March 2006

New Zealand Property Journal

Proudly brought to you in association with

Property Institute of New Zealand and

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### **TOPICAL ISSUES RECENTLY NOTED**

**Professional Practices Committee** 

### **GEO-SPATIAL TECHNOLOGY SOLUTIONS**

In The Property Industry: A Case Study

### **CURRENT VALUATION PRACTICES**

Thorn or Olive Branch

### WARRANTING THE QUALITY OF WORK

A Quick Guide to Implied Warranties

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Get in touch with a Property Professional

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THE INDUSTRY STANDARD

## Property Institute of NZ benefits

The Property Institute of New Zealand was launched in 2000 to take the profession into the 21st century. This followed overwhelming support for a new organisation by members of the New Zealand Institute of Valuers (NZIV), the Institute of Plant & Machinery Valuers (IPMV), and the Property & Land Economy Institute of New Zealand (PLEINZ).

The Institute has a membership of 3000 key property professionals, who provide services in a number of property related areas involving people, places and spaces. These include; property management, property consultancy, property development, property valuation (rural, residential, commercial and industrial), facilities management, plant and machinery valuation, financial analysis, real estate sales and leasing, project management, and others.

The Institute has 17 branches across provincial and metropolitan New Zealand, a number of overseas members, and is affiliated to a number of other international property organisations.

The Institute's business plan has 3 key goals:

• To become the first choice pre-eminent organisation for property professionals to belong in New Zealand;

• To lead and influence the New Zealand property sector and its environment;

• To provide professional support of members to enhance public confidence in the profession.

The Institute promotes a code of ethical conduct and provides a range of membership services and benefits.

The Institute provides a range of products, services and benefits including:

• The Property Business - published bimonthly in partnership with AGM Publishing, this is the Institute's lfagship publication, which has established itself as the leading property publication in New Zealand.

• JOBMail a weekly email service to all members advertising jobs available in the sector, these job vacancies (and positions sought) are also put on the Institute's website: www.propertyorg.nz.

 Property Registration an added status conferred by the Property Institute of NZ Registration Board in the streams of Plant and Machinery Valuation, Property Consultancy, Property Management, and Facilities Management. The Valuers Registration Board registers property Valuers.

• Property Standards sets standards of practice in New Zealand, and is developing Australasian-wide standards. In addition, the Institute has had considerable input into the development of international Valuation Standards.

• Code of Ethics and Discipline has a code and Rules of Conduct, which are enforced by a professional practice committee to ensure that the public are served ethically and have some measure of protection.

 Education enhancing the quality and skills of the profession through initiatives such as the provision of textbooks, accreditation of university courses, provision of professional certificates, education seminars, audio conference and events.

• Membership Benefits Package all Institute members are automatically entitled to a number of discounts off the Institute's affiliates products and services. For example 30% subscription discount to the award winning Unlimited Magazine, office supplies, accommodation average savings have been estimated at over \$15,000 across a range of products. For further information, please visit: wwwproperty.org.nz.  Property Institute of NZ Awards - the Institute promotes professionalism and recognises excellence by providing national, internal and tertiary studies awards to key individuals who contribute to the Industry, profession and Institute.

• Property Network the network of 17 branches across the country, and one in London. This provides a local focus point for Institute networking, educational activities and social functions such as the Property Ball, golf days, BBQ's and Christmas functions.

• International Relationships the Institute has a number of reciprocity arrangements with other countries that have regulated professional marketplaces, allowing some NZ members to practice overseas more easily In addition, the Institute has an MOU with the Australian Property Institute, an agreement with IFMA (International Facility Management Association), is represented on other international bodies such as IVSC (International Valuation Standards Committee), WAVO (World Association of Valuation Organisations), PanPac (Pan Pacific Congress of Real Estate, Appraisers, Valuers and Counsellors) PRRES (Pacific Rim Real Estate Society), and has a number of other international relationships.

• Property Institute of NZ Confidence index measures confidence and other key indicators in the property sector.

• Career Foundations a key package, which provides additional support, targeted at university students and graduates needs.

 Schools Project established in 2003 to promote the Institute, profession and universities offering the Property Degree, to youth (specifically school leavers) throughout New Zealand. Initiatives include visitations by local members to secondary schools, distribution of promotional material to schools, and other communications.

• Property Publishing includes discounted textbooks for student members, the 'Property Journal', Property Institute of NZs Statscom, and other publications.

 Library Services - the Institute has an extensive range of publications on all aspects of the property profession available to members, who are welcome to request information.

• Property Card given to all Institute members, and gives entry to Institute events at discounted prices. It can also be used as a form of identification/verification of membership with the Property Institute of NZ, when accessing the Institute's affiliates products and services at discounted rates.

 www. propertyorg.nz the Institute's website provides information on the Institute and its members, such as 'branch events', 'find a registered member' and on line publications. Information about the products and services identified above, as well as additional products launched by the Institute, can be also found on the site. The site continues to be developed further.

• Other Property Institute of NZ Products and Services the Institute is also looking at partnering with other organisations to bring more benefits to members and these will be announced as they are progressively launched.

To become a Property Institute of New Zealand member: There are eight levels of membership that recognise professionalism and achievement Student, Graduate, Affiliate, Associate, Full Member, Senior Member, Fellow and Life Member. Not everyone is able to become a New Zealand Property Institute member. To check out how you can become a member either contact us, go to our website for more information, or contact Mike Clark, chairman of the PI membership committee at mac@seagars.co.nz

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# Submitting articles to the Property Institute of New Zealand Property Journal

#### Notes for Submitted Works

Each article considered for publication will be judged upon its worth to the membership and 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 editor and contributors are not necessarily endorsed by PI.

Deadline for contributions is not later than January 10, May 10 and September 10 of each year.

#### Format for Contributions

All manuscripts for publishing are to be submitted in hard copy typed doublespaced on one side only of A4 sized paper and also in Microsoft Word document format on IBM compatible 3.5" disk or alternatively emailed to head office.

Any photographs, diagrams and illustrations intended to be published with an article, must be submitted with the hardcopy A table of values used to generate graphs must be included to ensure accurate representation. Illustrations should be identified as Figure 1, 2 etc.

A brief (maximum 60 words) profile of the author; a synopsis of the article and a glossy recent photograph of the author should accompany each article.

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

Articles and correspondence for the PI Property journal may be submitted to the editor at the following address: The Editor, PI Property Journal, PO Box 27-340, Wellington.

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#### REFEREE PANEL

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# Why become a member of the Property Institute of New Zealand?

Property Institute of NZ's primary objective is to represent the interests of the property profession in New Zealand.

The Property Institute of New Zealand:

Promotes a Code of Ethical Conduct

- Provides Registration the formal recognition of experience and certified qualification of excellence
- Provides networking opportunities
- · Assists in forming professional partnerships
- · Provides a marketing tool in the approach to new and existing clients
- Provides The PROPERTY Business 6 times a year in partnership with AGM Publishing
- Distributes national PI newsletters and email updates
- Delivers a National and Branch CPD programme
- Offers membership with the International Facility Management Association (IFMA)
- Offers other international linkages
- Offers networking opportunities between the profession and the universities through the PI "Buddy Programme"
- Promotes annual PI Industry and Student Awards
- Delivers an annual PI Conference
- · Offers links and information through the PI website wwwproperty.org.nz
- Provides regular branch breakfast and lunch seminars
- · Promotes the annual Property Ball in partnership with the Property Council
- Provides PI Confidence index and PI JobMail

For more information on our services to members contact the

P1 National Office:

Gerard Logan PRESIDENT Mark Dow DIRECTOR Phil Merfield INDEPENDENT DIRECTOR John Darrock DIRECTOR Chris Stanley DIRECTOR Mark Sigglekow DIRECTOR Peter Dow DIRECTOR Tony Culav NZIV PRESIDENT Gwendoline Daly DIRECTOR Conor English CEO

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# Position: Editor

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# **EDITORIAL**

It is with great pleasure I welcome you to my first edition of the New Zealand Property Journal.

As always the journal has a diverse range of articles, from geo-spatial technology solutions, an examination of current valuation practices through to a piece examining warranties under the Building Act.

I strongly urge all Property Institute of New Zealand members to read the notice from the Professional Practices Committee which draws attention to some topical issues. As property industry professionals, it is within our interests to ensure we operate diligently and the Professional Practices Committee performs a vital role in ensuring we are serving the industry appropriately.

The Property Institute of New Zealand is seeking a new editor for the journal. It is an exciting role for an enthusiastic individual who is passionate about property and the Institute and who wishes to ensure that readers receive relevant research material. The journal is the Institute's longest standing publication and is a great opportunity for a property industry professional who has a significant understanding of the industry's issues and who is determined to see the publication continue to move forward.

Please do not hesitate to give your feedback on this current edition and I encourage members to submit contributions to the journal. I hope you enjoy this edition.

Kind Regards

Glenn Clark Chief Executive Officer Property Institute of New Zealand

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# ESTATEMASTER

# Are you still building your own spreadsheets to undertake valuations of development sites?

# You need to talk to us...

Sydney +64 02 8198 7600 or PINZ Conference Cairns, May 23 & 24.

Our software is recognised as the leading property development software with over 600 companies in Australasia running our programs.

Our clients include Colliers, Jones Lang LaSalle, CB Richard Ellis, Knight Frank, Preston Rowe Patterson, DTZ, ING Real Estate, Investa Property Group, Landco, Macquarie Goodman, Suncorp, National Australia Bank.

Estate Master is proud to announce the continued support of both the New Zealand and Australian Property Institute in sponsoring the joint PINZ and API Property Conference in Cairns in May.

We invite you to join us in Cairns one day early and take the opportunity to attend one of our half price training sessions. If you are not able to make it to Cairns don't worry we will be in your town in June to catch up with everybody.

To make a booking or for further information on the Software suite visit the web site or contact +61 2 8198 7600

www.estatemaster.net

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# Topical issues recently noted, by members of the Professional Practices Committee:

#### MORTGAGE VALUATIONS

The Committee continues to see valuations by members addressed to lenders which do not contain mortgage recommendations. Practice Standard No 2, states the requirements of security recommendations in respect to the Trustee Act, Solicitors Nominee Company rules, Securities Act Regulations 1988. In all other cases in New Zealand, *a mortgage* recommendation should be provided.

The Professional Practices Committee holds the view that if a Valuer is specifically requested not to provide a mortgage recommendation, it is essential that the valuation report specifically records the basis on which it is prepared i.e. that the client has requested that no security recommendation be given.

There is also the issue of the amount of lending security a property might provide. Historically, and many Acts, require a maximum advance of sixty six and two thirds percent (66.66%) of the assessed current market worth. Many judicial decisions support this view. However, we now often see reports where valuers have recommended 80%, or more, of the value as first mortgage security. Whilst we are aware that there are lenders who will advance up to 100% of a property's value they are basing their assessment on the value of the property together with

considerable other financial knowledge relating to the borrower's debt servicing ability, which is not available to the valuer. The valuer's recommendation is, and can only be, based solely on the security the property provides, and the Committee urges caution in making recommendations.

At the recent Bank of New Zealand Seminar the bank advised that they made their own assessment of lending level. From a risk management point of view the greater the recommended mortgage advance the greater the risk carried by the valuer in the event of a default by the mortgagor at a later stage.

#### THE VALUATION OF PLANT & MACHINERY

At the recent annual conference of the Plant & Machinery division of the Institute it was brought to the Committee's notice that Plant & Machinery valuers are regularly seeing examples of plant and machinery valuation tasks, often of a large scale with complex assets, being undertaken by land and building valuers. Land and building valuers who wish to carry out this work need to be reminded of the Code of Ethics of our Institute which states "a member should not undertake any work *for* which *the member* is not qualified *or where* the member is in any doubt or ought to be in any doubt as to the adequacy *of* that member's *professional competency* and *or experience to* undertake *the work* unless such *work* is completed *under* the supervision *of a* person *of* adequate *competency*".

Members interested in undertaking Plant and Machinery valuation work are encouraged to seek membership of this group, within the institute, and obtain the requisite qualifications.

#### RETENTION OF BUSINESS RECORDS

The committee was recently asked to give guidance on the length of time it is necessary to retain valuation records. The Valuers Act 1948 does not recommend a retention period for documents.

The Institute has taken advice from the Land Professional Mutual Society Incorporated, whose solicitors commented:

"The Limitation Act 1950 will usually govern the relevant limitation period.

As there are no guidelines or legislation *specifying* the time a valuer should have to hold documents it would be *our* recommendation that Valuers retain their documents for at least ten years and preferably twelve years before they are

destroyed. Obviously *if there are* threats *of a* claim that remains *unresolved* and *are not* time *barred*, documents relating to that claim should be held *beyond the ten or twelve year period* until *resolution of the* claim.

Documents should never be destroyed to prevent the use of litigation if litigation is in contemplation".

#### PROFESSIONAL PRACTICES COMMITTEE

24 JANUARY 2006

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# From the Professional Practices Committee

#### PINZ-NZIV

The Committee wishes to raise two matters with members in relation to Standard Practice in their specific area of expertise.

#### (1) SUPERVISION OF PROPERTY GRADUATES

Registered Valuers who employ property studies graduates are reminded that they are unconditionally responsible for the valuation services carried out by their junior staff. Over recent years a number of valuation practices have adopted less than appropriate support routines, exposing inexperienced valuers, as well as senior practitioners, to unacceptable risks.

We refer specifically to Clauses 1.5 and 6.4 of NZIV Code of Ethics, and to the PINZ Rules of Conduct under Clauses 1.4, 1.10, 1.11, 1.16 and, where necessary, 1.17.

Supervision by the Registered Valuer should involve full property inspections, preferably with the graduate, to ensure proper inter-action on site; careful reviews of the valuation assessment and report; checking all delegated tasks; and leading in client liaison situations.

This is a lengthy process but graduates must be properly trained to ensure that they will be competent to work on their own, and at the level required, when eventually registered.

#### (2) USE OF SHORT REPORTS

The ADLS Fourth Edition lease at Clause 2.3 allows for parties to supply a Registered Valuer's certificate substantiating the new rent proposed. It has come to our attention that some members are providing, in the first instance, the certificate only, which incorporates a summary of the member's findings. We understand that in most instances this certificate is based on a valuer's full inspection and report. However, it has been reported to us that, at the request of the client, certificates only are being produced. We would refer to Practice Standard 1 of the Professional Practice Manual 2004 and, in particular, Clause 5.1. This is further referred to at Clause 1.5 of the New Zealand Institute of Valuers' Code of Ethics, requiring the maintenance of the highest standards in the preparation of statements, reports and certificates.

Any written or oral advice given by members must always be in accord with *"best* practice" as set out in the relevant Institute Standards/Guidance notes, etc. This is for the benefit of not only individual members, but the profession as a whole. It is in the preparation through investigation, analysis and inspection, that normally leads the valuer/member to their final conclusions. Certificates may not be the appropriate format to provide, if ensuring that all aspects of the task have been incorporated and fully considered.

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# John NB Wall Memorial Award

The New Zealand Property Institute offers an annual award for an article to be published in the Journal. The award has a value of up to \$1,000 and shall be paid to the successful applicant who meets the following conditions:

Rules Governing the John NB Wall Memorial Award

- a) 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.
- b) Entries should be submitted to The Chief Executive of The New Zealand Property Institute PO Box 27 340 Wellington. The closing date is Monday 1st May in each year.
- c) Preference will be given to authors who are valuer members of NZPI/NZIV. The author shall provide a brief biographical note which may be published.
- d) The article shall not have been submitted to any other journal or published prior to being submitted for entry to the competition.
- e) The article shall not exceed 10000 words including any equivalent space where illustrations, diagrams, schedules or appendices are included.
- f) The manuscript shall be type written, double spaced and copies shall also be available in electronic form.
- g) The author shall supply a short synopsis of the article, setting out the main thesis, findings or comments contained in the article.
- h) The winning manuscript shall become the property of the New Zealand Property institute and the author shall agree as a condition of receiving the award to pass copyright to the institute and no reprinting or distribution of the article shall take place without the express consent, in writing, of the Chief Executive Officer after he has consulted with the editor of the journal.
- i) All applicants for the award shall be advised accordingly
- j) Assessment shall be decided by the Council of the NZIV on the recommendation of the editor of the journal and shall be on the basis of relevancy, quality, research and originality of the article to the principles and practice of valuation. The Council's decision shall be final. An award shall not made in any year where an article does not meet an acceptable standard.
- k) The Council reserve the right to nominate their own awardee should any article not be submitted for consideration by an author or when an article has already been published in the journal.
- 1) 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.

Rules as at 19 April 2005

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## Geo-Spatial Technology Solutions in the Property Industry: A Case Study

BY CHARLOTTE HURLEY

#### INTRODUCTION

One area of the property profession with the potential to be transformed by emergent technology to a revolutionary degree is that of property and asset management, particularly in terms of accessing asset information.

Innovative software based on geo-spatial technology that offers this function has been developed as the result of rigorous research and development, and recently been launched on the market.

Documenting its genesis and design is didactic in that it offers insight into the unique development process of a customer-targeted technology solution with prime application to property practice.

The software, known as Assetta *ScorecardsTM*, has been created in New Zealand to meet the specific needs of the owners, managers, valuers and accountants of multiple properties and facilities.

#### BACKGROUND

Harnessing and integrating technology into daily operations has meant that the property industry has predominantly kept abreast of consumer demand for the time, cost and communication advantages with which technology can enhance work and personal lives.

The industry has embraced geo-spatial technology since it emerged some twenty years ago. For instance, industries related to the critical network of infrastructure such as gas and water have embraced the Geographic Information Systems (GIS) platform as a means of pinpointing the location of their assets.

Another example of technology uptake by the property industry is the provision of online real estate services. Additionally, searching property information such as titles and rates online is now common practice.

Programmes such as Google Earth, and Google Maps2 enable people to navigate graphically to a location. In terms of their application to the property market, those using similar geo-spatial analysis programmes are able to conduct property searches in more defined areas and at greater speed than ever before.

The impact of such programmes is not yet fully manifest in New Zealand, but is an increasingly strong influence in global property markets. They have the ability to mete out and marry geographic and demographic data to inform property purchasing and valuation decisions.

For instance, users can now locate buildings within a proscribed physical location, such as houses in a school zone. A franchisee of a fast food restaurant seeking commercial premises for a new outlet can specifically query vacancies that feature foot traffic over a specified amount, with nearby car-parking, and on a corner site.

#### NEW ASSET MANAGEMENT TECHNOLOGY

The field of asset management within the property sector has also enjoyed technological advances in recent years. Software packages have been developed that use the power of relational databases to capture large amounts of information about assets, and assist the operational aspects of facility management like maintenance tracking.

However, it is recently released software that surpasses its predecessors with its dynamic integration of technologies that could potentially revolutionise asset management.

ScorecardsTM has been developed in Palmerston North by local company Assetta whose director is an ex-mayor of the city, Mark Bell-Booth. He conceived the software during his term of office (2001-2004), with the aim of improving asset management for local government.

Besides local government, the innovative software has application to other large organisations with multiple assets in many localities. These include hotel chains, franchise operators, banks, private property portfolios, health boards and universities.

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#### THINKING TECHNOLOGY

Traditionally, asset registers and management systems exist in a table format with individual numbers assigned to each asset. Such inventories are comparatively one dimensional and effectively rendered obsolete with any change to assets or their condition. Customising such registers to individual need is also cost-prohibitive.

Additionally, capturing data is labour intensive: a community park can take up to two days to measure before the data is even entered into an inventory.

Based on geo-spatial technology, however, an asset such as a fence can be marked on the ScorecardsTM programme remotely. The GPS (Global Positioning System) location of the fence's two ends enables the exact distance between them to be calculated automatically. Further, the system's analytic and strategic planning powers mean that the value of assets can be automatically modified based on their condition.

Condition reporting of assets in the field is via portable hand-held devices. Data is then uploaded by web-reporting technology, eliminating the chance of transcription errors. ScorecardsTM also functions as a centralised asset management system. From a risk management perspective, the programme stores and safeguards knowledge and information that may previously have been the preserve of only a few members of staff.

#### ASSET MANAGEMENT HIERARCHY

The simple navigation of ScorecardsTM has been designed to work on a hierarchical basis following logical thought patterns. Thus, when researching an asset, a user first looks at its placement graphically such as in Figure 1.

One moves incrementally closer to an asset through a series of maps or images of descending scale: representing country, city or borough, street, lfoor-plan, et cetera (see Figures 2 and 3). These images are in JPEG form, and may be a digital photograph, an aerial map or as simple as a scanned line drawing.

Figure 4 shows how assets are represented by icons that sit on their exact GPS location. Users can delve into more detailed fields of information by clicking on the icon to find out about an asset's history or scope, or its sub-assets.

Figure 1: Screen shot from Assetta ScorecardsTM showing the mapping of assets.

Figure 2: Customised templates help enter asset data, which can be placed in the programme by dragging icons onto their GPS locations.

Figure 3: Assets are categorised by type and represented by icons.

Figure 4: Users click on Scorecards TM icons to access more in-depth data behind them.

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In this way, the icons are `asset trees' with subsets of information held behind them. For example, a toilet block icon may contain further data about its services, roof and structure. Clicking on the services option will display the number and material of toilet pans and hand-basins.

In one system, ScorecardsTM dynamically

- encompasses:
- a. Buildings
- b. Building Elements
- c. Assets within buildings d. Assets outside buildings
- e. Properties that are important to the user
- i. Emergency information
  - 1. exits
  - 2. fire extinguishers
  - ii. Ownership information
  - iii. Construction information
  - iv. Construction materials
  - v. Condition scoring and notes, memos and photographs.

Customised templates are used to enter this data and feature characteristics important or relevant to the asset owner: the construction material of a hand-basin, its diameter, or cost per unit for example. Creating templates for assets which can then be duplicated for similar assets is a major time-saving aspect of the programme.

#### A SYSTEM OF SCORECARDS

The power of ScorecardsTM for large asset owners is having the components of each asset isolated. Manipulating their asset information using the software, a hotel chain owner could potentially determine when the curtains on a certain floor of a particular hotel were last replaced or dry-cleaned, thereby being able to plan maintenance much more efficiently.

The discrete location and condition information for an asset or sub-asset can be accessed at a very basic level, or dynamically contrasted across specified variables for valuation, maintenance, strategic planning and emergency management purposes.

The optional components of the technology equate to the following `Scorecards':

- Condition Scorecard fast, flexible condition scoring on site, with the option to add written notes, voice memos or photographs to any asset record;
- Location Scorecard assets shown on maps, photographs or plans for easy review and reporting, and includes a search engine;
- Valuation Scorecard constructive valuation information captured at an element level or from a fixed asset register, with depreciation also able to be applied;

- Maintenance Scorecard links with PDA technology to flag assets for immediate maintenance plus checks maintenance history and contractors' progress, as well as prioritising jobs;
- Strategic Asset Management Scorecard forecasts long-term needs, and assesses backlog maintenance, refurbishment and capital renewal;
- Emergency Scorecard integrates with emergency service systems and includes building construction, number of people normally on site, hazards and utility locations.

### UNIQUE ACCOUNTING BENEFITS FOR THE PROPERTY INDUSTRY

Under New Zealand International Accounting Standard 16, parts of property plant and equipment are required to be depreciated separately. This allows different depreciation methodologies and different useful lives to be applied to the components of assets. ScorecardsTM gives large asset owners the tools to manage this process by allowing an asset owner or manager to view and access trees of assets and subassets.

The Impairment Test, as highlighted by Paragraphs 10-12 of the Standard, can also be managed within ScorecardsTM. Changes in market value can be recorded against an individual asset.

The effect of significant adverse events on an organisation can also be factored into the asset, as can change in market interest rates or market rates of return. The carrying amount, compared to the market value of an asset, can then be compared.

A simple condition-scoring activity using a PDA can collect evidence of obsolescence or physical damage, meaning assets can be flagged as idle. Conversely, assets can be flagged as `Cash Generating Assets' and future income streams attached to them. Impairment gains or losses are calculated at an individual asset level, so the requirements of the Standard can be easily met.

#### MANAGING ASSETS BETTER

"It is critical that *service* organisations have *a clear* knowledge *of the* condition *of their* assets and how *they are performing.* All management decisions *regarding* maintenance, rehabilitation and *renewal revolve* around these *two* aspects."

International Infrastructure Management Manuals

Dissatisfaction with traditional asset recording was a major impetus for Bell-Booth in creating ScorecardsTM. Conventionally, the collecting, filing, and reporting of information on assets are predominantly been done for tax purposes.

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Fixed assets appear on council balance sheets in a condensed form, describing only their cost, rate of depreciation and residual value. The Fixed Asset Register represents often the most significant part of value and wealth yet contains the most scant amount of detail. It is a scenario that meant just seven line items in his council's balance sheet represented some 90,000 assets.

Aside from the arms and agencies of central government, the eighty-six councils in New Zealand are the largest property owners and asset managers in the public sphere. Their asset portfolios contain a myriad of facilities and properties that range from the size and value of a public rubbish bin to that of a sports stadium.

Producing a Long Term Council Community Plan (LTCCP) is now a legal obligation for all councils in order to provide ten years' of future asset management plans. Bell-Booth felt accountability was compromised in the production of a LTCCP in the absence of comprehensive asset reporting.

He considered that a detailed knowledge of a council's assets should be imperative for preparing a LTCCP, particularly considering its mandate to spend its constituents' money wisely and maintain their assets to its best ability.

Under current legislation councils are also required to report on and state their intended Levels of Service. He saw that asset performance reporting and knowledge is an essential component of achievement of levels of service targets.

Planning for compliance with the upcoming changes to the International Financial Reporting Standards (IFRS) regarding asset registers led to a further realisation that the prevailing mechanism for asset management was both limited and labourintensive.

Bell-Booth foresaw massive costs if the sighting, condition-rating and evaluation of each and every above-ground built asset in the public domain was to be carried out manually. The prospect of that dollar burden on his council and ratepayers was a major precursor for the creation of ScorecardsTM.

### RESEARCH AND DEVELOPMENT: STARTING WITH THE END-USER

Drawing on his previous business experience and insight into the running of a council, Bell-Booth assembled a team of computer programmers, systems architects and accounting specialists. He charged them with devising purpose-built software to improve asset management with the widest possible application.

The software was customer-targeted from the start. Even at the concept stage, asset managers in tertiary institutions, local government and the private sector were consulted to ensure the product met their various needs. Months of research and development led to a product that can now track all the various types of assets a city or large asset owner is likely to own; individually keeping track of their properties, condition, valuation, and location. During this phase, the guidance of experienced local government staff with extensive expertise in asset management as well as input from Audit New Zealand was sought. The beta version of the product was shown to potential customers, and their feedback used to enhance it.

Best practice as championed by the International Infrastructure Management Manual4 was included in the architecture of the system, which was also built in line with the National Asset Management Standards (NAMS) standards.

Peer reviews were implemented at several stages. The input of the Chief Financial Officer of the Palmerston North City Council, the President of the NAMS group, the Head of Strategic Management at Massey University as well as asset managers such as the Council's Parks and Recreation Department staff was sought and incorporated.

One peer review into Scorecards' valuation methodologies was conducted by Gary McLoughlin5, director of chartered accountancy and business advice firm Horwath Porter Wigglesworth Limited.

He sees the technology's worth in its ability to deconsolidate an asset into components, offering far more precise valuation capability than any software he has seen before. For instance, a lift shaft with its many moving parts and higher level of attrition can be depreciated or amortised separately from a stairwell.

McLoughlin attributes ScorecardsTM with the potential for far more effective management of assets. Computer functionality that can continuously manage an asset through its entire life cycle rather than merely meet its five yearly valuations for accountancy compliance is highly advantageous for informing maintenance programmes.

As a valuer, being able to remotely inspect assets that have complex and current condition data is of significant benefit. He predicts its particular merit will be to sectors of the property industry like construction, insurance and property ownership.

#### A CUSTOMER-TARGETED TECHNOLOGY SOLUTION The property profession has never been about bricks

and mortar alone. A cornerstone of professionalism in any industry is its level of customer service, something this profession demonstrates a commitment to in its Professional Practice Guidelines: "The main *reason* for being in business is to serve and benefit a client. Normally, benefits come to clients from solving clients' problems." Its Members have undertaken to provide, "greater assistance to clients in utilising Members' services especially as the era of electronic commerce develops."6

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The challenge in an increasingly automated society is to keep technological advances applicable and meaningful to the end user. Primarily because it has been developed with a strong emphasis on serving industry and client need, ScorecardsTM technology appears to have achieved this in several ways: (a) Ability for customisation:

A key position of the technology's development was keeping it broad enough to be tailored to infinite needs. With no presumption about the types of asset it can manage, ScorecardsTM users can customise data entry fields and templates, as well as nominate default settings such as the most common colour of an asset. (b) Optimal usability:

The product was designed to meet the user's needs first and foremost. Its easily-navigable structure is also visually rich so its use of graphic plans, photographs and icons makes for a highly accessible look and feel. (c) Customer support:

Scorecards has been developed to enable any staff member of an organisation to access information and produce quality data; it requires a degree of computer competency but minimal training. A helpdesk offers customer support.

#### CONCLUSION

Information technology such as computers and the Internet are now commonplace in many homes and workplaces: fifty per cent of households containing two children under the age of fifteen were connected to the Internet at the time of the last Census7.

In many industries, technological knowledge and capability is becoming the new currency the access to which not only success but survival is dependent.

A major point of differentiation for businesses in the property profession will continue to be level of interest and adaptability in regard to the uptake of emerging technology. At the least, an ability to advise clients on the most up-to-date geo-spatial technology will be crucial.

There is a twofold function of new technology that may be used to measure its efficacy and success: its real added-value features as perceived by its end-users, as well as a reduction in costs for its provider.

The ability of *ScorecardsTM* to meet such a function is yet to be proven given its recent appearance on the market. However, considering Assetta's commitment to creating a customer-targeted technology solution with a high level of input from industry and one that meets widespread need its wide uptake by and benefit to the property profession seems assured.

About the author: Charlotte *Hurley* is a Wellingtonbased *freelance* writer. She has particular interest in innovative technology and its implication *for* extant business and industry.

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# **Current Valuation Practices**

### Thorn or Olive Branch in Reducing Land Tenure Conflict in Pacific Island Countries

#### INTRODUCTION

Real estate is a major commodity within a market economy, thus valuations are essential for sound decision making. The market's dynamics and structure influence the reasons for using valuations. Purposes for valuation are broadly divided between those that fulfil market requirements and those laid down by statute. I

Market required valuations include those used for sale, purchase, mortgage, rental, insurance, inheritance and divorce, and balance sheet purposes.2 Statutory required valuations are subjective-based valuations required by law Examples include valuations for rating,3 probate4 or for compulsory acquisition purposes. In countries that recognise indigenouso lands were wrongfully taken, valuations are used in estimating compensation settlements.?

#### VALUATION ISSUES IN DEVELOPING COUNTRIES

The International Valuation Standards Committees emerging market commentary recognises the unique economic, legal and institutional characteristics of real estate markets in emerging market) countries and the problems they create for valuers.

#### CURRENT VALUATION PRACTICE IN THE REGION

#### Legal Framework

The legal framework determines the effectiveness of a real estate market. This framework considers the legal aspect of land ownership, including ownership rights, leasehold and other partial interests, compulsory purchase, and the effectiveness of the legal system to enforce property rights.

Through their colonial heritage, most small Pacific island countries adopted and or adapted (at least prior to independence) the written laws of their sovereign. So, within an international perspective, the foundation of written law is in place. However, due to the unique customary nature of land in the region,

- Paul Munro-Faure, "Sustainable Development and Land Administration Infrastructure Reforms: The Role of the Markets and Land Valuation Systems Agenda for Change?" (paper presented at the UN-FIG Conference on Land Tenure and Cadastral Infrastructure for Sustainable Development, Melbourne, Australia, 24-27 October 1999 1999).
- <sup>2</sup> A.F. Millington, An Introduction to Property Valuation, 4 ed. (London: Estate Gazette Limited, 1994; reprint, 1995), 43-45, Munro-Faure, "Sustainable Development and Land Administration Infrastructure Reforms: The Role of the Markets and Land Valuation Systems Agenda for Change?" Valuation used to estimate a value for taxation purposes. Also known as assessed value in the USA.
- Valuation used to estimate a value for taxation purposes. Also known as assessed value in Typically used to determine inheritance tax or for division of an estate.

Also known as expropriation in Canada and condemnation in the USA.

Also known as aborigine, customary, native, or Indian.

Matthew S Myers, "Valuation of Inalienable Customary Lands: Fair Compensation to Indigenous Land Owners" (paper presented at the 1st World Congress of the International Real Estate Society, Girdwood, Alaska, 2001).

IVSC, International Valuation Standards 2001 (London: International Valuation Standards Committee, 2001), 311-20.

IVSC Ibid., 314. defines emerging markets as markets growing in size and sophistications and found in a national economy, which is in transition to becoming more developed, and market-based.

10 The term 'region' is used to describe all the independent small island developing countries of the Pacific (western and south).

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there are conflicts between the introduced laws of the sovereign(s)]] and customary practice and laws.

Availability / Transparency of Published Information The valuation process includes the collection and analysis of general, specific, and competitive supply and demand data. Without such information, the analysis could he limited, possibly to the point of having little value itself.

Within the Pacific, there is an abundance of general data, published by governmental agencies, non-governmental organisations, academe, and private industry (such as financial institutions). However, there is often little or no specific information on comparable properties.

Many developed countries have land taxation systems that require the taxing authority to collect specific property information such as building size, age, construction details, land area, and other improvements. Within the region, land taxation is limited to a few urban areas, with the taxation method being based on an unimproved capital value.],

Only land or site information is needed for determining the rating or tax value. Therefore, there are no public records with details of property improvements. Without such information, valuers are unable to gather specific information regarding comparable properties.

In more developed countries, another common method of getting sales information is through networks of selling brokers or multiple listing services. Real estate markets within the small Pacific island countries are small and immature and have yet to develop these networks.

#### Property Market Volatility

Real estate market volatilities are caused by internal (within the country) or external (outside the country) forces. Internal forces that cause instability in the property market include political instability (such as in PNG, Solomon Islands and Fiji), land title disputes (common in most small island countries), poor enforcement of land rights, lack of market infrastructure, and unstable monetary policy

External forces that have recently affected the region are loss of tourism due to the events of

September 11th, loss of garment factories in Fiji due to American trade preferences to developing African countries);, and currency devaluations to remain competitive with foreign countries. These all impacted their respective property markets.

Lack of Adequately Trained Professional Valuers Prior to independence, most of the island countries relied on valuation assistance from their respective colonial sovereign. As countries gained independence, there was a shift to locally trained staff within the respective lands departments. However, today, some of the smallest countries still don't have full-time qualified valuers.

Kiribati, for example, recently hired a new government valuer. The requirement was completing least Form 5 (grade 11). Fortunately, this valuer is now attending USP to earn his BA LMD. There are currently no qualified14 valuers practicing in Kiribati, albeit there are two recent (2000 & 2003) BA LMD graduates working in the Lands Department.

Kiribati's Micronesian neighbours to the south are in comparable positions. Tuvalu has only one valuer (a 1999 USP graduate), whilst there are no valuers in Nauru. In the Cook Islands, the only valuers are a couple of private practice engineers / architects, and there are no government valuers.

Following Samoa's independence in 1960, expatriate valuers were regularly hired due to the absence of a qualified, locally based valuer. 15 Back in 1971, the need for specialised training for valuers was identified by Bruce Brown, the recently retired Valuer-General of New Zealand, within his report on the proposed establishment of a valuation section and land taxation system for Western Samoa IC Brown noted that employees of the Lands and Survey Department completed valuations, but there were no valuers, specifically At that time, he advocated establishing a separate valuation unit within the Lands and Survey Department.

The resulting section today consists of one licensed valuer (Chief Valuer), and three other staff appraisers. The Chief Valuer and one recent USP graduate (2002) are the only appraisers with any formal education. Although the Chief Valuer has

- <sup>11</sup> Most Pacific island countries had a single coloniser, however, several countries had several colonial powers within the past 100 years. Samoa, for example, was colonised by the Germans and then subsequently acquired by New Zealand in 1914. (Malama Meleisea, *The Making of Modern Samoa: Traditional Authority and ColonialAdministration in the Modern History of Western Samoa* (Suva, Fiji: Institute of Pacific Studies of the University of the South Pacific, 1987).) The Federated States of Micronesia and the Marshall Islands in the Western Pacific were colonised by Spain (1868-1899), then acquired by Germany (1886-1914), Japan (1914-1944), and then as an United States administered UN trusteeship (1944-1986). (William A McGrath and W Scott Wilson, "The Marshall, Caroline, and Mariana Islands," in *Land Tenure in the Pacific*, ed. Selwyn Sarutangai II and Ronald Gordon Crocombe III (Suva, Fiji: University of the South Pacific, 1987).) 12
- Although there are slight statutory variances, generally unimproved capital value refers to the land as if unimproved. However, virtually all land, particularly in urban areas, has been improved either directly (on the specific property) or indirectly (off-site infrastructure such as roads, utilities, etc.) putting the UCV into the subjective-based 'intrinsic' value.

- 15 Patea Maio Setefano, "O Le Fuafuaina O Tau Faaletupe O Aseta Me Fanua I Samoa (Valuation Practice in Samoa)," (Apia, Samoa: 2001).
- 16 J. Bruce Brown, "Proposed Establishment of Valuation Section and Land Taxation System in Western Samoa," (Apia, Western Samoa: Department of Lands and Survey, 1971).

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<sup>&</sup>lt;sup>13</sup> In May 2000, US President Bill Clinton signed into law the African Growth and Opportunities Act that provides special trade preferences for democratic and developing African countries. (http://www.agoa.gov)

<sup>&</sup>lt;sup>14</sup> Qualified is often referred to someone with a Bachelors Degree in a property field, such as Land Management and Development.

formal degrees (BA LMD, PGDip'T), he has only 8 years of valuation experience, of which six were as the Chief Valuer. Ongoing training has been virtually non-existent due to lack of funds to attend overseas courses.

Fiji's history is quite similar to Samoa. Prior to independence in 1971, virtually all valuers were expatriates. Following Independence, locals were being trained in the Lands Department and at the Native Lands Trust Board (NLTB). Expatriate valuers were virtually phased out by the 1980'x. The Institute of Valuers and Estate Managers of Fiji (IVEM) membership rolls show its first member joined in 1974.

The Lands Department offered a Certificate in Valuation for those who passed the corresponding course. This was essential for promotions with the Lands Department and NLTB. The certificate programme ended when the Land Management Department at USP was started in the early 1980's.

In 1986, the Valuers Registration Act's was enacted. This act, nor the rules of the IVEM, requires valuers to take continuing professional education courses. Many of the senior valuers who were trained 20 30 years ago have not kept up to date with contemporary valuation methods. Thus, when recent graduates, whom were taught contemporary valuation methods, start work with these veterans, the graduate is then expected to use the antiquated methods currently practised. This creates a dilemma for the universities teach antiquated methods of 30+ years ago so that graduates can fit in, or to teach contemporary methods, which will go unused when they gain employment.

Outdated National Valuation Standards

In 1986, Fiji passed the Valuers' Registration Act" requiring that all valuers be registered. The act created the Valuers Registration Board and gave the Board the power to determine the suitability of and to authorise registration of approved persons, to regulate conduct of valuers and the practice of valuing, and to advise the Minister in relation to the practice and activities of valuers in Fiji. A Code of Conduct and Ethics was adopted on 17 November 1988.20 However, these fall drastically short of International Valuation Standards. In fact, some parts of the Act, such as the Valuation of Fee By-Laws (valuation fee schedule), are in direct conflict with the IVS. In conversations with many long time Fiji valuers, none could recall any disciplinary action taken against a registered valuer. Papua New Guinea's Valuations Act (Chapter 123) provides for the registration of valuers, and like Fiji, includes a valuation fee schedule that is in direct conflict with the IVS.

Samoa's Lands, Survey and Environment Department set a policy to control valuation services and licensing of valuers, both in the public and private sectors. Essentially the requirements for licensing are having a valuation qualification (appropriate Bachelors Degree) and several years experience in Samoa. There are currently only four qualified valuers in Samoa, three in private practice and one in government. There are also several valuers in training. The small supply of valuers is inefficient to justify an Act of Parliament for regulation. However, without an act, the Government has been unable to stop an unlicensed valuer from practicing.21 Like Fiji, the licensing policy does not comply with IVS. No other countries in the region have acts or policies specifically regulating valuers. External Pressure.

External pressures on valuers can be from property owners, lenders, government, or others that have a financial or personal stake based on the value outcome. Property owners use real estate as collateral for loans, whilst the lender typically limits the loan amount to a particular percentage of the collateralised value. Thus, more money can be borrowed if the value is higher.

As lenders use a loan-to-value ratio to measure collateral risk, they should be more interested in an accurate valuation. However, often an individual loan officer's performance and or salary are measured by loan volume. This individual has a personal interest in making loans regardless of the best interest of the financial institution, and therefore may be tempted to pressure valuers to over value the collateralised property.

Within the public sector, the government may pressure valuers (either staff or private) to have `low' values so as to save money with compulsory purchases. There also may be pressure towards higher values of properties owned by friends or family, or possibly with the self interest of kickbacks from other property owners.

Excessive or Insufficient Government Interference Excessive or insufficient government interference within a property market retards the property market's efficiency. Each country is unique, and as such are the property markets within them. What would be considered excessive interference in a large matured market might be considered insufficient in a small emerging market.

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<sup>17</sup> Post-Graduate Diploma one year of post-graduate course work following a Bachelor's degree.

<sup>&</sup>lt;sup>18</sup> Parliament of Fiji, "Valuers Registration Act (Act 7 of 1986)," (Suva: Government Printer, 1986).

<sup>10</sup> Ibid.

<sup>20</sup> Sheik Ushman, "Code of Conduct and Ethics," Institute of Valuation and Estate Management of Fiji Newsletter October 1992 1992.

<sup>21</sup> Patea Malo Setefano, "Land Valuation as a Tool for Resource Management," in Samoan Environment Forum 2000, ed. Tu'u'u leti Taule'alo and Violet Wulf (Apia, Samoa: Department of Land, Survey and Environment, 2000).

Thus, all the players in the property market must continually work together to identify the dynamics that make that particular market most efficient.

### REMEDIES TO IMPROVE REAL ESTATE MARKETS & VALUATION

Many of the problems with real estate markets and the valuation industry of the small pacific island countries have been identified. Although not all of the problems are easily remedied, steps must be made to improve the efficiency of the real estate market before the valuation industry can effectively value land. Thus, many of the recommended changes apply to the efficiency and transparency of the real estate market itself. The areas of remedies generally fall into five broad categories of legal framework, administrative structure, financial and banking system, skills and standards, and cultural and social.22

#### LEGAL FRAMEWORK

Legal frameworks should be reviewed to ensure that they provide transparent, fair, efficient and accessible (cost / time) system for the definition of ownership, use and other rights in relations to land, including for the protection of rights and access to land for the disadvantaged and to ensure that state/government interference in land tenure and use is restricted to a justifiable minimum, including effective provisions for planning and environmental protection.23

Further, the legal framework should be reviewed to ensure that state/government ownership of land is restricted to a justifiable minimum and that it is managed in an accountable, transparent and efficient manner.24

Transparency of government transactions is essential for an efficient real estate market. This is especially true for small island countries since the government is often a substantial (often only buyer in the case of customary land) buyer and seller.

To implement such, new laws will need to be enacted to provide free and open access to all government transactions. It will also require the difficult task of changing the government office culture to accept public openness and scrutiny. In time, the new openness and scrutiny will encourage the civil service to be more accountable and public more trusting.

The legal framework needs to address fair compensation within lands are compulsory acquired by government, particularly of customary lands. The issue of compensating for any intrinsic value associated with customary ownership needs to be clarified. The issue of whether such value should or should not be compensated is a local issue that needs to be decided locally.

High courts in Canada25 and New Zealand25 recently ruled that customary land is less valuable than freehold lands, whilst the Tongan Court of Appeals refused to recognise the concept of an open market value, as it was not appropriate for Tonga's land tenure system.27

Another legal action recommended is to adopt international accounting and valuation standards, either directly through statute, or indirectly by authorising appropriate professional organisations to adopt such, and to provide meaningful enforcement of these standards.

#### ADMINISTRATIVE STRUCTURES

Similar to the legal framework, the administrative structures should be monitored to ensure that they provide transparent, fair, efficient and accessible (cost / time) system for the definition of ownership, use and other rights in relations to land, including for the protection of rights and access to land for the disadvantaged and should be monitored to ensure that state/government interference in land tenure and use is restricted to a justifiable minimum, including effective provisions for planning and environmental protection.2°

The administrative structure is essential for effectively implementing the legal framework. An efficient real estate market needs an effective, reliable and efficient land information system (LIS). Some countries, such as the Solomon Islands, Papua New Guinea, and the Cook Islands have yet to survey and register all lands. This should continue, albeit within the constraints of the political instability of these countries.

As noted previously, public records with properties details, particularly improvements, are virtually nonexistent in all of the island countries. These are barrier for the property market.

Pacific island countries are greatly behind the most advanced markets of the world in availability of market information. It is actually quicker, easier, and less expensive for a Suva-based researcher to gather comprehensive real estate market information for a property located in Phoenix, Arizona, USA than a property located within Suva.

<sup>22</sup> Simon Keith et al., "Developing Real Estate Markets in Transition Economies: A Paper for the Rics Research Foundation," (London: LAPECO, 2000).
 <sup>23</sup> Munro-Faure, "Sustainable Development and Land Administration Infrastructure Reforms: The Role of the Markets and Land Valuation Systems Agenda

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<sup>&</sup>lt;sup>25</sup> Musqueam Indian Band V. Glass [2000 Scc 52 File 27154], (2000).

<sup>26</sup> Valuer-General V. Managtu Incorporation and Others [Ca219/961, (1997).

<sup>27</sup> Loto'a Havea V. Kingdom of Tonga, Appeal No. 5/2000 & 6/2000, (2001).

<sup>28</sup> Munro-Faure, "Sustainable Development and Land Administration Infrastructure Reforms: The Role of the Markets and Land Valuation Systems Agenda for Change?"

Governments need to commit resources (human and infrastructure) to regularly gather information and to continually maintain the LIS. This will require staff trained in LIS related fields, and the bureaucracy will need to be `customer' focused by providing current, accurate, and meaningful information for the market. Developing models that are easily integrated into an online-based service should develop these systems in a prospective manner.

Adoption of International Valuation Standards is vital for the integrity of the valuation industry, and subsequently the property market. However, the administrative structure of supporting and enforcing is beyond but only the largest of the countries in South Pacific. As previously noted, some countries don't even have full time valuers, thus, who is there to `enforce'? Fiji with over 50 registered valuers is too small to effectively enforce these standards in a competent and fair manner.

Support and enforcement of IVS in Australia and New Zealand is through respective Property Institutes. In the United States, enforcement of valuation standards is by state regulatory agencies and through professional appraisal organisations such as the Appraisal Institute.

Due to the limited number of valuers in each of the regional countries, only a larger regional organisation would be effective in administrating and enforcing IVS. Thus, a regional professional organisation, similar to the Australian and New Zealand Property Institutes, needs to be created. This organisation would be responsible for developing, maintaining, and enforcing professional codes ethics and standards for various property professionals, including agents / brokers, property managers, counsellors / advisors, and valuers.

#### FINANCIAL AND BANKING SYSTEM

To develop real estate, accessible and affordable financing is essential. Financing allows businesses to extract wealth from real estate through loans. These monies can be used to increase working capital or to invest in plant and machinery Financing provides the means to acquire housing or allows existing homeowners to trade their existing home. Thus, healthy a financial and banking system and an efficient real estate market are mutually exclusive.

The IVSC advices commercial banks and other lenders to require valuations prepared within compliance with the IVS, with particular emphasis on the valuation process be independent of the credit/loan approval.29

The IVSC directs several recommendations to NGOs. The first is for development banks and

29 IVSC, International Valuation Standards 2001, 317.

31 Ibid, 320.
 32 Keith et al., "Developing Real Estate Markets in Transition Economies: A Paper for the Rics Research Foundation."

33 Munro-Faure, "Sustainable Development and Land Administration Infrastructure Reforms: The Role of the Markets and Land Valuation Systems Agenda for Change?"

institutions to recognise the importance of valuations undertaken by professional qualified valuers within in compliance with International Valuation Standards, and secondly, valuation standards need to be viewed within the framework of promoting policies that

minimise imbalances in the property market and of restructuring and strengthening property markets and financial systems in emerging markets.30

#### SKILLS AND STANDARDS

The real estate markets within the region are generally immature, whose growth continues to be retarded by the lack of legal, financial, valuation, land brokering, and land / property management skills. The skills most lacking or non-existent are the latter three: valuation, brokerage, and property management.

The practice of valuation is regulated in just a couple regional countries, whilst brokerage and property management remain unregulated. Thus, virtually any one can 'hang a shingle' and practice these services. Stories of unscrupulous brokers keeping deposits or down payments are frequent. Few of the brokers / property managers have any formal training in their speciality, nor subscribe to any code of conduct & ethics or professional standards.

This is a classic `chicken and the egg first' situation. The skills have not developed due to the lack of a market; however, the market's growth is limited due to the lack of qualified property professionals.

Thus, the IVSC recommends that `institutions with regulatory functions over the valuation profession should ensure adequate opportunity for its development as this profession is central to the proper functioning of the property market and by extension the economy.'3 However, this also applies to the other property professionals such as agents / brokers, counsellors / advisors, and property managers.

To create an efficient real estate market, there is a regional need for improved skills in valuation and management of land as an economic commodity, and understanding of environmental issues for land managers. This should be done through course curriculum development at the university level for future valuers, agents/brokers, and property managers.32

Also, relevant NGOs and trade organisations should be encouraged to participate in identifying developments required to support acquisition of new skills and standards There is also a strong need for improvements in education and training capacity leading to mutual recognition of standards and qualifications. This can be done by encouraging development of regional and international groupings of relevant professional organisations and a move towards acceptance of international valuation standards.33

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<sup>30</sup> Ibid., 319.

The IVSC advises that `institutions with regulatory functions over the valuation profession should ensure adequate opportunity for its development as this profession is central to the proper functioning of the property market and by extension the economy'

#### CULTURAL AND SOCIO-ECONOMIC FRAMEWORK

Indigenous peoples social and cultural perspective of land ownership often conflicts with the economic perspectives of industrialised societies. With most the region's population being indigenous, the social and cultural perspective of land permeates society. However, as these cultures (or portions of them) move into market economies, such as through urban migration or leasing of rural lands, an understanding of real estate as an economic commodity becomes a necessity.

Landowners, particularly rural-owners, lack knowledge and information about property rights, and the value of their land.35 This causes distortions and volatility in the market. To avoid these conflicts and market volatility, landowners and tenants need to be educated to their and other's rights and have a basic understanding of the economics that create value. More importantly, they should have readily accessible, affordable, competent, and unbiased property advice.

To put confidence in the market, again the issue of transparency in ALL real estate transactions needs to be paramount.

#### CONCLUSIONS

Valuation is an essential aspect of adequately determining fair and monetarily equitable resolution to real estate transactions such as leases and compulsory purchases. Current valuation practice in the region is generally antiquated and significantly below international valuation standards. The regional valuation industry is in dire needs of drastic change to properly serve local real estate markets and particularly to meet international valuation standards.

The valuation industry needs to accept some of the responsibility, however, the current legal, administrative and social / cultural frameworks need significant changes. Thus, the valuation industry, along with governments, financial / banking / insurance providers, property developers, national pension funds (as major property owners), development banks, and NGO's need to work together to develop efficient and transparent real estate markets. Until that goal is met, current valuation practices will continue to be just another of many thorns causing land tenure conflict in the Pacific.

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# Warranting the Quality of Your Work A Quick Guide to the Implied Warranties Under The Building Act 2004

BY GRAEME CHRISTIE AND MICHAEL GOLD OF SIMPSON GRIERSON'S CONSTRUCTION LAW GROUP

The Building Act 2004 (the "Act") recently celebrated its first birthday. Like most one year olds, in its

first year the Building Act has given its parents (the Department of Building and Housing) some nervous moments. However, despite difficulties encountered in making some of the Act's new provisions work in practice (particularly the new offence for public use without a Code Compliance Certificate), other parts of the Act have fallen into place without so much as a hiccup. An example of an important provision that hasn't received much attention to date, is the new implied warranties for residential building work.

These new implied warranties appear in section 397 of the Act, and are part of the Act's consumer protection provisions. Simply put, the implied warranties are contractual terms that are implied (i.e. automatically added in by the law whether they were in the contract or not) into every residential building agreement (thereby making the contractor liable to the purchaser) and every agreement for sale and purchase of a household unit when purchased from a residential property developer. They are primarily designed to protect the purchaser of the unit against defects. These warranties are significant because they expand the potential liability faced by contractors and developers who engage in the construction of household units.

The new warranties apply automatically, and only in very limited circumstances can the purchaser waive their right to take the benefit of these warranties. Even more significant, is the fact that both the residential property developer and the contractor can be sued by subsequent purchasers of the unit, being people who acquire the household unit from the original owner and then experience problems with their unit further down the track. Normally a subsequent purchaser would have no contractual relationship with the original developer or contractor. Equally, a purchaser would normally have no contractual relationship with the developer's contractor. Purchasers now have a statutory right to bring a claim for defective workmanship, without having to allege that the contractor was negligent.

#### THE WARRANTIES

As noted above, the warranties apply automatically to every 'residential building *contract*" and every contract for the sale of a "household unit" by a "residential *property developer*" entered into on or after 30 November 2004. In summary, the warranties are promises by the contractor and the developer that:

- the building work (which is broadly defined)
   will be done properly, competently and in
   accordance with the plans and specifications and
   the relevant building consent;
- all the material used will be suitable for purpose and, unless otherwise stated in the contract, new;
- the completed building work will be carried out in accordance with all the relevant laws including the Building Act, applicable regulations and the Building Code;
- the building work will be carried out with reasonable care and skill, and that it will be completed by the date specified in the contract, or otherwise within a reasonable time;
- that the household unit will be suitable for occupation at the end of the work;
- that if the contract states any particular purpose or result the owner wishes to achieve and the owner relies on the skill and judgment of the contractor to achieve it, the building work and materials will be fit for that purpose and be of a nature or quality suitable to achieve that result.

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#### HOW IS A CLAIM BROUGHT?

If any of the warranties under the Act have been breached, proceedings can be brought against the contractor or the developer for breach of contract, usually in the District Court. The Act also allows home owners to bring a claim for breach of warranty under the fast track adjudication procedures introduced by the Construction Contracts Act 2002. If the breach of warranty claim revolves around damage to the property caused by water ingress, then it may be possible to bring the claim via the Weathertight Homes Resolution Service, which was set up by the Government in 2002 as a specialist tribunal to deal with leaky building claims.

### HOW LONG DO THE WARRANTIES APPLY FOR?

The Limitation Act 1950 continues to apply to building work. The Limitation Act provides that the limitation period for an action in contract expires six years from the date the contract was breached, i.e. when the defective work was performed under the contract. It is clear from the Act itself that the implied warranties are intended to be pursued as a breach of contract claim and accordingly the six year limitation period should apply.

There is a competing argument however, that the Building Code contains performance requirements that extend well past the six year limitation period for commencing a breach of contract claim. Proponents of this view would say that the six year limitation period must run from when the breach of warranty became apparent. Even if this was the case, the new Building Act has retained the ten year 'longstop' for commencing any civil claim relating from any building work. This would certainly seem to create a significant hurdle for anyone wishing to pursue a breach of warranty claim after the 10 year limitation period has expired.

#### KEY POINTS TO APPRECIATE

Many contractors are also concerned that the new `fitness *for purpose*" warranty in the Act will create open ended liability for contractors. However, there is no real need for widespread concern as liability under this warranty will only rarely arise. For liability to be created under this warranty there must have first been a particular purpose or result agreed upfront in the contract, which is unlikely to be the case in most large scale residential property developments. However, basic "purposes" like watertightness, or habitability can be picked by the fitness for purpose warranty.

We predict that the contractor's warranty to undertake the building work properly, competently and in accordance with the plans and specifications will be the most commonly used warranty. Arguably this obligation already existed under common law, it is just that the Building Act has clarified the obligation as a statutory right and it is now clearly owed directly by the contractor to the purchaser. The Act has also made it clear that subsequent purchasers take the benefit of the warranty as well. We also believe that the warranty that the building work will be undertaken within a "reasonable time" will be the other warranty most commonly used by purchasers especially where there are delays in construction.

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# Case Notes

Government Local Land Public works Attorney-General v Edmonds 15/12/05, CA97/05 Successful application by Wellington City Council ("WCC") for orders directing it be served with notice of appeal and that it may intervene concerning land subject to litigation Es brought proceedings in High Court ("HC") against A-G for relief pursuant to s 40 Public Works Act 1981. (PWA) as successors of person from whom land acquired and held under PWA HC made declaration that Crown obliged to offer land back to Es WCC now claimed equitable interest in parts of that land pursuant to arrangement entered with Crown and sought to become directly involved in litigation.

Held, WCC was proper party to litigation and its earlier decision not to participate is surprising WCC represents public interests which might affect outcome of appeal, thus should receive opportunity to express its viewpoint on appeal notice of appeal to be served on WCC and leave granted to intervene to extent it may present written submissions supporting appeal, such restriction to reduce impact on scheduled hearing time application granted.

Civil procedure Appeals - Maori affairs Maori customary law Tenancy law Landlord - Right of entry

Chmielowski v Fort Braggs Properties Ltd 15/12/05, Baragwanath J, HC Auckland CIV-2005-404-4618 Successful application by C for leave to appeal out of time against decision dismissing appeal from Tenancy Tribunal ("TT") - unsuccessful appeal by C C bought property and, having registered her proprietorship under Land Transfer Act 1952 (LTA), obtained mortgage to fund purchase default occurred and bank enforced power of sale contained in mortgage, selling property to FBPL TT directed C yield possession of property to FBPL C sought to convert her registered title into Maori customary land, untrammelled by operation of LTA. Held, given importance of this case, appropriate to consider application for leave in context of merits of case failure to honour FBPI\_s rights under LTA would itself infringe law and Treaty of Waitangi ("TOW"), which granted Maori same rights and duties of citizenship as people of England those duties included compliance with law and Court must apply

LTA in due exercise of responsibility to apply law as contemplated by signatories of TOW application granted appeal dismissed.

Civil procedure Appeals Contract Consent - Absence Misrepresentation Tenancy law Tenant - Quiet enjoyment

Lucky Red 8 Ltd v Kiwi Property Holdings Ltd 9/11/05, Williams J, HC Hamilton CIV-2005-419-920 Unsuccessful appeal by LR8L against District Court ("DC") decision entering summary judgment in favour of KPHL for LR8115 rent arrears LR8L rented premises from KPHL for a Photoworld retail outlet - LR8L faced a number of issues from students from adjacent polytechnic loitering outside their premises - LRBIs grounds of appeal included the following - LR8L not bound by agreement because alterations to lease amounted to a counter-offer never accepted by KPHL requirements of s 2(2) Contracts Enforcement Act 1956 (CEA) not satisfied breach of covenant of quiet enjoyment lease agreement entered on basis of

from obligations under s 3(1) Frustrated Contracts Act 1944. Held, agree with DC Judge that error corrections on lease agreement did not amount to an unaccepted counter-offer incontestable that documents signed were a sufficient memorandum in terms of s 2(2)CEA DC Judge took realistic and robust approach in determining there was no breach of covenant of quiet enjoyment no error in DC finding that there was no

misrepresentation as to foot traffic LR8L discharged

misrepresentation loitering students not shown to frustrate agreement appeal dismissed. Commercial law Guarantees Property Real

- Subdivision

Allan v Warneford 19/12/05, Simon France J, HC Auckland CIV-2005-404-3255

Partially successful appeal by A against District Court ("DC") decision finding him liable under personal buy-back guarantee A offered to sell Mr Warneford ("W") land section and buy-back at purchase price plus \$5,000 and holding costs if unable to sell W sought to invoke this clause three years later holding costs and unearned interest on purchase price awarded to Win DC, amounting to \$40,921.91 - A argued liability should not have been found on contractual or estoppel causes of actions.

Held, appeal allowed on collateral contract finding as that cause of action abandoned by W appeal against estoppel finding has no merit, as DC correct to hold it unconscionable for A to avoid liability by relying on terms of contract claim for unearned interest does not fall within terms of contract judgment for W reduced to \$19,294.98 appeal allowed in part.

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Professions and trades - Property Real

- Registration systems Administrative law Judicial review Grounds

Dempster v Registrar-General of Land 2/12/05, Fogarty J, HC Auckland CIV-2005-404-3178

Successful application by D for judicial review of decision of RGL revoking D's licence as landbroker - D Auckland-based landbroker who also acted as supervisor in Oamaru business where no licensed landbroker complaint made by New Zealand Law Society that D conducting landbroking business by means of company in breach of s 65 Law Practitioners Act 1982 (LPA) and over degree of supervision provided by D D refused to provide details of supervision to RGL during investigation RGL concluded D's actions constituted malfeasance and that his licence should be revoked.

Held, s 65 LPA has no application to legality of conduct of licensed landbrokers and persons under their supervision manner of supervision provided by D question of fact not fully investigated by RGL before making determination finding of malfeasance suggests conduct by licensee demonstrates they are no longer fit and proper person to hold licence and should not be made lightly D's conduct may have been misfeasance but fell short of malfeasance error of law by RGL when recommending revocation on grounds of malfeasance to Minister appropriate to quash revocation application granted.

Property Real Encumbrances Caveats Strategic *Finance* Ltd v Ellington East Ltd 27/1/06, Associate Judge Christiansen, HC Christchurch CIV-2005-409-2829

Successful application by SFL for orders removing EEL's caveats SFL held first registered mortgage over properties purported sale to EEL by one of 14 parties holding second registered mortgage after SFL began advertising lots for sale SFL argued that as first mortgagee, it had priority over second mortgagees and sale to EEL was mechanism to block valid and proper exercise of SFLS rights as mortgagee. Held, even if second mortgagee sale valid, it would still be sale subject to first mortgagee's rights any caveatable interest held by EEL did not prevent SFLs sale and second mortgagee never entitled to deal with mortgaged land without taking into account SFIs mortgage order that upon presentation of transfer for registration from SFL as mortgagee to its purchasers, caveats shall be removed from transferring title - application granted.

Civil procedure Judgments Summary Property - Real - Easements Rights of way

*Taylor v* Gilmore 3/2/06, Associate Judge Gendall, HC Wellington CIV-2005-485-1365

Successful application by G for leave to apply for summary judgment unsuccessful application for summary judgment against T T applied for easement over his property creating right of way in favour of G to be discharged T's title showed "provisional right of way", registered in 1952, whereas G's title showed "right of way" transfer which created right of way was said to have contained conditions, but transfer itself had been lost T's grounds for having right of way cancelled were that "provisional right of way" is not a registrable interest in land second alternative ground that right of way was only for as long as necessary for construction of public road, which was never built and must therefore have lapsed or been extinguished G submitted none of T's causes of action could succeed.

Held, registration of provisional right of way not unlawful, but critical factor is that transfer was subject to conditions interests of justice require that every step be taken to locate copy or reconstruction of original transfer, or evidence of conditions upon which right of way was granted whether term "provisional" was attached to original may be significant

- inappropriate to grant summary judgment - leave granted to apply for summary judgment application for summary judgment dismissed.

Property Real Encumbrances Caveats Strategic Finance Ltd v Ellington East Ltd 3/2/06, Panckhurst J, HC Christchurch CIV-2005-409-2829 Unsuccessful application by EEL for review of Associate Judge's (AJ) decision declining to grant stay of earlier decision EEL sought stay of AJ's decision ordering removal of caveats from Christchurch subdivision land SFL first mortgagee of land one of second mortgagees purported to sell land to EEL caveat lodged on titles by EEL when SFL proceeded to exercise its right of sale AJ held that SFLs sales held priority over sale to EEL and subsequently refused stay on basis that EELS appeal prospects were weak. Held, SFis priority argument unanswerable and no grounds for overturning AJ's decision to decline stay EEIs intended appeal had no prospect of success and no point granting stay appropriate to grant limited stay to enable EEL to appeal to Court of Appeal and seek stay from that Court application declined.

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Civil procedure Application To strike out Civil procedure Pleadings Statement of claim Pragma Investments Ltd v Great South 507 Ltd 10/2/06, Associate Judge Faire, HC Auckland CIV-2005-404-

1931 Partially successful application by GS and second defendant, Mead, to strike out Plis amended statement of claim for disclosing no reasonable cause of action - Pragma Holdings Limited ("PH") entered contract with GS to purchase commercial property PH then on-sold to PIL, company incorporated after contract - contract contained schedule of tenancies including details of lease to Kwikimart ("K") - K abandoned property and lease before contract settled based on alleged breach of lease, but defendants never advised PIL PIL pleaded negligent misstatement, claiming economic loss, and breach of obligations and misleading conduct under Fair Trading Act 1986 (FTA).

Held, pleadings regarding FTA deficient and require amendment but PIL has suffered loss in property value for FTA purposes provision of schedule of tenancies arguably misleading or deceptive and arguably amounts to false or misleading representation concerning interest in land defendants owed no duty of care to PIL, having received no indication there would be on-sale thus negligent misstatement claim struck out time allowed to amend statement of claim concerning FTA application granted in part.

Civil procedure Summary judgment National Mortgage Nominee *Company v* Clark 22/2/06, Associate Judge Abbott, HC Auckland CIV-2004-404-4625

Unsuccessful application by NMNC for summary judgment NMNC attempting to recover under loan agreement against C as covenantor loan agreement between NMNC and Toyoshu Securities Ltd ("TSL") and included security by way of deed of assignment of leases granted by TSL over building and rental income with C as covenantor 15 strata titles later issued in place of main title of building and when three units sold by TSL, NMNC released mortgage over units without requiring reduction of principal TSL defaulted on mortgage and building sold by NMNC - C opposed summary judgment on grounds that he had defences available.

Held, notice served by NMNC complied with Property Law Act 1952 by stating date by which TSL to remedy default and consequences of default wording and intent of clause which C signed as covenantor clear and operated to make C principal debtor and extinguish rights he might otherwise have had to be released from covenant C could have claim against NMNC in negligence arising out of release of three units questions C could not raise on present application which could form basis for independent claim appropriate that C have opportunity to pursue that claim which would qualify as set off against amount owed under loan agreement application declined.

Property Real - Encumbrances Caveats Civil procedure Proceedings Consolidation Howard v Rangeview Investments Ltd 23/2/06, MacKenzie J, HC Wellington CIV-2004-485-1601; CIV-2005-485-2566

Unsuccessful application by H for consolidation of proceedings H sought to consolidate proceedings for specific performance and proceedings seeking order that caveat not lapse dispute over sale of land from Alfred Howarth ("AH") to RIL AH considered RIL did not fulfil its obligations under contract and lodged caveat AH later cancelled contract and sought damages and relief under s 9 Contractual Remedies Act 1979 in place of specific performance - following AH's death, executors, H and Chung continued proceedings and sought to consolidate two proceedings.

Held, although consolidation would ordinarily he preferable, not appropriate here because issues relating to caveat proceedings capable of being decided separately and independent of issues in specific performance proceedings application declined.

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Location of Costing

**Construction Details** 

Date

Type of Costing (please circle) Residential Rural Commercial Type of Construction (i.e. House/Flats/Office/Shed etc)

Industrial

(If insufficient space please continue on separate sheet) Areas

Cost/M2 Modal

Contract Price (Excluding GST)

Analysis Element Floor Area

Multiple

Notes

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### Costings

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 Sefton Hip Roofed Bungalow, January 2005
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 Contributed by Denis J Milne, North Canterbury Valuations

 Construction: Hip roof bungalow with integral

 double garage on a small lifestyle block.

 Areas: 221.49m2

 Contract price: \$223,073 (excl. GST)

 Analysis:

 Total: 221.49m2

 Net Modal Rate: \$693.41

 Notes: Country build factor I% of contract price per

 10km. The distance from the main centre is 14km.

 The allowance for architecture/draughting fees is \$1,346.

Springbank Hip Roofed Bungalow, July 2005 Contributed by Denis J Milne, North Canterbury Valuations Construction: 4 Bedroom office and dual facilities with an attached single carport on a small lifestyle block.

Areas: 192.71m2 Contract price: \$188,926 (excl. GST) Analysis:

Total: 192.71m2 Net Modal Rate: \$827.40 Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 38km, and the allowance for the architecture/draughting fees is \$2,007. House constructed by Builder Today Homes.

#### Hip Roofed Bungalow, July 2005

Contributed by Denis J Milne, North Canterbury Valuations Construction: 4 Bedroom and study Villa style dwelling with triple bathrooms, double internal garaging and rolled verandah, built on a level site at Cust. Company Builders. Areas: 223.90m2 Contract price: \$173,537 (excl. GST) Analysis: Total: 223.90m2 Net Modal Rate: \$946.23

Total: 223.90m2 Net Modal Rate: \$946.23 Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 45km, and the allowance for the architecture/draughting fees is \$4,451. House constructed by Today Homes. Amberley Hip Roofed Bungalow, June 2005 Contributed by *Denis J* Milne, *North Canterbury* Valuations Construction: Superior 5 bedroom dual bathroom with triple integral garage constructed on a flat rural residential holding. Built of brick with Colorsteel roof. Areas: 214.13m2

Contract price: \$282,190 (excl. GST) Analysis:

Total: 214.13m2 Net Modal Rate: \$940.76 Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 40km, and the allowance for the architecture/draughting fees is \$2,789. House constructed by Benchmark Homes.

Fernside - Hip Roofed Bungalow, May 2005 Contributed by Denis j Milne, North Canterbury Valuations Construction: 4 bedroom dual bathroom with attached double garage situated on a flat site. Areas: 217.65m2 Contract price: \$289,310 (excl. GST) Analysis:

Total: 217.65m2 Net Modal Rate: \$957.18 Notes: Country build factor 1% of contract price per 10km. The distance from the main centre is 36km, and the allowance for the architecture/draughting fees is \$2,755. House constructed by North Canterbury Company builder Benchmark Homes.

#### West Eyreton Hip Roofed Bungalow, May 2005

Contributed by Denis *J Milne, North Canterbury* Valuations Construction: 4 bedroom dual bathroom with internal double garage situated on a flat site. Brick V. cladding with colrtile roof and is Dble Gl. joinery Areas: 192.32m2 Contract price: \$217,387 (excl. GST) Analysis: Total: 192.32m2 Net Modal Rate: \$805.78 Notes: Country build factor 1% of contract price per

10km. The distance from the main centre is 40km, and the allowance for the architecture/draughting fees is \$2,394. House constructed by Peter Ray Homes.

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