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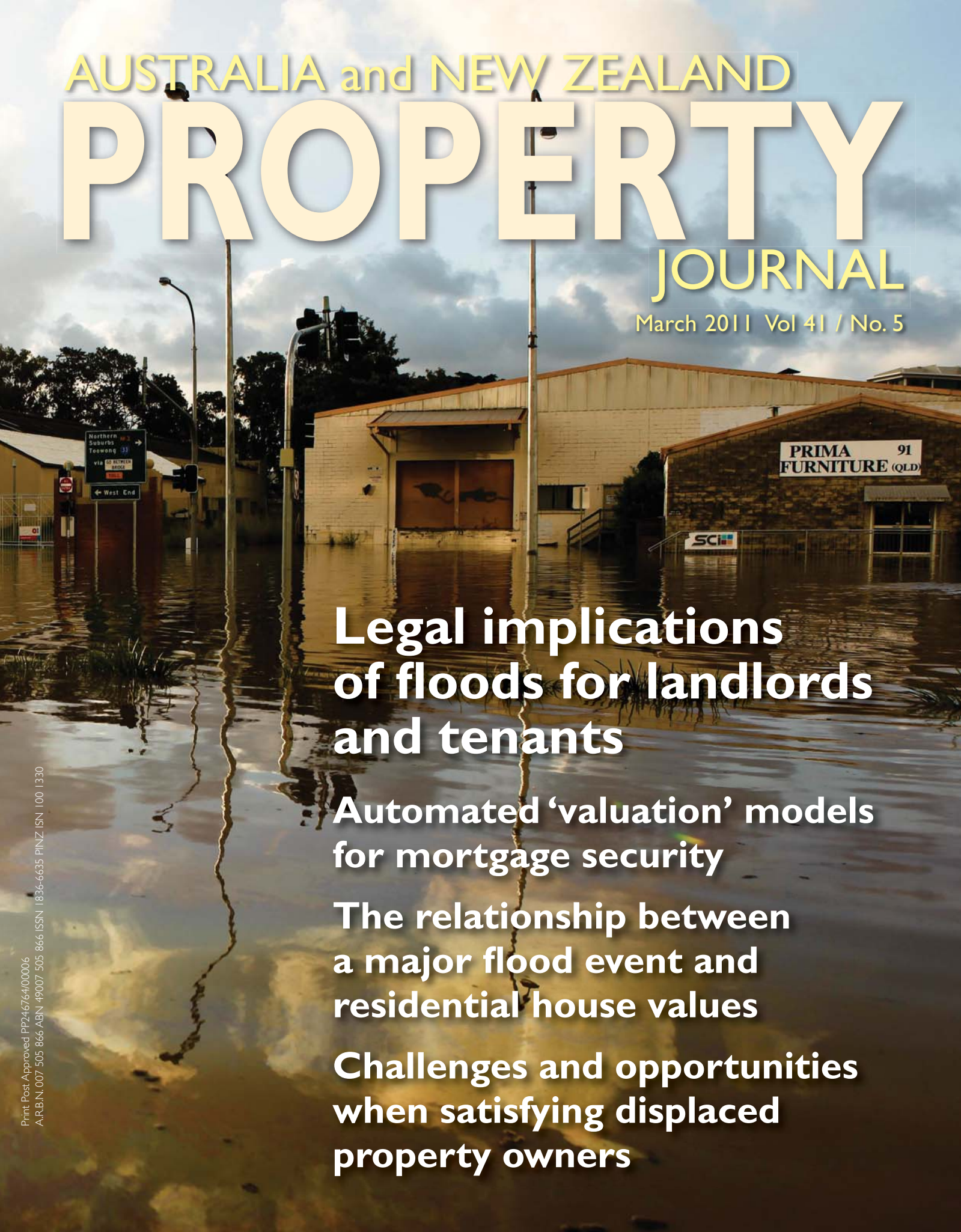

Legal implications of floods for landlords and tenants

Automated 'valuation' models for mortgage security

The relationship between a major flood event and residential house values

Challenges and opportunities when satisfying displaced property owners

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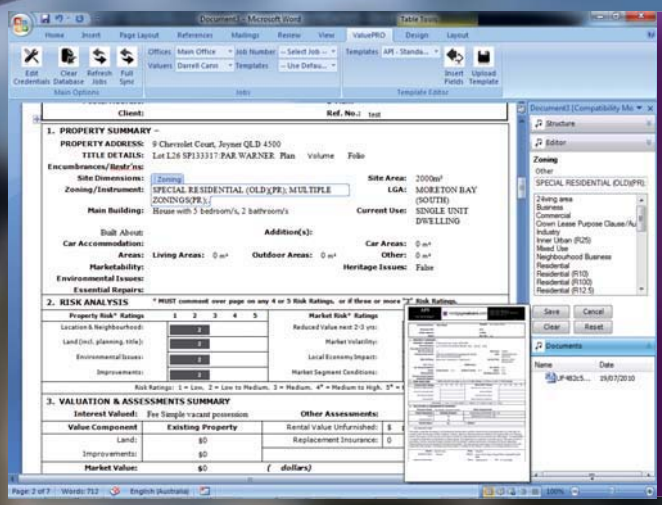

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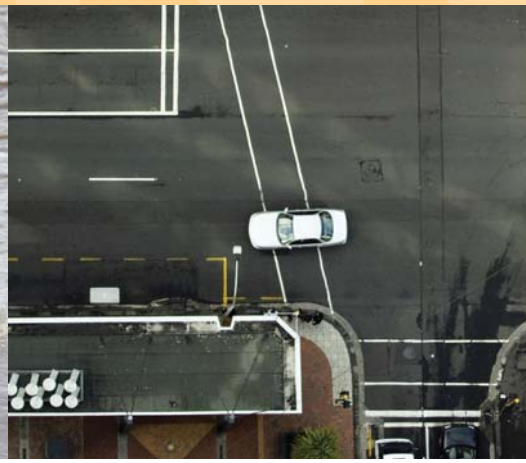

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API NATIONAL PRESIDENT'S REPORT

Nick McDonald Crowley
API National President

Welcome "readers" to the first edition of the API / PINZ Property Journal for 2011. In Australia, it has been a remarkable start to the year with the dramatic impact of the flooding in QLD and Victoria, bushfires in Western Australia and the impact of Cyclone Yasi on the whole of the Continent, but most notably the north eastern coastline of QLD.

The full financial impact of these natural disasters is yet to be felt however there is no doubt that economic stimulus will need to be provided by the Commonwealth to help restore a level of normality to these regions.

For the property sector, identifying the potential for these risks and their impact on property ownership and tenure will be an ongoing matter for consideration, and again, I refer all members to the Practice Standards that will help to guide Property Professionals in dealing with these matters in an appropriate matter.

I acknowledge the best wishes of support from our PINZ membership and our continued thoughts go out to those who have been affected by these disasters as well as those still recovering from the earthquakes in Christchurch in September last year and more recently in February this year.

Within the API there has been continued effort and input into the ongoing implementation of the Centralised Contact Management System, the new website (scheduled for an initial release in March with additional functionality being released over the year) and the Future Property Professionals Program.

To re-cap on the status on each of these initiatives I can advise that the audit of our accounts leading into the AGM's was initiated earlier than usual, by RSM Bird Cameron, so that new accounting system could be appropriately reviewed and considered prior to each of the divisional AGMs and importantly prior to the National AGM Scheduled in May 2011.

The National Finance Board are conscious of the progress and have been meeting via teleconference weekly over the past two months and are satisfied with the progress being made, although continuing to be diligently reviewing the collation of these reports.

The new CMS system has not been without its hiccups, however as has previously been put forward by National Council, this is an initiative that we are very determined to succeed on. I acknowledge the effort of all staff around the country in trying to adhere to the vision put forward by the National Council in previous years to help this come to fruition.

We are also pulling the Contact Management Database 'in-house' as data had previously sat outside with an external provider, which was not the ideal situation. Continuing to monitor and improve the CMS will be a key objective for the API.

The development of the website is continuing on the back of the initial works undertaken last year. It should be noted that a number of these functions are now being bought in house in an effort to contain cost and provide better service. Joel Leslie, the National IT manager has, over the past 6 months, had a dramatic and positive impact on the Association and its capacity to deliver a better IT platform than has previously been the case. To that end, the website is on track and Joel has boosted himself with additional resources to make sure that this happens smoothly in 2011.

In February 2011 an Extraordinary General Meeting of APIV Limited took place. This meeting was conducted to ensure that Corporate Membership occurs, paving the way for the full benefits of the Limited Liability Scheme to be released.

It should be noted that National Council firmly believe that the integrity of the API as a professional association is paramount and protecting individual members rights and providing services to individual members is the key objective. The Capital Liability scheme could not progress unless our members' employers are protected by the Scheme, hence the need for corporate membership. Fundamentally the amendment proposed allows corporate membership whilst still maintaining the integrity and the strength for the Association through voting rights still controlled by the individual membership.

The Future Professional Program is still on track to launch in 2012 and of is proposed 11 modules 10 are completed and ready to be uploaded. The intent is that the majority of the delivery of these modules will be done online and incorporated into the CMS Database/ Delivery Platform. Again, this is another challenge for Joel Leslie and the IT Team and is currently on track to be achieved.

As I have done with all my reports I will close by thanking the hardworking staff of the Institute around the country and particularly those working so hard to embrace the changes that National Council have requested and that our Institute needs to continue to provide the best possible service to our membership. I am looking forward to completing my term in 2011 and will continue to support the API and its aim of being Australia's premier property professional organisation and enhancing the professional standards of members.

Nick McDonald Crowley

President, National API.

PINZ PRESIDENT'S REPORT

Ian Campbell
PINZ President

I would like to extend my thanks to all members who had attended this year's branch AGM's held around the regions during February and to all members who have participated and supported in the running of branch activities over the last year. For those who attended, it has been a good opportunity to receive an update from the institute's professional development manager Allan Smee on a number of initiatives including the current development of online learning modules and our websites.

Members will be particularly interested to learn that in December 2010, the Property Institute Board endorsed the new designation for Marine Valuers which now forms part of the Infrastructure, Plant and Machinery Community. Following this endorsement and on behalf of all members, I am pleased to extend a warm welcome to all Marine Valuer members who now form part of our Institute. We look forward to working with you and to promote and expand the Marine Valuation profession.

Whilst January and February are usually quieter months, national office and your board had been kept busy. This included the delivery of a healthy financial surplus for the year end which was one of our primary objectives.

A full financial result will be announced at this year's AGM on 25 May 2011 in Wellington once accounts are finally audited.

In February we convened an international relations strategy day focused on the institute's reciprocity agreements and broader understanding with similar valuation and management organisations. This included a review of our institute's own role when participating and engaging with New Zealand's free trade partners.

At the same time I was delighted to host members from the Australian Property Institute including their incoming national president Mr Phil Western who replaces Mr Nick McDonald Crowley during 2011.

On current legislative matters, the institute has been particularly keen in aligning legislative issues with the interests of the NZ Institute of Primary Industry Managers, NZ Institute of Forestry, NZ Institute of Architects and Institute of Surveyors and their members. In March a meeting of these organisations will be convened to review the potential of sharing and addressing current issues such as the Financial Advisors Act and the Real Estate Agents Act. It is hoped that regular meetings of our organisations may result in joint initiatives and sharing of legal opinions and/or joint representation in the future.

Please note that our national conference is set down for Wellington on 26/27 May 2011. I would urge members to diarise these dates in advance and look forward to your attendance in Wellington.

Members Relief Fund

Recently I have met a number of members who have been affected by the September 2010 and the now the recent February earthquake that has impacted the City of Christchurch. I am also mindful of other natural disasters that have impacted upon people and their property on both sides of the Tasman - the forces of nature are so unpredictable.

To address the latest events and other incidences that directly impact upon our members and their families, we have now established a Members Relief Fund.

The relief fund is here to provide emergency financial assistance for members, employees and dependents of members and employees who have been directly impacted by these recent events, that has left them in a state of financial, physical or emotional distress.

I have since appointed our Chief Executive to administer the relief fund and invite readers to contribute to the fund if they can. Our thoughts are with all our Canterbury members and friends who have been affected by the recent earthquake and for all those who may have lost family or friends as a result. I hope this fund can help towards bridging some of the difficulties which may lie ahead.

Ian Campbell
President
Property Institute
of New Zealand

Automated 'Valuation' Models for Mortgage Security – examining their use on the Sunshine Coast

Abstract

The use of automated valuation models (AVMs) as a means of providing an estimate of value for residential property mortgage security purposes has gained popularity in mature economies worldwide including Australia. The attraction of the technology is both the speed with which valuations can be processed as well as the significant cost savings when compared with a traditional valuation. Following a review of property valuation and property finance literature in relation to the development and use of AVMs, semi-structured interviews were conducted with five registered valuers in order to gauge their exposure to the technology and to ascertain their opinions in regards to the use of AVMs.

The results of the research found none of the valuers interviewed had used AVMs nor did they know of any valuers that had used the technology, although some of them had used or were familiar with electronic valuer reports (EVRs) which is another desktop assessment method. The research concluded that AVMs were most likely to be used by lenders to quickly process loans that have a low risk profile. Also the number of loans processed in this way could be expected to increase over time. Considering the level of exposure many Australian lenders have to residential mortgages, the relaxation of conservative and prudential banking practices including full valuations was not considered to be a wise move by the majority of the research participants. The concern was that by allowing the market to self regulate this may not ensure satisfactory governance.

It is important to qualify the limitations of this paper. By nature valuation theory is a global topic and much of the literature review findings were drawn from international papers. However the interview sample consisted of only five participants within a limited geographical setting being the Sunshine Coast. It therefore needs to be made clear that this research should be taken as an exploratory study rather than a definitive overview.

Introduction

Background to the Research

For most Australians their family home is their most significant asset and for most Australian banks, a large proportion of their asset base is tied to a residential mortgage (API 2007). Providing mortgage security valuation services for residential properties is an important form of revenue and cash flow for many valuation firms in Australia. It has been estimated that 53% of valuers in Queensland are predominately occupied with valuations for residential mortgage security purposes (Elliott & Warren 2005).

There is evidence to suggest there is a growing trend in the use of computer software programs, namely automated valuation models (AVMs), to determine an estimate of value for residential mortgage security purposes both internationally and in Australia (Robson & Downie 2010; APRA 2005). This paper aims to first define AVMs within accepted valuation methods. The paper then seeks

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Table 1: Definitions of desktop assessments

Automated Valuation Model (AVM)
A computer software program that uses "one or more mathematical techniques to provide an estimate of value of a specified property at a specified date, accompanied by a measure of confidence in the accuracy of the result, without human intervention post-initiation" (RICS 2008, in Robson & Downie 2010)
Users: Valuers and Non Valuers
Electronic Valuer Report (EVR)
The valuer uses "sales data from a number of sources, overlaid with valuer knowledge, to determine the valuation of individual properties" (APRA 2005)
Users: Valuers

Source: Robson and Downie 2010; APRA 2005

to gain an understanding of how AVMs are currently used in the valuation of residential housing for mortgage security purposes and what the perceptions and attitudes of valuers are in regards to the technology.

The Research Question

The use of Automated Valuation Models for residential mortgage security purposes is a growing trend. *Does this technology provide any benefits to valuation firms in Australia?*

The Research Objectives

- To determine the level of use of AVMs by valuers.
- To determine the opinions valuers have in regards to the use of AVMs.
- To clarify the direction further research on the issue should take.

Literature Review

Automated Valuation Models

According to *Residential valuation practices by ADIs and LMIs* which is a report published by the Australian Prudential Regulation Authority (APRA) in 2005, there has been a major change in Australian valuation practices in recent years. There has been an increase in the number of alternative valuation methods used - notably by the larger lenders, including drive by assessments and desktop assessments. One lender in particular was identified as requiring valuations for less than 50 per cent of their residential loans (APRA 2005).

A desktop assessment is an estimate of value that is determined without a physical inspection of a property, by the use of either an electronic valuer report (EVR), or an automated valuation model (AVM), estimate of value. Both methods and typical users are further defined in Table 1.

Typically AVMs combine "comparable sales, repeat sales analysis and a hedonic price component" (Fitch 2007) to arrive at an estimation of 'value', although as Fortelny and Reed (2005) pointed out the methodology used is somewhat different to a valuation. It would seem that the commercial providers of AVMs are less interested in the methods used to develop the models than the levels of accuracy able to be achieved by them (Rossini & Kershaw 2008).

"The level of accuracy achieved by an AVM estimate of value is directly impacted by the quality of the data analysed and used as inputs". However due to cost pressures the existing commercial AVM products in most countries were considered too generalised to produce accurate value estimates on a consistent basis without the check measure of an expert valuers' opinion (Rossini & Kershaw 2008; Lardner 2009; Tretton 2007).

Benchmarks and Standards for Automated Valuation Models

There is a lack of benchmarking and standardisation in regards to AVMs with no clear indication of who should provide this framework (Rossini & Kershaw 2008; Fortelny and Reed 2005). The International Association of Assessing Officers (IAAO) have published a voluntary benchmark standard that considers compliant AVM outputs as a valuation, however the level of technical expertise required to build and operate such models is high with most practitioners inexperienced in this area (Robson & Downie 2010).

Ratings agencies such as Standard and Poor's and Fitch provide some industry guidance on AVM accuracy and acceptability. An AVM estimate of value is reliant on the 'match' of the target property to available comparables. This requires data on a large number of similar recently sold properties that are located in the area surrounding the target property in order for the estimate of value to be considered accurate. The use of AVMs outside these parameters is considered to carry unacceptable risk (Standard &Poor's 2005; Fitch 2007).

The *Residential Desktop Assessment Advisory Note* issued by the API outlines clearly that desktop estimates of value (which includes AVMs) are not valuations (API 2007a), and that the risks associated with desktop estimates of value lie with

lenders, rather than valuers (API 2007a). Lenders themselves must align their valuation practices for certain loans within the parameters set out by their mortgage insurers. In this light, it is more likely that lender mortgage insurer's (LMIs) will have the greatest influence on monitoring and assessing changes in valuation practices (APRA 2005).

This sentiment was echoed in a UK-based report on the use of AVMs. Robson and Downie (2010) found that the acceptance or not of AVMs by public indemnity insurer's (PIs) of valuation firms, as well as the requirements of LMIs regarding valuer public indemnity insurance were important factors in determining the level of uptake of the technology by the valuation industry. They also found that there were no clear industry wide protocols or standards regarding AVMs by the PIs representing valuers. Interestingly there have been attempts to overcome this issue of risk allocation in the USA such as by attaching insurance cover to the AVM estimate of value. This however increases the cost by adding a $100 premium to a $10 product and lenders had not responded with much interest (McWilliams 2004:82).

Drivers behind the uptake of Automated Valuation Models

With so many unresolved issues the question arises: *why use AVMs?* The answer lies in the market. Lenders are the largest customer base requiring valuations and their demand for a cheaper, quicker estimate of value for residential property is driving the market for AVMs (Gilbertson & Preston 2005; Elliott & Warren 2005). An AVM estimate can be done in seconds and costs approximately 4 per cent of the price of a valuation (Kim, Manley & Johnson 2007).

Many commentators expect the demand for AVM estimates of value to increase in the residential mortgage security market, with Robson and Downie (2010) predicting that in the UK they will eventually account for up to 38 per cent of the market. Despite such projections, valuation firms at a national level in Australia had not noted a reduction in the volume of valuations required for residential mortgage security purposes (Phillips 2010).

The position of valuers

Despite the increasing demand from lenders for quicker, cheaper valuation methods, other issues are at stake here. The valuation profession exists to protect the public interest and valuers are expected to provide an independent and reliable service to a range of stakeholders, from home owners to national economies that rely on stable banking systems (Gilbertson & Preston 2005; Tretton 2007; Motta & Endsley 2003). This being the case, it is of concern that despite most commentators rejecting the use of AVMs as a complete replacement for valuation services. There was little definitive guidance upon the manner in which they should be incorporated and to what extent they should be relied upon (APRA 2005; Robson & Downie 2010).

Also, their acceptance in the market may indicate a misunderstanding on behalf of various stakeholders as to how the models provide an estimate of value as there is a lack of explicit differentiation between the methodology used by an AVM and that of a traditional valuation (Fortelny & Reed 2005).

A major theme throughout the literature was that it is not considered appropriate for the valuation profession to reject outright new technology such as AVMs, as this may lead to a loss of relevance for the industry. Rather, it was preferable that boundaries and safeguards for the appropriate use of new technologies were put into place (Gilbertson & Preston 2005; Robson & Downie 2010). This view is in line with the evolutionary nature of valuation theory, which is often influenced by the dynamic nature of the property market and of those clients who require valuation advice (API 2007).

Research Methodology

Eriksson and Kovalainen (2008) commented that it is not enough to have an interesting topic to explore when conducting academic research but that new knowledge must be found that relates to existing theories and concepts. To this end, a critical review of the literature on valuation for mortgage security purposes with a specific focus on the use of AVMs in the profession was conducted. These research objectives are listed in Table 2.

Table 2 Research Objectives

Research Objectives
Define what AVMs are and are not.
Determine the manner in which they are currently used and by whom.
Outline potential threats and opportunities that AVMs may pose to the valuation profession.
Discover where gaps in the literature exist.

Table 3 Key themes from Literature

Key Themes from Literature
The experience valuers have with AVM technology.
The concerns regarding methodology and accuracy valuers may have in relation to AVM technology.
The future expectations of valuers in relation to the use of AVMs were that they viewed as a threat or an opportunity to the profession.

Following the literature review, key themes were identified allowing the development of a series of questions that would assist in gathering specific data as well as encouraging exploration of the themes. These key themes are listed in Table 3.

A qualitative approach "based on meanings expressed by words" (Saunders et al. 2000), was chosen to collect and analyse the data as this would fit the aim of the study to gain an understanding of the subject matter in a 'rich' sense. The research initially took a deductive approach in that the theory was taken as the first source of knowledge, to be supported or otherwise, as evidenced in the interview questions regarding participant experience in the use of AVMs. As well an inductive approach was also deemed necessary in order to include knowledge gained through experience such as participant perceptions regarding the technology and its use in the future (Eriksson and Kovalainen 2008).

A semi–structured interview format was chosen for the study as this would allow for flexibility in the order in which the questions were asked as well as the inclusion of open ended questions which would enable a greater depth of discussion and data collection (Saunders et al. 2000). However the list of questions was not varied between interviews (i.e. no questions were omitted) as it was important to the research to gather responses to each one from the variety of interviewee perspectives. An abstract was developed in order to give each participant an overview of the topic, with a copy of this given to each participant at the start of the interview.

All participants were qualified valuers and members of the Australian Property Institute (API). Two of the participants were directors or head partners of their firms, two were employees of large national valuation firms and one was a university lecturer with extensive prior experience in residential, rural and commercial valuation. Of the other participants, three were residential valuers and one conducted both residential and commercial valuations. Although all the participants were involved within the same industry, the variety of their experience and perspectives was considered to be beneficial and would allow for a well rounded understanding of the issues.

In order to reduce bias and to increase the reliability of the responses, each interview was transcribed immediately afterwards. The interviews were not digitally recorded as there was a desire on behalf of the interviewer not to inhibit interviewee responses which could result in a reduction in reliability (Saunders et al. 2000).

When following a qualitative approach to research, it is necessary to classify the collected data into categories to allow for meaningful analysis (Saunders et al. 2000). Through a process of merging related data from the interview notes, five key findings/statements were identified and are listed in Table 4.

A frequency of mention table is included in the data analysis, not to replace or reduce the value of the collected data, but to quickly display the level of response to certain issues. The table also illustrates how a simple questionnaire could be developed to collect quantitative data from a greater number of respondents in relation to the key issues of the research (Saunders 2000).

From this point the relationships between the data and the literature could be developed and tested in order to determine if there is an actual rather than apparent relationship (Saunders 2000).

Table 4 Key findings from Interviews

Key findings from Interviews
1. No participant had used an AVM
2. The client, not the valuer, determines the type of valuation
3. Desktop Valuations are considered an inadequate valuation method
4. No participant supported the unrestricted use of AVMs
5. Prudential lending practices are important

Analysis of Data

Finding 1: No participant had used an AVM

None of the participants had used an automated valuation model (AVM) to generate an estimate of value. Although 3 of the participants (2, 4 & 5) were clear on how an AVM functions to estimate value, participants 1 and 3 were unsure. There was slight confusion between the definition of an AVM and that of an electronic valuer report (EVR) which was attributable to the interviewer's lack of industry knowledge. Although EVRs were not considered by those participants that use them to be an adequate tool to determine value for most properties, market forces dictate that they are used. It is clear from the participants of this project that AVMs were not well known or used within the valuation industry on the Sunshine Coast

Finding 2: The client, not the valuer, determines the type of valuation

The type of valuation provided is client driven with all participants conducting valuations as per the client's instructions. For instance the client will request an EVR, a drive-by or kerbside assessment, or a full valuation (short or long form). Only when a significant risk issue arose would the participant challenge the client's instructions; this was not considered to be a problem by 4 of the participants (2, 3, 4 & 5). However, participant 1 noted that in their experience the valuer needed to have a strong justification for any change to the clients instructions (i.e. from a drive-by to a short form valuation), which they felt implied that the client did not give recognition to the valuers role as an independent provider of an expert opinion. Participant 1 also commented that the increasing commoditisation of the mortgage valuation industry - with valuers providing not a service but a product managed by other Business to Business (B2B) firms such as Valuation Exchange, would have long term negative implications on the relevance of the industry, as valuer autonomy was increasingly eroded. Note 'valuation exchange' is a valuation and valuer panel management firm, acting on the lender's behalf (Valex 2010).

Finding 3: Desktop Valuations are considered an inadequate valuation method

All participants had significant concerns regarding the use of desktop assessments (i.e. both AVMs and EVRs) even if they currently performed EVRs. All participants had concerns over the risks involved when a property had not been physically inspected by an experienced valuer, with participants 3 and 5 commenting that the output provided was only as good as the database in use for these methods. Participant 1 was concerned about the low fees paid to valuers for desktop assessments, noting that they were not sustainable. Participants 2 and 5 mentioned that the risks to valuers in performing desktop assessments were not acceptable, although participant 3 remarked that this risk was carried by the instructing client.

Finding 4: No participant supported the unrestricted use of AVMs

Three of the participants (2, 3 & 5) voiced their concerns over the ability of AVMs to adequately value for important factors such as views, the standard of improvements, access or potential change of use e.g. such as a development approval (DA) attached to the property. Participants 3, 4 and 5 were all of the opinion that the interpretive skill of a qualified valuer was essential to accurately determine the market and produce a reliable valuation, with participant 5 making the point that there was significant potential for the technology to under or over value properties. Nevertheless, participant 4 considered that "the technology could be used as a check measure of value" while participant 1 considered the time saving aspect of the technology could be beneficial where there was a very low loan to value ratio (LVR). Participant 3 regarded the use of AVMs in a dense city/suburban environment with high sales volumes and significant homogeneity to be acceptable; however they did not believe that most areas of the Sunshine Coast would fall into this category.

Finding 5: Prudential lending practices are important

"The cost savings for lending institutions is the driver behind their requests for desktop assessments but was not judged to be equitable with the potential risks incurred" by participants 2 and 3. In fact, participants 2 and 4 pointed out that the lack of conservative and prudential lending practices was a significant contributor to the global financial crisis (GFC). Participant 2 was of the view that the GFC exposed the risks of lenders using poor quality assessments (i.e. AVMs and EVRs) and that there was now a trend back to more conservative lending practices. Participant 2 also expressed confidence in the role of APRA in regulating the banking sector in Australia. Nevertheless, participants 3 and 5 were concerned that the oversight of standards and boundaries regarding the appropriate use of AVMs was unclear, with participant 5 expressing a lack of confidence in the 'market' applying adequate governance to this.

Table 5 Frequencies of Mention

Issue	Yes					No					Number		%	
Participant #	1	2	3	4	5	1	2	3	4	5	yes	no	yes	no
Has used an AVM						✓	✓	✓	✓	✓		5		100
Able to define AVMs		✓		✓	✓	✓		✓			3	2	60	40
Conducts desktop assessments	✓			✓			✓	✓		✓	2	3	40	60
Conducts drive–by assessments	✓	✓	✓	✓	✓						5		100	
Supportive of AVMs				✓		✓	✓	✓		✓	1	4	20	80
Believes AVMs are beneficial						✓	✓	✓	✓	✓		5		100

Discussion and Conclusions

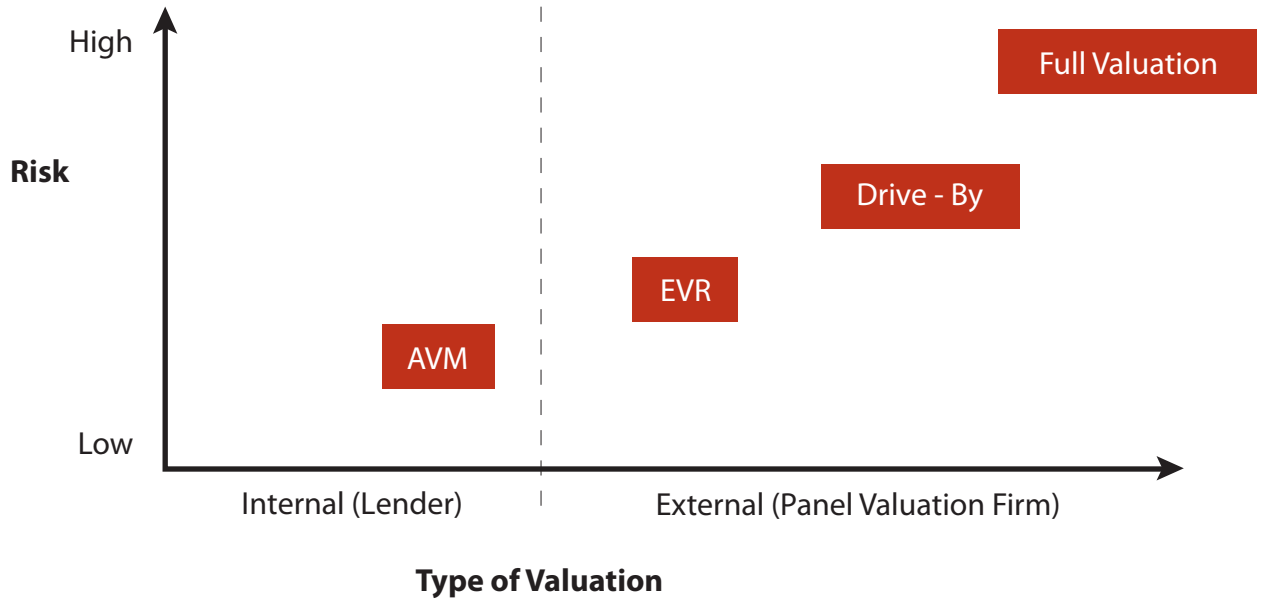
Throughout the literature, numerous references were made regarding an increase in the uptake of AVMs as a method of estimating value for residential mortgage security purposes. Conversely, the results from this research project clearly indicated that the valuers interviewed did not use AVMs and did not know of other valuers that use them. Several reasons could be put forward to explain this finding:

1. Australia is a new market and therefore the technology is not yet widely available (Rossini & Kershaw 2008);
2. AVMs are implemented higher up in the valuation instruction chain (Robson & Downie 2010);
3. Lenders do their own internal filtering and only those loans above a certain risk threshold are passed onto panel valuers (Robson & Downie 2010; Walsh 2009).

Although all three reasons would have some bearing on the lack of exposure to the technology by local valuers, the third reason is considered to have the strongest influence. The model below, adapted from Fortelny & Reed (2005), highlights the decision making process.

In relation to the suggestions in the literature that valuers should lead the way with new technology such as AVMs (Elliott & Warren 2005; Motta & Endsley 2003), is the fact that valuers must prepare a valuation according to a client's instructions (API 2007). Clearly it is not the valuers' decision as to what type of valuation is provided as demonstrated

Figure 1 Lender Risk Decision Making Process



by the research results. All the valuers interviewed completed valuation advice as per the clients instructions, only challenging the method instructed when they believed that insufficient information would incur too much risk. It is difficult therefore to reconcile the suggestion that valuers should embrace AVMs, when they would only use an AVM when instructed to do so, unless the purpose of embracing the technology was to use it as check method as put forward by participant four and also supported in the literature (Fortelny & Reed 2005).

Valuers who are members of professional bodies such as the API are bound by a code of ethics, and must adhere to certain standards regarding their professional practice (API 2007). Interestingly, lender mortgage insurers (LMIs) will only cover their clients if the clients use panel valuers that are members of the API (APRA 2005). That the API cautions against desktop assessments (API 2007a), and as participant five noted, desktop assessments were "not valuations", is not an inconsequential matter. It was clear from this research that valuers conducted electronic valuer reports (EVRs), although reluctantly, and that some banks were requesting them with greater frequency. This was likely a result of the greater bargaining position of the banks in comparison to valuation firms.

That properties in Australia and elsewhere were increasingly being valued by methods that were not considered to be a valuation (APRA 2005), placed a question on the long term sustainability of the profession as observed by participant 1. Although the literature suggested that residential valuers would still be needed for their specialist local experience and interpretive skills, attracting new entrants into the profession could be problematic if the volume of work available and the price paid for it diminishes over time (Walsh 2009; Motta & Endsley 2003).

It could be said that prudential and conservative banking practices stood Australia in good stead during the recent global financial crisis among other factors. Considering the level of exposure many Australian lenders have to residential mortgages, the relaxation of these standards was not considered to be a wise move by the majority of the research participants. The Australian Prudential Regulation Authority (APRA) has taken the position that it is LMIs that will have the greatest influence on the adoption or rejection of changes in

valuation practices. However, as one participant noted, allowing the market to self regulate may not ensure satisfactory governance.

Conclusion

In conclusion "it is difficult to agree with the position in the literature that valuers should embrace AVMs". It seems far more likely that these models will be used by the banks to quickly process loans that have a low risk profile, and that the number of loans processed in this way will increase over time. Unless strong prudential governance enforces the valuers' position, it is unlikely that those valuers engaged in valuations for residential mortgage security purposes will be able to withstand the erosion of both volume and price for the service they provide due to market forces.

It is important to qualify the limitations of this research. By nature valuation theory is a global topic and much of the literature review findings were drawn from international papers. However the interview sample consisted of only five participants within a limited geographical setting. It therefore needs to be made clear that this research should be taken as an exploratory study rather than a definitive overview.

Further research on a quantitative basis would be beneficial to determine the actual exposure of valuers to AVMs in a whole of Australia context, and to establish the level of uptake of the technology since 2005, when the Australian Prudential Regulation Authority last reported on the issue. This would allow for a clearer discussion of the issues at stake on a national level.

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The Relationship between a Major Flood Event and Residential House Values – A Brisbane Case Study

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Overview

The recent floods in Queensland and the subsequent floods in Victoria have raised the general awareness in society about the potential for riverside and seaside property to flood. This is even more important when considering Australia's love affair with the water where approximately 90% of the population live in close proximity to the water. All capital cites, with the exception of Canberra, are also in relatively close proximity to the ocean. The flood in Brisbane during January 2011 was consistently benchmarked against the last major flooding event in the city, being the January 1974 flood which was linked to the remnants of a cyclone.

Many property owners in most cities would not consider their property prone to flooding. However as recent events have shown, often retold by surprised residents who 'never thought it would happen to them', many properties not normally considered to be under threat from flooding but can (and recently have been) flood affected. These areas are in addition to the recognised floodplains located throughout the world, which even in the United States is as high as 7% of total land area (Holway and Burby 1990).

The aim of this paper is to consider how long it takes for the market value of a flooded property to recover and return to full market value, if at all. Whilst the flood event immediately has a devastating physical effect and requires weeks/months of cleaning and repairs, there often remains a stigma attached to an area which has flooded. In this age of high exposure in the media partly due to 'reality TV and the internet', it is the high risk flood areas that are well known.

The aim of this paper is examine the stigma attached to an area using the 1974 Brisbane flood as a case study. It is commonly accepted from a real estate market perspective that any property adversely affected by flooding suffers a liability (Butler 1995) which in turn decreases demand and subsequently market value (API 2007). But the central question remains: *but for how long does this perception remain after the flood event?* In the process of determining the value of a property, it is standard practice for valuers to check local government floodplain maps for the flood zone of a 100 year floodplain (API 2007) but *what is the length of the elapsed time period before property values in the local market recover from the impact of the flood?* Although the information in this paper is based on Brisbane it is envisaged it could be transferable to other towns and cities where major flooding has occurred.

This study should be of interest to property owners and government bodies who are concerned with loss prevention to individual property holdings and accumulated losses to society at large, both directly and indirectly. Furthermore, insurers and mortgage lenders would evaluate the risk of potential for future flooding. For example


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in the USA the impact of floods to be of prime importance, emphasised by the requirement of federal government mortgages for a certificate that the flood zone is not in a flood zone, or a policy of flood insurance (Harwood & Jacobus 1993).

Flooding and property values

Real estate valuers are fully aware of the significance of perception and stigma in regard to property values for a specific property or local area or suburb. Accepted scenarios included contamination, HVOTLs and other events e.g. mass murder. The local opinion of a property's flood potential can have a significant impact on its value, especially after a well publicised recent flood event (Donnelly 1989; Owens 1991) such as the 1974 and 2011 Brisbane floods. *But how for long does the term 'recent' refer to, and can it be measured in months, years or decades?* There have been very few studies into the relationship between floods and real estate values. A limited amount of research was centred on properties located on floodplains and the associated valuation issues (Floyd 1983; Owens 1991; Shilling, Benjamin & Sirmans 1985) where floods are expected. This classification contrasts directly with properties which, although have not been recently flooded, a significant time has elapsed since the last major flood (e.g. at least 30 to 40 years) and during this period most inhabitants at the time of the flood have either died, moved away or were too young to recall the significance and devastation of the flood. Brisbane conforms to this scenario well, with major floods in 1893, 1933, 1974 and 2011 with 40, 39 and 37 year breaks between each flood respectively.

Overall there has been an absence of studies specifically concerned with the impact of flooding upon property values in suburban areas which are not regarded as flood prone, especially in the longer time period subsequent to the flood and the ensuing subsidence. Considering that even slight differences in the topography of adjoining parcels can greatly alter the risk of serious flooding for each allotment, if past empirical research is revisited concerning the devaluation of property due to flooding there is no one clear line of thought as to how flooding affects the value of every parcel of land (Holway & Burby 1993). One of the challenges for the marketplace is to reliably determine where the flood lines are. It is commonplace soonafter a major flood for prospective purchasers to refer to a common metric, such as where the 1 in 100 year flood limit is, although arguably the interest in this dissipates over time.

... generally higher prices for suburbs adjoining the river, sometimes in flood-prone locations.

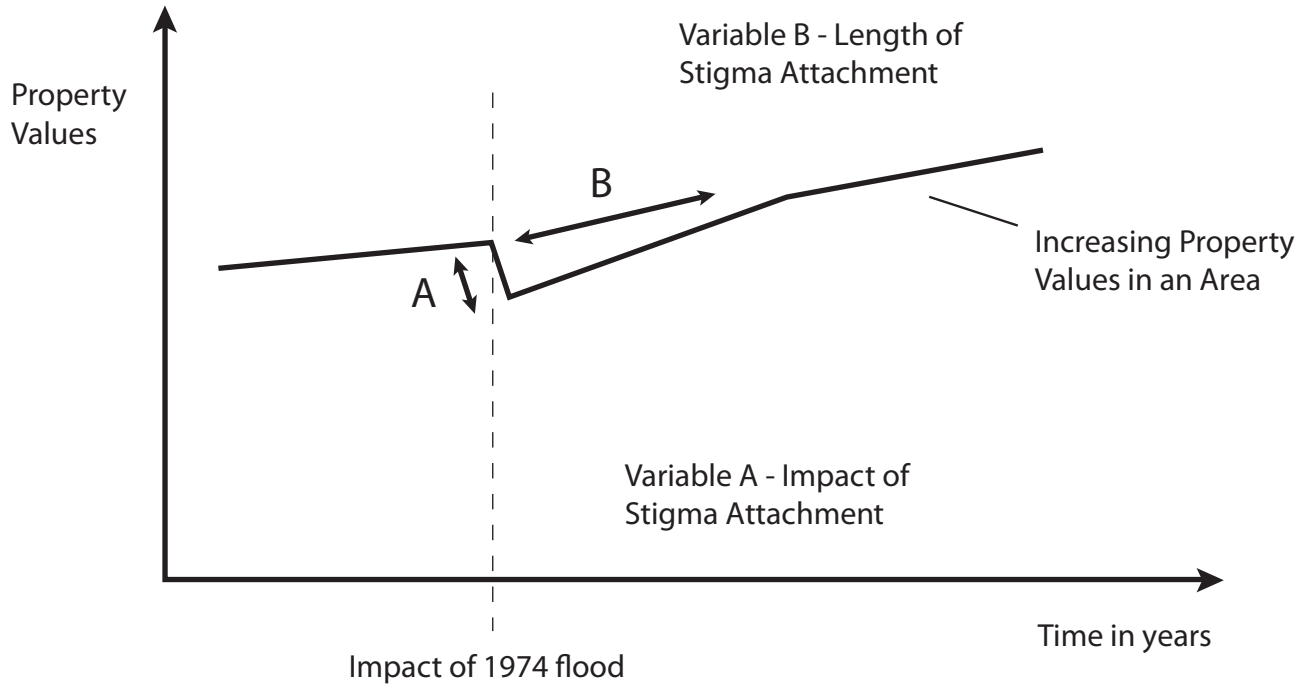
There is general agreement amongst valuers that most established housing allotments affected by a flood suffer a decrease in value (represented by Variable A in Figure 1) which can equate to a reduction of up to 30% for Brisbane properties in 1974 (Kidston 1976). However Kidston's findings are typical of previous research and although stating the initial devaluation it fails to explore the length of the devaluation (Variable B in Figure 1) and when or if the suburb's values may commence recovery and continue to increase in the long term. Although the importance in this research is placed on the length of Variable B, it is equally crucial to measure the slope of this recovery. If Variable B was a known quantity, this should assist to maintain property values in a flood affected suburb as sellers would not be so impatient to leave the area. It is argued that after the devastation of the flood and the tragic personal loss of many individuals and families, many sellers would be willing to sacrifice or discount their house sales price to gain peace of mind. However, if research such as this proposed that the period of downturn due to flood was finite and property values would recover, a longer period may be adopted before selling.

It is important to recognise the continued attempts from stakeholders and government bodies throughout the world in respect to planning for natural disasters, such as flooding, which significantly restricts residential development on flood-prone land primarily through zoning and building restrictions. Regardless of the resources allocated to planning and the selective retention of water it appears on a global basis that major flood events will always periodically occur and continue to cause subsequent decreases in property values and losses to society in general.

Overview of Brisbane in 1974

Located on the eastern coast of Australia, Brisbane is reminded of its history of severe floods (especially the big floods in 1893 and 1933) and a future flood appears inevitable. According to the Australian Bureau of Statistics (3222.0. 1976, 2007) the population of the greater Brisbane area was 730,440 residents as at 30 June 1974 (1,857,00 as at 30 June 2007), with Brisbane experiencing

Figure 1 – Relationship between Impact and Length of Stigma



an urban sprawl representative of most Australian capital cities. From a topographic perspective, the Brisbane River dissects Brisbane with an extremely high numbers of bends then eventually finding its way to the Pacific Ocean after a long journey from tributaries in the mountainous Great Dividing Range. Generally speaking the suburbs have level topography although can become quiet hilly in some pockets which were naturally isolated from the flood. Conforming to standard economic theory, the limited availability of property with river views also results in generally higher prices for suburbs adjoining the river, sometimes in flood-prone locations. It is these suburbs situated on a river bend or dissected by local creeks flowing into the river which experienced the greatest flood damage. The damage was extremely difficult to assess, although a study carried out by the Snowy Mountains Engineering Corporation (1975) estimated the cost in 1974 at $178 million with approximately 13,000 buildings flood affected (Dept of Social Security, 1981). In contrast the 2011 flood is estimated to cost approximately $5.2 billion with significant reductions in government spending (Bligh 2011).

Methodology

A time series database was assembled containing the median sales price for 117 primary suburbs located in Brisbane during 1974. Although alternative statistical methods of comparing house prices in suburban areas were considered, there were many difficulties encountered if a simplistic approach was to be maintained. For this reason the emphasis was placed on the median house prices, which although suffering from a number of well-known limitations appear to capture broad price movements in the housing markets (Potervba 1991). As the supply of land in an established modern city is fixed, it is argued that these price movements indicate varying levels of demand for real estate reflected in the median house values for each suburb.

This database was based on a 20% sample of recorded sales for all established dwellings (land area under 2000m2) for the years 1971, 1975 to 1979, 1984, 1990 and 1998. This information was sourced from the State Government and is representative of all sales that occurred. It was essential that each sale was confirmed as being an established dwelling rather than vacant land, apartment or with a land use other than detached residential. This was only possible with the assistance of detailed State Government records which listed the land use, zoning restrictions and rateable value of each sale property.

The nominated years were identified as representing a time period before and after the 1974 flood and up to 1998. For these selected years the median sales priced for each suburb was then assembled and ranked on a scale of

1 to 117, with a number 1 ranking representing the suburb with the highest median value in that year and overall level of demand. This method of measurement (on a ranking basis) was considered the most reliable means of a complete comparison of the entire established housing market in Brisbane on a suburban basis.

The second part of the research was to analyse detailed maps from the Brisbane City Council and to identify suburbs which were adversely affected by the 1974 flood – refer Table 1. The information listed in Columns 1 and 2 identifies variations in the location and total area of each suburb which highlights the variations between each area. From the original sample these 11 suburbs received the highest overall ratings for the decision criteria in Column 3 - *the percentage of suburb flood-affected*. This primary decision criteria was based on identifying the suburbs which possessed the largest number of individual flood affected properties and which were perceived to have been adversely flood affected. The secondary criteria listed in Column 4 - *maximum water depth* indicates the maximum height of floodwaters which affected the suburb. This method of measuring and comparing the impact of flooding upon property is a variation of the model used by Holway et. al. (1990), who tested a hedonic model on a larger scale analysing land values in nine cities. From a market perspective it is considered that a flood affected suburb would have a combination of both of these factors and most likely be the centre of widespread media coverage.

The individual rankings for the eleven flood-affected suburbs listed in Table 1 were identified for the time series 1971, 1975-1979, 1984, 1991, 1998 and are presented in Table 2. An analysis was then conducted of the adversely affected suburbs and their respective changes in house values over the short to long term. Although the number of influencing

Table 1 – Brisbane Suburbs adversely affected by the 1974 Brisbane flood

Suburb	**Column 1** Km to CBD	**Column 2** Suburb Area (ha)	**Column 3** % of Suburb Flood Affected	**Column 4** Maximum Depth (m)
Balmoral	5	123	35	10
Bulimba	3.5	203	75	10
Chelmer	7	133	95	45
Corinda	9.5	290	25	10
East Brisbane	2.5	191	70	35
Graceville	7	187	80	30
Jindalee	7.5	251	50	35
New Farm	2.5	186	45	5
South Brisbane	2	200	70	20
St Lucia	4	345	60	35
West End	3	185	25	15

Table 2 – Ranking of Selected Flood Affected Suburbs according to Median Dwelling Transfer Values

	1971	1975	1976	1977	1978	1979	1984	1991	1998
Balmoral	30	62	54	54	61	88	69	55	44
Bulimba	67	76	96	91	93	98	87	54	26
Chelmer	50	17	25	40	50	38	15	11	10
Corinda	28	21	43	35	31	45	37	31	56
East Brisbane	53	80	104	105	100	103	63	77	32
Graceville	60	51	52	75	62	43	54	28	21
Jindalee	2	15	16	16	16	16	26	41	68
New Farm	56	69	62	68	103	89	61	33	6
South Brisbane	46	97	71	67	88	78	105	76	43
St Lucia	6	7	37	22	12	13	13	9	4
West End	59	46	64	93	108	112	102	59	16

factors affecting property values are often considered infinite this methodology was adopted because of its ability to reflect overall changes in property values between 117 suburbs on a time series basis.

Discussion

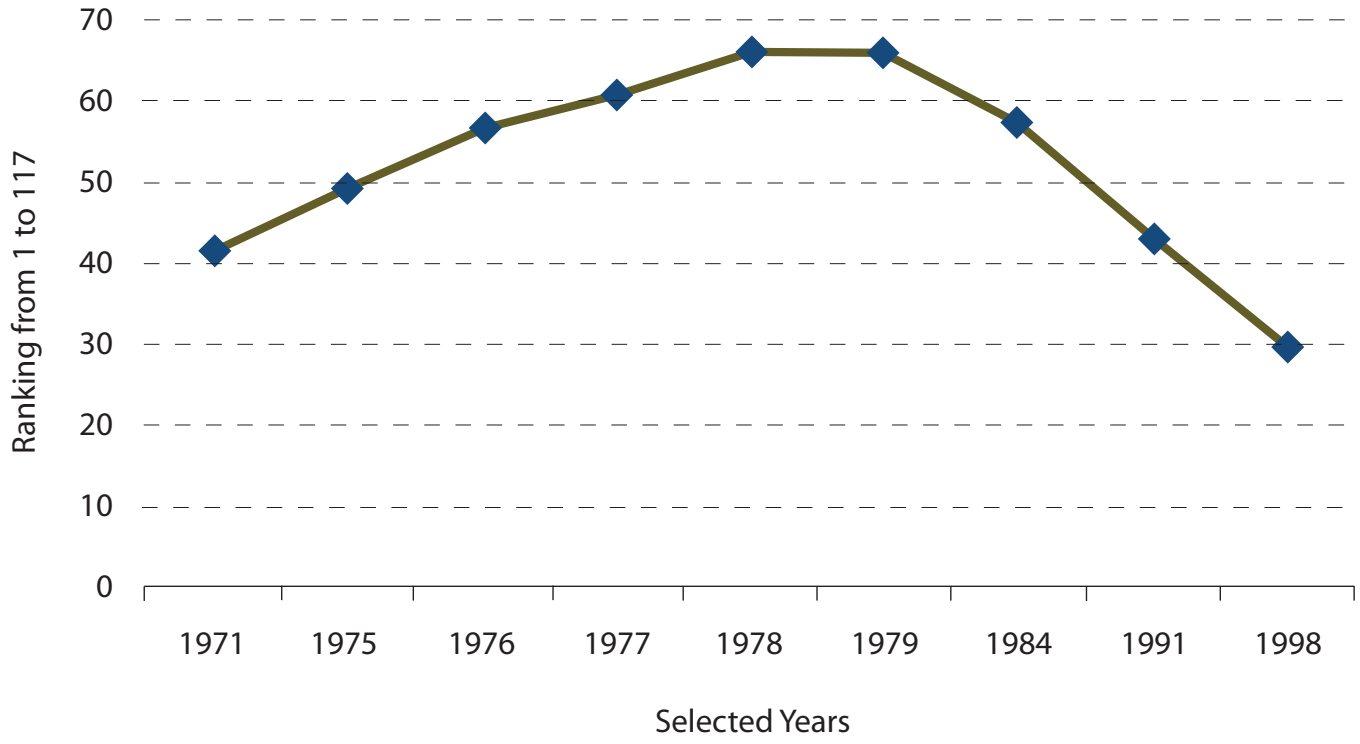
The eleven suburbs presented in Table 2 indicate that although the 1974 Brisbane Flood depressed property values, a number of years elapsed before the stigma and the flood-affected perception attached to the suburbs began to detach. East Brisbane, New Farm and West End all dropped on the ranked scale down to at least 100 out of a total of 117, with a large proportion of this decrease in demand attributed to the perception of the flood. The average rankings for the suburbs in Table 2 are presented in Figure 2. This graph shows the relationships for these 11 flood-affected suburbs and their relation to the entire Brisbane market on a suburban basis, where it appears that the stigma attached to most suburbs began to dissipate in the years 1978 and 1979, a period of 4 to 5 years following the 1974 flood. Analysing 1984 and 1991 these suburbs continued to increase in demand up to and including 1998. The only suburb not conforming to this overall trend was Jindalee with an above average area which was severely affected by the flood and even today purchasers are very conscious of the devastation which occurs during a major river flood. However the property markets in Chelmer, Corinda and West End show a lagged reaction to the flood, increasing their rankings between 1971 and after the flood until 1975 when their popularity dropped considerably. The reasons for the variations for these 3 suburbs could be attributed to a number of factors including the cyclical stage of these suburbs which reached a peak in 1975 although not completely retarded by the flood in 1974, or the older ages of these suburbs and therefore very high content of heritage housing.

Conclusions

This paper has examined the length of time it takes for stigma from a flood event to lessen, if at all. It is clear that as a result of the major flood in Brisbane during January 1974 most suburbs perceived to be adversely flood-affected suffered a decrease in value. However after a period of 4 to 5 years after the flood, this stigma began to dissipate up to the present day (prior to the 2011 flood) where it has been practically removed for the majority of suburbs. The reasons for the reduction of this stigma are outside the scope of this study and can only be hypothesised but appear linked to the age cohorts. In other words it is linked to the ageing of the existing population who experienced or vividly remember the exact area affected by flood but have moved out of the suburb or retired and the completion of improved water storage facilities.

From the results presented it appears that dwelling owners in a flood-affected suburb should wait at least 4 or 5 years before selling. Choosing to sell before this time period has elapsed will only result in an automatic discount for the buyer due the attachment of 'stigma'. Further study in this valuation area is encouraged with the absence of relevant material noted previously. Directions could include further defining the variances in the perception and recovery periods, and if the recovery line (Variable B in Figure 1) is a gradual or tiered approach. The only certainty we know is that regardless

Figure 2 – Annual Ranking for Flood Affected Suburbs in Table 2



of how much planning is undertaken and how many dams are built, major floods will continue to cause widespread damage on a sporadic basis. How the property market reacts after every major flood and affects peoples' lives is less certain, although it appears that for the next Brisbane flood (approximately 2051) residents should be better educated about the relationship between values in property market after the flood.

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Legal implications of the floods for landlords and tenants

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As the rebuilding commences following the devastation of the Queensland floods, landlords and tenants of flood-affected properties need to consider carefully their respective rights and obligations under the leases of those properties.

Damage or destruction clauses are stated expressly in most commercial leases. These provisions deal with the rights of the landlord and tenant where the building or premises are damaged or destroyed and the tenant is unable to use or have access to the premises. The wording of the clause will identify the nature and extent of the damage required for the clause to apply. There are two main circumstances in which the clause is likely to apply:

1. Damage to the premises so its use is substantially reduced.
2. The premises are not damaged but access to the premises is affected, making the premises either partially or wholly inaccessible.

While most clauses will identify both these circumstances, some may only apply when there is actual damage to the premises.

Rights

Whilst it is uncommon for the landlord to be required to pay compensation to the tenant, the successful application of the damage or destruction clause will generally attach other specific rights for tenants and landlords:

1. Abatement of rent and other expenses: The tenant is not obliged to pay rent during the period from when the damage or destruction occurs until the premises may be used or accessed again. The extent of the abatement allowed is usually proportionate to the extent of the damage or destruction, which achieves a more reasonable application. The abatement of other expenses, such as outgoings, for the same period of time depends on the terms of the lease.
2. Right for landlord or tenant to terminate the lease: The terms of the clause outline the landlord's and tenant's right to terminate due to the damage or destruction. The landlord's right to terminate, rather than restore the premises, is usually limited to where there is a substantial loss of use of the premises and there is normally a period of time for the landlord to make the election to restore the premises before termination is permitted.

Disentitling circumstances

Under the clause, the tenant may be disentitled from abatement if the loss or damage to the premises was caused or contributed to by the act or omission of the tenant or its employees (such as negligence).

... access to the premises is affected, making the premises either partially or wholly inaccessible.

Service of notice

Landlords and tenants need to be aware of any procedural requirements to bring these rights into effect. In the event that the rights do not come into effect automatically when the damage or destruction occurs, there will be a specific procedure to follow. For example, the tenant may need to serve notice on the landlord within a certain timeframe and the landlord will need to respond as to whether it will reinstate the premises or access. The procedure will vary from lease to lease.

Mitigate damage

In every case, the landlord and tenant should take all reasonable steps to mitigate the extent of the damage. This increases their chances of obtaining the most beneficial outcome in terms of protection afforded by the lease and the general law.

Construction of the lease clause

In the event that the flood damage sustained does not fall within the express description of damage outlined in the lease, the damage and destruction clause will not apply. Therefore is it essential for landlords and tenants to be aware of the provisions of their lease.

The Property Law Act

If the damage or destruction clause fails to address the abatement of rent due to flood damage, or a damage or destruction clause is not included in the lease, then section 105 of *The Property Law Act 1974* (QLD) may apply, unless its application has otherwise been excluded by the parties to the lease.

In every case, the landlord and tenant should take all reasonable steps to mitigate the extent of the damage.

If section 105 is applicable, a rent abatement clause is implied into the lease so that rent will be suspended whist the premises are 'unfit for occupation and use' due to flood damage. The rent abatement period extends until the landlord reinstates the premises 'fit for the occupation and use' of the tenant.

Right to quiet enjoyment

Tenants are entitled to possession of the leased premises without any interruption or disturbance by the landlord or any other person lawfully claiming under the landlord. Where the lease does not expressly contain a clause for the right to quiet enjoyment, it is implied into the lease.

A breach of this covenant requires the landlord to have caused the interruption or disturbance. Flood damage, which is clearly beyond the control of the landlord, does not constitute a breach of quiet enjoyment.

Frustration

When events beyond control of the both the tenant and the landlord make the performance of a lease radically or fundamentally different from what is outlined in the document, the parties may be discharged from their respective obligations due to frustration.

Frustration only applies when the actual damage or destruction does not correspond with that expressed in the damage and destruction clause of the lease. The lease will not be frustrated when the parties have provided expressly for the consequences of flood damage. In such cases, the lease cannot be discharged and is still 'on foot'.

Frustration only applies in exceptional circumstances that were not contemplated by the parties when entering into the lease. The application of the damage and destruction clause is a matter of construction from lease to lease. ■

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Valuation of flood affected property

The API is currently reviewing in detail the procedures that should be followed when valuing disaster affected property. The guidance, when prepared, will need to be applicable across Australia and take into account research of a number of similar incidents, not necessarily limited to flooding. As such it will take some time to prepare. In the interim the following may be of assistance for those dealing with property affected by the recent floods.

The valuation should follow the principles that would be followed for any property where there is a lack of evidence.

The valuation should address in clear terms the matters that the user of the valuation ought to know in deciding how to rely on that valuation. A valuation is far more than the figure and description of the property. It is a document that assists the reader on how to deal with the asset.

Certainly in the immediate future there may be a more limited market for inundated property but that does not necessarily mean there is no market.

Each case however must be treated on its merit. There is no fixed formula. The overarching principle is "What information will assist the reader in considering the valuation?"

A few suggestions for Member's consideration where a particular property has been affected include:

- The report should clearly so state if the property was inundated by the flood and the extent to which it was so inundated as far as those facts can be identified. The reader of the valuation must be given as clear a picture as reasonably practical.
  - The property may have been isolated but not inundated.
  - The land but not improvements may have been inundated.
  - The improvements may be highset and the area below the floor level was inundated.
  - The flood was above the floor level, or
  - The property was completely inundated.
- When making such a statement however detail your source of the information and include appropriate qualifications.
- In some areas the flood levels were higher than the predicted 100 year event and others lower. This even occurred in Brisbane in comparison to the 1974 flood. Comment may also be appropriate for property in close proximity to the flooding.
- Consider whether a lesser flood event may inundate the property. What is the frequency of incidents of flooding for that property?
- Consider the possible impact on value in every location not just near the river. Property not adjacent to the river may also have flooded.
- The impact to the value of commercial, industrial, retail and residential may be quite different.
- Consider the profile of the potential purchaser. How will the average prudent purchaser react to the

inundation? Generally owner occupiers will be different to investors.

- There could be situations where no value can be applied. This could include the property has suffered considerable damage which cannot be quantified by a valuer or the stigma is too great for proper consideration such as in areas of major tragedy (eg. Parts of the Lockyer Valley).
- For what period of time will the impact of the floods be remembered? The impact of the 1974 Brisbane floods was not in the minds for many purchasers over the last few years. After 10 years it was not top of mind and after 36 years hardly worth a mention for many. Others still have vivid memories of 1974 or other apparently distant flood events.
- Already individuals are stating that the advantages of riverfront living outweigh the disadvantages.
- What is the impact for cropping and other primary industry? How long before the land can be back to full production? What is the interim impact?
- There is obviously a potentially higher risk for parties committing funds in relation to some assets. This risk should be clearly outlined in the report. Risks may include:
  - The improvements may be considered not suitable for occupation or destroyed to the extent that existing tenants may have a right to vacate with consequent loss of covenant.
  - A broader range of values in which the property lies;
  - A longer time to realise on the asset;
  - A longer time to lease the asset, if vacant or if the existing lease is terminated;
  - Difficulties with insuring the asset.
- Consider your disclaimers and qualifications both in your templates and completed valuations. Question how the reader will react to a pure disclaimer that you have not undertaken a flood search.

One further piece of advice is to ensure that you consult with your colleagues if you have any doubt as to the impact on a particular property and how to inform your client. No individual has a mandate in all circumstances. We need to work together in these untested waters. ■

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Valuers embracing technology and collecting property data 'in the field'

Piers Macrae Cockram

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There are few valuation companies these days that do not provide their staff mobile-electronic means of collecting property valuation data in the field, where as only a decade ago this was not the case. This paper gives a brief picture of how mobile data-collecting technology has changed an industry as it has changed many others who rely on information gathered in the field.

Most industries now see the benefits to collection and storage of information being electronic rather than paper-based and the valuation industry is no different. The change to electronic means has been sparked by both the progress of suitable mobile devices and the commercial pressures to find operating cost and time efficiencies.

A series of questions may be asked:

- What will the impact of ongoing technological changes be on the valuation industry in the long term?
- How does a valuation company or sole practitioner assess the benefits of changing valuation processes performed in the field?
- When may mobile electronic devices eclipse the use of traditional paper-based data-collection methods?

Introduction

The valuation industry has identified two main needs for mobile data-collection technology in the field. The first is to quickly and accurately measure property areas and the second is the need for the rapid collection of field notes.

From early 2000 both tape and trundle wheel measurement techniques gave way to hand-held laser-measuring devices. The measurements used to be written down on pieces of graph paper and areas were manually calculated using basic geometry, sometimes with the aid of a calculator.

The arrival of *Bluetooth* support (a mechanism allowing the wireless transmission of data to a computer or handheld electronic device) on laser measurers then meant that the data could be captured using support software, and the geometry of the property could be drawn and measured accurately and immediately onsite. This then led to seeking mobile devices with applications able to collect field notes onsite, though to-date, many valuers still carry around printed forms commonly known as "tick and flick" sheets on clipboards for taking notes in the field.

By capturing such information electronically it would be possible to convert these recorded notes into a valuation report, thus reducing time and errors and eliminating the need for transcribing or retyping hand-written notes.

With each new technological wave hardware reduces in size, more support software programs are made available and the overall cost becomes viable. With a mobile device the volume of tasks that can be done by a valuer onsite will increase.

The history and pace of device technology

To understand how quickly mobile technologies are evolving compare the rapid development of the PC (personal computer) with that of today's *mobile* and *smart phone* revolution.

Desktop PCs have their genesis in the 1974 Xerox Alto – which was the first desktop sized computer that featured a graphical user interface and a mouse for pointing and clicking. It cost more than $30,000 in today's dollars and ran with a clock speed of 5.8 MHz and 128 kilobytes of storage. Today a typical desktop PC can cost less than $1,000, with a clock speed of 3 GHz and storage of 1Tb. In Australia it wasn't until 2008 when 68% of the population owned a PC.

Contrast this time scale with that of the commercialisation of the mobile phone. Australia's first mobile phone call was made in 1987 on a device that cost more than $4,000, it was the size of a brief case and had a battery life of about 20 minutes. From this standing start, it took only 20 years for Australia to pass the 1 mobile phone per capita mark in 2007. Today "basic" mobile phones weigh as little as 100 grams, they easily fit inside your pocket and cost, on average, less than $100.

Not only are the desktop computer and the mobile phone devices themselves evolving quickly, but the gap between the development of a prototype of a technology and its commercial adoption is dramatically shrinking too.

The rapid evolution of the smart phone is important to notice too, being a product of both the mobile phone and the PC. IBM developed the first 'smart phone' in 1993 called *Simon* being the first phone with an on-board computer featuring e-mail, an address book, a calendar and a note pad. It cost the equivalent of $1,356

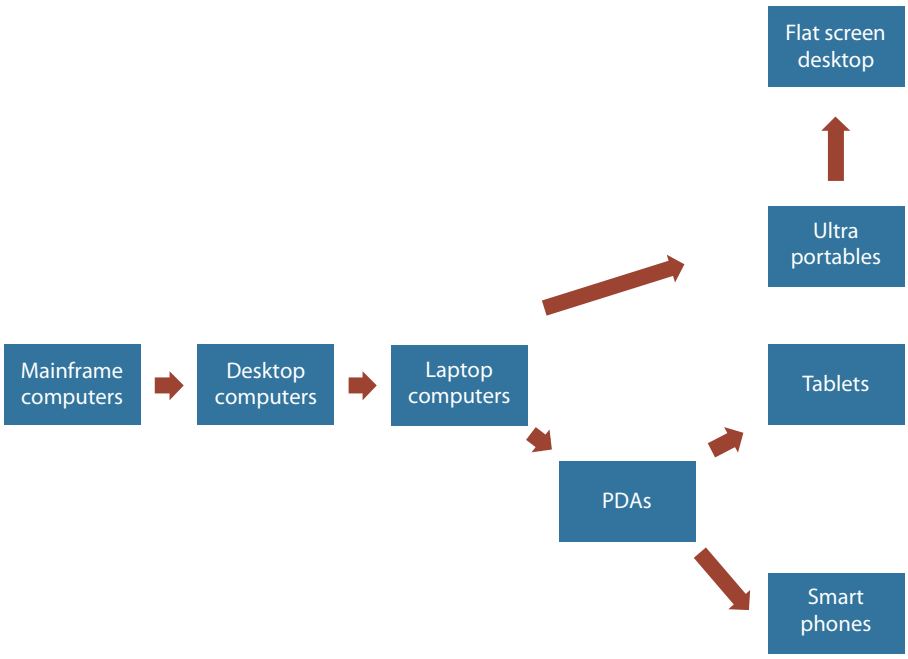

Figure 1 Evolution of device classes

in today's dollars, weighed approximately half a kilo and had a microprocessor running at 16 MHz.

Today 43% of Australians own a 'smart phone' capable of at least browsing the Internet and making use of downloadable software applications (source: Neilsen). A few years ago it would have been hard to accept the social and cultural impact mobile device technology would have made in Australia, and globally. Who hasn't relaxed at a café, ridden on public transport or taken a lunch break surrounded by people texting, twittering, browsing or reading books off smart-phone devices?

To assess the speed of arrival of new platforms and technologies we need to define the *point of general adoption (PGA)*. This will be the point at which the maturity of a given class of technology leads to it no longer being considered by late adopters as *risky* or *unusual*. If the point is >40% utilisation by the intended user base, the time to reach PGA for the last three technological revolutions was:

- 20 years for the personal computer
- 10 years for the mobile phone, and
- 5 years for the smart-phone.

As it can be seen the mobile phone took half the time and the smart-phone took a quarter of the time it took for the PC to be adopted.

The adopting pioneers of device technologies are important to the future of its proliferation. The early adopters of the technology however have little actual impact on the valuation profession as a whole; it is only when a technology begins to reach the *point of general adoption* that the impacts are noticed throughout the industry. Wider scale adoption is what impacts on industry standard practices and thus changes the expectations of the industry's clients.

As a comparison for thought, from 1974 to 2008 these were but a few of the improvements made:

- Computing speed per kilo of device weight increased by more than 6,200 times;
- Storage capacity per kilo of device weight increased by 6.25 million times; and
- The cost per unit of computing speed dropped by 7,200 times.

In addition to these simplified metrics, devices have been installed with valuation-relevant programs such as GPS software, cameras, gyroscopes, thermometers, compasses, and internet access to name a few. Each of these developing capabilities have their own improvement curve that can track how much faster, smaller, cheaper and less power hungry they will become over time.

Point of Diminishing Return (PDR) from device improvements

If it is reasonable to forecast that future improvements to device technology will continue at approximately the same pace as seen in the past, then the following conclusions can be made:

- Device weight will drop dramatically – most any desired form factor could be accommodated;
- Device cost will drop substantially – making almost any commercial application economically viable; and
- Device speed and storage will eventually exceed our ability to make meaningful use of increases in computing power or storage space.

In practice, of course, there will be some technical and commercial limiting factors that will prevent the absolute attainment of the above predictions. Nevertheless, we can still conclude that there must be a point in the evolution of mobile devices at which economically meaningful improvements to hardware capability effectively cease. At this point further enhancements and improvements will

have little or no material commercial impact on how fast a valuation can be performed in the field or how quickly a return on investment can be generated from adoption of such devices for field operations.

Some may argue that this point has already been reached since the introduction in late 2010 of low-cost netbooks, tablets and smart phone devices. Certainly any future enhancements to the hardware of these classes of devices are likely to have limited further impact on the commercial viability of using them. The current acceleration of growth in usage of mobile devices in the preparation of valuations is the single largest leading indicator that this Diminishing Return point is fast approaching.

Evolution of Device Form Factor

Another aspect of the mobile revolution directly affecting the valuation industry is the physical size of available devices. The ability to pack a required amount of computing power into a device, with the desired size and weight, will increase the valuer's task capability onsite, and thus influence the rate of device adoption.

Evolution of Device Classes

Early users of tablet or smart phone technology in the field have frequently commented on the slow speeds of their device, that screens are difficult to read in sunlight and glare and that their device may be too heavy, too small or too large, too expensive and sometimes too fragile. These issues have largely been addressed in the latest generation of devices and further improvements are already in development stage destined to be available in Australia in the coming year.

Our ability to miniaturise devices that "pack a punch" has led many valuers to now complain that their smart phone device has actually become too small to use comfortably. The manufacturers of these devices have heard similar feedback across their client base and this has led to the development of a new middle-sized device broadly referred to as the 'tablet' or 'slate', such as the *iPad* created by Apple. This device class is now filling a form factor void between the laptop/netbook and smart-phone market, with sizes falling into three categories: small, medium and large.

Paper Based Approach	Electronic Device in the Field
■ *Sketch and measure areas.* Area Calculations generally done at an office after the inspection. ■ *Tick and Flick Sheet used to record field notes*, such as PC items, split up of bedroom and bathroom attributes. Notes subsequently have to be re-typed by the valuer or an administration staff. ■ *Print outs of Sales Evidence generated in advance of an inspection* – notes taken following drive bys of selected sales. ■ *New Sales evidence observed and captured on paper notes*, to be manually added to a database and checked for duplicate entries. ■ *Last minute instructions received by mobile phone alert*; documentation not available, requiring a return to the office. ■ *Photographs taken with a separate digital camera*, downloaded at the office and then manually associated with a report.	■ Sketch, Measure and Calculate Areas in real time while on site. ■ Site Notes captured using push button controls with dictation and e-paper as a backup for non-standard situations. ■ Live Sales Evidence available in situ. ■ Documentation (including documents provided after the valuer has left for their inspection) available while on site. Documentation can be verified in real time and used in the assessment process. ■ New Sales evidence captured in real time and made instantly available to all valuers in the company via a central database. ■ Photos added directly from the device's camera into the appropriate job (no download and manual matching step required). ■ Dictated notes can be sent from the field upon completion and transcribed by staff at office while the valuer is on the road, enabling parallel processing of report tasks. ■ Analysis, QA and Replacement Insurance can be calculated. ■ Draft report prepared while in the field. ■ Potentially submit report to the client directly from the field if appropriate. ■ New instructions can be received while in the field – run sheet adjusted accordingly allowing the valuer to capitalise on opportunities to add to their existing run for that day.

Table 1

The smart phone form factor has the advantage of portability and integration of the phone and can be said is a class of device that you don't need to remember to bring with you as it will likely always be in your pocket. The tablet form factor provides a larger screen space for studying documentation and graphical applications while onsite. Whereas the tablet is not as convenient to carry as the smart phone it is easier to use in the field than a laptop computer.

The laptop or convertible tablet with a keyboard can provide a full functioning software environment and is generally used within a car or desk environment. This class of device is often just a little too large to be comfortably used when actually inside a property conducting a site inspection.

Change in activities occurring in the field

The increased power and broader connectivity of mobile devices have increased the range of tasks that can be conducted in the field. Given the advances in hardware capabilities and near ubiquitous network access, the only remaining limiting factor for valuers is the feature set of the software they use when in the field. In theory a valuer, equipped with the appropriate mobile device and programs, could conduct all necessary duties while in the field therefore obviating the need to return to the office altogether.

This change of approach to in-the-field activities will become a key determinant in calculating the economic viability for a company to migrate to an all electronic field-data collection strategy.

Table 1 shows a common comparison to continuing a paper approach to collecting and distributing valuation data in-the-field versus changing to electronic data capturing devices.

Change in activities occurring in the office

The applications of improved technology are not limited to the systems used in the field. Indeed its likely that there will be a number of steps previously conducted in the field that may in the future be conducted from the office; the emergence of *Desktop Valuation* products is the first sign of this. Currently limited in market scope to lower credit risk situations, there is a case growing for using these technologies as part of full inspection valuation products.

The companies that embrace this early will likely gain a clear competitive advantage.

A case in point is the application of aerial mapping and 3D built environment-modelling services available over the Internet. Services such as NearMap (**www.nearmap.com**) and AAM (**www.aamgroup.com**) have changed the risk equation of relying on aerial photography to identify, assess and even measure a property prior to an actual on-site inspection. With an average update frequency of 1 month, coverage of the majority of the population, as well as resolutions of up to 1 pixel = 3 cm on the ground, many of the risks currently associated with relying on such information sources are gradually being reduced.

Such technologies are unlikely to remove the need for a physical inspection in the foreseeable future, but they do offer an opportunity to start the valuation process in a way not previously possible before physical access can be gained. The companies that embrace this early will likely gain a clear competitive advantage.

The ability to remotely analyse sales evidence in this manner has not been lost on the valuation industry either, companies are already validating calculations based on the split of sale price apportioned to land and improvements estimated from remote imaging services.

Thus the transfer of on-site activities into office-based activities done prior to an inspection also alters the total time that a valuer needs to spend on site.

Qualitative considerations in adoption of mobile technology

For most companies considering changes to their in-the-field processes, there are the qualitative factors to be determined such as:

- Resistance of existing valuation staff to change their practices versus the ability to attract and retain technical 'savvy' staff;
- Mandated adoption enforced by leading customers of the company (e.g. recent tenders requesting details on mobile technology employed by the company); and
- Perception and ability to manage risks associated with the use of mobile technology. (e.g. policies surrounding the ownership and recovery of hardware).

The future of mobile technologies in the valuation profession

As illustrated earlier there is past evidence which shows the growth of development and adoption of mobile technologies globally, the same is apparent within the Australian valuation industry. Hence some predictions can be made based on past history and present activities.

- *Universal adoption of mobile devices by the property profession before 2020 is a near 100% certainty* - this is likely to be driven by a combination of future lender panel selection criteria, the fundamental economics of process improvements that can be derived, and the changing demographics of the valuation profession.
- *Substantial and revolutionary new software and hardware improvements* - for example technologies that are currently bulky, complex and expensive will be improved to make the current process of sketching and measuring property areas all but obsolete.
- *Device Form Factor will extend to devices so small and powerful that they will be able to be worn* - assuming the form of a watch, or an earpiece and glasses with built in projectors.

In spite of the impressive technology improvements to come, the changes will have limited overall workflow benefits to the profession. The majority of workflow benefit to be derived from mobile technologies is already available to the profession. Each improvement will constitute only a small percentage of further efficiency to the minimum incompressible time it will take to complete a valuation report. ■

The consequential business impact on the property valuation profession from major technology shifts

Technology	Application	Industry Impact
Web 1.0 *Simple databases on the web*	The emergence of web sites that could efficiently distribute government and agents advice sales data.	Reduced the time and difficulty associated with collecting and analysing comparable sales data. Levelled the field for many valuation companies that previously could differentiate their services on the basis of their proprietary accumulated sales data.
Web 2.0 *Sophisticated multi-party application software delivered over the web.*	The start of valuation order aggregation and third party panel managers.	New intermediaries are inserted in between valuation companies and their traditional finance clients. General reduction in fees and changes in the balance of power in the industry. Economies of scale required to operate efficiently on reduced fees leads to rapid consolidation & acquisition of valuation practices into national companies, networks and franchises.
SOAP/XML/Web Services *A new method for software to communicate directly with other software without human intervention.*	The Finance Industry establishes LIXI. Among other goals, it provides a protocol for exchanging valuation reports and workflow information between all parties.	Leads to the general homogenisation of valuation reports. Reduces the ability of valuation companies to differentiate their product on the basis of report contents and presentation. Lenders valuer selection focus switches to turn around times (through more transparent and consistent SLA reporting that's now possible).
Smart Phones & Tablet Computers *Inexpensive Desktop PC power and internet connectivity now fits in a pocket.*	Valuation companies develop or purchase software to take the place of paper-based 'tick and flick' sheets.	Valuers can turn around field inspections and report writing faster. Competition to deliver ever-faster turnaround times means more firms adopt some form of mobile technology. Banks take note of the impact of mobile systems on turnaround times for the most efficiently run companies and consequently raise their expectations of all valuation suppliers.

Challenges and Opportunities when Satisfying Displaced Property Owners

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Abstract

Managers in modern organisations are familiar with customer satisfaction and its importance in creating a competitive advantage. However, government agencies working in compulsory acquisition of property contact owners that are not necessarily satisfied with the transaction. There are significant differences in how owners perceive the transaction. Government agencies approach owners in a different way compared to traditional organisations. It is a one-off transaction rather than a long term relationship with an owner. In measuring satisfaction in resumption and hardship cases, it was found that most owners appreciated the way in which they were assisted in the process. On the other hand, some owners expressed concern at the amount of time it takes to achieve closure. What is clear, is that regardless of organisation orientation, customer feedback is useful in building corporate knowledge. This paper discusses these issues and provides an insight into challenges and opportunities with regards to satisfying displaced property owners.

Introduction

Managers in modern organisations are familiar with the concept and practice of measuring customer satisfaction. In order to be competitive, knowing your customers, having a customer focus and meeting and exceeding customer needs is essential. The body of literature is well developed in this regard. Key themes are characterised by firms creating a competitive value proposition, a cluster of physical goods and or services or additional attributes with a superior fit for customer needs (DeWit & Meyer 2004). Furthermore, some organisations extend this concept to include meeting cultural needs. Lam (2008) argues a case for the importance of feng shui in meeting Chinese customers residential needs.

However, there is a segment in the market government agencies work within that contains customers who are not necessarily happy with their transaction. These are the people subject to resumption of their properties as governments progress infrastructure development and try to address congestion issues in Australia and New Zealand.

The Key Question

There is no doubt about the appetite for space to free up congestion in New Zealand and Australia's modern cities and develop highway infrastructure. A range of strategies exist to improve our ability to move around. For example, bus ways, bike ways, tunnels, by passes and promoting more use of public transport systems are all apparent. Jurisdictions on both sides of the Tasman continue to invest in future infrastructure. The extent of commitment is huge with governments in Australia and New Zealand spending $775 million last financial year on property acquisitions (Elphick 2010).

The key question is: *how do organisations ensure a good outcome with owners when they are displaced, often aggrieved, and close a property deal with at least a satisfactory result for all concerned?*

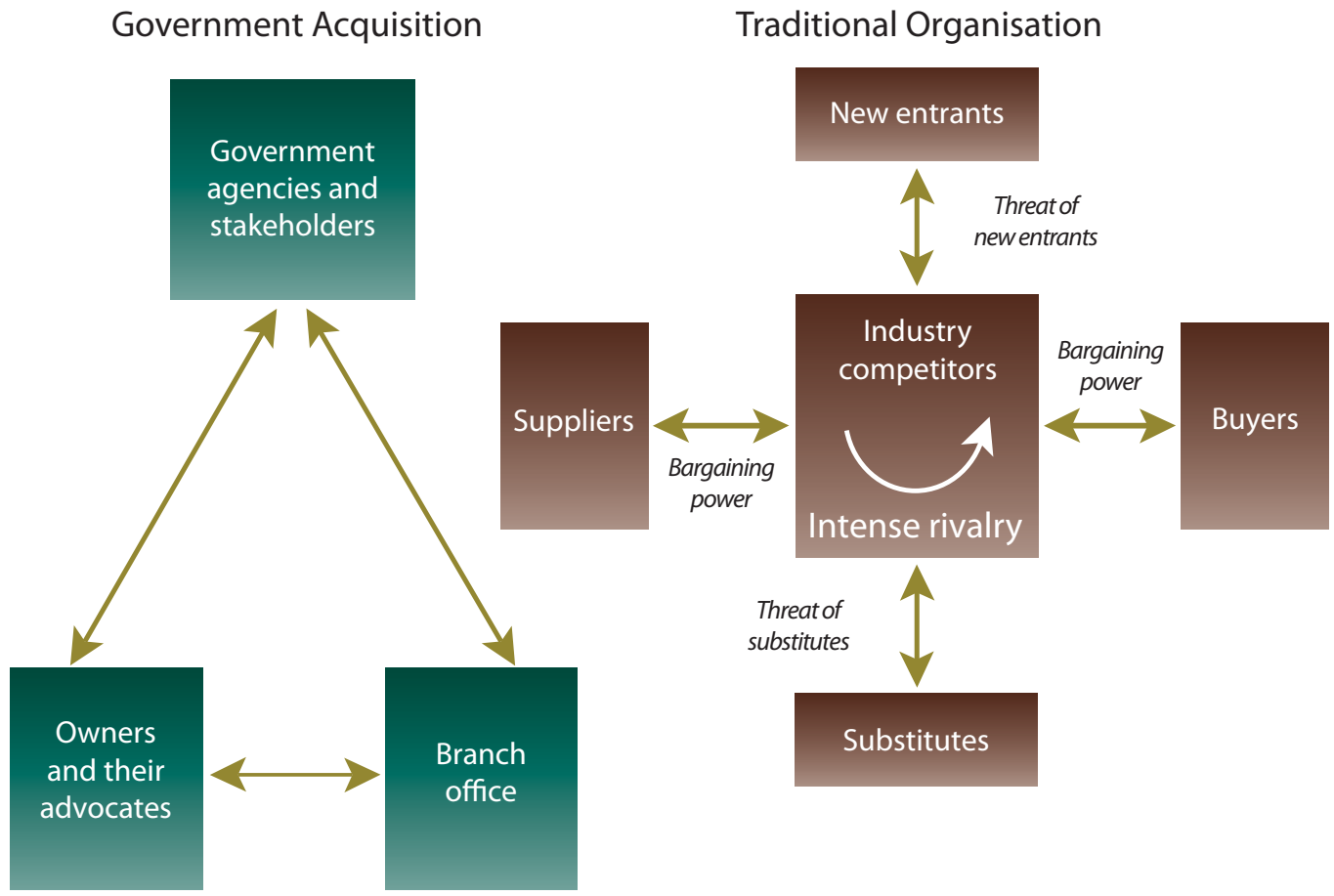


Figure 1: Unique Industry Positions

Objectives

In an attempt to address the key question, three key objectives will be discussed in this paper:

- Explore the unique position faced by government organisations in satisfying stakeholders in resumption and acquisitions.
- Compare and contrast business models of the government position and the traditional approach.
- Discuss challenges and opportunities in addressing client satisfaction if they are subject to compulsory resumption of their property.

This will be supported by a case study of work undertaken in Australia.

Government Acquisition and its Unique Industry Position

Government acquisition holds a unique position in the industry as it procures land for infrastructure development. A test of the client relationship is found in comparing government acquisition with the traditional for-profit approach. Main street customers are sought out by traditionalists, often with aggressive competition. Customers are passionately protected in order to retain their custom. On the other hand, a government resumption transaction only wants the property, however named. After the deal is closed, it is hoped that the relationship is over. Interestingly, the Taxation Department holds a similar view: 'Pay your taxes and everything will be fine'.

Figure 1 compares the unique industry position of government acquisition compared to the traditional for profit organisation.

The government acquisition side is characterised by key internal players interacting with the owners and their advocates. On the other hand Porter (1985) described the traditional industry analysis as five key elements. Traditionalists are faced with competitors in their industry and their buyers will have varying degrees of pressure on prices charged in their industry. The threats of new entrants are diminished as increasing barriers are created by industry players to

Table 1 Business Models Compared

Government Acquisition	Traditional Organisation
Focus on closure	Focus on profit
Obtain physical right of way	Defend market share
Project focused	Seek repeat business
Stakeholder perspective	Industry dynamics perspective
Customer is a one-off	Long term view of customer relationship
Satisfaction is finite	Satisfaction is a journey to loyalty.
Stay out of court	Customer is a loyal partner in business

Table 2 Similarities and Differences

Government Acquisition	Traditional Organisation
Political imperative	Competitors
Court precedent	Corporate Social Responsibility
Property market values	Share holders
Power to take	Market forces
Similarities	
Compliance with legislation and standards	
Environmentally-friendly	
Create highly valued community opinions	
Genuinely want good customer, organisational and community outcomes.	

discourage new comers to the industry. There are no threats to government acquisition as no one really wants to do it. This also results in no competition further reinforcing the unique position proposition.

Unique Business Model

Government acquisition also adopts a unique business model as it delivers right of way for infrastructure. Table 1 highlights the differences between the traditional business model and government accusation.

Similarities and Differences

Key drivers of operating principles are seen in the similarities and differences. Table 2 describes the main issues in this regard.

Government acquisition has the power to take, which immediately presents a range of challenges when it comes to trying to get to a satisfactory outcome for everyone. After establishing the unique position proposition of government acquisition, a case study of exactly how an Australian jurisdiction planned and implemented customer feedback from displaced owners is discussed.

Leading the Way

In order to achieve success, commitment from senior management is a pre-requisite in any organisational endeavor. It was discovered that metrics were missing in relation to client feedback and satisfaction measures were highly desirable branch performance indicators. It was important to demonstrate commitment and support for the initiative. This was facilitated by presenting the concept to the senior management team. Benefits and expected outcomes were noted to asssit with buy-in. The initiative set out to achieve a number of objectives as follows:

- Improvements in our service delivery (efficiency);
- Strategic alignment with Transport and Main Roads goals and direction (effectiveness);
- Reward and recognition of staff for achievements; and
- Better relationships with owner stakeholders.

Designing the Journey

After the approval in principle, the next stage was to find out exactly what owners' perceptions, beliefs and opinions were about the service delivery. Staff were engaged in the development of methods and instruments. It was important to reinforce the point that this was not a punitive strategy to reprimand staff for poor negotiation outcomes, rather to explore opportunities to improve outcomes. Organisational outcomes were:

- foster compassion and empathy in the negotiation style

Figure 2 Client Feedback - Resumptions

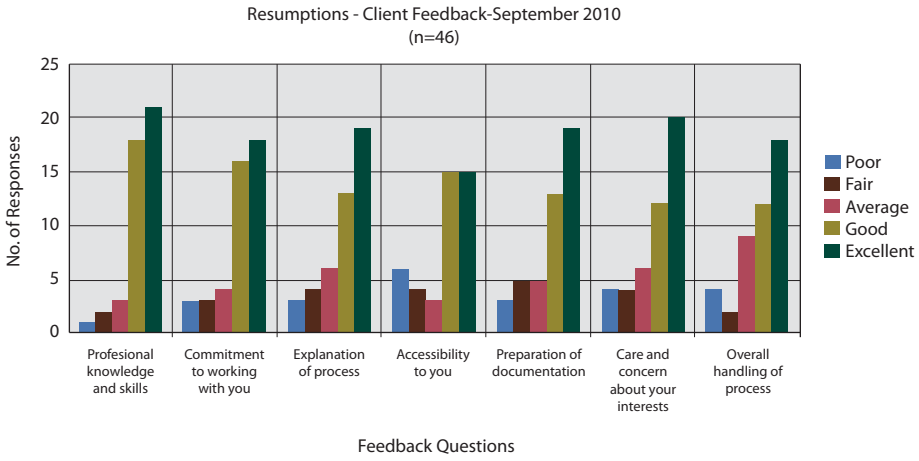


Figure 3 Client Feedback - Hardship Purchases

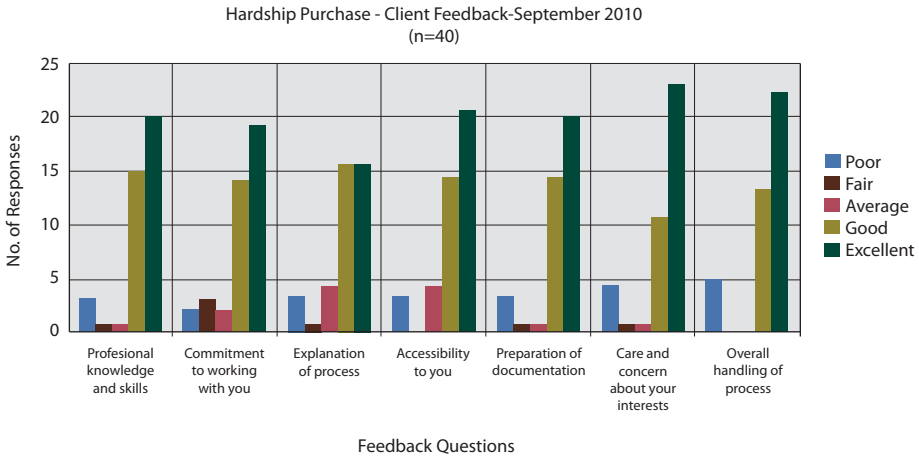
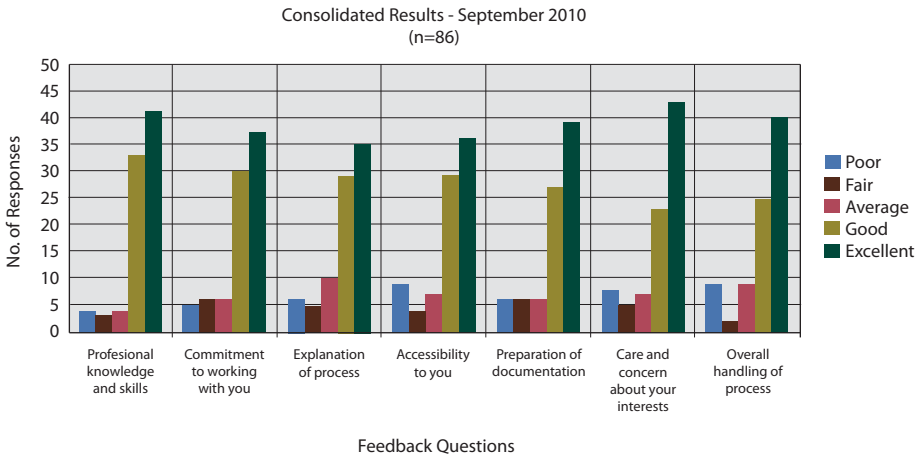


Figure 4 Consolidated Results



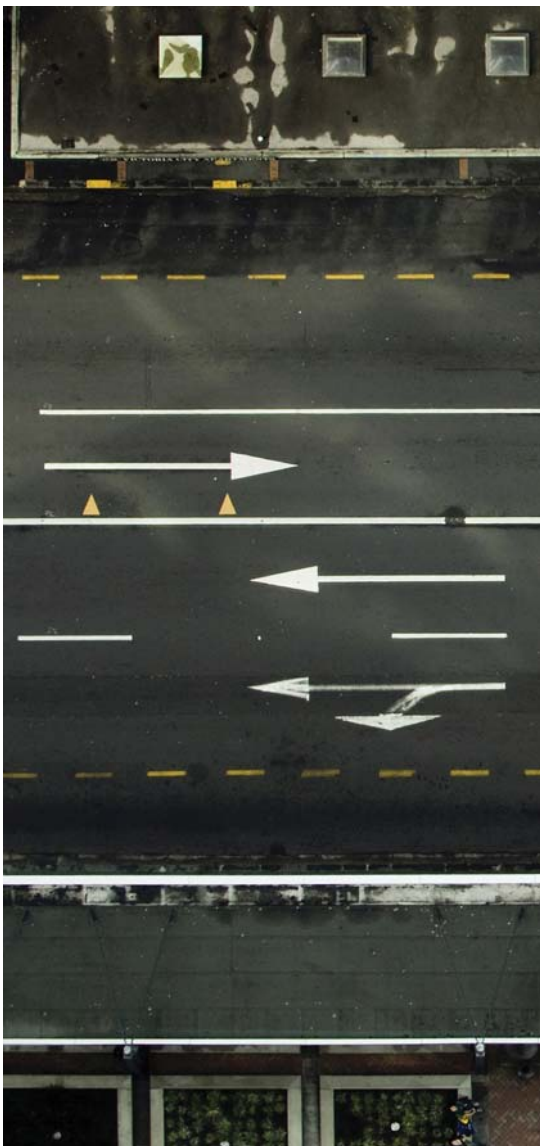
- create a culture of team work
- foster a client-focus approach
- promote partnerships with industry experts.

Getting Methodology and Instruments Right

It was clear that early drafts indicated no one form would fit all clients. Therefore four instruments were crafted as follows:

- residential tenants
- commercial tenants
- resumptions
- acquisitions (hardships).

The instruments were designed on a basic five point Likert Scale with the opportunity to record any qualitative data. The forms are attached at Appendix 1. Testing and validation included taking



some outside advice, which added value to the finished forms. The forms were sent out after the deal had closed. It was hoped to capture most of the opinions, beliefs and feelings at this point.

Findings

The first sample of returns in relation to resumptions found that the high point was professional knowledge and skills with 85% of respondents rating it good to excellent. The opportunity to improve, with a score of 65%, was in the area of being accessible to the client. Figure 2 shows the results in relation to resumptions.

The findings in relation to hardship purchases, where an owner has applied to the agency to buy the property due to a proposed road or rail project, indicated strong points in the areas of care and concern about owner interests and overall handling of process. Opportunities to improve were on the explanation of processes. Figure 3 shows the results in relation to hardship purchases.

When all findings are consolidated, findings indicate that care and concern for owners is a high point, with over half of all respondents considering this as good to excellent. Two areas for improvement are accessibility and explanation of process. Figure 4 shows the consolidated findings.

Discussion

Findings were a confirmation of promoting and maintaining a compassionate approach to negotiations. Despite the difficult and stressful situation of resumption, owners provided some positive feedback. However, as was expected, there were some owners that were very unhappy with the process. It is recognised that a resumption or hardship purchase transaction is a very stressful event in some owners' lives. It can be charged with years of emotional ties to property or family tradition.

Anecdotal evidence showed that issues with lead times for delivery of projects and time to get things done can be frustrating for owners. Interestingly when satisfaction ratings are compared to the banking industry in Australia it was found that the CBA rated at 65% with the top bank being NAB with 70%. When the agency's approach is compared to the Taxation Department, it was similar to their professional survey which explores five key elements. This survey is

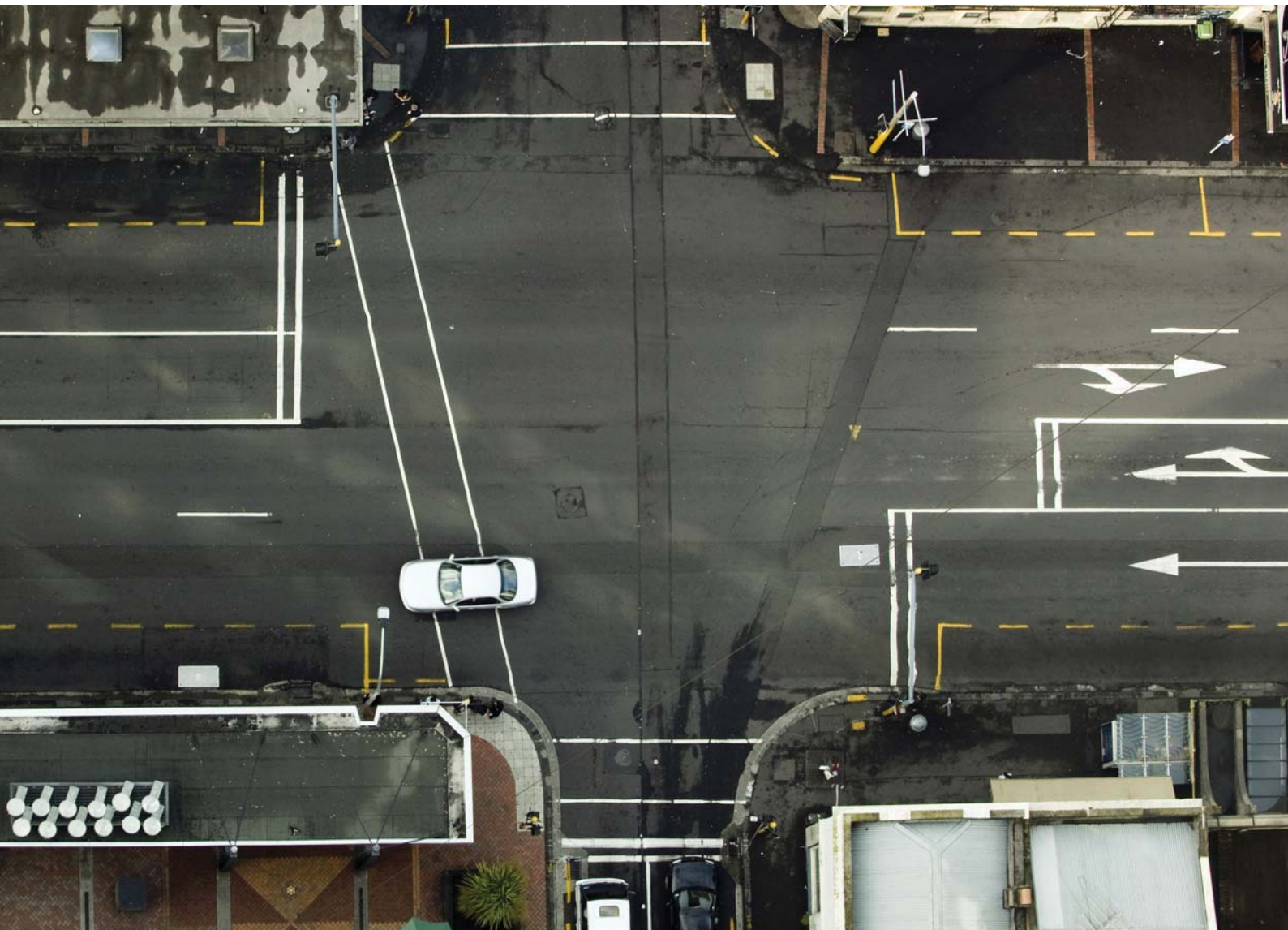


Table 3 Taxation Professional Survey compared to Agency Survey Questions

Element of Professionalism	Characteristics of Professionalism (Tax Department)	Question from the agency Survey
Empathy	Respect for owners	Care and concern about your interests.
	Explain and respect owner's rights.	Explanation of process.
Fair and Just Outcomes	Procedural justice	Overall handling of process.
	Distributive justice	
Communication	Agency communication	Commitment to working with you.
Accountability	Accountability for actions	Accessibility to you.
	Understand owner's needs.	Preparation of documentation.
Behaviour	Agency behaviours.	Commitment to working with you.
Ability	Agency ability	Professional knowledge and skills.

Source: Taxation Department Australia (2010)

undertaken twice a year. The model and the questions from the agency survey are shown in Table 3.

Benchmarking is an important step in trying to find good tried and tested techniques. The State Authorities Property Manager's Conference meets once per year and, in part, undertakes a study of what is working in the field across Australian and New Zealand jurisdictions. It is the only national clearing house for best practice for government acquisition of property. It provides information and influence on a whole range of asset management issues affecting customers, the environment and legislators.

Limitations and Learnings

There are some limitations in relation to the early case study results. Small sample sizes diminishes the usefulness of the results. Less than 25% of the settlements for the period are represented in the

sample. Clearly the organisation will need to continue to build on its body of knowledge and sample more widely. Furthermore, it will need to measure the response rate of its sampling to establish how many owners are not responding at all to the request for feedback.

Further research is needed in the area of the wider stakeholder group. For example, owner advocates such as valuers on the other side would reveal a different dimension of feedback that would enrich the picture. The most significant learning is that it provides evidence to identify opportunities to improve what the organisation does.

Conclusion

Measuring customer satisfaction is a prerequisite of competitive behaviour in modern organisations. This is driven by a need to establish long term customer relationships to create a sustainable competitive advantage. However, not all transactions are characterised by customers who are satisfied.

Government agencies who are involved in resumptions and acquisitions are faced with owners who are not necessarily greeting them with open arms. Customer satisfaction takes on a whole new meaning and presents new challenges as government agencies seek to bring about good transaction outcomes in this regard. One thing is clear. Government agencies hold a unique position as they seek feedback. They are driven by political imperative, court precedents and market forces. Regardless of what organisation is considered, some common things prevail, such as environmental responsibility, compliance with legislation and serious focus on trying to obtain the best outcomes for all stakeholders.

Measuring customer satisfaction is a prerequisite of competitive behaviour in modern organisations.

It can be done if the approach is leadership-driven and instruments are designed and validated. Information and feedback can be gleaned from owners as they relate their experience to project managers. Organisations can realise benefits from such an initiative. For example, improved teamwork and meaningful recognition of staff for good project outcomes. Above all it provides the window to identify opportunities to continuously improve organisational outcomes. Regardless of how the organisation is structured, improving corporate knowledge and continuously improving operational outcomes are good things.

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Hypothetical Case Study – View loss and visual privacy issues as related to the amendments to a Tree (Disputes Between Neighbours) Act

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Introduction

This paper examines recent amendments to the* Tree (Disputes Between Neighbours) Act 2006 (NSW)*, which came into force on 2 August 2010.

There are two key and inter-related new issues addressed by the amendments which have the potential to profoundly affect the way in which the Act is both interpreted and implemented:

- that is those parts of the Act relating to view loss; and
- to a lesser extent, visual privacy, associated with hedges.

During the review period of the *Tree (Disputes Between Neighbours) Act 2006 (NSW)*, a high number of submissions were made relating to extending the Act to cover trees that block sunlight or views (Department of Justice and the Attorney General, 2009). Furthermore: "the most frequent and most serious concerns raised in submissions to the review related to high, dense hedges on immediately adjoining private properties, where the hedge is wall-like, and severely obstructs solar access to, and views from a dwelling".

As a result, the *Tree (Disputes Between Neighbours) Amendment Bill 2010*, under Part 2A, addresses both the obstruction of sunlight or views by a 'hedge', where a hedge is broadly defined as a group of two or more trees that form a hedge over 2.5 metres. It also lists matters to be considered by the Court in relation to the obstruction of sunlight or views, with one consideration being to consider "any contribution of the trees to privacy" (section 14F (l)). This matter obviously includes a visual privacy component, which in most cases could also be addressed by the same expert that would report on view loss impacts.

As a means of exploring these legislative changes, this paper presents a fictional case that explores the implications of the amendments to the Act in terms of the two issues associated with visual change: view loss and visual privacy. It has been developed to illustrate both sides of an argument that the Court may have to consider, when deciding on whether a hedge should be removed or modified. It should be noted that a case such as this would also normally include illustrations such as plans, photographs and photo-montages to show view impacts.

Statement of the Problem

The Applicant owns a two storey house orientated with the rear of the house toward a popular coastal view (Coogee Beach in Sydney, which includes views of Wedding Cake Island). Such views are considered highly desirable and this coastal fringe is well-known for its very expensive real estate.

The house is of a contemporary design and was constructed three years ago. The current Applicant purchased the house six months ago. The neighbouring house to the east, owned by the Respondent, is a single storey Federation-style house situated at a ground level approximately 1.5m below the Applicant's property.

The subject hedge runs along the western boundary of the Respondent's property, and extends from the rear property boundary to approximately one-third of the way along the side boundary.

There are a number of particularly pertinent points to this case...

This hedge consists of six (6) individual plants of the species *Cupressocyparis leylandii* 'Leighton's Green', and is currently approximately 5 metres (m) tall and 20m long. The hedge was planted prior to the house's construction, yet subsequent to the development consent for the house being granted.

The hedge currently affects views to the east from the rear yard of the Applicant's residence, and will eventually also affect views to the east from the upper deck and living area if it continues to grow to a height over 6.5m.

The Applicant has approached the Respondent a number of times in regard to maintaining the hedge at a maximum height of approximately 2.5 m, however, the Respondent has not indicated that they are willing undertake such a commitment.

The Applicant now seeks to have the hedge removed due to the existing and future impact on views and solar access to the Applicant's house.

The Respondent has indicated that the hedge was planted to achieve a degree of visual privacy, as the elevation of the Applicant's property some 1.5m above their property, plus the location of the Applicant's upper deck and downstairs outdoor entertainment area, means the Respondent's main living area and rear yard is overlooked.

Application of Tree Disputes Principle and suggested extension of Principle

The current *Tree Disputes Principle* does not take into account the amendments of the Act under Part 2A that specifically address high hedges that obstruct views and issues associated with visual privacy.

As this case will be one of the first to be heard on this issue, it is put forth that the *Tree Disputes Principle* should be extended to include a reference to the two relevant planning principles that specifically deal with view loss and visual privacy.

It should be noted that as part of the review of the Act (Department of Justice and the Attorney General, 2009), two particularly salient points were raised that are relevant when considering view loss and visual privacy:

- The first point, which relates to view loss, stated that: "As for views, some trees which have been planted in a line can form a hedge which is the equivalent to a wall, blocking lines of sight from a neighbour's dwelling".
- A second relevant point was raised by the Institute of Australian Consulting Arboriculturalists (in Department of Justice and the Attorney General, 2009), which submitted that the Court should adopt a balancing approach between the relative amenity and privacy of the neighbours, and have regard to the existing view sharing principles used by the Court in planning matters" amongst other issues.

As there is already a planning principle established by *Tenacity Consulting Pty Ltd v Warringah [2004] NSWLEC 140* that addresses impacts on views, it would be reasonable to also adapt that principle to serve as an extension to the current *Tree Disputes Principle*.

A similar argument can be used to adapt the current Court planning principle for the protection of visual privacy established by *Meriton v Sydney City Council [2004] NSWLEC 313*, which sets out matters to be considered when assessing tree disputes, including "any contribution of the trees to privacy" (section 14F (l)).

Therefore, this report has applied and adapted both the *View Sharing Principle* and the *Protection of Visual Privacy Planning Principle* to the subject case where they are relevant to assess the hedge in terms of visual privacy protection and view loss.

Impact on visual privacy resulting from Applicant's property

Protection of Visual Privacy Planning Principle

The planning principle for the protection of visual privacy was established by *Meriton v Sydney City Council [2004] NSWLEC 313*, which states that "When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space".

There are a number of particularly pertinent points to this case made under

this planning principle that could be applied, including:

> *"The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy."*
>
> *"Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection."*
>
> *"The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time."*

Application of Visual Privacy Planning Principle to Respondent's residence

General: Both houses are within a low density land use zone. The rear deck of the Applicant's house overlooks the Respondent's property, with the most overlooked parts being the main living area at the rear of the house, and the entire rear yard, the most overlooked.

The application of the most relevant points under the *Protection of Visual Privacy Planning Principle* to this case is illustrated in Table 1.

Conclusion from application of Visual Privacy Planning Principle to case

Therefore, under this principle, any overlooking of the main living area is considered the type of visual privacy impact that would be of the most concern, with the impact to the rear yard of lesser concern.

However, it is put forth here that a higher level of concern should be applied to a loss of visual privacy to the rear yard of the Respondent. The rear garden includes a large deck immediately attached to the house that is surrounded by an attractive garden. The high level of garden design and maintenance displayed in the rear yard could be used as evidence that the members of the Respondent's house place a high value on the garden and its amenity, which until the construction of the Applicant's house included a much higher degree of privacy, as the previous house on that property was a single storey residence.

The overlooking of both the rear living area and yard could be described as high, resulting in a substantial loss in visual privacy to both of these high use areas.

The extensive upper deck of the Applicant's house is the main cause of this overlooking, and as such it should be noted that the deck is more than three times the size of that generally recommended in Council's planning guideline.

Table 1: Application of most relevant points under Protection of Visual Privacy Planning Principle

Most relevant points under Planning Principle	Discussion for this report
"The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy."	The land use zone within which both the properties are located is Residential 2(a), which is a zone that supports low density development such as individual houses and dual-occupancies, with a maximum height of three storeys. Thus under this part of the planning principle it can be interpreted that some level of visual privacy would be reasonable and could be expected.
Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection." "The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time."	The main living area, located on the ground floor, is directly overlooked by the Applicant's house. In particular, from the upper rear deck there is a line of sight into the side window of the Respondent's living area, with a large window located on this side, approximately 2700mm wide and 1800mm high (i.e. almost the full height of the side wall). The level of the deck floor is approximately 2.5m above the upper sill of this window.

Effect of hedge

The hedge will block all views into the Respondent's property from the upper deck when it reaches a height of approximately 6.5m. This assumes a standing height of 1.5m for any viewer. With the hedge at this height there would be minimal impact on visual privacy from the Applicant's property.

Without the hedge (currently approximately 5m high), there would be substantial overlooking into the Respondent's living room and rear yard from the Applicant's property, from both the rear yard and upper deck. As the hedge continues to grow this overlooking will be almost wholly prevented. This overlooking is largely caused by the upper deck which is significantly larger (over three times in area) than generally allowed under the applicable council guideline.

... the first three steps of the principle could also be applied when considering tree disputes related to view loss ...

Tree (Disputes Between Neighbours) Act 2006 (NSW)

Under Part 2A of the *Tree (Disputes Between Neighbours) Act 2006 (NSW)*, in order to make an order under this part the Court must consider a number of matters including "any contribution of the trees to privacy" (section 14F (l)).

It is concluded that the hedge will eventually prevent overlooking from the Applicant's upper deck, when it reaches a height of approximately 6.5m. Overlooking from the rear yard is achieved at an approximate height of 3.5m.

Impact on views from Applicant's property due to hedge

View Sharing Principle

The judgement *Tenacity Consulting Pty Ltd v Warringah* sets down a principle to reach a decision on whether an impact on views by a proposed development is reasonable (also discussed by Roseth, 2005) when, as stated in the judgement: "a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment."

A four-step assessment process is established by the *View Sharing Principle* to decide in such cases whether or not view sharing is reasonable.

It is argued here, that the first three steps of the principle could also be applied when considering tree disputes related to view loss, as these three steps establish a consistent methodology for assessing the value of views affected and the extent of

impact related to any loss of such views.

However, Step 4, which essentially deals with whether a development complies with development controls, should not be included as that step is not generally applicable to tree dispute cases.

The first three relevant steps, taken directly from the judgement, are as follows:

> *"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
>
> *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
>
> *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."*

Application of View Sharing Principle

Table 2 summarises steps 1 to 3 of the *View Sharing Principle* when applied to this case, as a means of assessing the value of views affected and the extent of impact related to any loss of such views.

Additional methods of assessing value of views

Due to the subjective nature of assessing the value of views, it is put forth here that a technique advocated by the National Trust in its recent document *Wind Farms and Landscape Values: National Assessment Framework* (Australian Wind Energy Association and Australian Council of National Trusts, 2007) is useful. The document itself was widely circulated for comment and is generally accepted to

Table 2: Application of view sharing principle (steps 1 – 3) to this case, when applied to the Applicant's property

Step 1: Value of views	**Views seen:** Views over the southern half of Coogee Bay Beach, southern headland and rock pool at southern end. Views also over ocean to east which include views of Wedding Cake Island. Approximately lower third of view seen is of intervening buildings from residential properties to the south of Applicant's property (from standing position on upper deck.) Value of views: Views from upper deck and living area are extensive and consist of mostly views with water as a component. Both Coogee Bay Beach and Wedding Cake Island could be considered as local Sydney icons. Under Step 1 the subject view has been concluded to have a high landscape value.
Step 2: From what part of the property are views obtained	**Views over rear and side boundary of property.** Most extensive views from upper deck and living area. Views from other windows on eastern side of house prevented by roofline of Respondent's house. It should be noted that the views described are the only distant views available from the Applicant's property.
Step 3: Extent of impact (assuming a approximate maximum height of hedge of 6m)	**Views seen with a hedge of 6.5m:** Views would remain of southern half of Coogee Bay Beach, southern headland and rock pool at southern end. There would be no views over ocean to east which includes views of Wedding Cake Island, a local Sydney icon. Approximately one half of the existing view would be lost. This loss of views is considered severe. Refer to Section 6.8 for further discussion in regard to this conclusion.

represent best practice. That document suggests there are a number of ways to assess a landscape's value, including:

> *"Potential evidence of landscape values may also be found in art and literature sources; through proxy measures such as use and visitation; in tourism information; from past heritage, sense of place or community art projects etc (page 9)."*

A search of such sources in regard to the subject landscape that can be viewed from the Applicant's property has determined that Coogee Bay Beach and Wedding Cake Island have been the subject of a number of cultural references, such as:

- Wedding Cake Island – instrumental tune named after the island made famous by Australian band Midnight Oil;
- Coogee Bay – Holiday Sketch at Coogee (oil painting by Tom Roberts) and Coogee Bay (oil painting by Charles Conder), both 1888 (although it is acknowledged these are historic paintings they still illustrate the value of this coastline landscape); and
- Coogee beach and ocean pool – the subject of many photographs by well-known Sydney photographer, Ian Lever.

The popularity of the coastline of the eastern suburbs, including the intensively used Bondi to Coogee coastal walk, is also evidence that this coastal landscape is valued by both tourists and the Sydney community.

These cultural references serve to strengthen a conclusion that the subject landscape seen from the Applicant's property has a high landscape value.

Conclusion: Extent of view loss to Applicant's property resulting from hedge

In applying Step 3 of the *View Sharing Principle* it is concluded here that the loss of views from the Applicant's property as a result of an assumed hedge height of 6.5m is considered severe.

Approximately one half of the existing view would be lost, which includes loss of views over the ocean to the east and views of Wedding Cake Island.

Such views over water are considered as having a high value, which is evidenced by the presence of water as a major component, the local iconic nature of views of Coogee Bay (partially lost) and Wedding Cake Island (totally lost) and the value placed on this landscape by its listed cultural references and attraction to tourists and others.

Tree (Disputes Between Neighbours) Act 2006 (NSW)

Under Part 2A of the *Tree (Disputes Between Neighbours) Act 2006 (NSW)*, the Court must be satisfied that: the trees concerned:...(ii) are severely obstructing a view from a dwelling situated on the applicant's land...". When the existing hedge reaches a height of 6.5m it will severely obstruct the existing view from the Applicant's house.

Assessment of Hedge Options

To assist the Court in its decision, options have been explored of removing part of the hedge, or maintaining it to a specified maximum height, as described below. Other options could be to allow the planting of a less rampant hedge species.

Should the rear, southern four trees be removed the effect on view loss and visual privacy (assuming a maximum height of 6.5m) would be:

- Visual privacy would remain to the main living area of the Respondent's house and for the majority of the

outdoor deck. However, clear views from the Applicant's deck into the remaining rear yard (approximately two-thirds of the yard) would remain.

- View loss would be reduced to a moderate impact. Although some part of the eastern view to the ocean would still be lost, that part of the view that includes Wedding Cake Island would be clearly seen, which is the most valuable part of the view.

An option of maintaining the hedge at a maximum height of 4m would:

- Result in a minor loss of the lower part of the view from the living area and parts of the deck, considered a minimal view loss outcome.
- Provide a degree of visual privacy to the Respondent by limiting direct overlooking to only that from the eastern edge of the deck, when in a standing position. Some views over the far side of the yard would still be possible when standing on other parts of the deck.

Report findings

At a height of approximately 6.5m the hedge would be almost wholly responsible for protecting the visual privacy of the Respondent's living area and rear yard, from overlooking from the Applicant's upper deck (which is noted as being three times larger than generally permitted and thus exacerbates any overlooking issues).

The existing hedge, when it reaches a height of 6.5m, will severely obstruct the existing view from the Applicant's house.

Removal of part of the hedge, or maintaining it at a specified lower height, could possibly retain a level visual privacy to the Respondent, whilst decreasing the degree of view loss.

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