reference to *Oakley* (1980) 3 MPC 127. Having regard to the structure and purposes of the Matrimonial Property Act, and the arbitrary distinctions it creates for the purposes of distinguishing between separate and matrimonial property, for example severing increases in value and treating that value as matrimonial property, persuades me to the view that the Judge's approach was right in treating this as a business asset, albeit one that was enjoyed on Maori land. For that reason, in order to arrive at a just division of property, it seems to me that the exercise the Judge undertook here is appropriate. I would be concerned however to have the value of the improvements included at their full value because the valuer has treated them as value to the owners of the land. That same value to the lessee is however subject to this contingency; that the other owners agree to the lease continuing, to mention one. I would allow a discount of 30% based on the contingencies relating to the continued enjoyment of that property by the husband. In all other respects it seems to me that the Judge's approach was the correct one.

I have had regard to the observations of Judge Borrin in *Rawiti v Marama* 2 NZFLR 127. That of course was a case involving a matrimonial home and did not have the business asset considerations of the present property in question, and did not involve a leasehold interest. In the present case Judge Inglis QC has approached it from a different point of view, one which in my view is consistent with matrimonial property principles, by treating it as a business asset of some value. It is undoubtedly that, and should be accorded some value as matrimonial property. In reaching the view that I do I have not overlooked the appellant's submissions relating to the appropriate valuation, which it was submitted would be either the demolition value or the book value which now stands at \$4,510. For the reasons I have already given it seems to me the asset can be valued at higher than that figure, to recognise the reality of what the husband has got, but not at the full amount, having regard to the uncertainties as to ultimate ownership and title, which are best reflected in a substantial contingency discount from present value.

The next item of matrimonial property

which is in dispute is live stock. The point is a short one. The Judge in the Court below accepted as common ground that the husband brought to the marriage 877 head of sheep. By the time of separation the flock had grown to 1,453, the progeny of the original flock. The Judge accepted that the original flock was not acquired in contemplation of marriage, so that s.8(d) did apply, but said:

"However the progeny of the original flock cannot be regarded simply as an accretion to separate property, for following the line of reasoning which appealed to Hardie Boys J in *Walsh* (infra) the stock as at the date of separation was produced from the investment not only of the capital represented by the original stock, but also the money and effort expended in the farming business during the marriage. The end produce represented much more than the original investment."

Finally the Judge said:

"It is more in keeping with the reality of the parties' farming operation following the marriage and also with the spirit of the Act to treat the flock as at the date of separation as matrimonial property and to treat the original flock as having been brought into the marriage by the husband as a contribution to the marriage partnership, which in realistic terms is what it became. Without that contribution, all that the husband can be said to have brought into the marriage was farming expertise, earning ability, a limited amount of plant and equipment, and the capability through his family connections to occupy leased land.

The whole of the flock as at the date of separation should therefore be classified as matrimonial property and valued accordingly, the value of the original flock being treated as part of the husband's contribution to the marriage partnership."

Mr Walshaw submits that the deduction of the premarriage valuation of livestock is commonly adopted and relies on the commentary in Fisher to that effect. Fisher observes, after commenting on s.9(2) and (3):

"In short, in a marriage of substantial duration where the farm is actively farmed by either or both spouses, the livestock seems unlikely to retain any original designation as separate property except for the marriage date value or numbers of premarriage livestock.

A detailed application of sections 8,9 and 10 will of course be necessary in each case.

Section 9(3) is concerned with the increase in value or the income or gains which have occurred by the application of matrimonial property. Section 9(6) however is different. It provides:

"Subject to s. 10 of this Act, any separate property which is or any proceeds of any disposition of, or any increase in the value of, or any income or gains derived from, separate property, which are, with the express or implied consent of the spouse owning, receiving, or entitled to them, used for the acquisition or improvement of, or to increase the value of, or the amount of any interest of either the husband or the wife in, any property referred to in s.8 of this Act shall be matrimonial property."

In this case it seems to me separate property, with the express consent of the husband has been used for the acquisition or improvement of any matrimonial property. The Judge was right to say:

"In any event s.9(3) and (6) operate in the circumstances to blur any useful classification of the original flock and progeny. Following the marriage the original flock was used as the vehicle for providing the family income and for increasing the flock. This would therefore seem to be a case in which subs.(6) ought to be applied, and the transition from separate to matrimonial property fortified by subs.(3) for the accretion was attributable at least in part to the actions by the wife by her own contribution to the marriage partnership and to the application of matrimonial property."

There is no contest here that the increase in the flock should not be matrimonial property, by virtue of s.9(3). Mr Walshaw's concern is that the Judge has used s.9(6) to include the whole of the flock as matrimonial property. However a literal reading of s.9(6) clearly enables him to do so and as Fisher observes:

"The general effect of s.9(6) appears to be that where an asset which was hitherto separate property is with the consent of its owner used to augment matrimonial property, that asset itself became matrimonial property."

The Judge went on to say that it could not be advanced on the one hand that the bringing to the marriage of the initial flock was a contribution to the marriage

partnership, and then seek to obtain credit for its value as separate property. With that proposition Mr Walshaw did not disagree. His point was that that separate property should have been recognised as what it was and at its premarriage value. I do not think *Hayden v Hayden* (1984) MPC 97 is particularly helpful on this point. What the Judge said there was:

"it is common ground that the stock owned by the husband at the time of the marriage were his separate property. But Mr Finnigan's argument is that (a) all stock subsequently obtained by him by way of purchases and natural increase up to the time of the separation must be treated as matrimonial property; and (b) that this also applies to all stock similarly obtained after the parties separated."

There follows a discussion of a number of cases, and in particular *Austin v Austin* 3 MPC 3. But nowhere in the judgment as I can see it has the Judge in fact made the distinction that Mr Walshaw argues for. Moller J was more concerned there as to whether the progeny had become matrimonial property rather than separate property by virtue of the application of s.9(2). Indeed the Judge was concerned with the application of s.9(3) and not s.9(6), and concluded by saying:

"The final result therefore is that the wife will be entitled to an award based on a treating of the stock that was on the farm at the time of separation as matrimonial property."

Mr Montague made the submission, and I think it is probably appropriate, to emphasise the point that in real terms the original livestock was no longer property in existence. Its only relevance was as to whether property derived from it retained its character as separate property. It would be inappropriate he argued to deduct either the number of livestock or their value, as it was no longer property capable of being identified as such. A preferable course was to treat the husband's premarriage ownership as a contribution to the marriage partnership. This is in fact what the Judge did. I acknowledge that in *Bowen v Bowen* (reference) Hardie Boys J has treated the livestock in that case as being matrimonial property to the extent that the increase in the value of the livestock occurred after a date on which the husband acquired the property following the marriage, when he commenced to farm the property on his own. The Judge did not consider s.9(6), rather s.9(3), and had considerable regard to the contribution

made by the separate property. It does appear as if he invited the parties to value only the increase on that date, and not the flock overall, but that is not altogether clear from the decision. Likewise it seems to me that *Bennett v Bennett* [1981] 4 MPC 12 is decided on its particular facts. I do not think *Walsh v Walsh* [1984] 3 NZFLR 23 is authority for a contrary proposition. Somers J said:

"At marriage the husband owned all the livestock on the farm. His mode of carrying on business involved the sale of all progeny and the replacement of aged ewes by purchase. His case is that the livestock at the date of separation was separate property by reason of s.9(2) - does the sale of original separate property produce proceeds which were separate property and which were employed in the purchase of further (separate) property. This is a tracing exercise which may be justified by the terms of the Act. But in this case the evidential foundation has not been laid. It has not been shown that the purchase price of stock held at separation came directly, or through intermediate sales and purchases, from the original stock. All that can be asserted is that it was acquired during the marriage. It is therefore matrimonial property and its agreed value is \$37,540."

Hardie Boys J said:

"The livestock on the farm was already owned by the husband when the parties were married. Numbers had decreased by the time of the separation but of course very few of the original animals remain. Stock numbers were maintained by purchase out of farm income rather than by breeding. For this reason, Pritchard J held that the livestock at the date of separation was matrimonial property For the stock on the farm in 1977 was produced from the investment not only of the capital represented by the original stock, but also of the money and effort expended in the farming business over the following ten years. The end product represented much more than the original investment Even more relevant in some cases may be subs.(6) of S.9, but its application to the present facts would be artificial."

For these reasons I would agree with the view expressed above by the Judge in the Court below, and consider the case properly approached not by attempting some artificial calculation of numbers and value, but rather in the broad way that s.15 allows.

Mr Walshaw submits that if the appeal is unsuccessful in respect of the question of livestock and the woolshed and yards, then the proper division should be 75/25. The appeal has been successful in one part, by the reduction of the uncertain value of the latter. The Judge has said about that in relation to the livestock:

"It is more in keeping with the reality of the parties' farming operation following the marriage and also with the spirit of the Act to treat the flock as at the date of separation as matrimonial property and to treat the original flock as having been brought into the marriage by the husband as a contribution to the marriage partnership, which in realistic terms is what it became. Without that contribution all that the husband can be said to have brought into the marriage was farming expertise, earning ability, a limited amount of plant and equipment and the capability through his family connections to occupy leased land."

So the Judge has indicated that was a significant contribution to the marriage partnership. It represents approximately half of the flock which commenced at 877, being increased to 1,453 over the nine years of marriage. His initial contribution must be regarded therefore as substantial, and by taking all the stock in at full value has to come into the equation with full impact. In a division of 60% to 40% I do not think any criticism could have been made of the Judge's approach. Of more difficulty however are the assets represented by the woolshed and yards. In that respect the Judge says:

"Essentially the husband says that there should be unequal sharing and recognition of the assets and farming experience he brought into the marriage in contrast to the wife, who brought no significant assets into the marriage. To put it another way he says that their unequal start was not compensated for by the wife's greater contribution during the marriage, so that the unequal start has carried through to an unequal finish. That argument, though it is understandable, does not give recognition to the fact that the matrimonial property now available for division does not include the matrimonial property diverted for the construction of the woolshed and yards on the leased land, a diversion now only to the benefit of the husband."

But in his conclusion the Judge took into account the value of the woolshed and

yards at \$34,000 and treated it as matrimonial property. The fact that the wife cannot have recourse to that asset is of little significance if in the division between them the business value of the asset is nevertheless taken into account. If the Judge has left that out of the factors to be taken into account for the purposes of s.15, then it seems to me he has not taken into account a relevant consideration in the exercise of his overall discretion. By reducing the value of that asset I have mitigated the impact of that on the husband, and in that respect deprived the wife of her share of that reduction. But I think the approach by the Judge seems to have overlooked the fact that he was fully compensating the wife for the exclusion of that property. If that is so then I am free to look again at what is largely a discretionary decision relating to proportions and one with which this Court would normally not interfere.

I agree with Mr Walshaw that whilst the overall division is a matter within the discretion of the Judge, it does appear that the Judge assumed the husband was doing better than he really was. In all those circumstances a small adjustment to the percentage proportions is in my view required to reflect the contribution the husband made to the marriage partnership as represented and reflected in this asset, the value of which is now included in the matrimonial property for division. The additional contribution clearly made by the husband, as found by the Judge, is best represented, in light of the way in which the woolshed and yards have now been valued by an adjustment to the percentages, which I fix at 65%/35% for the husband and wife respectively.

The parties agreed that there was a contingent tax liability, depending on the outcome of the appeal with regard to farm stock. If the appeal was unsuccessful the sum to be deducted was \$7,718.96, and that sum will now have to be deducted. In summary the value of the woolshed and yards is to be fixed at \$23,800 (a deduction of 30%). The division of other (s.15) matrimonial property is to be 65% to the husband, 35% to the wife. In all other respects the orders made in the Court below remain. I make no order for costs. Solicitors:

RA Broadhead, Palmerston North for the Appellant

Todd Whitehouse, Levin for the Respondent

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