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

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.

Complete editorial policy review process and style instructions are available from the Editor. Deadline is no later than 30th of January, May and September of each year.

Format for contributions

All manuscripts for publishing are to be typed double-spaced with wide margins, on one side only ofA4 sized paper and must be suitable for scanning. Computer disk copies (IBM compatible 3.5") are encouraged.

Original photographs, diagrams, tables, graphs and similar material intended to illustrate or accompany an article should be forwarded separately with the text. A table of values used to generate graphs must be included to ensure accurate representation.

Illustrations should be identified as "Figure 1 (2,3, etc)". 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.

Primary (a-level) heads should be typed in all capitals and bold, secondary (b-level) heads with inital capitals and bold and tertiary (c-level) heads should be italicized. Do not number headings.

Footnotes, Endnotes, References and Acknowledgements are to be listed at the end of the article in the following format:

Footnotes, Endnotes	*References and Acknowledgements*
1. Comment	*Author; Title; Publication*
2. Comment	*Author; Title; Publication*
3. Comment	*Author; Title; Publication*

Manuscripts are to be no longer than 5000 words, or equivalent including photographs, diagrams tables, graphs and similar material.

Articles and correspondence for the NEW ZEALAND VALUERS' JOURNAL may be submitted to the Editor at the following address:

The Editor, NZ Valuers' Journal		
PO Box 22082	*or*	*Cl- PO Box 27146*
Wellington 6040, NZ		*Wellington, NZ*

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(1998) N.Z.V.J. March, Page.

Valuers Registration Board will continue to operate as it is but will be transferred to the OVG.

Further changes to New Zealand's rating systems can be anticipated. Currently the Rating Powers Review is underway and the Local Bodies Amendment Act is being reformed.

Until these processes are complete the ramifications of a full reform process will remain unknown, but the groundwork for change will have been laid. In the meantime, as a first step, valuers in private practice will gradually gain access to the mass appraisal market. Further changes to the Valuers Act cannot be ruled out if the profession is to adapt to a rapidly developing new environment.

Footnotes

1. Among the key papers to be presented at the forthcoming annual conference of the NZIV will be one from outgoing Valuer General and Chief Executive of Valuation New Zealand Rob Hutchison entitled *Corporatisation of Valuation New Zealand - opportunity or threat* and another from John Dunckley, outgoing President of the NZIV - *Will New Zealand Valuers still be controlled by Statute?*

2. The Valuer-General Designate is Warwick Quinn and the Chief Executive of the VNZ CROC is Bill Osborne.

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MEDIATION OF DISPUTES

Sherwyn Williams

NZIV's rules embrace mediation

The new rules of the Institute of Valuers which were adopted in 1997 provide (rules 138 and 139) for disputes between members, and between members and their clients, in appropriate cases, to be resolved by way of mediation. This is very much in tune with the growing popularity of mediation as a means of resolving disputes. And its use is not confined to small disputes. Large corporations are embracing it as an alternative to litigation in cases with millions of dollars at stake. A recent review of court processes undertaken following pilot schemes in some parts of the country has proposed that judges should have the ability to refer cases to mediation, perhaps as a prerequisite to the matter being allowed to proceed in the court. That is already the situation in some overseas jurisdictions.

What's it all about?

There is still some confusion as to what mediation is all about and how it relates to other forms of dispute resolution. In arbitration, the arbitrator makes a decision which is binding on the parties, in the same way as a court. In fact, litigation in the courts and arbitration are the only two dispute resolution processes which involve a binding decision being imposed on the parties. All other forms of dispute resolution require the parties to agree on the result. In a mediation, a third party (called the mediator) will assist the parties to negotiate a settlement of the dispute, usually following a recognised process and using various negotiation techniques. If the parties reach agreement, the agreement is recorded in writing and is then enforceable as a matter of contract. If the parties don't reach agreement, that is the end of the mediation, and the parties are then left to pursue arbitration or litigation in the courts. The mediator does not give a decision, or even indicate his or her view as to the merits of the respective parties' cases. A key element in mediation is that the mediator should remain neutral.

There is another dispute resolution process, commonly called conciliation, which is a cross between arbitration and mediation. In a conciliation, the third party (called the conciliator) will assist the parties to negotiate their own settlement but, in the event that they can't agree, the conciliator may be called upon to make a decision on the basis that the decision becomes binding if not objected to by one or other of the parties within a certain time period.

Mass appraisal market opens to valuers in commercial practice

Legislation nearing completion will split Valuation New Zealand into two new organisations, remove its monopoly valuing for rating purposes and create an environment for further changes to the valuation profession/industry which will be more in keeping with current and future national business trends.

As of July 1 Valuation New Zealand will comprise the Office of the Valuer General (OVG) which will have a standard setting, auditing and advisory function and a yet to be named crown owned company.

In broad terms the model adopted is nearest to that of the Department of Survey and Land Information which has become Land Information New Zealand and Terralink.

The Valuer-General joins the Registrar-General of Land, Surveyor-General, Chief Crown Property Officer, formerly the Commissioner of Crown Lands, the Chief Topographer/ Hydrographer all of whom are directly responsible to the Chief Executive of Land Information. This brings more of government's land related administrative bodies under the overall control of one organisation.

Changes to Valuation New Zealand were initiated after a preliminary internal review proposed by then Valuer General Hamish McDonald concluded that the structure and some of the functions of the department should be reorganised. Subsequently Rob Hutchison took over the position of Valuer General mandated to review the changes after obtaining cabinet approval.

The review looked at the necessity of retaining the government monopoly on property valuations for rating purposes which was being seriously questioned. Services provided by a monopoly are, by definition, not necessarily cost-effective. Moreover pressure from the local authorities to shift valuations into a contestable setting, consistent with their other activities, was mounting.

After discussion with the new Minister John Delamere Hutchisons brief was changed and his new alternative plan prepared and accepted. The legislation is currently being drafted in order to be passed in time to meet the 30 June/1 July deadline.

The 1998 legislation will look different from its 1951 predecessor. Beyond the clauses empowering the major changes, the words Valuer General are frequently replaced by Registered Valuer and much of the body of the actual content will be comprised in rules and regulations. These not only comply, or in some cases exceed, current international standards but they can, in future, be changed more easily than an Act to cope with further developments in the profession/ industry.

In the meantime staff from the two Establishment Units are travelling the country to explain the changes and relationships that need to be developed between them and their traditional clients. Also being explained is the proposed method of operation and implementation.

The new crown owned company will have 18 instead of the current 27 district offices and compete in the market place both for mass appraisal and commercial valuations. Each of the offices is likely to be reconfigured and duplication of functions is to be rationalised.

Under the new scheme the Territorial Local Authorities will still require a District Valuation Roll, but they will tender in the open market for the required services. In doing so the TLA's will be obliged to ensure that the tender meets the additional requirements of the regional councils such as those of the Special Rateable Areas.

The TLA will also become responsible for sending out the valuation notices and dealing with protests.

Because the TLAs value at different times a process of equalisation endorsed by a certificate will be required each year. This involves an additional estimate of prevailing market rates being added to the current value and will ensure that the rating data is kept up to date.

While the crown accepts that it no longer needs to provide the service it perceives an obligation to ensure that the standards continue to be met. Previously this was an in house assurance within Valuation New Zealand. The function will be transferred to the Office of the Valuer General which will continue to use the IAAO standards as the industry benchmark.

Although the model comes into place on July 1 clearly not all of the 74 local authorities will be ready to take on their additional responsibilities at that time. A programme for shifting into the new contestable environment has been established; it provides for a gradual change and a learning curve. Staggering the implementation of contestability also ensures that the right market conditions are established.

At this stage it is assumed that the Tarawera District Council and the Invercargill City Council will be the first to move into the new market condition. It is envisaged that other local bodies will follow at a rate of approximately 25 a year.

As the environment is created, the OVG will be developing its auditing programme. The office will also maintain its advisory function in government but extend this role to outside organisations. The

NOTICE
1998 Annual General Meeting and Conference

Venue: War Memorial Complex, Napier
Dates: Friday 1st Sunday 3rd May 1998
Programme: See page 69
Accommodation: Various city motels/hotels
Enquiries to: Secretary, Hawkes Bay Branch NZIV
PO Box 458
Napier

See *you at*
"The Art Deco Lifestyle Region" of New Zealand

The distinction between conciliation and mediation is significant. The principal purpose of both procedures is to encourage the parties to negotiate without prejudice, to make offers and counter-offers, to make concessions and (particularly in private sessions) to be frank with the conciliator or mediator as to the strengths and weaknesses of their respective cases. If the parties face the prospect of a conciliator making a decision, albeit a non-binding one, the parties are going to be less inclined to enter into the spirit of the conciliation in a way which maximises the chances of a negotiated settlement. Furthermore, there is the problem that, to enable a conciliator to make an informed decision, the parties really need to put all of the significant facts and arguments before the conciliator, and that can have the effect of distorting the focus of the process which ought to be on finding a solution which meets the parties' interests rather than a result which purports to be the legal, or "right", answer. And, very importantly, it adds to the time and cost of the process. Conciliation has its place, because sometimes parties want an independent person (who may be an expert in the relevant field) to make a decision as to who is right and who is wrong, without necessarily being bound by the decision; and it can assist in settling the dispute. But there are some real advantages with mediation, and the success rate for mediation is generally regarded as being very high.

There's a point at which every dispute should be settled

Many people are sceptical about mediation because they say it only works when both parties to the dispute are keen to settle and both are therefore prepared to give ground. That's a simplistic view. The first point which may be made in response is that almost invariably parties to a dispute do want to settle, in the sense that they would rather not be involved in the dispute. Therefore, unless the other party is simply to "go away", there is something to be gained from mediation if it gets rid of the dispute. The second point is that even if you think that you have a watertight case, it would be a rare case where you are not better off settling, even if that does involve making some concessions. If the other party looks like persisting with the dispute, you will have on-going involvement and aggravation (both of which have a cost) and you will probably incur legal costs (to a greater or lesser extent). Moreover, there is no such thing as a watertight case. And litigation or arbitration tend to destroy relationships, whereas mediation can actually enhance them. At the very least, mediation has the prospect of enabling you to hear the other party's point of view, and possibly of narrowing the issues in dispute if not eliminating them.

It should also be said that you don't need to go to mediation contemplating the prospect of the matter being "split down the middle". Maybe you need to go with a view to offering something by way of settlement but it need not be much and it may not even be in the form of a concession. It may be something you are quite happy to offer which may be worth more to the other party than to you. It is only because we are so used to seeing disputes settled in terms of who is right and who is wrong that we tend to be limited in our vision of any process which enables the parties to work jointly towards solving their dispute.

How does it work?

A typical mediation begins with the parties agreeing on a mediator. LEADR New Zealand and the Arbitrators' and Mediators' Institute of New Zealand both maintain panels of mediators who have been accredited by the respective organisations and, although theoretically anybody can be a mediator, it is desirable to have someone who is trained. An untrained mediator can do more harm than good.

Because a mediation focuses more on the interests of the parties rather than on their rights, it is not necessary for the mediator to be an expert in the field or even to come to grips with all the facts. Indeed, often the past "facts" of the case become of little importance as the parties try to devise a solution which meets their interests and possibly concentrates

more on the future of their relationship. For the same reason, a mediation does not require anything like the preparation required for an arbitration or a court case, or even a conciliation. It can therefore be arranged and concluded in a short time frame - even within a week.

Having found a mediator who has no conflict of interest and is prepared to assist, the next step for the parties is usually to sign a mediation agreement. This identifies the dispute to be mediated, formally appoints the mediator and contains provisions dealing with the procedure to be adopted, the fact that the mediation will be confidential and without prejudice, and the payment of the mediator's fee (usually shared equally by the parties).

The mediator may hold a preliminary meeting to meet the parties and to make sure that they are committed to the process and that the representatives at the mediation itself will have authority to reach a binding settlement, and to discuss such things as whether any documents are to be exchanged or provided to the mediator in advance of the mediation. The preliminary meeting might take around half an hour.

Perhaps a couple of weeks later, the mediation itself will take place. Normally, the mediator would want the parties to have set aside at least one full day, but usually not more than two days. Most mediators would probably look to reach a settlement within one day, even if it means going on into the evening.

At the mediation, the mediator will make an opening statement summarising the process and reminding the parties of such things as the mediator's impartiality and the fact that the process is without prejudice. Then, typically, the mediator will invite one of the parties to summarise the situation as he sees it, uninterrupted by the other party. Then the second party is invited to do likewise. The mediator will then attempt to identify the issues which have emerged from the parties' opening statements and to establish an agenda for discussing those issues. The mediator will also endeavour to identify points of agreement and options for settlement.

Guided by the mediator, the parties will then discuss the issues, usually one at a time. The mediation process is one of discussion and negotiation rather than a process whereby the parties have to establish their respective cases. The parties do not give evidence in the manner of a court or arbitration hearing. And there is no question of what they say being said on oath. A party will certainly want to try to persuade the other party to his point of view, but more for the purpose of asking the other party to accept that there is at least an argument than for the purpose of convincing him of the point. It follows that witnesses are not called to give evidence or even to attend the mediation. Sometimes a "witness" will attend if he or she can assist in explaining a particular aspect of the dispute or if what he or she has to say on a particular point may be crucial in the other party's assessment of its position. However, this is the exception rather than the norm. Usually, each party is simply represented either personally or by an officer or other representative who is authorised to speak for and reach agreement on behalf of the party at the mediation. Where one of the parties wishes to have a non-party present to assist, the non-party will usually be required to sign an undertaking to keep confidential anything which he or she sees or hears at the mediation.

The focus on interests and solutions

In the discussion, the mediator will encourage the parties to address the issues rather than argue with each other. An attempt will be made to express the issues in a way which enables the focus to go on the interests of the parties rather than on their strict legal rights and obligations. Often the latter have nothing to do with what the parties really want. As has been noted, the objective of a mediation is to achieve a solution which both parties can live with rather than a decision as to who was right and who was wrong. It is this feature of mediation which is the key to some of its advantages, such as the fact that it improves the prospect of the business relationship between the parties being preserved.

Generally, the initial discussion of the issues will be in a "joint session" with both parties. If the

mediator feels that it would be helpful for him or her to see each of the parties separately, as will usually be the case, the mediator will do so with each party in turn. In these private sessions, each party will be encouraged to be open with the mediator, in the knowledge that anything said to the mediator will be held in confidence and not disclosed to the other party without the first party's consent. Armed with the information which he or she obtains in the private sessions, the mediator is better equipped to direct the negotiations down certain paths and to identify possible settlement options.

There may be a number of private sessions and a number of joint sessions. Points of agreement will be established, even if only provisionally. One of the advantages of mediation is that it provides an almost limitless range of options when it comes to finding a solution. The parties can devise a solution in any shape or form. A good mediator will encourage the parties to think laterally in looking for solutions.

The agreement

If the parties are getting closer, the mediator will usually encourage them to keep going to see if an agreement can be concluded notwithstanding that it might be late in the day. It has been suggested that sometimes tiredness leads people to reach agreements against their will. It could equally be said that the lateness of the hour often provides the "excuse" the parties need to make the final concessions which lead to agreement without losing face. Whatever the reason, it is often the case that agreements are reached at the eleventh hour.

If an agreement is concluded, it will be reduced to writing and signed by the parties before they leave the mediation. This is very important, to avoid the dispute being compounded by disagreement as to whether or not it was settled at the mediation and to avoid a party having the opportunity to seek to revisit aspects of the agreement or even to reconsider the settlement itself.

Role of lawyers

Although the reader might expect this author to say so, it is generally desirable for lawyers to be involved in the mediation. However, their role is substantially different from their role in, say, an arbitration. Many people feel more comfortable having their lawyer with them for support and advice and the lawyer, especially if trained in mediation, can play an important part in helping the mediator to get to the parties' interests. The lawyer really needs to be involved in the preparation of the initial agreement to go to mediation and then again in the preparation of the agreement recording the settlement at the mediation to ensure that it has legal force and is workable. During the negotiation, the lawyer may speak on behalf of his or her client, although many mediators prefer the parties themselves to do most of the talking.

Mediation for valuers

The disputes which are likely to be referred to mediation under rules 138 and 139 of the Rules of the Institute of Valuers are, for the most part, likely to be relatively minor. It would still be important for the parties' agreement to go to mediation to be in writing (for example to ensure that the mediation is without prejudice), but there may be no need for a preliminary meeting and the mediation might resolve the matter within two or three hours. There is scope for larger mediations, however. A client who was threathening to sue a valuer for a negligent valuation might be happy to mediate the dispute. The involvement of an insurer in such circumstances is not necessarily a bar to mediation, but it does complicate matters a little.

Worth trying

Many people unfamiliar with mediation will consider it unlikely to help in their case because, they will say, they have already attempted to negotiate with the other party and they've got nowhere. Or sometimes parties to a dispute decide to set up a formal negotiation process without involving a mediator because they can't see the difference which the mediator is going to make. However, the neutral mediator makes

a big difference. Quite apart from the fact that mediators are trained in such things as breaking deadlocks, redressing "power imbalances" and various other negotiation techniques, the simple fact is that, in a two-way negotiation, parties are often reluctant to disclose their "bottom lines" in case it is seen as a sign of weakness or somehow taken advantage of by the other party. A mediator is like an airlock in that both parties can confide in the mediator without risk of their concessions escaping until they are accepted by the other side. The author has acted as mediator in a dispute where both parties were prepared to settle at the same level but, without the aid of a mediator, neither would have been prepared to make the first offer to do so.

It is not every dispute which is suitable for mediation. However, most of the disputes which valuers are likely to get into in the course of their business are likely to lend themselves to mediation. Professional disciplinary proceedings are a special case because sometimes there is a public interest involved in a professional person being disciplined (eg. suspended from practice) which may not be met by a mediated settlement. But in less serious cases, a mediated solution may be better for the interests of all involved, including the public interest.

ABOUT THE AUTHOR

Sherwyn Williams is a senior partner in the Litigation Department of Kensington Swan 's Wellington office. He is a trained mediator, an Associate of the Arbitrators 'and Mediators 'Institute ofNew Zealand and a member of LEADR New Zealand, and is on LEADR New Zealand's panel of mediators.

Discrimination Law- Business Compliance

Marie Koreman

Auckland-based management consultancy Equity Works has been contracted to provide advice to the Institute and its members about equal employment opportunities.

In the first of three articles to be published in the Journal in 1998, director Marie Koreman examines the legal obligations of members who as employers have to ensure discrimination free workplaces.

Marie 's second article will, focus on the statistical pro file of women in the valuation profession and the implications of their increasing number for business practice. In her third article she will provide practical guidelines for equal employment opportunities initiatives that members can implement to meet legal requirements and to ensure the full participation of all members in the profession.

Statutory Law

Discrimination in employment is addressed by the Employment Contracts Act 1991 and the Human Rights Act 1993. (The discrimination provisions of the latter Act extended to the provision of goods and services).

Defining Discrimination

Unlawful discrimination may be direct or indirect.

Direct discrimination occurs when a person is treated less favourably because:

- His or her identity corresponds with an unlawful ground of discrimination; *or because of*
- Presumed characteristics, (stereotypes) associated with such identity.

For example:

- An employer chooses not to hire a graduate valuer because he is Samoan, (race discrimination);

  A 60 year old employee is not invited to take part in computer training because the employer assumes that, because of the employee's age, he or she will find it too difficult. As a result the older employee becomes less skilled than younger colleagues.

Indirect discrimination refers to instances where apparently neutral rules, practices and decisions appear to treat people equally, but in practice disadvantage some people whose identity corresponds with an unlawful ground of discrimination.

For example:

- An employer provides all employees with the opportunity to attend voluntary weekend training sessions and those who turn up are given preference to work on high-earning files. Men and women employees with child care responsibilities are unable to attend and are subsequently disadvantaged (family status discrimination);
- All employees are required to work in an environment where sexual calendars are displayed and racial banter commonplace. Employees who are offended are subjected to more stress and embarrassment than other workers, (sexual and racial harassment).

The Human Rights Act defines employment discrimination to include, where a person qualified for work

- is not hired;
- is provided with less favourable terms of employment, conditions of work, fringe benefits, opportunities for training, promotion, and transfer than those provided to employees with similar capabilities employed in similar work;
- has their employment termi-

nated or is asked to retire or resign

- is subjected to detriment, - by reason of any of the prohibited grounds of discrimination.

Prohibited Grounds

The law establishes grounds upon which it is unlawful to directly or indirectly discriminate against people in employment. *(See Table 1)*

Personal Grievance or Human Rights Commission Complaint

If an employer or representative of an employer, eg. a manager or recruitment consultant, discriminates against an individual on the basis of an unlawful ground of discrimination a complaint may be brought against that employer by way of either:

- A personal grievance in the Employment Tribunal, (if the unlawful ground is covered by the Employment's Contracts Act); or

A formal complaint to the Human Rights Commission, (if the unlawful ground is covered by the Human Rights Act).

Where an unlawful ground is covered by both Acts, an aggrieved employee may choose one course of action only.

Who is Protected?

Table 2 illustrates that the Acts differ in their scope as to who is protected from discrimination. The Human Rights Act extends coverage to, among others, job seekers, voluntary workers, independent contractors, clients and people seeking admission to partnerships.

Examining Specific Grounds

The Human Rights Act defines each unlawful ground quite specifically. It also lists one or more exceptions to each ground, i.e. circumstances in which the law allows an employer to discriminate.

Sex

Sex discrimination is unlawful, and includes discrimination against a person because of pregnancy.

For example, sex discrimination may occur if.-

An employer refuses to employ a female graduate valuer on the assumption that most clients prefer to deal with men valuers.

It is not unlawful for an employer to discriminate on the basis of sex if the work is performed wholly or mainly outside New Zealand

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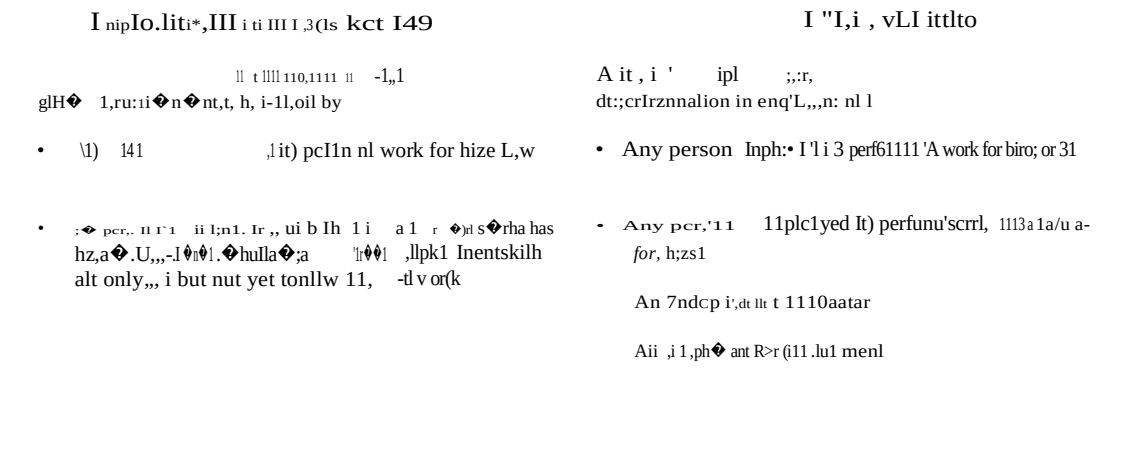

and the laws, customs or practices of that other country are that only persons of a particular sex ordinarily perform that work.

For example, discrimination on the basis of sex may be okay i f•

- A New Zealand employer with a construction contract in Saudi Arabia refuses to hire a woman where the work involves on-site supervision in that country.

Case Law Sex discrimination:
Trilford v Car Haulaways Ltd [1996] 2 ERNZ 351

Existing employee of Car Haulaways, Mrs Trilford, applied for the position of Transport Supervisor. She was advised by the branch manager that she would not be considered because thepo-sition was "more male oriented".

The Employment Court found Mrs Trilford had been discriminated against on the basis of her sex and ordered Car Haulaways to pay Mrs Trilford $1 5, 000.00 compensation for distress and $6,179.96 lost wages.

Marital Status

Marital status means being single, married, separated, divorced, widowed or living in a relationship in the nature of marriage.

For example, marital status discrimination may occur if

- An employer dismisses an employee when he or she marries a co-worker because the employer believes it is inappropriate for spouses to work together.

It is not unlawful to discriminate on the basis of marital status where a person is married to *or* living in the nature of marriage with *or* related to another employee and:

- There would be a reporting relationship between them; *and/or*
- there is a risk of collusion between them to the employer's detriment.

Also, it is not unlawful to discriminate against a person who is married to or living in the nature of marriage with or related to an employee of *another employer* and:

- There is a risk of collusion between them to the employer's detriment.

For example, discrimination on the basis of marital status may be okay if

- An employee is married to the director of a rival valuation firm and there is a risk of confidential client information being passed to the employee's spouse.

Family status

- Family status includes being responsible for the care of children and other dependents, living with any person or being a relative of a particular person.

For example, family status discrimination may occur if:

- An employer disadvantages an employee for taking statutory parental leave
- A well-qualified job candidate is not employed because they are a single parent and the employer assumes he or she may have trouble meeting out-of-town travel commitments.

Case Law Family Status Discrimination: *Dryfhout v NZ Guardian TrustAEC 58/96*

After taking parental leave, Ms Dryfhoutsought to return to work during the hours of 8.45 a.m. and 4.35 p.m. with 20 minutes for lunch, in order to accommodate her child care arrangements, (a nanny who worked 8.00 a.m. - 5.00p.m.). Prior to takingparental leave Ms Dryfhout had worked 8.30 a. m. - 5.00p.m. with an hour for lunch. Guardian Trust refused Ms Dryfhout's request and they argued it would effectively lead to "the opening of floodgates with staff coming and going as they pleased". The Court rejected the company's argument and ordered Ms Dryfhout be allowed to return to work during the hours she proposed. On the facts of the case, the Employment Court rejected the employer's argument that client needs could not be met by Ms Dryfhout working her proposed hours, and found that if the company 's position was upheld Ms Dryfhout would be forced to resign ostensibly because of her child care commitments.

Disability

Under the Human Rights Act, disability means:

- Physical disability or impairment;
  Physical illness;
- Psychiatric illness;
  Intellectual or psychological disability or impairment;
  Presence in the body of organisms capable of causing illness;
  Reliance on a guide dog, wheelchair or other remedial means.

For example, disability discrimination may occur if-

An employer fails to promote an otherwise qualified employee because they have received treatment for depression; or they are known to have had a heart attack.

It is not unlawful to discriminate on the basis of disability if:

A person could only do the job with the aid of special equipment or services *and it is not reasonable* that the employer provide these;

because of the nature of the work environment or j ob duties the work could only be performed with some risk of harm to the person with the disability or other people, it isn't reasonable to take that risk *and the employer cannot reduce that risk without unreasonable disruption*

For example, discrimination on the grounds of disability may be okay if

- An employee, who is otherwise a high performer, has a psychiatric illness that causes he or she to have sporadic outbursts that offend clients. The employer cannot reduce the risk of outbursts happening when clients are present because of their unpredictability.

Age

The Human Rights Act defines age as:

- *Until February 1999:* Any age between 16 and the date at which a person would usually become entitled to national superannuation;
- *From February 1999;* 16 years of age and over.

From 1 February 1999 it will be unlawful to

- `Retire' a person because of their age or entitlement to superannuation, i.e. compulsory retirement is effectively abolished early next year.

It is not unlawful to discriminate against a person on the grounds of age for a number of reasons, including:

- The person is under 20 and youth rates apply;
- Age is a bona fide occupational qualification, e.g. having to be 18 before a fork lift can be driven.

Religious belief

Discrimination on the basis of religion is unlawful.

For example, unlawful discrimination on the basis of religious belief may occur if

- An employer refuses to recruit a practising Christian because he or she is uncomfortable with that person's religious beliefs.

It is not unlawful to discriminate against a person on the basis of their religious beliefs if,

- The person's belief requires them to follow a particular practice *and* the employer cannot accommodate the practice without unreasonably disrupting its activities.

For example, discrimination on the basis of religious belief may be okay if:

- A sole-charge office manager of a small valuation office is Muslim and is required to pray at set times during working hours. It is unreasonable for the reception to be left unattended and other employees are not available as temporary relievers.

Race, colour, ethnic or national origins

It is unlawful to discriminate against a person on the grounds of race, colour, ethnic or national origins. Ethnic or national origins include nationality and citizenship.

For example, race discrimination may occur if.

An employer restricts a brown-skinned valuer's duties to dealing with strategically less important clients because the employer believes more prestigious European clients are racist. The brown-skinned employee's promotional opportunities are thereby limited.

Sexual orientation

Sexual orientation means being heterosexual, bisexual, lesbian or gay.

*For example, sexual orientation discrimination may occur if.**

- A gay man is required not to wear an earring at work as it identifies his sexual orientation, but heterosexual men and women are allowed to wear one earing.
- A gay man receives offensive comments from workmates about his sexual orientation, e.g. linking it to HIV.

Political opinion/participation in an employees' association.

It is unlawful to discriminate against a person because of their political opinion or because they do or do not belong to a union

Case Law Political Opinion discrimination: *O'Dea v BHP NZ Steel & Electrix Company Ltd CRT 3/96*

Using Marxist terminology, Mr O'Dea expressed opposition to a proposed workplace reform initiative. BHPNZSteel and Electrix sought to transfer Mr O'Dea to another work site but when they discovered his contract restricted his employment to Glenbrook Mill, they dismissed him for redundancy. The Complaints Review Tribunal found Mr O'Dea was dismissed because of his political opinion and ordered the companies to pay his costs and to apologise. Mr O'Dea did not seek compensation for humiliation and distress, but the Tribunal said, had he sought it, it would have had no hesitation awarding compensation of $10, 000.00

Sexual and racial harassment

Both sexual and racial harassment are defined in legislation. They occur where a person has been subjected to offensive behaviour of a verbal, physical, written or visual nature and been detrimentally affected.

Harassment can occur to employees by the behaviour of their manager, co-worker or a client or customer of a firm.

In order to claim defence to a substantiated claim of harassment under the Human Rights Act, employers must have taken "reasonably practical steps" to prevent behaviour of the nature complained of occurring. For most employers this means an active harassment prevention programme that includes: a

- Policy statement;
- Special complaints procedure;
- Trained harassment contact people;
- Staff education about rights and responsibilities.

Compensation awards for sexual harassment average between

$15,000 $35,0000. Settlements at least as high as $95,000 have occurred through the Human Rights Commission.

Hostile Environment Harassment

Workplace harassment can occur through behaviour that is sexist, ageist, anti-gay or anti-religion and not only through behaviour of a sexual or racial nature.

Workplace environments that are hostile to minority workers such as women, discriminate in that they provide lesser working conditions than those afforded other employees. Tolerating sexist language and jokes, excluding women from social events and displaying sexist material may constitute sex-based harassment, a form of direct or indirect workplace discrimination.

Implications for Valuation Employers

As with all professions and private sector businesses, valuation employers are covered by the full extent of discrimination law.

While, on the face of it, legislative compliance may appear a forbidding responsibility, the rationale for discrimination law ought to be kept in mind. New Zealand's discrimination law has been formulated on the basic tenet that all New Zealanders ought to be able to pursue their career choice and economic well-being in conditions of freedom and dignity. in doing so, the law seeks to ensure they be unimpeded by prejudice or assumptions that detrimentally affect their employment for reasons unrelated to their technical skills and ability to do their job.

Code of Ethics

This tenet is reflected in NZIV's code of ethics, which prescribes that each and every member is to

practise their profession with devotion to high ideals of integrity, honour and courtesy; loyalty to the Institute, and in a sprit of fairness and goodwill to fellow members, employees and subordinates."

Further, the code prescribes that members shall at all times

"...abide by all laws, statutes, regulations and rules relevant to their professional practice. "

These statutes include the Employment Contracts Act and Human Rights Act.

Equal Employment Practices

Equal employment opportunities practices applied by valuation employers will ensure legislative compliance with discrimination law. From the profession's point of view such practices will also ensure the profession utilises the talents of the greater gender and ethnic diversity it has attracted over recent years.

Marie Koreman, B.A, LLB, DipBus (PMER)

NZIV EEO Contact People

This month, the Institute will be training five people to act as Equal Employment Opportunities (EEO) Contact People. Any member will be able to contact these people if he or she feels they have been a victim of discrimination or harassment, either by a fellow institute member, employer, co-worker or client. EEO Contact People will assist each enquirer identify whether his or her concern is indeed a discrimination or harassment problem, and, if appropriate, advise them of remedies that may be available both in and outside NZIV.

NZIV's rationale in providing such a service is to ensure all members have the opportunity to practise their profession to the best of their ability, free from discrimination. *(Refer NZIV Property Digest* September 1997)

Due Diligence: A Lawyer's Point of View

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This article is broadly divided into two parts. First I will make some general comments about due diligence in real estate transactions. Then I will describe some of the key aspects of the legal due diligence process. As I was co-author of the AIVLE Due Diligence Guidelines Issue date 1/96, in the latter part of this article I have followed some of the material which was included in the Guidelines.

These three articles on aspects of Due Dilgence are reproduced with permission of the Valuer and Land Economist, a publication of The Australian Institute of Valuers and Land Economists which is shortly to be renamed the Australian Property Institute.

The concept of Due Dilgence was introduced in the November Journal. It should be noted that while the legislation differs many of the principles apply to New Zealand conditions.

What is Due Diligence?

This can mean many different things in different circumstances. For the purposes of this article due diligence may be conveniently described as the process of ascertaining all the information about a property and the parties to a transaction that is necessary before another party can enter into the transaction.

What kinds of Transaction?

Due diligence is conducted in many circumstances, most typically a sale/purchase mortgage, leasing, valuation and other kinds of transactions.

Before entering into any of these the parties must know all that is relevant to them about the property. Therefore they or their professional advisers must make all the prudent enquiries that are required to put them in a position where they are comfortable in advising about the property, and the parties are confident in proceeding with the transaction.

Who Conducts the Due Diligence?

Many practitioners will remember the days when it was only necessary for a purchaser to make enquiries before proceeding with the purchase of a property. Except in the case of an auction, a vendor, mortgagor or lender would only supply the title particulars and perhaps enough information for the relevant documentation to be drafted and it would be left to the other party (including a valuer conducting a valuation) to make all the necessary enquiries for themselves. The cardinal rule was *caveat emptor* let the buyer beware.

Today *caveat emptor* is as relevant as it always was, but it is only one aspect to the transaction. New laws and practices requiring vendors, mortgagors, landlords and others to disclose more about a property include:

- disclosure requirements on vendors of property, such as section 32 of the Sale of Land Act in Victoria;
- disclosure requirements on landlords under Retail Tenancies Legislation around the country;
- franchising laws;
- the Trade Practices Act;
- the Fair Trading Acts;
- lenders conditions precedent to making advances and
- warranties incontract documents.

In order to make adequate disclosure and compliance with the relevant laws and practices it is necessary for the owner to conduct a due diligence, to gather all the relevent information and provide it to the other party or parties to the transaction. Failure to do so can result in a breach of the law or a breach of contract and suffering the consequences which might follow.

Furthermore, in these times where parties expect transactions to be concluded much more quickly than in the past, a vendor, mortgagor, landlord or a property

owner requiring a valuation will conduct a due diligence on their own property to supply to the other party in order to save time in getting the transaction started and completed.

The Cost of Due Diligence

Later in this article I describe some of the due diligence enquiries that may be required in typical transactions. Many of these require the services of lawyers, engineers, valuers and other professional consultants. They can involve a great deal of time and work and therefore a considerable amount of cost.

So, it is prudent to ensure that in any large transaction, the majority of the original due diligence work is performed only once if possible. If one party can arrange for the work to be done and the other party or parties can rely on the due diligence work being checked, appropriate questions being asked, and proper warranties and conditions being included in the contract documents to protect the party relying on the due diligence, a considerable amount of cost can be saved.

If a contract document does not contain suitable warranties and conditions then it may be necessary for the other party to make its own due diligence enquiries before entering into the transaction, but this will impose additional cost to the transaction and may also delay its completion.

It is possible that a purchaser will be protected from inadequate due diligence by the remedies available to a purchaser under the Sale of Land Act, retail tenancies laws, the Trade Practices Act and other legislation, but these will be cold comfort where the most appropriate remedies should have been contractual, or perhaps the transaction should not have been entered into in the first place.

The Time Factor

The party in the best position to conduct a due diligence prior to entering into a transaction will be the vendor, mortgagor, landlord or the owner seeking a valuation. A considerable amount of time and therefore cost, can be saved if that party performs the due diligence work and makes it available to the other party or parties to the transaction at the appropriate time.

In large property sales a vendor will be able to place itself at an advantage if its due diligence work is so comprehensive, thorough and accurate that it will be readily acceptable to purchasers.

Practitioners will be well familiar with auction contracts and simple tenders for the sale of property. Sale by tender became popular from the mid-1980's, where tenders followed the long established principles of tendering for construction contracts. By including comprehensive due diligence information in the tender documents the vendor can expect tenderers to tender a price for the property with a minimal amount of time and cost for due diligence, ensuring an efficient selling process.

In larger and more complex property sales where the due diligence work is very extensive, and where there are several prospective purchasers bidding for the property, it may be desirable to reduce the number of bidders to a more manageable number. The objective will be to limit to a small number of prospective purchasers the data about a property which would be disclosed to them. Also, many vendors prefer to limit the audience to sensitive detail about their property, such as rental and other financial information, to the smallest number possible. Therefore a typical process might be to:

- issue to the market a request for expressions of interest about the property, including indicative prices;
- select a small number, say two or three, who will be invited to tender;
- allow the selected tenderers to inspect the due diligence material;
- receive final tenders;
- select the best tender and sign a contract.

The process from receiving expressions of interest to signing can be reduced to a few days or weeks if necessary. Not only does this save time and cost, but this process has the added advantage of avoiding lengthy negotiations with the highest bidder about the sale and running the risk of losing time or commercial ground in final negotations.

The ability to achieve a streamlined process of this nature requries a property which can be sold without the need for negotations and of course, more than one purchaser competing for the property. It is made possible by ensuring that all of the information the purchaser would require is made available in the vendor's due diligence and legal documents which support that position.

Data Room

In large property transactions it is common for a data room to be established which contains all the of the relevant information about the property and the transaction.

Typically the data room is a room at the office of the solicitors for the vendor, and is held under tight security with strict rules governing entry to and use of the room.

On many occasions we have established a data room and an office for major property sales. In the sale of Victorian Ports during the Port Reform process we established several data rooms for the sale of the electricity companies and power stations in Victoria. These operated under the tightest security and with arrangements established to ensure that the rooms were available at different times for different parties contemplating making a bid.

Confidentiality Agreements

One reason for limiting the number of parties who can inspect due diligence material, is to attempt to maintain confidentiality of material as far as possible. This particularly applies to sensitive financial information.

Therefore it is often prudent to ensure that a person intending to view due diligence material executes a confidentiality agreement binding them to maintain as confidental all material seen by them and other persons in their organisation.

During our client's successful bid for Melbourne Airport, the Commonwealth requried every single person from our office and our client involved in the process, to execute a comprehensive confidentiality agreement. Having signed an agreement as onerous as this, it was then necessary to establish rules within our organsaiton to ensure that the agreements were not breached. even inadvertently.

This is even more complex when data is produced in electronic form.

Reliance on Consultants Reports

A vendor will be most reluctant, and indeed well advised to not warrant or represent the condition of a property in a contract of sale. Therefore a purchaser must rely on its own inspection and those of consultants to ascertain the condition of the property. Where, in the due diligence process the vendor is supplying information about the property in the form of consultants reports, for example structural and services engineers reports, depreciation reports and the like, it will be necesary to ensure that the report is addressed both to the vendor and prospective purchasers, so that there is recourse to the consultant if the report is wrong. Also, they should ensure that the consultant is adequately insured and the consultant's insurance permits the report to be addressed to their parties such as purchasers.

If the vendor's consultants reports are not available to prospective purchasers then delay to the transaction may occur while the purchaser is obtaining the report and the purchaser may gain a tactical advantage in seeking concessions in areas where its report may disclose unexpected problems with the property.

Also, if the vendor can obtain consultants reports which can be made available to tenderers, it will save a wasted expense for those tenderers who are unsuccessful.

Legal Due Diligence

The legal aspect of the due diligence process calls for a consideration of the issues relevant to ownership of the property, including the ownership structure, the nature of the title and the various matters that impact on use, employement and value. In the case of properties which are leased, the legal due diligence

process also calls for a detailed review of the lease or leases.

Ownership Structures

Apart from ownership by an individual personally, legal structures for property ownership include a company, a trust (unit or discretionary) a partnership or a joint venture (incorporated or unincorporated).

Where interests are acquired by two or more parties it is necessary to consider whether they should become joint tenants or tenants in common.

Usually the ownership structure selected for a property is made because of taxation, or stamp duty considerations, and appropriate professional advice is required before selecting the structure for a particular property.

Types of title

There are basically four types of title, the Torrens system which applies to most Australian properties (including strata titles), general or `old'law titles which was the system inherited from England and used before the enactment of the Torrens system in the Australian states, Crown leasehold and private leasehold estates.

Particular care needs to be taken in examining titles in the due diligence process. Even Torrens certificates of title can be complex with easements, covenants, caveats, agreements restricting use and other complexities. The examination of a general law title usually involves a careful study of the documents back to a good root of title. Practitioners will be familiar with the need to examine leases with particular care to ensure that the lease is well understood by the purchasers, lessee, mortgagee or valuer who is interested in the lease.

Matters AffectingTitle

Apart from examining the title itself, a due diligence should also involve examining a large number of other matters which may affect the title. Depending on what exists, the outcome might affect the purchase price or value of the property, therefore careful scrutiny is required in every case.

Some of these include the measurements of the property, the existence of mortgages, charges and unpaid rates or taxes, restrictive covenants, easements, sewers and drains, caveats, planning restrictions, body corporate rules, leases, heritage, compliance with building construction laws, contamination and many other things.

Solicitors experienced in property law are accustomed to making enquiries to find out about these things, however, it is usually necessary to provide the owner with a detailed questionnaire which is aimed at gaining as much knowledge as possible about the property from the owner before embarking on enquiries, and certainly before preparing contract documentation.

Planning Controls

The value of the property will be directly affected by town planning laws which relate to the property, particularly insofar as they constrain the development potential or use of the property.

Where it is intended that property controls which apply to the property by legislation, lease control or some other method.

Therefore it is necessary to ascertain what uses may occur as of right without a permit, entitlement to permit (with or without conditions) prohibited use, non-conforming use and required amendments to the planning scheme to permit a particular use of development to proceed.

There are numerous planning isssues which may affect development potential. These include zoning, height controls, floor space, ratios, plot ratios, traffic and car parking issues, density controls, heritage, views, site lines and many other issues.

Foreign Investment Review Board

The Foreign Acquisitions and Takeovers Act 1975, is a Federal statute regulating foreign investment in Australia. All proposed real estate acquisitions by foreign interests must be submitted to the FIRB for examination, unless the acquisition falls within a specific exempt category.

A natural person not ordinarily resident in Australia, or a corpo-

ration in which there is a holding of 15% or more by a non-resident or 40% or more in aggregate by two or more non-residents, is a foreign interest under the Act. If the transaction does not have the benefit of one of the exemptions, permission will be required from the Treasurer before the transaction can proceed.

This can take up to 40 days to obtain.

Therefore a foreign purchaser intending to purchase a property must factor this requirement into a bid for the property. Alternatively a vendor selling a property which might be purchased by a foreign interest should also factor in the need for further approval into its selling arrangements.

Leases

Leases are a vital component in most commercial properties, and any due diligence process must include a thorough analysis of all lease covenants affecting the subject property.

There is a large number of issues which must be examined. This can be made particularly onerous by lengthy lease documents and it is compounded by non-uniformity in lease documents from one property to another, and often non-uniformity, the leases for one property.

Usually it is the task of the solicitors for the parties to a transaction to review the lease documents and report to the party for whom the solicitor is acting.

Where a property having many leases is being sold it is often prudent for the solicitors for the vendor to prepare an epitome or short summary of each lease which prospective parties can rely on, rather than reading boxes full of lengthy lease docuements. In many cases the leases are identical except for those provisions which have been specifically amended and which can be better identified in the epitome of lease.

Those owners who follow the practice of amending their lease documents by use of an addendum page, rather than incorporating amendments in individual clauses, can make future due diligence processes much simpler.

Environment

In conducting due diligence it is necesary to consider the desirability of having an environmental audit of the land and building covering matters such as contamination, asbestos, air-conditioning, filling, underground tanks and other relevant items to be carried out by specialist environmental consultants.

In most cases a vendor will pass the environment risk across to a purchaser, and the purchasers will be more comfortable in taking this risk if the vendor has supplied a professionally prepared environmental audit on which the purchaser can rely.

Conclusion

In addition to the matters briefly covered in this article, there are many others which would normally be canvassed in a due diligence process and disclosed to prospective purchasers. These might include building reports, inventories, rental arrears, files accounts and financial statements, surveys, insurance, property management details, outgoings and others.

Also, it may be necesary to consider the existing and future potential management style for the property, including interviewing the existing building management, reviewing maintenance and service agreements and reviewing management, staff, personnel and their entitlements.

These and other issues are covered in some more detail in the AIVLE Due Diligence Guidelines

The importance of a prudent and comprehensive due diligence cannot be underestimated. Also, the time it takes to properly conduct a due diligence, provide a report and if necessary, establish a data room, should not be underestimated.

The cost of due diligence can be expensive, but if properly prepared, conducted and controlled it should prove to be a worthwhile investment.

About the author

Michael Trumble is a partner of Corrs Chambers Westgarth and one of Australia's leading property lawyers. Michael has acted for owners, developers, government and local government in property development, construction and management, commercial leasing, purchases and sales, joint ventures and other related transactions, including major city office building developments, shopping centres and public infrastructure projects.

Some of his recent transactions include the new Federal Courts Building in Melbourne, acting for the Victorian Parliament House Completion Authority, transactions for the Melbourne Convention and Exhibition Trust and other projects for Government and leading Australian institutions.

Financial due diligence in commercial property transactions

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Due diligence is normally associated with the process of formal enquiry and analysis that precedes a proposed acquisition or disposal of financial and business assets.

As a pre-cursor to the acquisition or disposal of commercial property, the primary purpose of financial due diligence is to assist in determining the economic value of the proposed transaction and identify the risks attendant upon the acquisition/disposal of property assets, and thereby assisting in the determination of the terms upon which the vendor/acquirer will be prepared to enter into the transaction.

A principle consideration, and in many ways the key to successful due diligence, is determining the appropriate level of enquiries and the nature of those in order to minimise the risks and liabilities of participants.

In this article we propose a risk-based approach to financial due diligence that focuses on a level of inquiry that provides an appropriate degree of certainty for vendors/acquirers in a commercial property transaction, mitigates risks associated with the transaction and is conducted at a cost that is commercially acceptable and within a time frame that does not delay the finalisation of the transaction.

Due diligence as a `defensive `tool

A traditional view of due diligence is that it is a defensive strategy aimed principally towards ameliorating the risk of civil liability arising as a result of a transaction. The potential for civil liability on a trade sale may arise for a vendor when potential purchasers are invited to review or provide material relating to the relevant assets and/or warranties and indemnities. The Trade Practices Act and the Fair Trading Acts of the various States impose potential civil liability where a person engages in conduct which is misleading or deceptive or likely to mislead or deceive. In the same way, the Corporations Law imposes liability on persons engaged in misleading or deceptive conduct.

There are no due diligence defences under the Trade Practices Act and the Fair Trading Acts of the various States. Similarly there are no due diligence defences to the applicable provisions of the Corporations Law where an information memorandum is not a prospectus required to be lodged or registered with the Australian Securities Commission.

Thus the only `defence' is to do all that is practicable to ensure there is no contravention. One way to achieve this is through a properly structured vendor due diligence process. Accordingly, the traditional approach to due diligence was focussed on this aspect.

From a buyer's standpoint, significant risks arise where there is a need to rely on warranties and indemnities provided by a vendor in the transaction documentation. In any event, any such warranties and indemnities is risky and the likelihood that litigation (be it to enforce a contractual right or claim civil compensation) will compensate for a purchaser not receiving what is expected from the transaction is minimal.

The best approach is to do all that is practicable to ensure there is no need to claim compensation in the future. This is achieved through a properly structured buyer due diligence process.

Mindful of this perceived need to structure a `defensive' due diligence process a common approach, in a major transaction is for the Board of the buyer or vendor to appoint a due diligence committee which then devises a due diligence checklist covering all of the financial aspects of the transaction and delegates to management and external advisers the task of providing a financial report and `sign off' on each of the items in the checklist: The flow of information is shown in table 1.

Based on the checklist, teams of accountants, land economists, structural engineers, consulting engineers, architects, lawyers, valuers and environmental consultants are put to work reviewing and reporting on all aspects of the proposed transaction.

The result is often a very expensive, time-consuming and voluminous report that involves an unnecessary expenditure of time and resources and often fails to properly identify and give priority to key risk areas. Checklists, simply put, encourage an attitude of form over substance, often without regard to the nature and priority of risks. If, as already identified, we adopt the view that the primary purpose of financial due diligence is risk management, then an alternative risk-based model is required.

A risk-based due diligence process

The `risk based' model involves identifying at the outset the key areas of risk be it from the vendor or buyer's perspective - and focuses due diligence inquiries on those key risk areas: *see* Table 2

Document key risk associated with the transaction

Scope the level of enquiries necessary

I

Delegate Responsibilities

I

Report findings and recommendations

I

Reflect recommendations in Transaction Documentation

Table 2.

Agree Due Diligence Planning Memorandum

111110

Develop Detailed Checklist

no

Delegate Presentation to Management and Advisers

Report findings

Table 1.

This approach eliminates the risk that resources are devoted to areas that are less important, ensures that tasks are appropriately delegated, and importantly, ensures that there is a distinct link between the outcome of due diligence and the transaction documentation.

Under this model, the first step in the process is to define and document the principal financial risks. Implied in this approach to due diligence is an understanding of the risk profile that a potential investor wishes to take. For example, is the potential buyer seeking high returns with low regard to risk or minimum competitive returns commensurate with a low level of risk (eg fully leased income producing property). This primary step must be performed at senior management/Board level, as it requires an understanding of the objectives of the organisation and its business and risk profile. In practice, however, this important function is too often delegated to external advisers or a `project manager' conscripted from the ranks of middle management, with the result that risks may be misinterpreted or given an inappropriate priority.

Scoping the appropriate level of enquiry

Materiality is an important element in scoping the level and nature of due diligence enquiries and must be clearly defined prior to the commencement of due diligence.

In a vendor due diligence, materiality tests will assist in the review and determination of the financial and other information to be provided to prospective purchases and the form in which such information is made available. For prospective buyers materiality tests will ensure that enquiries are properly focused on key risk areas.

The concept of materiality is best described by accounting standards which define an item of information as being material if its omission, non disclosure or misstatement would cause the financial information to mislead users when making evaluations or decisions. Regard is to be had to a number of factors including the nature of the assets, the kinds of investors and matters already known to the market and professional investment advisers.

The suggested guidelines - adopted in accounting standards are normally the benchmarks regarding the *quantitative* aspects of materiality

- an amount which is equal to or greater than 10% of the appropriate base amount ought to be presumed to be material unless there is evidence to the contrary;
- an amount which is equal to or less than 5% of the appropriate base amount ought to be presumed to be immaterial unless there is evidence or convincing argument to the contrary; and
- no presumption ought to be made as to the materiality of an amount which lies between 5% and 10% of the appropriate base amount prior to consideration of the nature of the item.

By setting an appropriate quantitative materiality limit, a vendor may also seek to limit obligations under warranties given in the various sales contracts by reference to the materiality threshold.

In addition to the quantitative guidelines, items, transactions or events will warrant further investigation if they meet certain *qualitative* materiality criteria. In general, regard should be had as to whether:

- the matter might have a material effect on the operation of the property;
- the matter might have material effect on the future activity or development options available e.g. any lease or licence, having an unexpired term exceeding, say 10 years (including options);
- the matter might have a material effect on income, cash lfow or the ability to generate profits;
- the matter might have a material effect on the cost structure of the business eg. negotiations in respect of terms and conditions of employment
- the matter might affect an investor's decision to invest in the relevant asset or the price

which an investor would be prepared to pay;
- the matter is in some other way onerous, unusual or so outside the ordinary course of business that it ought to be considered;
- the matter may have an adverse effect on buyer's reputation; or
- there has not been material compliance with relevant legislation.

Both vendors and buyers will exercise their judgement in respect of each issue as to whether or not it is so material as to require further investigation. As a procedural matter, judgements made regarding whether a particular issue should or should not be investigated or disclosed on grounds of materiality should be documented.

Matching the nature of enquiries with the risks

As already stated, a key pre-cursor to a successful financial due diligence process is the identification and documentation of the primary risks associated with the transaction. The nature of the risks will be different for vendor and buyer.

For a vendor, the primary risks are normally evident from a consideration of the legal and financial implications of selling the relevant assets i.e.
i) the vendor is legally entitled to sell the assets;
ii) the risks and liabilities associated with ownership will pass to the buyer; and
iii) the risks associated with past ownership that are to be retained by the vendor are known and understood and the price at which the asset is to be sold.

From a prospective buyer's perspective, it is vital to understand the nature of risks to be assumed and the liabilities that will flow from ownership, and the future economic benefits embodied in the assets.

The specific nature of enquiries which flow from identification of these risks factors will vary for each type of transaction. Following is an example of the type of inquiries that one would normally expect in a significant property transaction so as to ensure that parties are fully informed regarding the attributes of a particular property and the risks associated with the proposed transaction.

While these procedures focus on the financial due diligence enquiries, they inevitably overlap with the detailed enquiries undertaken as part of legal due diligence.

Asset identification, valuation and related issues

Any purchaser of property must, of necessity, have a view as to what the particular property is worth. Ultimately, one's assessment of value will be a key factor in determining how much to pay for a property or for an interest in a property and, from the point of view of a vendor, how much to accept for a sale of a property. Equally, the value of a property will be of critical importance to a lender who proposes to advance money against the security of a property. Valuations may also be required for the purposes of financial statements, for insurance purposes, and to assist in analysing investment performance.

In order to obtain an expert and impartial assessment of the value of a property, a suitably qualified, experienced and licensed valuer is normally appointed to prepare a valuation of the property on an appropriate basis. Usually, this will involve an assessment of the property's market value.

Market value can be defined as the price that a property will bring in the open market, from voluntary bargaining between vendor and purchaser, with neither party over anxious to do business, but both must be willing to trade and are assumed to know the benefits and the deficiencies of the property concerned.

The valuer's role is to interpret the market using sales as evidence and apply general valuation methodology to form an opinion of that property's market value. It should be recognised that the resultant valuation is an opinion and is therefore subjective. The assessment of an individual property's value may vary between values. Two valuers appraising the

same property should arrive at a similar if not the same figure, however, in practice, there would normally be a variation. This is not unlike the market place, where two identical units within a building may sell at auction, on a given day at a different figure.

There are several methods of valuation that are available to the valuer. These include

- capitalisation of income
- discounted cash flow (DCF)
- summation method; and
- direct comparison.

No one method is inherently superior to another for all valuations but each has advantages and disadvantages for a particular property. The valuer ascertains which is the best method suited to the property and this becomes his prime method of valuation. The others can then be used as a check. If there is a large discrepancy between the various approaches, further investigation should be carried out. However, it should be noted that some variation between the different approaches is sometimes warranted and can be soundly reasoned.

In adopting a valuation method, the highest and best use of the property must first be established e.g. a three story commercial building existing on a site which has a permitted floor space ratio (FSR) of 10:1 allowing an additional seven storeys to be constructed. It would be inappropriate to value the property based on the income stream from the existing three floors without considering the development potential of the site.

Care should be taken prior to engaging a valuer to ensure that the instructions and terms of engagement agreed with the valuer are sufficiently comprehensive, so as to ensure that the valuation report contains all relevant information. For example, the valuer may be asked to opine specifically on aspects of the property under consideration, which in turn may be an important feature of contract negotiations and the content of the transaction documentation.

Examples of such items include:

- matters relating to title (for example, the identification of encumbrances such as easements and covenants, and identification of registered leases);
- property location (commentary on access, public transport, impact of development proposals on adjoining properties, government infrastructure, development plans);
- site services (drainage, lfooding potential, soil characteristics, contamination);
- town planning (identification and impact of planning proposals);
- environment issues (in particular identification of the costs of an environmental rectification works); and
- existing tenancy details.

Taxation issues

Investors will generally enter into and price the value of a potential investment by reference to its short and long term income and capital growth potential. As both income and capital gains are subject to taxation, issues will significantly alter after the tax return on an investment. The investment decision may be materially influenced by the tax effectiveness of the investment, which in turn, will be dependent on the nature of the vehicle which is used to acquire a property and the manner in which the acquisition is structured. As all potential bidders for a property will have their own taxation profile and tax affairs, the proper management and planning of taxation issues is a vital element of the negotiation and buyer due diligence process. The vendor also needs to investigate means by which bidders can obtain the best possible tax outcome, so as to ensure the highest possible price for the property.

Given the complexity and ever-changing nature of our taxation system, it is essential that expert taxation advice is sought as part of the financial due diligence programme.

Specific matters that need to be addressed include:

- ascertaining the cost base for tax depreciation purposes of assets acquired and allocating the purchase consideration to specific items of plant and equipment so as to obtain the most effective taxation outcome;
- determining the tax deduc-

tibility of finance costs and repairs and maintenance costs;
- ascertaining the level of historical construction costs (including structural improvement) for purposes of the building allowance and determining the appropriate building allowance rate;
- determining the eligibility of fixtures for tax depreciation and the appropriate depreciation rates; and
- determining the liability for Stamp Duties that will arise on the transfer of property.

Specific matters that need to be addressed in vendor due diligence include:
- ascertaining the depreciation balancing charge (and elections to offset the balancing charge against other assets) or tax deductible write-off; and
- ascertaining the capital gains tax liability on the sale and identifying opportunities to minimise taxable gains or offset gains against capital losses

Net Assets and Contingent Liabilities

Financial assets and liabilities to be transferred with the property to the buyer need to be identified and valued. As the due diligence process will inevitably precede the finalisation of contracts and the transfer of ownership, a mechanism needs to be agreed between the parties for the transfer of assets and liabilities, including debtors, trade creditors, liabilities for employee entitlements and other liabilities that may crystallise between the signing of sale documentation and the completion date. Specific items to be considered include:
- provisioning for bad and doubtful debts'
- contracts and commitments for capital expenditure;
- liabilities for employee entitlements (annual leave, long service leave, sick leave);
- liability for employee redundancy payments which may be triggered under employment contracts by the change in ownership;
- employee superannuation entitlements (including areas in contributions and employer obligations under defined benefit superannuation arrangements; and
- potential liability for contingent liabilities such as claims for compensation by employees, legal claims, etc.

Other financial considerations

Other considerations that will be addressed during financial due diligence will depend on the nature of the property under review. The due diligence process should ensure a thorough understanding of the key revenue and expense drivers of the business.

Revenue potential is obviously a prime consideration in assessing a commercial property and the quality and quantity of the income stream is one of the major determinants of risk and investment appeal. In reviewing revenue potential; the different types of revenue streams need to be identified, as the receipt of some types of revenues are perceived to be less dependable, and therefore riskier, than others. For example, in a retail property, revenues are typically made up of minimum (base) rents, percentage or turnover rents, storage rents, and expense recoveries. Income may also be derived from parking charges, casual leasing of common space areas, and a variety of miscellaneous sources. Tenant mix will also impact revenue potential. A retail property heavily weighted in anchor tenants may be considered less desirable, due to the lower base rent achievable and the heavier dependence on turnover rent. Tenant mix may also impact revenues via its impact on the recovery of outgoings, as major tenants may be in a position of strength and may have negotiated significant expense recovery concessions.

Operating expense estimates should incorporate an analysis of actual, historical and budgeted figures, having regard to future increases in expenses based on current economic growth trends. Each type of expenses should be reviewed separately to determine appropriate escalation factors and a thorough understanding should be obtained of expense drivers and how items are calculated, particularly statutory charges. An

understanding of the arrangements pertaining to expense recoveries from tenants is critical.

Leases

Leases are an integral component in most commercial property transactions and a thorough understanding of the leasing arrangements and the risks and benefits associated with existing arrangements is essential. Issues that would normally be addressed in financial due diligence include:

- understanding the commercial and financial impact of all lease arrangements;
- ascertaining the financial impact of the transaction on those existing lease arrangements;
- assessing the financial status of lessees; and
- identifying and quantifying potential and contingent liabilities associated with lease arrangements (such as early termination, responsibility for maintenance of fitout, capital gains, tax liabilities on reversion of leased assets, liabilities for employee entitlements).

Handling the information flow

The due diligence process will involve the handling of significant amounts of information. This requires guidelines to be put in place to deal with confidentiality and other matters. The key matters to be agreed between the vendor and potential buyers concerning the flow of information and confidentiality are:

- information identified as confidential may be released to bidders and their advisers on the condition that such persons have entered into, or agreed to enter into, a satisfactory confidentiality agreement directly with the vendor;
- where documents are the subject of confidentiality agreements with third parties' consent to allow potential purchasers to examine the documents. If third parties prove reluctant to allow the release of confidential material the vendor must explore ways in which such third parties might be persuaded to release sensitive material in a mutually acceptable manner; and
- potential purchasers and advisers who are given any information memorandum or access to a data room or provided with other disclosures should be required to sign a confidentiality agreement.

An important outcome of properly structuring and controlling the flow of information will be that the risk of liability in respect of information provided to potential purchases (be it in an information memorandum; through the data room process or otherwise) is reduced by

- ensuring that appropriate qualification is attached to any statement or representation;
- understanding and documenting the assumptions and qualifications appropriate to all forecasts;
- directing the prospective purchaser to conduct their own due diligence enquiries before making the investment;
- including a general disclaimer in the information memorandum, in the data room rules and with other information provided to potential purchasers; and
- the successful purchaser agreeing in the sale agreement, the matters, if any, on which it is relying in making its investment decision.

Conclusion

The major benefit of undertaking properly structured due diligence in a commercial property transaction is to ensure that the expectations of both parties in a transaction are consistent with the final outcome.

This will go a long way towards avoiding the need to rely on warranties, indemnities and expensive legal remedies. The need to obtain expert advice and involve a range of advisers means that conducting the due diligence process may prove to be expensive and time consuming, but the benefits which flow from a properly focussed risk-based due diligence programme will always outweigh its costs.

Due diligence - building services

Kevin Vidler
Director Norman Disney & Young, consulting engineers

Consulting engineers are frequently commissioned to report on the condition of services within a building or industrial installation which is for sale.

These commissions may be for a potential purchaser who needs information so they can make an offer for a property, perhaps at an auction, or alternatively for a committed purchaser whose offer is subject to a satisfactory report on the services installations.

The latter reason probably falls into the grey definition of `Due Diligence' but from the viewpoint of the consulting engineer, the objective is the same - that is to assess and report on the existing condition of the building services systems.

The engineering profession, by its nature, is one of exactitude and preciseness and thus the practitioners of this profession would be keen to roll up their sleeves and report on a wide variety ofparameters relating to the engineering services.

Nonetheless, in the current era of commercialism, management pressures will ensure that they do not spend more time on the project than allowed for by their professional fees.

Similarly, the client may not wish to pay a premium fee for an extensive service.

It is therefore prudent that the consulting engineer and client agree on the scope of service to be provided and the extent of the inspections and tests.

If no agreement exists on these items, there is significant potential for dissatisfaction of both parties.

This dissatisfaction is demonstrated by a particular case in Sydney a few years ago wherein the consulting engineer was commissioned to report on building services before the client concluded his contract with the vendor.

The engineer reported, among other items, that the refrigeration chiller on the air conditioning system was in reasonable condition and appeared satisfactory.

Three months after the sale, the chiller suffered a major failure and the client then initiated litigation against the consulting engineer for his failure to report the true condition of the chiller.

The consulting engineer argued that the deadline for his commission only provided for a walk through inspection of the plant and his professional fees had been charged accordingly and thus there was no opportunity to undertaken any additional inspections or tests which may have established the true condition of the chiller.

Legal advice indicated that there were no qualifications on the extent of service or degree of inspections, and thus it was possi-

ble that the consulting engineer could be found negligent in his duty of care.

The case was settled out of court but probably in neither parties' favour as the client was up for the cost of a new chiller and the consulting engineer made a contribution in excess of his professional fee.

A consulting engineer will rely on his expertise and experience in the preparation of a due diligence report of an engineering system but the conclusions that he draws from the results of his work will not be infallible as many system components preclude the ability to undertake fully detailed examination.

There must be some qualification of the results which are based on his best endeavours to establish the true condition of the system's components but it is necessary that the client be informed of any limitations in the performance of his works and associated risks due to these limitations.

Thus it is important that both parties agree on the scope of works and also equally important that the client accepts that there is some degree of risk especially if he doesn't want to pay a higher fee for a more thorough inspection which could include proving tests of equipment.

In other words, a walk through inspection on the day before the action can't produce the same results as a methodical survey incorporating equipment proving tests.

The refrigeration chiller is a good example, to examine as it is one of the more expensive items in the services installation and, it may be difficult to assess its true condition by visual inspection alone, as it is basically a sealed unit with most of the working components concealed from normal access and views.

A typical check list to examine a chiller could include the following:

- See it operate (some chillers are not operational in winter seasons)
- Listen for undue noise in operation and look for oil leaks and rust (to assess if parts are excessively worn)
- Establish the age of the unit (normal life expectancy may be 20 years).
- Inspect if it has been dismantled and reassembled (to establish what repair work has been done)
- Determine the type of refrigerant (The Montreal Protocol has determined phase-out dates of various types of refrigerants. If the refrigerant has been changed, the capacity of the chiller may have been reduced.)
- Establish that all compressors are operational in multi-compressor chillers; this may require that the load within the building be temporarily increased to cause the compressors to operate)
- Undertake analytical chemical testing of refrigerant (to establish contamination from oil and water leakage due to worn internal components)
- Examine chiller tubes for corrosion (requires partial dismantling of the chiller)
- Thermographic survey (identifies hot spots on equipment and refrigerant leakage)

Inclusion of all these items would constitute a very thorough inspection and would provide suitable data for a reasonable prognosis of the chiller condition.

Such an inspection would take time and will be costly, especially for some of these items.

Extensive checking and testing lists can also apply to other major components within the building services systems such as diesel generators, switchboards, fire pumps, cooling towers, lifts and escalators.

In actual practice, there may be insufficient time to perform certain proving tests, or inspections, and, in most instances, inspections which require shut down of plant and dismantling may be im-

practical particularly with an occupied building.

A walk-through inspection may identify obvious defects but better results will eventuate from more thorough examination.

The AIVLE Due Diligence Guidelines note various services disciplines which should be assessed and the review process which should be undertaken.

There are well founded guidelines on which the consulting engineer and client can determine the degree of examination which is suitable for a particular project.

This will include details of work to be done as well as works not included, so that any perceived risk is understood and accepted by both consulting engineer and client.

About the author

Kevin Vidler is a Director of the international firm of consulting engineers Norman Disney & Young.

With more than 30 years experience as a building services engineer, he has been involved in a wide variety of projects including office, hospital, retail and industrial complexes in Australia and overseas.

Kevin has a special interest in the preparation of condition reports for buildings and has managed engineering teams for inspections and reports on all types of projects including suburban offices, shopping centres and high rise CBD office buildings.

This article reflects the ethos of his firm which is to ensure that there is a mutually acceptable understanding between client and consulting engineer and to provide excellence in service to satisfy the clients needs.

An Investigation into the Relevance of Pedestrian Counts to New Zealand Property Valuation

Garry Dowse
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This paper presents the results of the first in a series of studies by the author on the influence of market variables on New Zealand commercial property values. The paper examines the influence of pedestrian counts on shop rentals in a traditional strip shopping' location, utilising quantitative analysis techniques.

For many years surveys of pedestrian flows have been conducted in New Zealand commercial centres. The general purpose of pedestrian count surveys is to obtain some measure of the popularity of retailing locations.

Property valuers commonly make significant use of pedestrian count data in the analysis and assessment of commercial land values and retail shop rentals. They are also utilised by other property professionals, retailers and the public for management, relocation, and investment decisions. In the commercial property sector there is a long established theory that pedestrian flows influence retail sales volumes, and hence the viability and rent paying capacity of retail businesses.

Throughout New Zealand significant effort is put into gathering commercial centre pedestrian count data. However, while much of this information is available to interested parties, there is very little empirical research available on the relationship of pedestrian traffic volumes to shop rentals and land values. The last known, comprehensive study on this topic in New Zealand was undertaken by the Government Valuation Department (1968).

Methodology and Data

Data for the study was collected on retail shops in Lambton Quay, "the Golden Mile" of the Central Business District of Wellington City.

Regression and correlation statistical techniques were used to analyse and interpret rental patterns within the area. In simple terms, regression techniques allow the prediction of one variable, the "dependent variable" from the known value(s) of one or more "independent variable(s)". In the use of regression analysis, correlations are automatically of relevance they determine and show whether or not two variables are related.

Statistical techniques allow for identification of market trends and the relative importance of variables which affect value, the decision making process undertaken by the valuer when utilising traditional valuation methods.

The term strip shopping (synonymous with "ribbon development") refers to traditional main street shopping locations characterised by many separate retail buildings with verandah cover footpaths, and curbside street parking.

Experience suggests pedestrian counts are not the sole determinants of retail shop rentals. However, it could be expected that they do contribute as a predictor variable in the explanation of variation in rental. Given the foregoing, regression and correlation analyses were completed to identify (in terms of relative importance) the variables that have the most impact on shop rentals in the subject case study area.

The dependent variable in the study was "total occupancy cost" (annual rental plus rates and operating expenses) for each rental premise within the Wellington data set. Total occupancy cost figures were for the actual retailing area within each individual shop. Total occupancy cost analysis is considered a realistic comparison basis to overcome difficulties in comparing "net" and "gross" leases.

The data base of potential independent variables contained inputs for all salient features of the data set premises, namely:

- shop position
- quality of accommodation
- date of rental setting
- rental period
- lettable shop floor area
- shop frontage
- pedestrian count

The identification of the foregoing range of potential independent variables recognised that rentals could be expected to be influenced by a number of factors.

Shop position, quality of accommodation, and length and date of rental setting data for each premise was input into the regression analysis utilising dummy coding (e.g. one of two values: one or zero, representing "yes" or "no"). NB Regression is a mathematical technique, requiring numeric (at least ordinal scaled) inputs for all variables.

The shop position category noted whether an individual shop benefited from a corner situation. Quality of accommodation was an all-encompassing category based on a judgement of an individual premise's condition, age and standard of finish. The coding for this category reflected whether the premises were good, average or fair.

The rentals collected were effective for either two or three-year rent periods. The date of rental setting was coded by year, while the length of rental was coded to simply reflect whether the rental was for a two or a three-year period.

Shop floor areas and shop frontages were input directly into the data base in their existing "numeric" form. The input of shop frontages into the data base recognised that in addition to lettable lfoor area the quality of display frontages could be expected to affect retail rental levels. Potentially, the width of a shop's frontage could affect the tenant's display of goods to passing pedestrian traffic, sales volumes and hence rent paying capacity.

Copies of pedestrian count surveys for Wellington City's CBD were sourced from the New Zealand Institute of Valuers. The completion of regular pedestrian count surveys in commercial retail locations of New Zealand cities and towns are a long established practice of the Institute: the first pedestrian count surveys undertaken on a regular basis in Wellington dates back to 1951. Historically, selective counting has been the method used counts are made at various locations in retail areas, a certain number of times on any one day, and for a given time period to include all potential shoppers.

The Lambton Quay counts were converted to an index, by taking the count at any one location and recording it in the data set as a ratio to the highest count. For shop locations where pedestrian count figures were not available, a subjective estimate of the count was incorporated in the data set.

Statistical Analysis

Table 1 shows the results of a "stepwise" multiple regression analysis. Stepwise variable selection have two criteria: one to enter variables and one to remove variables from the regression model. The stepwise procedure begins with a model that incorporates the constant coefficient only. At each step the independent variable that produces the biggest increase in the coefficient of determination is added; after that all variables in the model are examined, and any independent variables that are no longer sig-

nificant predictors are then removed. Ultimately the final model is found when no more variables meet the preset entry criteria.

Variables were entered into the subject regression model only when the change in coefficient of determination (r2) was significantly different from zero at the significance level of 0.05. By default a variable was removed if the observed confidence level for its coefficient was more than 0.10.

In viewing the final output it can be said that the regression model "explains" a very high proportion of the variation in total occupancy cost. The r2 of 0.8996 infers that the three variable model (incorporating shop floor area, pedestrian count index, and shop position) explains 89.96% of the variation in total occupancy cost. Some 10.00% of the variation remains unexplained (associated with other factors, e.g. frontages, time, quality, non-linearity etc.).

The coefficients for the independent variables listed in the column labelled B, can be used to write a regression equation for the prediction of the dependent variable. It is envisaged that this procedure will be demonstrated in a future article. The partial regression for a variable quantifies the change in the dependent variable when the value of the independent variable changes by one, and the values of any other independent variables in the equation remain constant. For example, by reference to Table 1, with an increase of one

2 Coefficient of determination (r2) is a measure of the proportion of the variance of the dependent variable about its mean that is explained by the independent variable(s). The coefficient can vary between 0 and 1. The higher the value of r2 the greater the explanatory power of the regression equation, and therefore the better the prediction of the dependent variable. See Hair et al., "Multivariate Data Analysis", 45 Ed. (1995).

Table 1: Linear Regression Stepwise Method

Equation Number 1 Dependent Variable.. TOC

Variable(s) Entered on Step Number 3.. POSTN

Multiple R	.94846
R Square	.89958
Adjusted R Square	.88800
Standard Error	20529.39806

Analysis of Variance

	DF	Sum of Squares	Mean Square
Regression	3	98165389319.76830	32721796439.9228
Residual	26	10957860800.89835	421456184.64994

F = 77.63985 Signif F = .0000

---------- Variables in the Equation ----------

Variable	B	SE B	Beta	T	Sig T
FLRAREA	1186.811346	80.901459	1.031107	14.670	.0000
POSTN	16364.920013	7571.776175	.134459	2.161	.0401
PEDCOUNT	1474.294459	153.804470	.673179	9.586	.0000
(Constant)	-108552.9595	16585	.37232	-6.545	.0000

square metre in the variable FLRAREA (shop floor area) there is an expected increase in TOC (total occupancy cost) of $1186.81.

The magnitudes of the partial regression coefficients are not measures of the relative importance of the variables. The magnitudes of these coefficients depend upon, among other things, the unit of measurement for each individual variable. In the subject case study, pedestrian count is measured as a percentage, floor area is expressed in square metres, and shop position as a numeric dummy code.

A more appropriate means of interpreting the relative importance of the variables is to view the beta weight (listed in the column labelled Beta) for each coefficient. These are the partial regression coefficients when all the independent variables included in the final model are expressed in a standardised form. The research findings here show that the variables, in terms of their relative importance on the prediction of total occupancy cost are: FLRAREA (shop floor area), PEDCOUNT (pedestrian count index), POSTN (shop position).

In the actual stepwise variable selection procedure, FLRAREA entered the regression model in the first step. PEDCOUNT entered on the second step, increasing the rz from 0.5232 to 0.8815. In the final step POSTN entered as a third predictor variable, increasing the r2 to 0.8996.

Within the regression analysis pedestrian count data is shown to be a significant contributor of information as a predictor variable. Specifically, pedestrian count is one of the two most important predictors or variables in accounting for variation in shop premises total occupancy costs in the subject case study area.

The impact of pedestrian counts alone, can be observed by examining the correlation between pedestrian count and total occupancy cost represented on a "zonal" basis.

Figure 1 is a scatterplot of total occupancy cost and pedestrian count relating to the Lambton Quay retailing area. Total occupancy cost is plotted on a "Zone A" square metre basis (15 metre standard depth), and pedestrian count on the earlier described index basis.

Zonal rental analysis methods, combine the simplicity of the square metre method with the accuracy of the depth table method. The zonal shop rental valuation system is discussed in R.L.Jefferies, "Urban Valuation in New Zealand Volume One", 2" Ed. (1991). Zonal analysis methods allow concurrent rental comparisons of small, average, and large premises to be undertaken. Retail space is divided into two or more zones with that portion at the road frontage, the prime rental zone being identified as Zone A. Beyond Zone A, a reduced rental rate applies which can be arbitrarily fixed (for example at 60% of the rate applying to Zone A), or set at a square metre rate assessed by comparison to specific evidence or related to storage or office rental levels in the locality.

In the unlikely event that pedestrian count changes will be exactly matched by changes in total cost per square metre, then the points on the scatterplot would fall along a sloping line. A more likely scenario is for the points on the graph to be randomly distributed on each side of a theoretical sloping line. In viewing the scatterplot it can be seen that there is a positive linear relationship between pedestrian foot traffic counts and premises total occupancy cost per square metre. The higher the flow of pedestrians, the greater the total occupancy cost per square metre.

A simple linear regression analysis was also undertaken on these same variables. The summary results are shown in Table 2. The case study statistics show that there is a very close linear relationship between pedestrian count and total occupancy cost per square metre: pedestrian count "explains" 90 percent of the variation in total occupancy cost per square metre.

The estimate of standard error noted in the summary results represents the value of the unexplained error. To put it in context, in the subject case study the data base's mean total occupancy cost per square metre is approximately $1300. On that figure the standard error ($124) equates to plus or minus 9.5 percent. This

Figure 1: Scatterplot Total Occupancy Cost (TOC) with Pedestrian Count

LAM BTO QUAY RETAIL-I G AREA

Pedestran Count Index

Table 2: Summarised Simple Linear Regression Output

	LAY113TON QUAY
	7'OC per square metre
Constant	339.1989
Standard Error	124.2495
Rz	0.9045
Number of Observations	30
Degrees of Freedom	28

infers, that each dependent variable explained by the regression analysis has on average, a plus or minus 9.5 percent unexplained error associated with it.

Statistically, this analysis indicates a very close linear relationship between pedestrian count and the Zone A total occupancy cost per square metre. For the subject data base, this implies pedestrian count is a very reliable predictor variable in the explanation of variation in total occupancy cost per square metre.

Summary and Conclusions

For Lambton Quay, pedestrian counts are not the sole determinants of shop rentals, however, they do emerge as an important predictor variable in the explanation of variation in rental. The research findings associated with the "stepwise" regression procedure show that the variables (in order of relative importance) that are expected to have the most impact on the prediction of retail rents are:

i. Shop floor area

ii. Pedestrian count

Shop position

In New Zealand commercial property markets, pedestrian counts are often utilised as measures of the relative comparability

The results of the Wellington case study serve to help provide quantitative support for some of the long established perceptions of the relevance of pedestrian flows to commercial property. The research shows that when pedestrian counts are taken concurrently at fixed points, the relationship between the volume of pedestrian traffic and current shop rentals can be ascertained, and they can be expected to serve as a guide to assist in supporting conclusions derived from the consideration of other factors.

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The impact of the Petroleum Industry on Taranaki Real Estate

Trevor Woudt
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This article is based on a NZI V post graduate research paper for which support was also provided by the New Plymouth District Council and the South Taranaki District Council

There appears to be general agreement, at least in research literature, that housing markets are difficult to understand, let alone model. Any modelling framework for instance needs to take account of complications such as the dual role of housing as a consumption and investment good, the heterogeneous nature of housing, the role of finance and the role of asset price expectations.

Despite the complexity of the topic because of the sheer size of investment in the housing market significant rewards are on offer for anyone who can gain a better understanding of its dynamics. According to the last census, there were a total of 1,279,329 private dwellings, 314,148 of these were rental investment units. Any assumption about the average market price of these rental units yields a very large figure indeed.

The intention of my research paper (which was in part supported by the Institute of Valuers Post graduation scholarship) was to explore the role of economic factors which influence house price changes.

The comparative remoteness of Taranaki and the presence of the Petroleum Gas processing industry, which is unique to the province, simplified the task somewhat. The title of my paper was "The impact of the Petroleum Industry on Taranaki Real Estate.

The New Plymouth Market

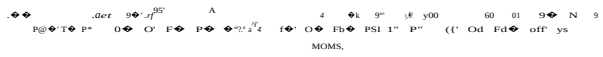
In early 1997, it appeared that the New Plymouth Real estate market was not going to have a good year. The level of sales was down, there was a glut of listings and as a result there was some downward pressure on prices. The following graphs tell a disturbing tale.

NB The last three months sales for 1997 were estimated based on previous years averages.

Graph 2 Median House Prices for New Plymouth

MattM

Graph 3 - Average Number of Days for New Plymouth Houses to Sell



Graph 4 The Difference between Listing Price and Selling Price

Source: REINZ

All of these graphs indicate a weakening market. Graph 1 shows that the level of sales was anticipated to be down in 1997. Graph 2 reveals that following a period of increase from 1991 to 1994, ignoring the spikes, during the last three years the median sale price for New Plymouth properties has essentially been stagnant. Graph 3 shows that properties took increasingly longer to sell between 1994 and 1997.

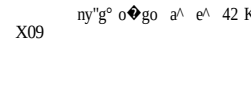
Graph 4 reveals the difference between the initial list price and the eventual sale. This difference rose dramatically between 1996 and 1997. Although there could be a number of reasons for the divergence between the lines shown, the most plausible explanation is that New Plymouth vendors have had difficulty in achieving the prices they wanted for their properties and therefore had to be willing to accept lower prices to sell their properties.

Did business confidence play a role?

The poor state of the New Plymouth housing market during late 1996 and early 1997 appears to parallel a decline in provincial business confidence as shown by the National Bank business confidence index. During the period business confidence nationwide fell dramatically, however, confidence in Taranaki fell even further as can be seen.

If we assume that economic confidence has some impact on house purchases as appears likely, then the poor business expectations

The National Bank Business Confidence Index



Quarter

could go some way to explaining the slow property market.

Is it possible to determine why Taranaki business people had such negative expectations?

Taranaki has a predominantly rural economy with a disproportionate reliance on dairy farming, 2,250 of the 3,480 farms in the province are dairy farms. According to Ministry of Agriculture models, income at the dairy farm gate was $513,765,870 in 1997, but payouts were expected to decline in 1998.

Late 1996 and early 1997 was also not a good period for the Petroleum industry. Natural Gas Corporation was in the midst of restructuring which would eventually result in the loss of approximately 100 jobs at its Bell Block head office and at the Kapuni processing plant. Fletcher Challenge Energy (Taranaki) went through the process of determining whether it would relocate its offices to Auckland, this would have resulted in the removal of approximately 170 jobs from New Plymouth. The announcement which potentially had the greatest impact was that made by Methanex, that unless large reserves of cheap petroleum gas could be found and soon, it would have to close the smaller of its two plants (Waitara) by the end of 1998.

The finite nature of the Taranaki petroleum reserves was a factor well understood by the populace at large. The two major petroleum finds upon which the New Zealand Petroleum Gas industry is based had both been discovered over twenty five years ago, Kapuni in 1959 and Maui in 1969. There had been a number of smaller discoveries, mainly onshore during the 1980's, but nothing even got close to the big two.

It is not surprising that many Taranaki residents saw the writing on the wall. A survey of business people by a business development agency conducted during September and October 1997, revealed that many respondents expected that the Petroleum industry would decline and eventually depart the province altogether.

This perspective is not surprising given that the imminent depletion perspective was echoed by the Government itself. The energy modelling division of the Ministry of Commerce using a SADEM modelling analysis predicted that by 2005, the price of Petroleum Gas would be too expensive for the gas processing industry. Therefore by 2005, none of the current Petroleum Gas processors i.e. Methanex, Petrochem and Farmers Fertiliser would remain. Petroleum gas after 2005 would be used for reticulation and electricity generation only.

Were the negative expectations regarding the Petroleum industry the predominant cause of the weak property market?

There were job losses during late 1996 and early 1997, predominantly from the Natural Gas Corporation and a few from Methanex. At the same time there were also redundancies from Taranaki Base Hospital and Farmers Fertiliser (as a result of a takeover). A provincial economy such as Taranaki's has a comparatively narrow economic base. Well paid, skilled workers such as those made redundant by the restructuring already described, can have difficulty finding alternative employment. If they wished to obtain incomes similar to that they had previously, they may have no choice but to leave Taranaki in search of greener pas-

tures. Anecdotal evidence suggests that there were a number of departures from the province after the redundancies.

Was the impact of these departures significant enough to make a difference?

Probably, especially within New Plymouth because most Petroleum and Petroleum related employees are based there. It was evident that the price bracket relating to executive homes was disproportionately effected in late 1996 and early 1997. This squares with the assumption that there were fewer highly paid Petroleum employees to buy them.

How much influence does the Petroleum industry really exercise over the Taranaki Property Market?

To answer this question, it is necessary to define the importance of the Petroleum Industry to the Taranaki economy. Although there are a few major Petroleum companies which account for the majority of direct Petroleum turnover, for the purposes of this study, they were either unable or unwilling to provide information as to their turnover. Employment was therefore used as a surrogate measure.

According to Statistics NZ, for the year to June 1996, there were 1060 people directly employed in Petroleum related Industries within Taranaki, according to the following distribution

Industrial Classification	Description	Full time Equivalent Staff
1200	Oil and Gas Extraction	360
3610	Electricity Supply*	280
2510	Petroleum Refining	170
3620	Gas Supply	140
1512	Petroleum Exploration Services	110
Total		1060

*Electricity supply has been included in this analysis as the New Plymouth power station is powered by Petroleum Gas and its fortunes are tied to remaining reserves.

A survey conducted for Network Taranaki, revealed that approximately 930 positions could be attributed to businesses which provide goods and services to the Petroleum Industry. If we assume that a further 1,000 positions are derived as a result of the provision of services indirectly to the Petroleum industry and its employees, and allowing for various multiplier effects, then we could attribute approximately 3,000 jobs to the Petroleum industry.

The total population of Taranaki, according to the 1996 census, was 106,790. Approximately 70,630 of these were aged 15 years or over and 42,670 of this number were gainfully employed on either a part or full time basis. Using these figures, the Petroleum industry therefore provides a total of 7% of Taranaki employment.

From the negative comments provided with the Network Taranaki survey relating to Petroleum scenarios, it appears that many respondents overestimated the potential size of the negative impact on the Taranaki economy of a decline in the Petroleum. In the event of the worst scenario envisaged by the Department of Commerce SADEM model we would still see the continuance of the electricity and gas reticulation industries into the foreseeable future. This would have resulted in the worst possible scenario with the loss of between 1,000 and 2,000 positions over a five year period.

To conclude, it appears that Taranaki business people over estimated the size of the potential negative ramifications of the anticipated decline in the Petroleum Industry, and this fed into a decline in business expectations and confidence. Although there were some real negative impacts in terms of job losses and outward migration, this general lack of confidence may have provided an additional negative impact on property purchase intentions and therefore property prices.

Getting it all wrong

As it stands, respondents who gave negative responses with regard to their expectations of the Petroleum industry were wrong on two counts. Firstly as we have already seen, estimations with regard to the potential size of negative Petroleum impacts were overestimated and secondly, in 1996 there was one potentially very large and one moderate Pe-

troleum discovery in Taranaki. The most significant the Mangahewa gas and condensate field according to current estimates (although testing is not yet complete) could encompass a reservoir larger than Maui. If this is so, then the Gas processing industry will have plentiful and (because Mangahewa is predominantly onshore) cheap gas for some time to come.

The other interesting aspect is that the public expectations diverged significantly from expectations within the Petroleum industry. A survey of 14 oil industry executives who were involved with, monitored or who had responsibility for Petroleum exploration activities within their organisations were unanimous in their expectation that there are significant Petroleum resources still to be found within the Taranaki basin.

Popular Property Models

The divergence between popular expectations and economic realities is nothing new in property theory, Case (1986) found that property price changes could not be explained by economic fundamentals such as income, demographics, construction and mortgage rates. In a later paper Case and Shiller (1988) tested this hypothesis that `popular models', essentially grossly simplified popular explanations, provided part of the explanation as to why property prices deviated from what economic factors would suggest. They found in some markets questionnaire respondents subscribed to popular explanations about the activity within the property. It appears that these simplified' popular models' play a part in explaining boom and bust cycles observed in some property markets.

In Taranaki, and probably New Plymouth in particular, it is possible to surmise that there was a popular model accepted by a portion of the population. The model may have been something like `The Petroleum Industry is a crucial component of the Taranaki economy, it is in decline and will depart once the oil and gas runs out, people will therefore leave and try to sell their houses, driving house prices down.'

This explanation is inherently logical and given the publicity surrounding the negative announcements during late 1996 and early 1997, it is not surprising that such a model would arise.

The Real Influences

In the cold light of day, however, the Petroleum industry in terms of the Taranaki housing market is merely a side show, far larger factors are at work. The Taranaki United Council Energy Monitor, produced a series of very valuable research papers tracking the impact on the province of the construction phase of the Think Big' Petroleum projects (1982 1986), and noted that outward migration had been a feature of Taranaki population since the 1920's. The only period where inward migration had exceeded drift in the other direction was during the Think Big construction.

As Peters and Savage (1996) noted, *total population growth is important because it captures the basic need for housing services.* A simple analysis of 1996 census information on population changes observed within the 74 local authority districts provided the following result.

When districts were grouped according to their geographic location within their respect island the following picture emerged

Geographic Location	Number of Districts	Average Rate of Population Growth 1991-1996%
North	17	11.4
East	14	7.2
Central	20	5.1
South	15	1.7
West	7	0.7

There was obviously a strong bias in population growth toward districts in the North and East of their respective Islands The Northern growth is obviously skewed by the presence ofAuckland which combines both a strong economic and opportunity pull in terms of migration, but growth is not limited to Auckland which accounts for only five of seventeen Northern local authority districts. Naisbett, in his landmark publication `Megatrends', identified the drift to temperate climates as a Megatrend of the 1980's, this also

seems to apply to the 1990's.

Another dimension considered the impact of economics as follows:

Type Designation	Number of Districts	Average Rate of Population Growth 1991-1996%
Tourism Centre	4	10.5
City	20	8.2
Dormitory	11	7.9
Rural	38	3.1

The continued rural to urban drift is an important factor here, although there is some evidence of a counter drift in terms of population movement toward rural districts adjacent to the main population centres (defined as dormitory districts for this analysis).

These two analyses detail the growth in population in the North and the East at the expense of the West and South, and the growth of cities and their surrounding districts at the expense of more remote rural districts.

For the Taranaki districts, population movements observed between the 1991 and 1996 census revealed the following:

District	Population usually Resident -1996	Change from 1991	%Change
New Plymouth	68,111	918	+1.4
Stratford	9,544	-339	-3.4
South Taranaki	29,135	-1,095	3.6

If the projections for population changes between 1996 and 2021, recently released by Statistics New Zealand are to be believed, then the news is not good for Taranaki Property owners

District	Population usually Resident -1996	Medium Scenario 2021	%Change 1996-2021
New Plymouth	68,111	64,600	-6.8
Stratford	9,544	8,000	-17.5
South Taranaki	29,135	24,300	-18.2

*1996 population used as the basis for comparison for the population projections by the investment consultant author differed from the usually resident census night figures, the percentage calculations were drawn from the projection document.

Although current expectations for the Petroleum industry are particularly buoyant, economic activity derived from Petroleum is extremely unlikely to match the heights of the `Think Big' construction period. It appears that Taranaki property owners, like many in New Zealand provincial centres, will have to get used to at best stagnant and at worst declining property prices into the forseeable future.

About the author

Trevor Woudt, B.Com.,Canty, MBA, Massey. His work history includes accounting, market research and corporate computer sales.

In 1994 he began an MBA for which a requirement was an in-depth research paper; he tackled the subject of "Residential Property Investment. "

In 1997 he began a Master of Business Studies (Property) Degree at Massey University which has enabled him to continue his exploration of the economic and sociological drivers behind the price movements in the residential property market. This formed the basis of the NZIVPost Graduate Paper.

Trevor is currently employed by a investment consultant in New Plymouth and is secretary/treasurer of the Taranaki Property Investors Association.

GERMANE ISSUES AND SUGGESTED VALUATION METHODOLOGY IN LIGHT OF THE MAORI RESERVE LAND AMENDMENT ACT

M J McNamara
Christchurch

Background

This article focuses on the valuation of ground leases in light of the current controversy surrounding The Maori Reserve Land Amendment Act. More specifically, it is concerned with the promotion of clear logical definition of lessee's and lessor's interests and their valuation.

Since the early 1970s, the techniques used by valuers to assess the value of partial interests have come under increasing scrutiny. These criticisms have been reinforced in New Zealand of late with the emergence of compensation provisions in The Maori Reserved Land Amendment Act leading to a variety of high-level calls for change. Techniques used in appraising the value of partial interests, seemingly beyond debate (eg the Statutory Method having legislative backing) have come under the scrutiny of many observers and commentators, not all of them property valuers. According to Haslett *The New Zealand Valuers Journal* has between 1969 1989 years carried no fewer than 25 articles on this and related subjects.' A review of the j ournals thereafter devote more than half this number up to December 1997.

"Ground Rentals A National and International Perspective" by Leonie Freeman published February 1993 gives a comprehensive overview of the ground lease situation in New Zealand as well as revealing different practices and problems encountered internationally.' The issues dealt with in this article are by no means exhaustive, however, they are deliberately singled out with the view to provoking thought towards defining what the partial interests mean.

The Lusk report and Marshall report are recent literature covering Glasgow-type leases, featuring in the December 1994 issue of The New Zealand Valuers Journal by D. Knight.' Both were commissioned by the Government so that various recommendations to redress imbalances that exist to both lessee's and lessor's could be addressed. In particular, the Lusk report was prompted by lessee's complaints brought about essentially by inflation in land values and consequentially high rent review. It deals with certain leases which fall under the Public Bodies Leases Act 1969. The leases almost all have rentals determined by arbitration, with the exception of a few which have rents pre-

1 Haslett, S. Perpetual Lease Valuation Usins Equated Yields. *NZ Valuers Journal* 1989, December Issue, p14-18.
2 Freeman, L. M. (1993) *Ground Rentals - A National and International Perspective.* Copyright C© 1993 NZ Institute of Valuers.
3 Knight, D. The Lusk Report and The Marshall Report on Leasehold Tenures. NZ *Valuers Journal* 1994, December Issue, p29-42.

scribed at 5%, and Crown Renewable Leases which prescribe 4% of land exclusive of improvements.

The Marshall report deals with leases under the Maori Reserve Land Act 1955, and considers the statutory constraints on the beneficial owners imposed by the Crown via the Maori Trustee, which have deprived Maori of reasonable use of and returns from their land.

The Lusk report stated a number of criticisms with regard to ground leases. It should be noted that much of that report came from those lessee's subject to the Maori Reserve Land Act 1955 (MRLA). Key issues noted from this report were:

- The valuation methodology being applied is flawed. (There are countless variations as to how and why this is alleged to be so).

  The personal and financial circumstances of the lessee are ignored in the rent review assessments.

  The period of 21 years between rental reviews is too long; yet most lessee's vehemently reject any solution that would involve intermediate rent reviews.

  Also, in some camps, a 21 year fixed rental period is seen as a real benefit, which is why lessee's oppose more frequent rent reviews.

  Leasehold enables people to afford better quality of improvements and/or location than freehold (in theory).

  Rental factors are less than mortgage interest rates.

  The leasing authorities' present freeholding practices are unfair, and uncommercial, and the prices demanded are far above reasonable market prices.

  The Boards' offers are not negotiable.

- The allowances made for the value of the lessee's interest are inadequate and unfair.

  The Committee was critical of the woeful ignorance by lessee's as to the nature and terms of their leases, and noted that nothing had changed in this respect since the 1968 Beattie report, and that lessee's continue to pay virtually freehold prices for leasehold land without seeking any professional advice. It proposes compulsory requirement for professional advice on purchase, but makes no recommendation for legislative requirement.

The distinction between freehold and leasehold property considerably complicates a generalised view of property investment returns. While ownership of a freehold interest indicates perpetual ownership of indestructible land together with the more transient structure built upon it, ownership of leasehold indicates a wasting asset. Yet this is too simplistic: there are perpetually renewable ground leases. It is in these two forms that property investments are almost universally held in New Zealand, especially by larger scale investors.

As with any valuation assignment, the first step is defining the problem. This naturally leads to formulating the definition of value relevant to the problem. In the case of ground leases, there are two interests that require clear and succinct definition. They are:

1. Definition of the Lessor's Interest.
2. Definition of the Lessee's Interest.

What follows is a carefully reasoned argument leading to the definition of these interests and the development of correct valuation methodology.

Partial Interest Theory

The bundle of rights theory holds that total real property ownership, or title in fee-simple, includes several distinct rights, each of which can be separated from the bundle and conveyed by the fee owner to other parties in perpetuity or for limited time periods. When a right is separated from the bundle and transferred, a partial, or fractional property interest is created.

Lease practice is one practical application of the bundle of rights theory. An owner of the total bundle (a lessor) may convey to a tenant (a lessee) rights to use and occupy a property for a fixed time period. In return, the tenant as-

sumes an obligation to pay an agreed-upon periodic rent.

The division of property interests may be examined from physical, legal, economic, and financial viewpoints. In valuation, the costs approach to value, which is essentially a summation procedure, is frequently used to value a property's physical elements. A valuer views a property as a group of physical components to which values are ascribed and added together to provide an indication of total property value. The simplest example of this procedure is the addition of land and building values.

In the economic division of property rights, the bundle of rights is divided into leased fee, leasehold, and often subleasehold interests through an established body of lease practices. The constitutional right of freedom of contract allows for flexibility in lease arrangements, and consequently a variety of lease contract clauses and provisions have been developed, sued and, in many cases, tested for meaning through litigation leading to judicial constructions. The flexibility has resulted in leasing practices that are responsive to changing economic and financial conditions.

Although typical valuation assignments call for the valuation of a lessor's interest in real property, a valuer may be asked to value a leasehold interest or to allocate total market value to the various lease interests.

A leasehold interest is held by a lessee, or tenant, who acquires rights to the use and occupancy of a property subject to various obligations, chief among which is the payment of rent. Contract rent is the periodic rent paid by the tenant to the lessor; it is specified in the lease as to both amount and timing. A leasehold interest is said to have value when contract rent is less than market rent, which is the amount a property could earn in a competitive real estate market. Market rent is not profit from a business operated on the premises. It is the rent the real estate can command in the market. In a perfectly negotiated lease, contract rent would probably not differ from market rent.

When market rent exceeds contract rent, the leasehold interest acquires value. When contract rent exceeds market level, there is no positive lessee's interest.

The following example illustrates the valuation of lessee's and lessor's interest in its most simple form.

Assume a parcel of land has a contract rent of $2,000 in perpetuity, i.e. no rent reviews or inflation. Yields are 6% with an estimated market value for the land of $50,000. What is the lessee's interest?

Value of lessee's interest = (market rent contract rent)/ Yield

0 Lessee's Interest:

$"000 = $16,667
0.06

The lessor's interest is the present value of the total rents received or:

0 Lessor's Interest:

$2,000 = $33,333
0.06

Note that the sum of the lessee's and lessor's interest equals capital value, i.e. $16,667 + $33,333 = $50,000. This is totally consistent with the `Bundle of Rights" theory already noted. Because this is a very important conclusion it is restated:

Lessee's Interest +
Lessor's Interest =
Capital Value

It follows that by simple algebraic manipulation, any one of these elements can be determined provided two are known. From this premise, further exploration of the lessee's interest follows by subtracting the lessor's interest from capital value. In the simple example, $50,000 - $33,333 = $16,667. This is not mere mathematical curiosity. This approach, as will be shown proves extremely useful in the calculation of perpetually renewable ground leases.'

The legal authority for this principle is contained in the Newman Case. This case centred on the sale of a leasehold property embodied under the Servicemen's Settlement and Land Sales Act 1943 and the fair assessment of the lessee's interest. Amongst other things, it established the principle that the sum

4 *Lecture Notes: Lincoln University, UVAL 411, 1988.*

of the lessee's and lessor's interest should always equate to capital value. The learned Judge Archer, J had this to say:

> "Notwithstanding these views, we are of opinion that the ascertainment of fair market value of a lease in accordance with the principles expressed is far from a simple matter, and that it is impossible to lay down any simple method of valuation for general adoption of Land Sales Committees.
>
> ...the sum of the values of all the separate interests in a piece of land cannot be greater than the capital value of the land. In a simple case, therefore, the interests of the lessor and lessee cannot together be greater than the capital value, and conversely, the capital value should be capable of division into the lessor's and lessee's interests respectively. There appears to be ample authority for this proposition with which *Blair,* J., concurred in *Valuer-General v. Public Trustee (11).* It follows that the ascertainment of the capital value of the land affected is a valuable, if not a necessary starting-point where the value of a leasehold interest is to be assessed. It also follows that the value of a leasehold can never exceed the capital value of the freehold, and that the value assigned to a lessee's interest may always be checked by considering whether the balance of the capital value is a reasonable sum to be allowed for the interest of the lessor".5

Thus, definition of both interests can now be formed:

1. Lessee's Interest is the present value of all future rent savings.
2. Lessor's interest is the present value of the total rents received.

Assuming the same as above but confining the term to 10 years the lessee's interest is determined as follows:

Table 1

Year	Market Rent	Rent paid ($)	Profit rent ($)
1	3,000	2,000	1,000
2	3,000	2,000	1,000
3	3,000	2,000	1,000
4	3,000	2,000	1,000
5	3,000	2,000	1,000
6	3,000	2,000	1,000
7	3,000	2,000	1,000
8	3,000	2,000	1,000
9	3,000	2,000	1,000
10	3,000	2,000	1,000
10*	50,000	50,000	
NPV @ 6%	50,000	42,640	7,360

* Reversion: $3000 (a),6%

4

Capital Value Lessor's Interest = Lessee's Interest

There is no inflation in these examples. In an explicit DCF approach all future rent changes are incorporated into the income flow so that the future inflating rack rents are taken into account. Assume a block of land is let on a ground lease with 5 years unexpired at a fixed rent of $25,000 pa. Market rents are 5% of capital value and the estimated current land value is $500,000. Inlfation is 10% p.a. The discount rate is sum of the Market Rent and the inflation rate, i.e. 15%. Assess the lessee's and lessor's interests. Table 2 gives the results.

Table 2

Years	Market Rent	Income Received	Profit rent
1	25000	25000	0
2	27500	25000	2500
3	30250	25000	5250
4	33275	25000	8275
5	36603	25000	11603
5*	805255	805255	
NPV @15%	500,000	484158	15842

*Reversion: Market rent inflated 10% for 5 years, capitalised @ 5%.

4 4 4

Capital Value - Lessor's Interest = Lessee's Interest

5 In Re a Proposed Sale, Mahoney to Newman Brothers, Limited [1947] NZLR 691.

Finally, consider a perpetually renewable ground lease. An immediate problem must be faced. The infinite nature of a perpetually renewable ground lease implies an infinitely long cash flow projection. While the discounting process will reduce the value of future tranches of income, eventually to a nominal amount, by which point the projection may cease, the process may remain inconveniently lengthy. This may be a minor problem in computation, but remains a considerable problem in presentation. What is needed, therefore, is a method of shortening the process.`

In solving this problem, the use of a stepped discounted cashflow is used to determine the lessor's interest. As defined earlier, the lessor's interest is the present value of total rents received. The phantom in the lessee's interest calculation is the perpetual right of renewal benefit. This will be explained by detailing step by step

the approach first introduced by

Lincoln University and is rightly named, the Lincoln Method. The approach was developed by Tom Marks and Ralph Frizzell, both practising registered valuers and fomer lecturers of Lincoln University.'

The Lincoln Model employs three of the six time value of money functions to shorten the Discounted Cashflow (DCF) process. They are:

1. Future Value= PV(1+I)'
where: *PV = present value*
I =Inflation rate
n = Number of years

2. Present Value of an Annuity=PMT $\frac{-(1+i)^{V}}{\left[\frac{1}{n}\right]}$

where: *PMT = Payment*
= Discount Rate = Inflation rate + Market Rent rate p
= number of payments per year
r = years to run

3. Present Value =FV(l+i)-n
where: *FV = Future Value*
= Discount Rate = Inflation rate + Market Rent rate n
= Number of years
r = Years to run

The proof of the Lincoln Model is set out in algebraic form below:"

Lincoln Formula for Partial Interests

Premise:

IfLessees Interest + Lessors' Interest = Land Value
Lessee's Interest = Capital Value Lessors' Interest

Lessors' Interest $\frac{cf.}{(1+i)^{n}}$

where: cf= cash flow

$$= P_{,} + -P_{1\ -R}$$

roof:
where $R = \frac{P3}{P:}$

P, = Present Value of Lessor's Interest in Term I
P, = Present Value ofLessor"s Interest in Term 2
P3 = Present Value of Lessor's Interest in Term 3

$$P, = CR\ I\left[\frac{(1+e)^{P}-1}{i}\right]$$

where: *CR = Contract Rent*
= Discount Rate
p = number of payments per year
r = years to run

$$Pz = LRxLUx(1+I)\ x \qquad J\ x(1+,l)_{„}{}'$$

where: *LR = Land Rent*
LV= Land Value
I = Inflation
n = Rent Review Period

$$P, = LR\ x\ LVx\ (I + I) - x \frac{1-(1+0'')}{N} \quad e \quad x(1+,)P$$

.. *Lessors Interest= LV-P, +* $\frac{P2}{1-R}$

Lessee's *Interest = Capital Value Lessor's Interest*

6 Baum, A. and Crosby, N. (1995) `Proper ty Investment Appraisal', (2e) London. Routledge., 5: p116.

7 Frizzell, R. Leasehold Interests A New Approach. *NZ Valuer* 1972, 21(13), p511-16.

8 McNamara, M.J. (1996) `The Developmentof a Valuation Model for Leasehold Property in New Zealand' unpublished Masters Dissertation, Lincoln University, 7:p69-71.

Now consider a Crown Renewable Lease having 11 year rent reviews with perpetual right of renewal. Market Rents are 6% of land value, whilst land values are increasing at 9% p.a. The market value for the land is $400,000 and the capital value is $750,000. The lease has 7 years to run. The contract rent is currently $12,000 p.a. Determine the lessee's interest via the Lincoln method.

The Inputs are:

CR = $12,000
i = I+ Market Rent= 0.09+ 0.06= 0.15
p = Assume rents are paid annually in *arrears*
r 7
LR = 0.04 (Note: Set in Statute)
LV= 400,000
I = 0.09
n = 11

$$P, = 12{,}000.)C \left[\frac{1 - (1 + 19.15)}{0.15} \right]$$

= 49,925

$$P, = 0.04x400{,}000x(1+0.09)5x \frac{1 - (1 + 5)}{0.15} x(1+0.15)-'$$

= 52,796

$$P, = 0.04x400{,}000x(1+0.09)''x \frac{1 - (1 + 4.5)x(1+0.15)-'''}{0.15}$$

= 29,283

$$\textit{Lessors Interest} = P, + \frac{P=}{I-R}$$

where $R = \frac{P3}{P,}$

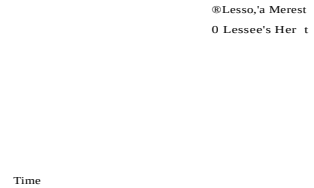
$$\text{Lessor's Interest} = \frac{49592598}{1 - 0.5546455}$$

= 168,474

Lessees' Interest = Capital Value Lessorr ' Interest
$750,000 $168,474
_ $581,526
Less Imps =__$350,000
Lessees' Interest = $231,526

The chart below depicts the form and identifies the various elements of the Crown Renewable Lease.

Form & Elements of Crown Renewable Lease



Time

There are a number of important observations that should be grasped from this example.

Note a Land Rent factor of 4% is applied to the land value in determining the reviewed rent in P2 and P3. This is because Crown Renewable Leases are governed under the Land Act 1948 which fix reviewed ground rents at 4% of the LEI (Land Exclusive of Improvements). Strictly speaking, this example should have been calculated semi-annually in-advance consistent with Crown Renewable Lease rental payments, however, this intricacy is not bothered with here .

Moreover, the LEI is compounded at 6 years from the present day for P2 and 17 years for P3 despite the fact the lease has 7 and 18 year gaps until each review. This is because the Land Act 1948 prescribes that ground rentals are determined no sooner than 2 years prior to review, and no later than 1 year. Each term therefore, has the present value of the rental receipts that the lessor will receive.

This step is the key to the approach:

R=

The discovery Marks and Frizzell pioneered is a unique property of lessor's interest. The proportion of lessor's interest is equal to a constant proportion to that of the preceding complete term. It is for this reason three terms of lessor's income stream must be calculated. P constitutes only part of the term income as indicated by the difference in shape of the lessee's interest in P, to that of P2 and P3 (refer chart). If the lease had eleven years to run i.e., calculated from a

review date, only the present value of two terms would be required. The lessor's interest would therefore be:

$$P, + \frac{Pz}{1 - R} \quad \text{where} \quad R = \frac{P2}{P,}$$

Because in practice this is seldom the case (one chance in eleven in this situation) it is necessary to calculate P2 and P3 to form the relationship.

The mathematical proof of the crucial relationship R is:

$$R \quad \frac{P}{P,} = \frac{29,283}{52\,796} = 0.5546455$$

$$P4 = 0.04 \times 400{,}000 \times (1+0.09)28 \times \left[\frac{1 - (1+0.15)^{-11}}{0.15} \right] \times (1+0.15)^{29}$$

$$= 16,242$$

$$\frac{P}{P,^{4}} \quad \frac{16,242}{29,283} = 0.5546455 = R$$

The lessor's interest from P2 into perpetuity can be determined using R. By projecting forward the rent at the inflation rate reviewed every eleven years and discounted at the Discount Rate of 15% for P2 and P3, the ratio R comprising these two elements applies the summation of a perpetual geometric progression. The procedure shortens what would otherwise be an array of inconviently lengthy discounted cashflows, notwithstanding difficulties in presentation.

With the lessor's interest determined the lessee's interest is simply the difference between the lessor's interest and market value, consistent with theory.

Analysis of Leasehold Sales

There are circumstances where a valuer is forced to analyse a leasehold sale due to lack of any freehold vacant land sales. This situation was well illustrated in Porirua Town Centre where all properties in 1968 were leasehold. The Government Valuations were objected to and subsequently negotiations carried through to a protracted four day Court hearing during 1971 - which resulted in the level of valuations being sustained. These happenings are of interest because they involved legal argument around methods, and the validity thereof analysing leasehold sales. This was the first occasion where evidence for a Court hearing of this nature relied entirely on leasehold sales.'

An analysis of leasehold sales is difficult and somewhat arbitrary. Analysis of freehold improved sales involves the basic assumption that the improvements are worth a certain sum and therefore the value of the land is deducted as a residue. This method is well recognised as having limited usefulness and should be treated with caution. Not the least of difficulties is the estimation of value of improvements. Nevertheless it is a legitimate approach where there is no other sales evidence or limited other evidence.

In the case of leasehold improved sales the analysis is further complicated because this residue of unimproved value, or the "lessee's interest", has to be converted from a leasehold to freehold basis. And because the market value of the lessee's interest includes both a benefit in the rent for the years to run, plus the benefit of the right of renewal, the analysis of sales have in the past been complicated by the existence of these two factors.

The Lincoln Model can be employed in such an analysis. By way of proof, if we take the Crown Renewable Lease example we should arrive back at the LEI of $400,000. By assuming the lessee's interest of $231,526 was infact a leasehold sale of land (disregarding the improvements), the freehold value of the land can be determined algebraically, by setting it to an unknown quantity `X'.

9 Barratt-Boyes, D B C. Analysis of Leasehold Sales. *NZ Valuer* 1972, 21(11), p425-432.

$P, = 12,\ 000x \frac{1-(1+0.15)^{-7}}{0.15} 1$

$= 49,925$

$Pz = 0.04X(1+0.09)bx \left[\frac{1-(1+0.15)^{-7}}{0.15} 1\right] x(1+0.15)-7$

$= 0.1319909X$

$P, = 0.04X\ (1+0.09)'7x \frac{1-(1+0.15)^{-}}{0.15} x(I+0.15)^{-}$

$= 0.0732081X$

$$\text{Lessor's Interest} = Pi + \frac{P`}{1-R}$$

where R = p`

$$\text{Lessors Interest} = 49,925 + X\left(\frac{0.01319909.55464}{1-0.5546455}\right)$$

$$= \$49,925 + 0.296372664X$$

Therefore X(Land Value) = $231,526 (Lessee's Interest) + $49,925 + 0.296372664X (Lessor's Interest)

X 0.294594733X = $231,526 + $49,925

> 0.703627335X = $281,451

> X = $400,000

This result affirms the theorem:

Lessee's Interest + Lessor's Interest = Capital Value

Calculation of Mid-Rent

It is possible to determine a rent which effectively cancels any lessee's interest between rent reviews. This is achieved by use of the Mid-Rent formula." The rent set at the start of the lease period is constant and equates rents as if reviewed annually based on a rental value (e.g. Land Value as a percentage) which is inflating at a given percentage. Using the example set out in Table 2 the application of the Mid Rent formula is set as follows:

Mid-Rent Formula is: $R = \frac{I[(1+i)^{n} - (1+q^{n})]}{(I+i)^{n}-1}$

Where:
- *n = term of rent period*
- *R = Mid-Rent*
- *I = Inflation Rate*
- *i = Discount Rate*

Table 2 Example:

Market Land Value =	$500,000
Land Rent =	5%
Inflation =	101/0
Discount Rate =	*15%*
Rental Value =	$25,000
Term=	5 years

$$\frac{0.15\,(1+0.15)5 \quad (I+0.01)5}{(1+0.15)5-1}$$

= 0.059451872

.'. $500,000 x 0.059451872 = 29,726 p.a.

The Net Present Value (NPV) of $29,726 p.a.should equate to the NPV of the Rental Value reviewed annually at 10% inflated at 5%.

The NPV of the Mid-Rent over the term is:

$$\$29,726 \quad \frac{1-(1+0.15)5}{0.15}$$

$$= \$99,646$$

The NPV of the Rental Value inlfated annually at the inflation rate should equate to $99,646. An inlfated annuity can be performed by the following formula which shortens the computation process consiberably:

$$P = A\left[\frac{1}{i-I}\left(1-\left(\frac{1+I}{1+i}\right)^{n}\right)\right]$$

Where:
- P = present value
- A, = rental stream for year 1
- i = discount rate
- I = inflation rate
- n = number of periods in term

Thus:

$$25,000 \left[\frac{1}{0.15-0.1}\left(1-\left(\frac{1+0.1}{1+0.15}\right)^{5}\right)\right]$$

= 99,646

The Mid-Rent formula excludes the present value of the reversion. If this is calculated, the sum of both elements should equal the market value of the land thereby excluding any lessee's interest.

10 Marks, T. The Mid-Rent Approach to Determininggental Rate. *NZ Valuer* March 1996, p43-44.

Reversion $\frac{AI}{i-I} \; x(1+1),x(1+i)-''$

= 500,000 x (1 + 0.15)' x (1+ 0.15)-5

= 400,354

Lessees Interest = Market Value	*Lessors Interest*
Market Value	*$500,000*
Less: Reversion *$400,354*	
Mid-Rent *$99.64 6*	
	$500.00 0
Lessee's Interest	*$ 0*

While this is possible, the question must be addressed if it is the intention of the parties to make Land Rents equal Contract Rents cancelling Lessee's Interest.

CONCLUSIONS

This article sets forth the fundamentals of partial interest valuation theory. At first inspection, the calculations may appear cluttered arrays of mathematically precise formulae. This paper is not about calculations of worth. This paper aims to assist the valuer in making reasoned qualitative decisions and to translate those decisions into a rational mathematical model for the valuation of parital interests. The basic points are these:

1. Lessee's interest is defined as the present value of all future rent savings.
2. Lessor's interest is defined as the present value of the total rents received.
3. The sum of the lessee's interest and lessor's interest equals capital value.
4. It follows the difference between capital value and the lessor's interest equals lessee's interest.
5. In the case of perpetually renewable ground leases, the lessor's interest is a constant proportion of rental value in a full term between reviews provided time inflation and the discount rate applied are constant.
6. If the contract rent is set via Mid-Rent Forumla at review, lessee's interest is dissolved and therefore the lessors interest equals capital value.

Only by the adoption of rational valuation models will decision-makers in property markets be able to utilise the increasing volume of property market intelligence which is becoming available and be able to command a position of respect within the wider investment community.

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About the Author

Mark McNamara is a Registered Valuer currently working for Knight Frank (NZ) Ltd in Christchurch. He is an Associate of the New Zealand Institute of Valuers registered in 1995 and has practised as a public valuer in Christchurch since 1993. He holds a Bachelor of Commerce in Valuation and Property Management and Master of Property Studies, both degrees conferred by Lincoln University. He is also an Associate of the Real Estate Institute of New Zealand and on the committee of the Canterbury/Westland Branch of 'the New Zealand Institute of Valuers.

Land Values affected by Maori Land Act

Brian Joyce and
James Carnie
Clendon Feeney
Auckland

Maori Land Values could fall considerably in the wake of the 1997 Court of Appeal decision in The Valuer-General v Mangatu Incorporation.

The Court of Appeal determined that valuation of Maori land, where the valuation is based on a hypothetical sale price, should reflect the legal restrictions on the sale of that land imposed by the Te Ture Whenua Act 1993.

The Mangatu decision applies to all Maori Freehold land and recognises the impact of the Act on the saleability or "alienation" of Maori Land; Maori land must be valued on a case by case basis in light of the restrictions that apply to each particular piece of land.

A hypothetical sale must be assumed to occur in a land valuation under the Valuation of Land Act 1951. The Court of Appeal in Mangatu considered that, prior to that hypothetical sale occurring, the hypothetical purchaser would consider the various restrictions on alienation applying to the land before making the purchase.

To ascertain the restrictions on alienation that apply to a particular piece of land, an analysis of the specific circumstances of the land is required in order to determine potential purchasers and the probability of the Maori Land Court granting confirmation to either a subsequent sale or change of status of the land.

No general reduction in value can be made without investigation into the specific circumstances of the land.

The instances in which Maori Land valuations must account for the devaluing impact of the Act will be widespread. When calculating roll valuations, the lower roll valuations will result in reduced rates for landowners. Where rents are revised under forestry leases, the decreased value of the land may cause a fall in the rent payable or freeze rent at its existing level. When calculating land value for raising finance or attaching value for joint ventures, Maori Land owners will face a possibly severe reduction in the capital value of their land and find it more difficult to raise finance on the land or attach significant value to it as part of a joint venture proposal.

Factors to be Considered in Valuation

The extent to which Maori Land values will fall following Mangatu is uncertain. The factors to be considered when assessing Maori Land value are somewhat ambiguous and undoubtedly difficult to assess accurately. Factors such as:

the membership of the `pre-

ferred class of alienees' (to whom a first right of purchase must be given),

the financial resources of this class,

the historical, spiritual and cultural connection of the Maori owners to the land, and

the often low probability of the Maori Land Court granting a change of status from Maori freehold land to general land, even if the hypothetical purchaser was within the preferred class of alienees must all be considered.

The likelihood of the Maori Land Court confirming a subsequent sale is increased by the potential for a sale to the preferred class, because the Maori Land Court is more likely to confirm a sale to a member of the owner's hapu (sub-tribe) or whanau (family). Where there is a possibility that a member or members of the preferred class may purchase the land, the probability of this occurring must be calculated and the devaluing effect of the Act reduced accordingly.

Similarly, ahi ka (the history of physical occupation of the land by the landowners) and historical importance of the land to the owners must be considered. Ahi ka includes any spiritual links, yet quantifying such factors for the purposes of land valuation will prove difficult.

A high level of ahi ka attached to the land will mean a correspondingly low prospect of the Maori Land Court-confirming a subsequent sale of the land, especially to a person outside the preferred class, and the land should be devalued to reflect the low possibility of alienation. Valuers face the challenge of determining the appropriate devaluation to account for the recent occupation or the historical and spiritual attachment of owners to the land.

Practical difficulties in obtaining information in respect of these factors also present a barrier to accurate assessment of the statutory restrictions. The identity and financial resources of the preferred class must be ascertained to the best extent possible, to enable a calculation of the probability that the preferred class would exercise its right of first refusal under section 147 of the Act.

The membership and financial status of the preferred class will be invariably difficult to ascertain, given that it will include descendants of any former owner who is or was a member of the hapu associated with the land, and any blood relatives of the current owner who have customary or historical links with the land.

Where the land is owned by a Maori incorporation, the preferred class also includes all the shareholders of the incorporation, whereas in the case of land owned by a trust the preferred class includes all the beneficiaries of the trust. The membership of the preferred class is constantly changing and may number in the thousands, whilst membership records of the preferred class are often poorly maintained and antiquated.

Our experience to date in dealing with valuations of Maori land has been that, even upon formal enquiry to both the Maori Land Court and the owners of the land, accurate information is not readily available, creating very significant difficulty for the valuers involved.

What seems certain is that the devaluing impact of the Te Ture Whenua Act on Maori Land values will be significant, especially in cases where a closer inspection of the relevant factors reveals the land to be practically unsaleable.

Not all Maori Land affected

Where Maori owners have acquired land after 1 July 1993 and the land is held by the owners as Investment Land under the Te Ture Whenua Act, then such land is exempt from the restrictions on sale.

In the case where land is acquired by a Trust, and the land was not acquired out of the original assets of the Trust, then the Trust may declare that this land is Investment Land. If the land is acquired by a Maori Incorporation, and the land was not acquired out of the original assets of the Incorporation, then the Maori Land Court may make an order that the land is Investment Land.

It will be of benefit to Maori Land owners to get land declared as

Investment Land, in order to escape the devaluing impact of the Te Ture Whenua Act and increase the rentals received under joint-venture type leases of the land.

Uncertainty following Mangatu Decision

Uncertainty surrounds the devaluing impact of the Te Ture Whenua Act on Maori Land. Few guidelines exist for land valuers and others when trying to incorporate the Mangatu decision into land valuations and commercial decision-making. In Mangatu, the Court of Appeal noted "In the absence of further guidance in the legislation valuers will have to weigh the considerations in a sensible and practical way to arrive at what may well be a robust and imprecise judgment."

The potential for Maori Land valuation disputes is considerable, given the imprecise and poorly defined factors to be considered when devaluing Maori Land. Even in the unlikely scenario of valuers on opposing sides agreeing on the theoretical content and proportionate weight to be given to the devaluing factors, disputes may occur. The information obtained by each valuer in respect of factors such as historical importance or historical connection of the owners with the land may vary and the subsequent valuations will differ.

At present, the value of Maori Freehold Land could fluctuate significantly due to events ostensibly unrelated to the land.

For example, if a member or members of the preferred class of alienees have a financial windfall (such as Crown compensation under the Treaty of Waitangi or the sale of other land or assets) then the financial ability of the preferred class to purchase the Maori land from the owners will increase accordingly. As the statutory constraints on land sales to members of the preferred class will be less restrictive than where the sale is to persons outside the preferred class, then the potential saleability of the Maori land will increase and the land value will therefore rise.

Future Guidance Required

The Court of Appeal in Mangatu made passing reference to the absence of legislative guidance in the valuation of Maori Land in light of the Te Ture Whenua Act. Such guidance, from whatever source, is essential to reduce the uncertainty presently surrounding valuation of Maori Land. Without such guidance, then defining the impact of statutory restrictions on Maori Land valuation will be left to the inevitable stream of litigation that will occur.

About the authors

Brian Joyce is a Partner and James Carnie a Solicitor of Clendon Feeney. They are based in Auckland.

Brian is responsible for a wide range of commercial and corporate advice to national and international clients at director and trustee level. He joined Clendon Feeney in 1969 and has been a partner since 1971. In that time he has acted for major corporate clients as well as high networth individuals and theirfamilies. He has extensive experience in law and commerce particularly with resource management, forestry and asset protection.

James joined the firm in 1997, after graduationg from the University ofAuckland in economics and company law with additional studies in international trade and finance. Since joining the practice he has worked in employment, forestry, corporate and company law.

The effect of Treaty Claims on State-owned enterprise land values

Paul Roberts
Chapman Tripp,
Auckland

In October 1995 the Land Valuation Tribunal gave its decision in *Auckland Grammar School Board v DOSLI & Telecom [1995] DCR 937*. The decision was the first to consider the effect of section 27B memorials on the value of land. It is surprising, given the significance of this area of law, that other similar cases have not come before the courts since that time.

This article describes section 27B memorials, looks at their general effect and then looks at their specific effect on land value in the light of the landmark decision in *Auckland Grammar School Board v DOSLI & Telecom*.

What are section 27B memorials?

In 1986 the government passed the State-Owned Enterprises Act 1986 ("the SOE Act") to transfer certain assets owned by it to the various state-owned enterprises. Section 9 of the SOE Act provides that the Crown cannot act inconsistently with the principles of the Treaty of Waitangi when transferring assets under that Act.

Following a court decision interpreting section 9, the government passed the State-Owned Enterprises Amendment Act 1987 which inserted (among other changes) sections 27 to 27D of the SOE Act.

These sections provide that:

1. a memorial is to be registered on the title of all land transferred to a state-owned enterprise under the SOE Act stating that the land is subject to section 27B of the SOE Act (ie. a "section 27B memorial");

2. the section 27B memorial remains on the title when the subject land is transferred to a private buyer and subsequent buyers;

3. where a claim brought by Maori interests under the Treaty of Waitangi 1975 over land subject to a section 27B memorial results in a recommendation by the Waitangi Tribunal that the land be returned to Maori ownership the land must be resumed by the Crown (subject to the Crown settling with the claimants prior to resumption); and

4. The resumption of land is to take place as if the land was taken by the Crown under the Public Works Act 1981 ("the PW Act") meaning that the compensation provisions of the PW Act apply to the former owner.

What is the general effect of a section 27B memorial?

Much confusion exists about he potential effect of a section 27B memorial. Some hold the mistaken view that land featuring a section 27B memorial is undesirable given the inevitability of resumption by the Crown. Resumption is in fact, far from a fait accompli as:

1. there must first be a claim, or the prospect of a claim, by Maori interests over the land;

2. even if there is a claim in existence, the Waitangi Tribunal will only recommend resumption of the land where:
   (a) the claim is well-founded; and
   (b) it is necessary to return the land to the Maori claimant to compensate for the Crown's act that that was inconsistent with the Treaty

   and even if (a) and (b) are satisfied the Tribunal has a discretion to decide whether or not the land should be resumed;

3. there is a 90 day period following the Tribunal recommendation where the Crown may settle the claim with the Maori claimant (eg. by the payment of money in lieu of resumption);

4. the Waitangi Tribunal can recommend, on the application of the land owner, that the section 27B memorial be removed. This is practically difficult to achieve as it requires the written consent of all parties having claims over the land.

Even if resumption does take place the former owner of the land is entitled to full compensation from the Crown under the PW Act.

What effect do section 27B memorials have on land value?

The fact that section 27B memorials only present a potential risk was acknowledged by the Land Valuation Tribunal in *Auckland Grammar School Board v The Chief Executive of the Department of Land and Survey Information and Telecom Auckland Limited [1995] DCR 937.*

The case concerned the valuation of a block of prime subdivisible land which had been originally transferred to Telecom Corporation of New Zealand Limited ("Telecom Corporation"). The land was transferred under the SOE Act and was hence subject to a section 27B memorial.

The land had subsequently been transferred to Telecom Auckland Limited ("Telecom") pursuant to the privatisation of Telecom Corporation and then on to a subsidiary of Telecom. The decision by the Telecom subsidiary to sell the land triggered the provisions of the PW Act which required the land to be offered back to the former owner, in this case Auckland Grammar School Board ("the Board").

Telecom's subsidiary offered the land to the Board at $5.8 million plus GST. The Board was not in a position to buy the land so it agreed to on-sell the land at the price to be fixed by the Tribunal plus $125,000. The purchaser prepared plans for a residential subdivision of the land.

Valuations were obtained by both parties. The valuations differed significantly on the effect of the section 27B memorial. The Board's valuer allowed a 32% discount for the memorial and concluded a value of $3.5 million. DOSLI's valuer concluded a value of $5 million, allowing a discount of 5%. Telecom's valuers reached values of $5.5 million and $5.8 million, allowing discounts of I% and 0% respectively.

The main issue for determination by the Tribunal was which allowance for the effect of the section 27B memorial was correct.

Decision

The Tribunal concluded that, with no section 27B memorial, the highest valuation of the land would be $5.9 million. The Tribunal then took into account the following factors in determining that a discount should apply:

1. The land is prime real estate.

2. Resumption is a potential risk, but should be balanced against the fallback position of "full compensation".

3. The risk must be further counterbalanced by the fact that resumption may not happen at all (and the Tribunal gave the Tainui settlement as an example).

4. The prominent location of the land could bring the issue of possible claims to a head if claimants became aware of development at the site.

The Tribunal did not feel that the section 27B memorial was a major problem, particularly in the light of full compensation under the PW Act.

The Tribunal concluded that the correct valuation was $5.5 million

plus GST, which included a deduction of between 5-10% (the deduction was actually 6.8% of the starting figure of $5.9 million).

However, the Tribunal stressed that a blanket 5-10% discount cannot be applied as a "formula" and that each case would have to be treated on its merits, taking into account such factors as those listed above and any increased awareness of the market's response to section 27B memorials.

Summary and Comment

The case rightly recognises that a range of factors will have to be taken into account when deciding the extent of a discount for section 27B memorials. For example, the effect of a section 27B memorial on prime residential land where there are no claims over the land will differ from an undesirable plot subject to numerous claims.

The decision could be criticised for setting the discount too high given that the land in the case was much sought after and that under the present political climate the risk of resumption of residential land is so small as to be virtually non-existent. In fact, given these circumstances, it is doubtful that there should have been any discount at all.

About the author

Paul Roberts is a solicitor at Chapman Tripp's Auckland office. He is now part of their environmental law team and specialises in resource management issues and commercial property litigation, although, in the past he has acted on a broad range of commercial and litigation matters.

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Valuation of Land Act (1951), vacant site following building destruction by fire, zoning ordinances, Historic Places Trust control removed, valuation methodology, direct comparison, residual land value techniques, capital value sales analysis, expert witness 's, willing buyer, willing seller concept, onus of proof

- Bill Harrington

IN THE OTAGO LAND VALUATION TRIBUNAL HELD AT THE DUNEDIN DISTRICT COURT

IN THE MATTER OF
The Valuation of Land Act 1951
and subsequent amendments
AND
An Objection to Valuation on General Revaluation of Dunedin City

BETWEEN

GEOFFREY WILLIAM BORLASE
(Objector)
AND
THE VALUER GENERAL
(Respondent)

Coram: JudgeT.H.Everitt,
Mr I. McN Douglas,
Mr W.O Harrington

Hearing: 30th June 1997
Counsel: Dr G.W.Borlase -
for self as Objector
Mr B. Dench
- for Respondent

JUDGEMENT OF THE TRIBUNAL

Introduction

The case concerns a near level 223 m2 vacant site at 663 George St, Dunedin. Prior to its being gutted by fire on 27th February 1994 the property contained a (circa) 90 year old single story wooden villa which had been let for student accommodation.

Because of the relative proximity of the University of Otago, the Dunedin College of Education and the Otago Polytechnic student lfats have become a feature of this North Dunedin area. There are also a number of accommodation houses and professional rooms.

The surrounding buildings are mostly of similar age and style to the house destroyed by fire. Some are two storied. All are sited close together. Few have garages. Many are separated only by a brick fire wall.

The land is zoned Residential G under the existing Dunedin City Council Scheme. The plan is transitional until the new scheme (made public in July 1995) comes into effect. Under the new scheme plan the property will fall within the Residential 3 zone, which permits much the same residential uses and commercial/residential uses as are allowed under the operative transitional scheme.

It is also of some significance that the site lies in the North Dunedin Residential Campus Townscape. Many of the buildings date from

the Victorian and Edwardian era. The ordinances require any new developments to be in harmony with the existing developments in the locality.

The parties agreed that the highest and best use of the site is for two or three storey residential units for student letting with an alternative possibility for use as professional offices. Because of the small lot size only one dwelling will be permitted.

The property had been valued for the purposes of general roll revision at 1st September 1992 at Capital Value $140,000 - Land Value $31,500 - Value of Improvements $108,500.

Following the 1994 fire the District Valuer reviewed the valuations for roll maintenance purposes to Capital Value $31,500 - Land Value $31,500- Value of Improvements $ nil. On 31st May 1995 the owner formally objected to that revised valuation and it was subsequently amended to Capital Value $33,000 - Land Value $31,500 Value of Improvements $1,500. This amendment was in recognition of the small (12.5 m2) wooden shed which survived the fire and which still remains on the property. Dr Borlase told the Court that he did not persue his objection to the special revision because a general revision was due again on 1st October 1995.

The property was in fact revalued for Roll purposes at 1st September 1995. In accordance with the requirement of Section 2 of the Valuation of Land Act (1951) the Valuer General determined the following values.

Capital Value	$54,500
Land Value	$53,000
Value of Improvements	$ 1,500

Objectors Case:

Dr Borlase lodged a formal objection to the September 1995 roll revision on 10th February 1996. His written grounds of objection were that the valuation did not represent the market value of the property. He also claimed a higher market value was justified because of its situation, because it was unencumbered with restrictive substantive improvements (ie removal of Historic Places Trust preservation control) and that it would be an attractive addition to either of the two adjacent properties fronting George St. The latter, being both in practical terms and in terms of commercial potential having regard to District Scheme compliance.

Further, the owner claimed that the Valuer Generals assessment of Land Value was "disproportionate in time" with valuations prepared by a local Registered Valuer in 1990 and 1992 respectively.

In his written objection the owner estimated the capital value of the property to be $100,000.

Dr Borlase presented his own case. He did not call any witness's.

In his opening address he firstly questioned the authority and certification of the respondents witness to appear and give evidence on behalf of the Valuer General at the hearing. The Court was satisfied with Mr Dench's response that the necessary warrants were held by him, as District Valuer.

Dr Borlase then outlined the issues which he required the Tribunal to determine.

(1) Did the Valuer General give full due and proper regard to all available evidence of relevant real estate market conditions when assessing the market value of the subject land ?

(2) Were the methods used by the Valuer General to make his assessment of the market value valid and correctly and fairly applied in the circumstances ?

(3) Having regard to the evidence and facts the Court was asked to determine what was in fact a fair and equitable market valuation of the subject land at the Ist September 1995.

Dr Borlase presented five valuation reports of the subject property prepared by three Registered Valuers between 1990 and 1996.The valuations are summarised as follows: (for comparative purposes chattels have been excluded)

The effective dates of all of these valuations relate to the period prior to the fire which itself was

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VALN DATE	EFFECTIVE VALUER: DATE		PURPOSE OF VALN	CV	LV	IMPTS
19/11/90	19/11/90	A	Mortgage	$115000	$43000	$72000
23/10/92	23/10/92	A	Mortgage	$125000	$50000	$75000
21/03/94	27/02/94	B	Insurance	$125000	$35000	$90000
13/10/94	27/02/94	C	CMV	$140000	$35000	$105000
23/05/96	27/02/94	C	Revised CMV	$153000	$35000	$118000

some 18 months prior to the September 1995 roll revision date. None of the Registered Valuers who prepared these reports were called by Dr Borlase to give supporting evidence. He was critical of some of the reports and used parts of others to support his own market value hypothesis.

In support of his claim that Valuation NZ had undervalued the George St market Dr Borlase produced the September 1995 roll revision of 667 George St (CV $190,000 LV $53,000 Impts $137000). He told the Court that the property had been sold in June 1994 for $198,500, which was prior to the revision date and this higher sale price should have been taken into account. He subsequently acknowledged the respondents evidence that the sale price included chattels.

He also produced the September 1995 revision figures for 657 George St (CV $165,000 LV $78,000 Impts $87,000) This is a 443 m2 property adjoining 663 George St on the south side. He told the Court the property sold in April 1996 for $187,000. and whilst acknowledging that 657 George St has almost twice the land area of 663 he said the price was further evidence that Valuation NZ had considerably underestimated the market value of 663 George St even though at the date of valuation its officers held knowledge of the sale price of 657 George St. He also submitted that the valuations prepared by the Valuer, we now refer to as "A" in the foregoing summary, proves that Valuation NZ had consistently undervalued the land on both 663 George St and on the adjacent properties.

Dr Borlase produced a series of spreadsheet exhibits which included comparisons of roll valuations and sales of improved properties in the immediate vicinity of 663 George St. He had applied his own mathematical analysis of these sales and using certain assumptions (based, it seems, on unit value figures of one of the valuation reports he had earlier discredited on other issues) he concluded that Valuation NZ was both inconsistent and incorrect in its assessments.

Finally he explained to the court that he had arrived at his assessed capital value of $100,000 by a methodolgy of first averaging the prices paid for 667 and 657 George St. His average rounded to $193,000. From that amount he deducted $94,875 for the improvements destroyed by the fire, (This figure he had calculated on the basis of the floor area of the 126.5m2 dwelling destroyed by fire which he valued at a "net value rate" of $750 per sq m). He then added $2,500 for the wooden shed which remains This calculation resulted in a sum of $100,625 which he rounded to $100,000.

The Respondents Case:

Mr Brian D'Arcy, a Registered Valuer with over 30 years experience in the Otago District gave evidence on behalf of the Valuer General. Mr D'Arcy is the District Valuer for Valuation NZ. He specialises in urban valuations.

Mr D'Arcy told the Court that in with Section 2 of the Valuation of Land Act the Roll values were fixed relative to freehold market sales as at the date of valuation at 1st September 1995.

He told the court that for roll revision purposes:

Capital Values were fixed by direct comparison with net sale prices (ie excluding the value of any chattels) of properties in the immediate locality.

Land Values were fixed relative to general market movements since the 1992 Revision of Values but with emphasis on residential land sales in the immediate locality.

The Value of Improvements are defined in section 2 of the Valuation of Land Act as "the added value they give to the land". Therefore a deduction of assessed Land Value from the assessed Capital Value produces the Value of Improvements.

Turning to valuation trends the witness said that increasing student rolls in recent years had increased the demand for vacant sites able to be developed for higher density student accommodation. This trend, accentuated by the scarcity of vacant sites and the high rental flows generated for even substandard existing housing stock caused land value levels in North Dunedin to increase 106% during the three years between the 1992 and 1995 roll revisions. This compared to an overall average increase for Dunedin City of only 33%.

He added that due to the more modest increase in Capital Values many properties showed a decrease in the Value of Improvements. He explained that this was merely an arithmetical result of the requirement that the "Value of Improvements" comprise the difference between "Capital Value" and "Land Value".

Mr D'Arcy explained that there are three methods commonly used by practicing valuers to assess Land Value levels. They are:

(1) Direct comparison, whereby actual sales of vacant land (or improved land subsequently redeveloped by demolition of existing improvements to obtain a vacant site) are analysed by comparison with the subject property.

(2) Residual Land Value techniques; whereby highest and best use is determined for a site, a hypothetical development is envisaged, net rental flow is capitalised at market rates to produce a likely capital value and the cost of development is deducted to produce a residual Land Value. He pointed out that the residual Land Value must be "lined up with values indicated from comparable sales"

(3) Capital Value Sales Analysis. This method is sometimes used in areas where there is insufficient vacant land sales evidence. Sale prices of houses sold in the locality are analysed by means of deducting the estimated value of the improvements to produce an indicated Land Value content of those sales. He pointed out that this type of analysis is susceptible to "over or under" assessment due to "saleability factors" not relfected in the improvement replacement cost estimate. and (are) dependent on the realistic judgement of accrued depreciation and obsolescence. He warned that professional textbooks make it clear that this method is recommended for use only by experienced practitioners and only as a check or last resort.

He then described his own approach to valuing the subject property.

He said that the level of Land Values for the subject locality were fixed by the direct comparison method. He produced a schedule of vacant land sales considered most relevant to the subject land explaining that the seven sales selected all took place prior to publication of the Dunedin City Proposed District Plan (July 1995). Notwithstanding Valuation NZ adopted the lower residential housing density of 1 household unit per 250 m2 of site area allowed under the Proposed Plan as the market indicators at the time of the roll revision were showing a slowing down in the demand for extra student accommodation.

Dr Borlase, in cross examination, questioned the relevancy of Mr D'Arcy's sales claiming that only one was in the "immediate" locality of the subject property. Mr D'Arcy agreed that only one vacant land sale, (at 543 George St), had been identified and for that reason he found it necessary to look further afield for sufficient sales of vacant land. This is com-

mon practice when only one potential comparable is available because that sale itself may be prove to be outside of the general trend. He told the Tribunal that having finally identified a sufficient number of near representative sales he analysed those sales and adjusted them for size, location , building potential etc. to allow a fair comparison with the subject property.

From his sales analysis Mr D'Arcy concluded that the Land Value of the subject property was $53,000 which equated to $238 per square metre of land or $8,833 per bedroom for a notional 1 x 6 bedroom student accommodation unit development.

He next used the Residual Land Value Method as a check on the Land Value assessed by the Direct Comparison Method. The worksheet he produced allowed for a two storey 6 bedroom student accommodation unit with minimum site coverage of 70 m2 His sales analysis of recent new developments in the precinct indicated an expected market value on completion of $180,000. His evidence showed that after deducting development costs of $820 m2 for the 140m2 hypothetical building, plus $12,000 for site development, holding costs and fees he arrived at a residual land value of $53,000.

As an additional cross check he calculated that allowing $75/ room/week for a 52 week rental and deducting $5,960 pa for total outgoings produces a net annual income of $17,440. This equates to a 9.6% pa return on the market value of the project which we understand to be a return in line with the local market at the time.

Mr D'Arcy explained to the Court that the value levels derived from his analysis tended to be at the upper levels whilst the development cost on the hypothetical development appeared to be the minimum likely to be incurred given the need to comply with the Precinct requirements. From this we conclude that, if anything, his Land Value of $53,000 is at the top end of the market expectation for September 1995. He added that should Resource Consent eventually allow more than one household unit on the subject site then the roll Land Value would be reassessed.

Summary:

The Court must decide each case on the law as prescribed by the relevant statute, the precedents relating to that law, the reliability of the methodology adopted by the various expert witness's who may be called and finally, that any values arrived at would meet a reasonable test in the real market place itself.. The Courts have recognised that valuation is not an exact science but it is exacting.

Mr D'Arcy carefully described to the court the methodology employed in assessing the values he was required to determine in terms of the Valuation of Land Act. He went on to explain the particular methods he adopted for this particular property and he presented clear evidence of his selected sales, his analysis of those sales and the additional workings he adopted as a cross check on his conclusions.

Mr D'Arcy showed that rather than just draw marginal conclusions from a very limited number of sales in the immediate locality he cast his net wider and wider until he found the sales he believed would provide him with enough evidence to fairly assess the market value of the largely bare site.

The Tribunal was impressed with the care given by Dr Borlase to the preparation and the presentation of his evidence and also to the nature of his submission. Dr Borlase did not have call upon the resources of market and sales data that Mr D'Arcy had at his disposal and the filed correspondence suggested there could be little help or co-operation extended to him by the respondent. For those reasons he would have been well advised to have called a valuer or even an experienced real estate agent to assist him, at least in the preparation of his case leading to his formal objection. To have done so might have also saved himself, the respondent and this court some expense. It is simply not enough to deduct destroyed improvements from an averaged price to arrive at a defensible market value. It follows then that the Tribunal cannot ac-

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cept that any prudent prospective purchaser of the subject property would assess a value for the property using the methodology and unit values adopted by the objector. .

The long accepted basis of valuation is the current market value in accordance with a willing seller - willing buyer concept and this concept is embodied in the definitions printed in the Valuation of Land Act. Willing seller - willing buyer is the criteria to test whether past transactions can be validly used as comparable sales evidence in the valuation process: and also as the objective framework within which a hypothetical sale might take place at the date of valuation.

Had the market for the property been tested by a public auction, a tender process or by a private sale at or around September 1995 then we would all be much better equipped to decide the values now before us. That was not to be so we must instead rely on the analysis of experts as to what those values might have been had a hypothetical sale taken place.

Archer J. in *Valuer-General v Manning* [1952] NZLR 701 gave a clear cut authoritative direction on this principle of valuation.

> "It is true, moreover that in terms the definition relates capital value to saleability at a hypothetical sale ... it is equally true, however that the definition envisages by implication, not only a reasonable and bona fide seller, but a willing and informed purchaser,and that the sum which a property may be expected to realise at any given date is dependent as much on what purchasers may be prepared to pay as on what a vendor may be inclined to ask. We concede that the definition is not intended to create a new standard of valuation for rating ... but is intended to apply to valuations made for those purposes the conception of "fair market value" long established in English law and assessed by reference to a hypothetical sale between a willing seller and a willing buyer."

The Valuation of Land Act places the onus of proof on the objector. Having due regard to the evidence produced by each party we are satisfied that the Valuer General gave full due and proper regard to all available evidence and he applied the correct methodology in the circumstances of making his assessment. The objector produced no evidence which could reasonably prove otherwise.

Decision:

We disallow the objection and we uphold the following values for the purpose of the 1995 roll revision:

Capital Value	$54,500
Land Value	$53,000
Value of Improvements	$1,500

Each party shall bear its own costs.

REGISTRATION REQUIREMENTS MANUAL

The changes in the Oral Examination Policy announced by the Valuers Registration Board in the May edition of the NZIV Property Digest have now been incorporated into an updated version of the Board's Registration Requirements Manual.

The manual revised as at 6 June 1997 is available from the Registrar, Valuers Registration Board, P 0 Box 5098, Wellington.

Any prospective applicants for registration should always ensure that they have the most recent copy of the manual available. As it is diff icult for the Board to keep track of everyone who has a copy of the manual, it is the individual responsibility of each valuer to guarantee she/he has an updated copy of the manual throughout the 3 year practical experience period.

Employers of graduate valuers may also find the manual a useful tool in the supervision and guidance of valuers working towards registration.

Sylvia Maunder
Registrar

New Zealand Institute of Valuers

Annual Manuscript competition
Conditions of entry

The Editorial Board of the New Zealand *Valuers' Journal* offers an annual Award for a leading article to be published in the Journal. The award has a value of $500 and shall be paid to the successful applicant who meets the following conditions:

1. The competition is open to any author of an original work based on research into or comment on a topic related to the valuation of real property.
2. Entries should be submitted to the Chief Executive Officer, New Zealand Institute of Valuers P.O. Box 27146, Wellington. The closing date for submission of manuscripts shall be 1 April each year and any winning article shall be published in the Journal. 3. Preference will be given to "first time authors" and New Zealand Institute of Valuers' members. The author shall provide a brief biographical note which may be published. 4. The article shall not have been submitted to any other journal or published prior to being submitted for entry into the competition.
5. The article shall not exceed 5,000 words including any equivalent space where illustrations, diagrams, schedules or appendices are included.
6. The manuscript shall be type-written, double-spaced and a copy shall be submitted on a 3.5" IBM compatible disk.
7. The author shall supply a short synopsis of the article, setting out the main thesis, findings or comments contained in the article.
8. The winning manuscript shall become the property of the New Zealand Institute of Valuers and the author shall agree as a condition of receiving the award to pass copyright to the Institute and no reprinting of the article shall take place without the express consent, in writing, of the Editor of the *New Zealand Valuers' Journal.*
9. All successful applicants for the Award shall be advised.
10. Assessment shall be by the Council on the recommendation of the Editor and the Chief Executive Officer and shall be on the basis of the relevancy, quality, research and originality of the article to the principles and practice of valuation. The judges' decision shall be final and binding. An Award shall not made in any year where an article does not meet an acceptable standard.
11. The judges reserve the right to nominate their own awardee should any article not be submitted for consideration by an author.
12. The decisions of the Council on any matter relating to the competition and Award shall be non-reviewable and correspondence shall not be entered into nor reasons given for the decisions of the Board.

New Zealand Institute of Valuers
59th AGM & Conference
Napier
1 May to 3 May, 1998

Key topics Saturday 2 May:

New ZealandValuation Industry Where to from here?
Will New Zealand Valuers still be controlled by statute John Dunckley Outgoing President of the NZIV

Change and where do we all fit?
Warwick Quinn Valuer-General designate

Corporatisation of Valuation New Zealand - Opportunity or Threat,
Rob Hutchison, Past Chief Executive Officer VNZ

The future appearance ? The Australian property industry merger Has it worked?
Brian Nye, CEO of AIVI.E

Compensation Models for Property Rights: Maori Reserve Land
Terry Bo d, Professor of Property Studies Lincoln University.
Recent member ofyMinisterial Panel on the Maori Reserve Land Amendment Act

The Te Turi Whenua and Mangatu decision; its effect on how valuers approach Maori Freehold Land
Allan Ford Fellow of the New Zealand Institute of Valuers

New Zealand Wine industry: How to achieve Growth and Quality
Philip Gregan New Zealand Wine Institute

During the afternoon there are three choices for field trips.

Two look at aspects of the Horticultural and Viticultural industries and the third at the trends and developments in Adaptive re-use in Regional Hawkes Bay.

Key topics on - Sunday *May 3 will include:*

Implications of trading rights and consents
Bruce Bornholdt, Lawyer, member of New Zealand chapter of Lawyers engaged in alternative dispute resolution

Resource Consents Cents and Incense
Cedric Croft, Senior Lecturer in Property and Valuation, Lincoln University

Buildings, Have they passed their use by date?
John Duncan Smoked Hoki Architects

The Building Act Valuers Beware Pat
O'Reilly, Transtasman Properties

Adaptive Reuse of Buildings overcoming the worthlessness of an objective valuation
Frank Spencer Senior Urban Valuer, Logan Stone

Ngai Tahu: a $170 million settlement from the Crown.
What's in it for valuers and property peo le in general
Russell Pyne - Development Manager of Ngai Tahu Property Group

Quality Managment for a Valuation practice Necessary?
Mark Muir Hutchins and Dick, New Plymouth

ISO Accreditation - Is it worth it?
Alistair Thomson - General Manager, Beca Valuations Ltd, Auckland

LearniNa Quest of Quality
Kathrine Fraser ZIV Education Development Manager

The conference will include with an executive summary from Alan Stewart and Bob Connolly , respective New Zealand and Australian presidents of NZIV and AIVLE. shortly to be renamed the Australian Property Institute.

For further information contact Dan Jones NZIV Hawkes Bay Branch President, at
City Commerical, Napier
phone 06.876.4763 or fax 06.876.0596

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