

NEW ZEALAND

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# PROPERTY PROFESSIONAL

MAGAZINE

## THE CHANGED PROPERTY LANDSCAPE

27 HOUSES A DAY

*Labour's plan*



CAPITAL GAINS TAX  
WHEN NOT IF?

*Message from London*

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We are unique – our property team focuses on property issues exclusively while other aspects of developments are tended to by our experts in construction, planning and financing.



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# The rubber hits the road

**It has been an incredibly busy year for the property sector, and there's no sign that 2018 will be any less frantic for professionals working in our industry.**

In this edition of *Property Professional* we take a look at the new government, the policies they have in store, and try to predict what it will mean for us and the broader Kiwi economy. We get a first-hand download from the Housing and Infrastructure Minister Phil Twyford, hear from tax experts about the impact of a likely capital gains tax, and review the Coalition Government's initial announcements – featuring well-known economist Cameron Bagrie.

Of course, any new government brings with it a level of uncertainty, and while we know many of the broader policy platforms, there is still an awful lot of information required to fill in some of the important blanks. But I'm very much of the view that we need to remain patient while some of those details are nailed down. It would be a mistake to rush to judgement only a few months into the three-year term.

Some of the changes that are being proposed are significant, and they are being implemented against the backdrop of a flat property market. It remains to be seen how much of an impact these changes will have on the wider property industry.

Nevertheless, there is a suite of policies in the pipeline and many will require legislation. That means the Property Institute is gearing up for a busy year in 2018, as we seek feedback from members and present that feedback in the form of submissions, commentary and media statements.

What has impressed me thus far is the new government's apparent willingness to work with the private sector to deliver on its ambitious agenda, and to be pragmatic where necessary. I know the man dubbed 'Mr Fixit' (Phil Twyford) fairly well, having built up a good working relationship over the past couple of years. He's smart, he's approachable, and he's spent the better part of a decade getting his head around the issues – particularly in Auckland.

I applaud the move to appoint him as Infrastructure Minister as well, because any new building on a large scale is going to need the pipes, wires and transport systems to cope – too often in the past that has been an afterthought, instead of being front and centre during any planning phase.

However, the agenda he has set himself is hugely challenging. It would be a mammoth task for any government, and in a climate where there isn't an unlimited pot of money – the job of joining all the dots together is that much harder.

They talked the talk in Opposition and now they must walk the walk. Personally, I think they've got off to a pretty good start, but for Mr Twyford and his colleagues the rubber will really hit the road in 2018.

By the time our next *Property Professional* magazine is released in March we'd hope to have a bit more paint on the canvas and will be far better placed to make some more informed calls on progress.

## What's it really worth?

Of course, one of the big news stories in Auckland in the past couple of months has been the release of new Council Valuations for rating purposes. This generated a significant amount of discussion, and came at the same time as data confirming the slow down in the property market.

Having received the new valuations, many Aucklanders may have been tempted

to extend the mortgage and go on a pre-Christmas spending spree.

But, of course, a Council Valuation is not real money. It's little more than a rough guess as to the value of any property at one point in time. The Property Institute, on behalf of its many valuer members, invested a considerable amount of effort into making the point that the only reliable valuation is one done by a registered valuer following a site visit – or the sale of the property.

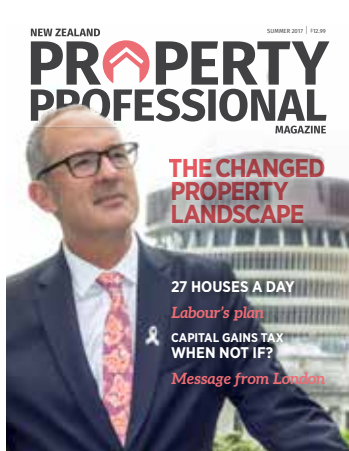
This is one of the advocacy roles that the Property Institute fills, and as the new government gets its feet under the desk I'm confident there are a lot more of these opportunities coming down the track.

## Last word

And finally I want to wish you all a very Merry Christmas and a Happy New Year. The New Year will inevitably bring a host of new challenges and opportunities for our industry, so I hope that you all get to take some relaxing time off to spend with friends and family before the fun begins all over again ☺



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# NEW PROPERTY LANDSCAPE

## Uncertainty and intervention

### What effect will the changes have?

We can be certain of one thing in the new property landscape – more state intervention is coming. Whether or not you think it's needed, and at what scale, will probably depend on which side of the political fence you sit.

Nevertheless, there are to be significant changes to the way property professionals operate in the new environment and how they interact with the Government.

There will be more regulation, with the spectre of new property-related taxes and changes to existing ones – and a large government house-building programme – particularly in Auckland.

As *Property Professional* goes to print, there is still little flesh on the bones of the policies that have been agreed by the three-month old Coalition Government. The whisper around Wellington is that officials have been scratching their heads trying to nail down some of the detail around

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*There is still little flesh on the bones of the policies that have been agreed by the three-month old Coalition Government.*

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the bullet-point type notes they're now responsible for turning into workable laws.



*Businesses are reporting greater difficulty accessing land, labour and materials. Also, partly reflecting growing risks in the construction sector, banks have tightened lending standards for residential property development.*

But change is coming, and if nothing else property professionals are skilled at thinking on their feet. They will inevitably adapt.

As we go to print though, no-one quite knows what the end result is going to look like, how much intervention is actually required at this point, or how the market will react. Quite what the new landscape will be like in a year or two is also not known at present.

### What we know

Within days of forming a government the Labour-New Zealand First-Greens alliance announced a move to ban non-residents from buying existing residential dwellings.

Using the powers of the Overseas Investment Act and the expertise of the Overseas Investment Office, they plan to classify existing houses as 'sensitive' – effectively forcing foreign buyers to make applications to purchase homes – which the Prime Minister has said will almost certainly be turned down.

Legislation is being drafted that we have been told will be introduced before the end of the year.

While we know the broad brushstrokes, the devil will be in the detail. What is an 'existing dwelling'? Are residential dwellings

on farmland caught? How many houses is this going to stop from falling into foreign hands? In a flat to falling market, is it really needed? Only time will tell.

### Horse has bolted

Certainly that's the view of the director of The Property Market in Auckland Antonia Baker who told Fairfax that foreign buyers hadn't been an issue for years.

'Foreign buyers left our market the moment they needed to produce an IRD number and local bank account number, and that change was put in place two years ago. That horse has already bolted and all that legislated change will do now is lock the stable door.'

Director of Tommy's Real Estate in Wellington Nicki Cruickshank is quoted as saying foreign owners have had no effect on the capital's housing market either.

'Overall pretty much no impact at all.'

ANZ Chief Economist Cameron Bagrie sees the change as more political than anything else.

'Is that going to be a cure all fix for the property market? The answer is no. What happens to rural land etc, we're just not quite sure yet. Things seem to be a little bit up in the air and we don't like that. The business sector doesn't

like it, but that's just a reality as it takes the new government of the day to get their feet in, test the water, and find out what's going on.'

Property Institute Chief Executive Ashley Church agrees that the policy change on its own is unlikely to have a major impact on property prices, but he's pleased that the Government is trying to direct that foreign cash into new builds.

'It's a win-win. We increase our housing supply – and as most of these investors are non-residents and won't be living in the place – that should, at the margins at least, increase our rental stock. That's got to be good for our supply side imbalance,' he says.

Similar policies in Australia have had a minimal impact, and one of the workarounds has seen large-scale residential developments being marketed and sold to overseas investors.

In its November Monetary Policy Statement the Reserve Bank also pointed to a new phase in the country's property market.

'Residential investment has been supported over recent years by low interest rates, strong population growth, a shortage of housing, and high house prices. However, growth in residential investment has weakened in each of the past four quarters.



Residential construction in Canterbury has fallen from a high level, and elsewhere the sector appears to be approaching capacity limits,' according to the RBNZ.

'Businesses are reporting greater difficulty accessing land, labour and materials. Also, partly reflecting growing risks in the construction sector, banks have tightened lending standards for residential property development.

'Changes to loan-to-value ratio (LVR) restrictions, a tightening in lending standards, and a lift in mortgage rates through to the end of 2016 have moderated the demand for housing and slowed house price inflation over the past year.

'Pressure on affordability, reduced demand from foreign buyers, uncertainty around tax policy, and revised expectations of future capital gains may be further tempering demand at present. It remains uncertain how persistent the slowing in the housing market will be.'

Bagrie doubts the new government's more expansionary fiscal policy will have a significant impact on interest rates.

'Probably 25 maybe 50 basis points tops. We're still trying to work out what the policy platform could mean for economic indicators such as interest rates, or currency, or economic measures, but at the moment we just don't have an awful lot of clarity over some of the key things we need clarity over.'

## More change coming

The new government has a suite of other property-related policies in the pipeline. You can read more about them later in this magazine in a piece written by the new Housing Minister Phil Twyford. But significant changes have already been well flagged:

- Losses from rental property investments will be ring-fenced. Investors will no longer be able to use tax losses on their rental properties to offset their tax on other income, a practice called negative gearing. This move has been recommended by the International Monetary Fund (IMF) and the RBNZ. This change will be phased in over five years, with loss deductibility reducing by 20% a year

- Building affordable homes through the KiwiBuild programme and the Affordable Housing Authority/Housing Commission
- Extending the 'bright line test' to tax those who sell a house within five years of its purchase
- Ensuring homes are healthy to live in and building state houses for families in need.

Bagrie says he'll be watching with interest.

'What we're looking for is what's going to happen with regard to the bright line test. I suspect that'll come in reasonably quickly if it does, so watch for a whole swamp of properties hitting the market in the next two to three months because people want to be out of the window for that. We're a little bit uncertain about where things are going to go with regard to tax treatment – there's

To deal with that, Labour points to its 'Dole for Apprenticeships' policy that will subsidise employers to take on around 4,000 young people for on-the-job training in fields including building and construction.

A new KiwiBuild-Visa will also be introduced (an exemption from migration cuts), but the RBNZ shares Bagrie's concerns about the availability of workers to deliver on KiwiBuild and how that programme will impact on the broader market.

'Our working assumption is that around half of the proposed increase will be offset by a reduction in private sector activity,' according to the RBNZ.

But the new Housing Minister is undeterred by the doubters and has doubled down on Labour's KiwiBuild policy. He told TVNZ's Q+A programme in mid-November

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*The ANZ's Cameron Bagrie has concerns about the ambitious 10-year programme to build 100,000 houses. That's an average of 27 new houses each and every day, which is a huge challenge.*

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a lot of talk about negative gearing, ring-fencing that sort of stuff. I think those sorts of things are down the track, but what they do is they create a little bit of uncertainty, and uncertainty for the property market is just not going to be helpful.

'I suspect we're in a bit of a holding pattern here in regard to where things sit both economically, and across the property market, until we get a lot more clarity in regard to what the policy agenda is going to look like.'

Bagrie also has concerns about the ambitious 10-year programme to build 100,000 houses. That's an average of 27 new houses each and every day, which is a huge challenge.

'Construction cannot physically build any more stuff, because we just don't have the manpower, and of course migration's going to make that a little bit tougher as opposed to easier.'

that he had asked officials to look at doubling the policy from 1,000 new houses a year to 2,000. More than 50 houses a day.

Some \$2 billion has been set aside for KiwiBuild and the jury is out on whether or not the complicated programme (including its unique funding model) lives up to its promise and what shape private sector involvement might take.

## Rental shake-up

Landlords too needs to be gearing up for change. Labour has said it will:

- Increase 42-day notice periods for landlords to 90 days
- Abolish 'no-cause' terminations of tenancies
- Limit rent increases to once per year (the law currently limits it to once every six months) and require the formula for rental increases to be specified in the rental agreement

## When the property market slows up there is a risk that this takes the economy down with it.

- Ban letting fees
- Require all rentals to be warm, dry and healthy for families to live in by passing the Healthy Homes Bill
- Give landlords access to grants of up to \$2,000 for upgrading insulation and heating.

### Capital gains tax

Labour has said it will set up a Tax Working Group to 'ensure that there is a better and fairer balance between the taxation of income and assets, in particular the capital gain associated with property speculation.'

The anticipated timeline for the Tax Working Group is:

- Tax Working Group established and mandated by Cabinet (by December 2017)
- First meeting of Tax Working Group and call for public submissions (February 2018)
- Interim report released for feedback (September 2018)
- Final report issued with recommendations for the Government (February 2019)
- Cabinet decisions finalised (April 2019)
- Public consultation on detailed changes, if any (April – August 2019)
- If necessary, Bill introduced (September 2019)
- Parliamentary process, including full select committee process (September 2019 – July 2020)
- Legislation passed and enacted (July 2020)
- Implementation of changes in the next tax year (commencing 1 April 2021).

This is an area that will be of particular interest to the Property Institute's valuer members, given that a capital gains tax will require a significant and ongoing valuation component. Simpson Grierson tax expert Luke Strom take a closer look at capital gains tax later in this magazine.

### Crystal ball gazing

Like the rest of us, economists from the Reserve Bank down are watching and waiting. But Bagrie remains reasonably upbeat.

'I think life's going to go on. We've got a maturity to work through these things. It's a change, but it's not what we'd call a sea change.

'The Government's got to take the business sector along for the ride, because the last thing we need when you're going through a bit of an economic transition is for the business sector to just stop. When the business sector stops, you don't hire, you don't employ, you don't invest and then the economy slows up and you've got a bit of an economic problem. That's the risk at this juncture, so we're looking for firm economic signals.

'I've looked at the broad policy platform and I'm not too concerned – with one exception to that rule. The one thing that does worry me at the moment is industrial relations style policy. And because the unions have been out of power for nine years, you can sense a little bit of pay back or catch up is pending.

'Obviously when the property market slows up there is a risk that this takes the economy down with it. That's tended to be an historical pattern – that is when pro-cyclical parts of the economy such as housing actually go, they take the broader economy with it. What happens is that when property prices are falling that tends to impact on what's called the wealth effect. And that impacts on broader spending trends.

'Consumer confidence is still holding up at a pretty elevated level. What we're also seeing is that motor vehicle sales, which tend to be pretty closely related to the property market, are holding up as well.

But if I start to see consumer confidence in motor vehicle sales begin to wilt then I think that's going to be a bit of a sign that the property slow down we've seen up in Auckland, which I think to date has been a fundamentally good thing, is going to have a little bit more of a perverse impact across the broader economy.

'The last time we saw a lot of change it was 2000 and it wasn't marketed very well. What we ended up with was that the economy just about tipped itself into recession because we wrapped ourselves in cotton wool and business confidence collapsed. The property market to me looks reasonably delicately placed.'

Bagrie picks the Wellington market though to buck the national trend.

'I think Wellington will be playing a little bit of catch up, in fact I think Wellington's will be going gangbusters for the next two to three years. There's a lot of talk about Ministries being broken up – primary industries, MBIE. The creation of new Ministries is going to mean an awful lot of job creation and Wellington property looks cheap compared to Auckland anyway – so Wellington could be a little bit of a laggard here over the economic cycle' 📈



### USEFUL STATS

According to November's Property Institute/Valocity Regional Insights report:

- Auckland median sales annual prices are down 0.6%
- The nationwide median sale price is down 1.5% year-on-year
- First home-buyers (27.9% up 1.6% since October 2017) continue to account for a much larger proportion of mortgage registrations than investors (17.4%)
- Nationally, registrations to investors are 33.9% below the same month last year.

# The Labour-Led Government's HOUSING PRIORITIES

PHIL TWYFORD

## First 100 days

The new Government has made its list of policies to deliver within the first 100 days in office. Policies to build more houses, and make them more affordable and healthy to live in, feature strongly in our 100-day plan.

I make no bones about the fact we have a housing crisis in this country. That crisis has been so much the worse because, for years, the previous government flat out refused to admit its existence. You can't fix a problem you won't face.

And calling it a housing 'challenge' – like it's some enjoyable hurdle to be overcome – is no good either. When families are living in cars and garages, when children are getting sick and dying from unhealthy housing, when even middle income families can barely afford the rent, let alone the cost to buy a house – that's not a 'challenge', it's a crisis of broken dreams and afflicted lives.

## Housing shortage

The size of the problem is enormous. Government figures we discovered on coming to office show that Auckland is short 45,000 houses, and the country as a whole is short 71,000, with the deficit growing by the day.

## Healthy homes and rental properties

We are making progress already. We began by announcing how we will ban overseas speculators from buying existing houses. Legislation for that will be in Parliament before the end of the year. By the end of

November, we will have passed the Healthy Homes Guarantee Bill to begin ensuring all rentals are warm and healthy to live in.

This Act will enable the Government to implement minimum standards to improve rental housing

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*The Government will run a consultation process over the next 18 months to ensure that tenants, landlords, public health and building science experts and industry representatives have an opportunity to get involved in setting the Healthy Homes regulations.*

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But this is absolutely a problem that we can solve together. Since becoming Minister, I've been heartened by the energy that government departments have shown as they gear up to put our plans into action, and by the eagerness from the industry to work with us to get the houses built and ensure everyone has a decent place to live.

quality. These minimum standards will be implemented through supplementary regulations that will be developed after the Bill has been passed.

The Government will run a consultation process over the next 18 months to ensure that tenants, landlords, public health and building science experts and industry representatives have an opportunity





to get involved in setting the Healthy Homes regulations.

There is strong international evidence that effective heating, insulation and ventilation can directly reduce illness (by helping maintain a minimum air temperature) and indirectly reduce illness (by controlling relative humidity, lowering dampness and inhibiting the growth of mould).

Renters and owner-occupiers alike may suffer negative health effects from living in substandard properties. However, renters are more likely to live in such properties and are less likely to have the financial means to change their circumstances. There is also a case for focusing on the quality of rental properties because the lowest quality houses are concentrated in the rental market.

For many landlords, their properties will already meet these standards. For those who need to do upgrades, grants of up to \$2,000 for heating and insulation will be available.

### KiwiBuild

We are also pushing ahead with our commitment to end the state house sell-off and lay the foundations for our KiwiBuild programme of affordable house-building. KiwiBuild will deliver 100,000 affordable houses over 10 years for first home buyers. Half of these will be built in Auckland. That is a 10-fold increase in the number of affordable houses being built in Auckland each year, from 500 to 5,000.

KiwiBuild homes will only be sold to first home buyers, and any Kiwi who hasn't owned a home before will be allowed to apply for a KiwiBuild home, regardless of their income or wealth. To avoid buyers reaping windfall gains, a condition of sale will require them to hand back any capital gain if sold on within five years.

Building 100,000 affordable homes in 10 years is a huge goal. But we know

it can be done. We will look to build on under-utilised and vacant Crown land. I already have a review started of all of the developments that are underway or planned that involve some kind of government stake. We're going to look at how we can ramp up the level of ambition and build more affordable homes, KiwiBuild homes, as well as more state housing.

We'll work with developers who are planning affordable homes and buy some of them off the plan, speeding up developments, taking some of the risk out of it, and ensuring that we get a supply of high-quality affordable homes for first home buyers.

An exciting part of KiwiBuild will be 10 to 15 large-scale urban development projects in Auckland, particularly around the rail network, aimed at delivering new infrastructure, the kind of amenities and open spaces that communities need, and a mix of different kinds of affordable housing. These will become modern urban centres and satellite towns built for the 21st century.

### Tenancy law changes

Another key area for the Government is updating tenancy law to reflect the modern world in which half of New Zealanders live in rentals.

Our primary rental law is now over 30 years old and dates from a time when home ownership was at record levels while renting was, for most people, a temporary period in life before buying a home and settling down. Now, renting has become the life-long reality for more and more families locked out of an unaffordable house market.

We want to take the time to get these changes to tenancy law right, so that they work for both landlords and tenants. Over the next year, we will run a consultation process with all stakeholders, leading to new legislation to strike a better, fairer balance.

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*Our primary rental law is now over 30 years old and dates from a time when home ownership was at record levels while renting was, for most people, a temporary period in life before buying a home and settling down.*

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### Working together

The housing crisis contains many separate problems but the Labour-led Government is determined to tackle them all. Every New Zealander should have a secure, safe, healthy place to call home, and a fair shot at owning it. That is the heart of the Kiwi Dream and there is no reason why we can't achieve it if we work together 🤝



**Phil Twyford, Minister for Housing and Urban Development and Transport.**  
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# A POSSIBLE CAPITAL GAINS TAX

## and the implications for property practitioners

LUKE STROM

**Potentially significant tax changes are on the new Labour-led Government's agenda. For those involved in the property industry, the possibility of a general capital gains tax (CGT) will be of particular interest.**

### Political position on CGT

At the 2011 and 2014 elections Labour campaigned on a policy of introducing a CGT. In the lead up to this year's election it campaigned on the basis that, if elected, it would establish a Tax Working Group (TWG) to review current tax settings (including on the taxation of capital gains) and take any of its recommendations which it thought worthy of implementation to the electorate at the 2020 election. This, of course, was a back flip on an initial position which would have seen a Labour-led Government potentially implementing TWG recommendations, including a possible CGT, without taking them to the electorate first.

Labour clearly has an established position that favours a CGT, its stated reason being that current tax settings create investment distortions, notably a tax bias towards what Labour's manifesto refers to as 'housing speculation'.

As to the other members of the new government, the Green Party strongly favours a CGT and has long campaigned for one. New Zealand First, on the other hand, has not campaigned on implementing a CGT and Winston Peters has in the past said publicly that he is not in favour of such a tax. That said, it appears implicit in the coalition

arrangements that the TWG will proceed, and it seems unlikely New Zealand First would stand in the way of any parliamentary steps towards implementation of a CGT that might be taken before the next election.

The Government's proposed mandate for the TWG is to review current tax settings to 'ensure that there is a better and fairer balance between the taxation of income and assets, in particular the capital gain associated with property speculation' (albeit estate tax and any tax on the family home are off the table).

The Government proposes to appoint the TWG in December this year, with its first meeting to be held in February 2018 and its final report to be presented to the Government by February 2019. Following public consultation in mid-2019, the Government plans to introduce any recommendations it chooses to adopt in a Bill in September 2019. The intention is that the Bill would be passed into law by July 2020, with new measures taking effect from 1 April 2021. In other words, the legislation could be passed before the 2020 election, but only take effect after the election and subject to the right of any incoming government to repeal it.

### Will the Tax Working Group propose a CGT?

Political realities mean that it is seemingly almost inevitable that the TWG will recommend the introduction of a CGT, albeit the recommendation will undoubtedly be presented as supported by sound economic arguments. New Zealand is one of the few exceptions among OECD countries in not comprehensively taxing capital gains, although many economic gains that

would be taxed as capital gains in other jurisdictions are subject to income tax in New Zealand. This includes certain interests in foreign equities, financial arrangements and particular land transactions.

The Key Government's 2010 TWG considered that there were good reasons for the introduction of a CGT. Some of the reasons in its 2010 report included:

- The inconsistent and ad hoc treatment of capital gains under the current settings, particularly in the context of the New Zealand taxation system's 'broad-based low rate' framework
- Existing income tax rules create uncertainty over whether certain capital gains are taxable which, in turn, distorts investment and savings decisions
- A CGT would reduce investment bias towards assets that are expected to produce capital gains
- Investments that generate non-taxable gains as an alternative to taxable income create a risk to the tax base
- A CGT has potential to generate significant revenue to fund government expenditure.

While these may be objectively strong reasons for a CGT, there are practical difficulties with this form of taxation. For example, if a CGT is imposed on a realisation basis it may have a 'lock-in' effect under which owners of property defer disposal to avoid the tax. On the other hand, if a CGT is imposed on an accrual basis, taxpayers are taxed on amounts not realised, creating obvious cash flow issues. In addition, most overseas regimes incorporate concessions for the effect of inflation, such as indexation, which are inherently complex. Further, there are very complex boundary issues between CGT and income tax regimes.

## What would a New Zealand CGT look like?

The best existing indication of the form of CGT regime that a Labour-led Government would promote is found in its previous policy documents in the area. Before the 2011 election in particular, Labour had a well-developed and detailed policy about CGT. The 2014 and 2017 policy positions are less detailed, but not inconsistent with the 2011 position. Against that background I would expect the CGT to have these characteristics:

### *It would be broad-based*

In 2011, Labour proposed that the following classes of property would be included in the CGT net:

- Family baches and farms
- Shares in a company
- Businesses
- Units in a unit trust
- Contractual rights and options
- Leases and licences
- Goodwill
- Foreign currency
- Minerals and precious metals
- Livestock, if held on capital account
- Intellectual property rights, such as patents and trademarks
- Endowment policies.

However, if the taxpayer trades or deals in such property, current income tax rules, rather than the CGT regime, would still apply to taxable gains from that activity.

### *Certain property would be excluded*

The previous Labour policy was that the following property would not be subject to CGT:

- The family home, i.e. 'where you live most of the time'
- Personal property other than shares
- Collectables, whether a stamp collection or a super yacht
- Small business assets sold for retirement
- Payouts from retirement savings schemes, including Kiwisaver and life insurance policies
- Lump sum compensation including ACC, redundancy payments and court awards
- Gambling winnings
- Medals.

As with the items of property proposed to be included in the CGT net, if the taxpayer trades or deals in these types of property the gains from that activity could still be taxed under the income tax rules.

### *Asset revaluation at commencement*

It is expected that, in line with Labour's previous policy position, CGT would apply to net gains that accrue only after CGT commences. To that end, a valuation day (V Day) would be necessary to provide currently owned assets with a deemed cost base equal to their market value as at the commencement date.

### *Low rate*

Labour proposed a flat low rate of 15%, rather than indexation, to account for the effects of inflation.

### *Taxation on realisation*

Previous Labour policy, and the most likely future position, is that CGT would be payable on realisation and would apply to net gains that accrue only after CGT commences.

### *Roll-overs*

In various situations, capital gains on disposal or transfer of property that would otherwise have been subject to CGT would be 'rolled over' and CGT deferred. For example, Labour said in 2011 that capital gains on an asset transferred between a couple on a relationship break-up would be rolled over so CGT would not be payable until the asset is sold. However, one would expect that at the time of sale the taxable gain would not be limited to the gain accruing after the relationship break-up.

The situation may be different with inheritances. In 2011, Labour's policy was that inherited property would not be taxed until disposal by the beneficiary, and that they would be deemed to have acquired the asset at market value on the day the testator died so that pre-death gains are not subsequently taxed.

### *Use of trusts*

Going by the 2011 position, transfers to trusts would be treated as CGT events, as would gifting in all forms.

### *Capital losses*

Again, going by Labour's previous public position, capital losses will be able to be carried forward to offset future capital gains, but would not be able to be offset against income.

### *A boon for valuers*

Unquestionably, the introduction of a CGT will be a boon for valuers and others in the property industry.

First, owners of property will need to determine the market value of CGT property as at V Day (on the Government's current timeframes this would be 1 April 2021). In 2014, Labour indicated that taxpayers would be able to establish the market value of their property on V Day under one of the following options:

- For land, the most recent government valuation for rating purposes
- The sale price of the asset (or equivalent asset) in a recent arm's-length transaction
- A private valuation at the owner's expense.

For many taxpayers, and in relation to many assets, the third option will be the only tenable option for taking a realistic position on market value.

In addition, there will be a significant ongoing role for valuers. For instance, valuations will be needed at the time of deemed realisation events, e.g. transfers to trusts and in the context of inheritances 🌀



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# NEW SYSTEM FOR MANAGING EARTHQUAKE-PRONE BUILDINGS

A national system for managing earthquake-prone buildings came into effect on 1 July 2017. It changed the way these buildings are identified, assessed and managed.





## Timeframes set

The primary objective of the new system is to protect people from harm. It categorises New Zealand into three seismic risk areas and uses these areas to set timeframes for identifying and doing seismic work on earthquake-prone buildings or parts of buildings. A whole building or part of a building can be earthquake-prone. This means that engineers assessing potentially earthquake-prone buildings need to consider vulnerable parts of buildings, as well as the overall performance of the whole building.

It introduces a new category of 'priority buildings' in high and medium seismic risk areas that are considered higher risk because of their construction, type, use or location. Priority buildings must be identified and strengthened or removed in half the time available for other buildings in the same seismic risk area.

The general timeframes for identifying and doing seismic work on earthquake-prone buildings are shown in the table below.

Seismic risk area	Territorial authorities must identify potentially earthquake-prone buildings (EPBs) by:		Owners of earthquake-prone buildings must carry out seismic work within (time from issue of EPB notice):	
	Priority	Other	Priority	Other
High	1 Jan 2020	1 July 2022	7.5 years	15 years
Medium	1 July 2022	1 July 2027	12.5 years	25 years
Low	N/A	1 July 2032	N/A	35 years

The system applies to non-residential buildings and larger residential buildings that are two storeys or more, have three or more household units, or are used as a hostel, boarding house or other form of specialised accommodation.

## Role of territorial authorities

Under the new system, territorial authorities or TAs (councils) are responsible for identifying potentially earthquake-prone buildings, notifying owners, deciding if buildings are earthquake-prone and issuing earthquake-prone building notices (EPB notices), and publishing information about earthquake-prone buildings in a public register.

If building owners are notified that their building is potentially earthquake-prone, generally they must provide an engineering assessment to the TA within 12 months of being notified, or evidence that their building has been strengthened to an acceptable standard. Once the TA has determined a building is earthquake-prone, then determined its earthquake rating and issued an EPB notice, this notice must be displayed in a prominent place on or adjacent to the building. The owner must carry out seismic work on the building within the timeframe specified on the notice.

If the building is located in a high or medium seismic risk area it may also be a priority building. TAs will inform owners if their building is a priority building when they identify it as potentially earthquake-prone and request an engineering assessment. Owners of certain heritage buildings may be able to apply for an extension of up to 10 years to strengthen their building. They will need to talk to their TA to find out if the building is eligible.



***The primary objective of the new system is to protect people from harm. It categorises New Zealand into three seismic risk areas and uses these areas to set timeframes for identifying and doing seismic work.***

### **The EPB methodology**

A key tool for TAs, engineers and building professionals advising building owners is 'The methodology to identify earthquake-prone buildings (the EPB methodology)'. This is a new document, set by the Chief Executive of the Ministry of Business, Innovation and Employment, under the Building Act 2004. It sets out the steps to follow when identifying, assessing and making decisions on earthquake-prone buildings.

The first section outlines the two pathways TAs can use when identifying potentially earthquake-prone buildings. TAs must identify particular buildings in set timeframes using the profile categories in the EPB methodology. However, they can also identify potentially earthquake-prone buildings at any time if they have reason to suspect the building is earthquake-prone.

There are three profile categories based on characteristics such as the age of the building, the type of construction and common building features. The characteristics of buildings in each profile category are described in detail in the EPB methodology. A building owner with a building that has been identified as potentially earthquake-prone has 12 months to respond with an engineering assessment.

The second section of the EPB methodology sets out the rules for engineers in undertaking an assessment

on behalf of a building owner. It includes the engineering qualifications required, the steps to follow when deciding on the appropriate form of engineering assessment for a potentially earthquake-prone building, and technical and reporting requirements. The methodology cites the Engineering Assessment Guidelines available at: [www.EQ-assess.org.nz](http://www.EQ-assess.org.nz).

The third section steps TAs through the criteria for accepting new engineering assessments and recognising assessments done before 1 July 2017. It explains how to determine if a building is earthquake-prone and assign an earthquake rating.

### **Guidance on priority buildings**

Another important document for TAs and building owners is the guidance on priority buildings. This outlines the timeframes for identifying and doing seismic work on these buildings, the responsibilities of TAs and building owners, and includes detailed information on the categories of priority buildings.

Priority buildings are identified in areas of high and medium seismic risk. There are two categories of priority buildings – those that are prescribed in the Building Act and those that are identified with community input.

Certain hospital, emergency and education buildings are in the first category and they are prioritised because of their

function. They include hospital buildings that are likely to be needed to provide emergency medical and ancillary services in an emergency, or that enable emergency response services to carry out their jobs in an emergency.


The second category includes buildings that could collapse in an earthquake and impede routes of strategic importance for emergency response services, or any part of unreinforced masonry buildings that could fall onto thoroughfares with high vehicle or pedestrian traffic.

Priority buildings do not have to be identified in areas of low seismic risk.

### **Useful websites**

The EPB methodology, the priority buildings guidance, links to legislation, information sheets and an overview of the new system are available at: [www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/](http://www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/).

There is a section on the site specifically provided to assist building owners: [www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/what-earthquake-prone-buildings-system-means-for-you/owners-of-earthquake-prone-buildings/](http://www.building.govt.nz/managing-buildings/managing-earthquake-prone-buildings/what-earthquake-prone-buildings-system-means-for-you/owners-of-earthquake-prone-buildings/).

*The information in this article was supplied by the Ministry of Business, Innovation and Employment* 



# RESIDENTIAL PROPERTY MANAGEMENT

## The challenges facing the industry

KAREN WITHERS

**Once considered the sales agents' poor cousins, residential property managers are now gaining recognition in the challenging and ever-changing world of professional property management. But it is not without its challenges. This article looks at the major issues facing the residential property management industry in the 21st century and how expert professional operators are rising to the top of their game.**

### Legislation

Tenant and landlord stories fill the media on a weekly basis and the health of rental properties is a constant 'football' for policy-makers. The Residential Tenancies Act (RTA) is a complex and ever-changing piece of legislation. Property managers are having to keep ahead of these changes or risk being fined by the Ministry for Business,

Innovation and Employment (MBIE) or taken to court by tenants. A thorough knowledge of this Act and its implications is essential for any property management professional.

The industry is special in that we have a designated Ministry of Justice tribunal (the Tenancy Tribunal) for handling disagreements between tenants and landlords. A property manager is expected

to don their lawyer's hat when attending these hearings and cases can be won or lost on their knowledge and preparedness. A 2016 High Court ruling (*Osaki v Holler*) changed the landscape of tenant liability. The knock-on effect was that rulings for some damage, previously deemed tenant responsibility, was turned back to being the landlord's liability.

With thousands of dollars at stake, landlords and property managers are having to approach any Tenancy Tribunal case with increased care and attention to the legal interpretations of this ruling. Upcoming proposed changes to the RTA (the RTA Amendment Bill No.2), currently at select committee stage, seek to address this as well as interpret the new methamphetamine testing and remediation standards and ratify the unlawful premises rules.

Property managers must stay updated with these changes or risk significant financial losses for their company and/or their clients.

### Training and education

There are currently no mandatory certifications or qualifications for residential property managers in New Zealand, nor are individuals required to be members of a regulatory body. Most property managers are experience-based operators. The Independent Property Managers Association of NZ (IPMA) represents non-real estate affiliated residential property managers and encourages its members to attend regular seminars and use its training materials. A continuing professional development (CPD) style format is being considered for members.

Many of its members hold the New Zealand Residential Property Managers Certificate – Level 4, but the IPMA believes there should be a tertiary level diploma or certificate designed specifically for the residential property management industry.

IPMA members are carefully screened with Police and reference checks before being admitted, as well as being required to operate a separate (trust) account for holding rental funds. As the responsibilities and liabilities of a property manager grow, those operators who are already operating to a high code of ethics (with qualifications and lengthy experience) will begin to be recognised as ‘preferred’ suppliers by clients looking to engage a property management professional. Being a member of a reputable organisation such as the IPMA will increase their professional credibility.

### Staffing

Encouraging and retaining quality staff is becoming a major issue in the industry. Increased liability (the Health and Safety at Work Act 2015 for example) and workloads are a daily source of stress for a property manager. The 24/7 ‘on call’ nature of the industry can lead to higher burn-out of staff, as well as personal risk from interactions with unstable or drug-affected tenants.

A robust tertiary qualification would validate the profession and encourage more graduates into entry level positions. Property management needs to be considered a genuine career choice, with qualified and experienced staff remunerated accordingly. Pay differentials are currently experience-based and reward those who have ‘toughed it out’ the longest, but who are not necessarily the best at their job or the most qualified.

A recent survey of IPMA members confirmed that most believed this type of qualification should be the prerequisite to operating as a property manager. Top property managers use available technology to improve productivity and service levels. There are also many outsourcing products on offer to assist, but operators need to weigh up the pros and cons of engaging such services and their impact on quality assurance and service levels.

### Regulation

Should residential property managers be regulated, or registered, or certified as a minimum requirement? This is a hot topic industry-wide and a sensitive one for real estate companies and their representatives. Property managers are not covered under the Real Estate Agents Authority (REAA) and there is no designated body to handle complaints unless they hold a sales agent licence. Members of groups such as the IPMA have chosen to be affiliated with a self-regulating industry body, with membership criteria and a robust complaints procedure. Its members must have public liability insurance and operate

a separate account for rent payments.

However, this is not the same for all umbrella bodies and management companies are not currently required to be registered or their employees to hold any industry qualifications.

The IPMA would like to see a standardised system for registering property managers and criteria to which they must adhere. This would ensure all industry operators are fully accountable and always operating at the highest level. A recent survey of its members indicated that over 80% were in favour of the industry being regulated.

It is likely that as landlording becomes increasingly complex and onerous more property owners will engage the services of a professional property manager. New Zealand will therefore start to see an increase in the percentage of residential rental properties being managed professionally.

As tenancy law continues to change, so does the industry. Operators who are committed to upskilling and staying ahead of these changes are those who will ultimately reap the rewards and gain the professional credibility they deserve. In turn, this will ensure clients paying for a professional service are getting the highest level of service and care for what is usually their second highest value asset 🏠



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# MARINE Valuations

IAN WALKER

**In a country where nearly a third of the population describe themselves as recreational boaties, Ian Walker is one of the foremost boat valuation experts. This article looks at the complexities of boat valuation and why owners should reconsider their insurance every two years.**

## **An interesting occupation**

Being a Registered Marine Valuer is very rewarding profession. Experience is knowledge, every valuation is a challenge, and no two vessels have the same value. A boat valuer inspects many different vessels in detail, ranging from a salvaged vessel to an offshore vessel in pristine condition. It is a highly specialised area involving assets that can be worth millions of dollars. The inspection often involves travel, as desk-top valuations are an option for small trailer vessels only.

## **The road to boat valuation**

My first introduction to boating was at the age of nine in a 9 foot 6 inch clinker sailing dingy. A carpenter by trade, I completed an apprenticeship with an Advanced Trade Certificate and then later became a building contractor for a number of years. In 1984, I started as a part-time boat broker with Hauraki Yachts and Launches and became a full-time boat broker in early 1985.

Boat valuations were part of the job. I recall selling 42 boats in my first year and

many of the sales came from vessels up and down the Tamaki River where the office was. In 1984/85, Westhaven rental marina berths were in demand. When a vessel was sold we were given the task of valuing the sold vessel for the Auckland Harbour Board to ensure the boat price was not inflated so as to obtain the rental marina berth. I did many such valuations and this practice continued until around 1989.

In 1986, after completing the two-handed Round North Island Race in my Whiting 29 I went to Nautical School in Auckland for a month and graduated with a Commercial Launchmaster (CLM) qualification, issued for life. In 1990, I resigned from Hauraki Yachts and Launches and started with Orams Marine as a boat broker, later becoming new boat sales manager and then contract broker/manager of the brokerage for the last eight years.

Fourteen years later in 2004 I started my own company, G.I. Marine. We were at that time a boat brokerage company and also provided valuations in a vastly different report. Early discussions were held in 2012 with the NZ Marine Industries Association Ltd (NZMIA) about NZ Marine Valuations Limited becoming a member of the NZMIA, with the view to gaining an NZMIA Certificate in Valuations, which was subsequently obtained.

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***A boat valuer inspects many different vessels in detail, ranging from a salvaged vessel to an offshore vessel in pristine condition.***

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In 2013, I became a full member of the Property Institute of New Zealand (PINZ). In 2014, I became a Registered Marine Valuer with certification issued by the PINZ Plant and Machinery sub-section: Marine. I have enjoyed the process of working with PINZ immensely as they are very confident about the role I play as the only Registered Marine Valuer within the marine industry. Valuations I carry out for clients are therefore provided within the guidelines established by PINZ, and also therefore comply with the International Standards (IVS 2013) of the IVS International Valuation Standards Committee based in London. I provide a complete service, New Zealand-wide and throughout the South Pacific. NZ Marine Valuations Limited is accepted as a Registered Marine Valuer by the National Australian Bank (NAB) and the Bank of America.

### Wide range of vessels

Marine valuations range from small trailer boats to the other end of the scale, very high-quality vessels (e.g. a 54 metre offshore luxury cruise vessel). Some vessels are under-insured and it is not until there is a loss that clients realise that their vessel may not have enough insurance. It is recommended that the insured value be re-addressed every two years. Some insurance companies in fact require an updated valuation every second year.

### Market value defined

Market value is defined as 'the estimated amount for which property (or an asset) should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after, proper marketing, wherein the parties had each acted knowledgeably, prudently, and without compulsion' – International Valuation Standard (IVS) 103.

The market value also presumes:

- The values used for comparison remain static during the marketing period
- The assets would be freely exposed to the market
- There is a reasonable period within which to negotiate the sale, taking into account the nature of the items, their location and the state of the market
- That no account is to be taken of any higher price that might be paid by a purchaser with a special interest.

### Methodology

The three main types of methodology used in marine valuations are: market value basis; depreciated replacement cost; and agreed sum valuation for insurance. The process for marine valuations can be far more complex than the procedure to value some other assets. For instance, as there is no register maintained of recorded boat sales the process can be very time-consuming.

### Market value basis

In valuing most marine assets I use the market value method. This is done by researching sales prices (and asking prices if sales prices are not available) for assets of a similar type, age and condition and adjusting for any variations between the subject and comparable assets. This applies to most vessels, whether the valuation is for a matrimonial property assessment, damage to the vessel, a finance requirement or because of theft.

### Depreciated replacement cost

This method is only used very occasionally and then as a last resort. It is used in particular for one-off designs, often valued in the millions of dollars, where it is difficult to compare one vessel with another. This option is based on the realistic value of an existing vessel, as opposed to reaching a value by using accounting calculations that have no relationship to the market value. If there are two vessels that are both one-off designs, it is better if possible to still use the comparative method and







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**The three main types of methodology used in marine valuations are: market value basis; depreciated replacement cost; and agreed sum valuation for insurance.**

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research other vessels listed for sale (or have been sold) that have at least some similarities and then make adjustments to the subject vessel.

If the vessel is of a production design internationally well known, boat valuers have access to recorded sales information that can reasonably be relied upon. If there are several recent sales recorded of similar vessels the information can be considered creditable. Further evaluation is then required to compare the inventory and specifications between the chosen vessel sold and the vessel being valued, and once this is done the value of the subject vessel is now established. There will also be costs to get the vessel imported into either the Port of Auckland or the Port of Tauranga.

Recently I valued a one-off vessel built by a yacht builder owner, designed by another well-respected yacht builder, with

a custom interior. It had been launched many years earlier, and today there are many of this designer's range of vessels on the water today. The difficulty was that the vendors had higher expectations than the purchaser as to the market value. I initially considered the depreciated method, but the figure was too low in respect of the value of the subject vessel, so I short-listed six vessels that had some similarities to the subject vessel. After full consideration as to their value, with adjustments I then arrived at a value of the subject vessel. I sent the valuation to our client who passed it on to the vendor, and they did not argue against it (i.e. they accepted the valuation as the selling price).

**Agreed sum valuation for insurance**

This method applies only for vessel owners requesting an agreed sum for insurance. This satisfies the owner's requirements. Without this cover for an agreed sum, in the event of a loss the insurer would request a market valuation. This would leave the insured very much short of the real value of the vessel to them. Two examples follow from one end of the value scale to the other:

- A classic launch by a well-known yacht designer. The vessel market value was \$65,000, and it was launched 50 years ago but recently re-launched after an

18-month complete restoration. It is now insured for an agreed sum in excess of \$150,000

- Another classic vessel from Europe, which had been imported into New Zealand in early 2000. The extensive restoration and subsequent ongoing maintenance required an agreed sum valuation for insurance purposes. The valuation was three times what the vessel was previously insured for under market value ☺



**Ian Walker is the Managing Director of NZ Marine Valuations Limited based in Auckland. He has been involved in boat brokerage, including marine valuations, for 33 years and is still learning. [ian@boatvaluer.kiwi](mailto:ian@boatvaluer.kiwi)**



# MESSAGE FROM LONDON

BEN GILL

**What does the future of retailing look like in UK high streets?**  
Ben Gill looks at current trends in the retail sector.

## Warnings in the retail sector

If there's one thing I miss about New Zealand (actually, there's lots), it's the Kiwi attitude to Christmas. Jandals, BBQ and sunshine and you're pretty much done. Not so in the UK unfortunately, where Christmas provides the only glimmer of excitement in an otherwise dark and cold season. With all this over-hype comes the pressure to spend spend spend, which UK consumers have enthusiastically done every year. Christmas spending reached £77.5 billion (NZD\$146 billion) in 2016, with a further increase expected this year.

However, all may not be joyful and triumphant in the UK's retail sector, as soon you'll be hearing the words 'profits warning' more often than 'Do they know it's Christmas?' So, with time on my hands until the next department store shoving match, I have taken a look at what is happening across the retail sector.

## Pray for the other ones

The British love of chains (stores, cafes, supermarkets and restaurants) is hard to overstate; it's an oddly American desire to consume the same, standardised goods wherever someone may find themselves. Accordingly, chains are estimated to represent over half of all retail space in Britain. However, it would seem that we're a fickle bunch, as chains are also responsible for the greatest number of store closures over the last three years.

High street stalwarts in particular are rethinking their footprints, with Steve Rowe (the new Chief Executive of Marks and Spencer) setting out that his company needs 'the right estate for future shopping habits'. Given the firm's history as a 'high street anchor', and a resistance to downsizing previously, this represents a major shift in thinking.

This response by major retailers is being driven not only by squeezed margins (lower footfall and increased costs), but a move away from a retail philosophy that dictates that a brand needs to be represented in every town. Retailers are focusing on those locations that offer the greatest likelihood of continued profitability, which these days is away from secondary shopping centres and towards mixed-leisure facilities in major cities.

This has seen the beginning of the 'hollowing out' of some regional towns. The north west region in particular has seen its retail vacancy rate grow to 15%, and in some towns as many as one in three high street shops lies empty. A startling statistic reveals that of all vacant shops in the UK, one in 28 has been vacant for more than two years.

## There's no need to be afraid

Despite the gloom, there are some retailers who are expanding their footprint and signing up new leases. According to research carried out by LDC, the retailers most likely to find themselves in this category are those





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*Retailers are focusing on those locations that offer the greatest likelihood of continued profitability, which these days is away from secondary shopping centres and towards mixed-leisure facilities in major cities.*

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that blur the line between traditional product offerings and services, what may be termed 'experiential retailing' (examples include vaping stores, independent barbers and beauticians). This is believed to reflect a general generational trend towards the idea of shopping as an experience, rather than the simple gathering of required items. It may also be that these retailers offer products and services that consumers are less willing to cut back on when money is running low.

Interestingly, the demand from bars, cafes and casual dining chains is cooling rapidly, having previously been viewed as a growth area in line with retail customer expectations around experiences. This contrasts with another growth area – convenience takeaways. While not the most glamorous of offerings (kebab pizza anyone?), these retailers are seeing an uptick in business as shoppers feel the pinch and seek out cheaper alternatives to the aforementioned casual dining options.

Finally, while the supermarket sector has recently entered into a period of merger frenzy (Tesco's and Booker, B&M and Heron Foods, Sainsbury's and Nisa), Lidl and Aldi, two low-cost German retailers, are continuing to expand their UK footprint. Their growing popularity similarly suggests that UK consumers are seeking out lower-cost offerings. While good news for them, this may suggest continued downward pressure on retailers more generally.

### **There's a world outside your window**

And so to the department stores. A recent *Guardian* article highlighted a further innovation along the 'experiential retailing' spectrum – shoppertainment. Receiving its launch in Oxford's new Selfridges store, this approach sees retailers increase the use of actors, fit-outs and product demonstrations to create a unique shopping experience. It's hoped that this will create a distinct impression in consumers' minds and build brand loyalty, in addition to upping the excitement level associated with shopping. Whether Tesco's could replicate this with buying broccoli remains to be seen!

Department stores are seeing something of a revival, as customer expectations increase in terms of service and being made to feel special. This revival can be seen in the UK through the cut-throat world of Christmas window displays, with Selfridges again ahead of the pack, having unveiled their displays as early as 19 October. Department stores may also be indirectly benefitting from the trend of other retailers to focus on major cities. Selfridges, Harrods and House of Fraser have always concentrated here and avoided 'diluting' the value of their brands by appearing on every high street.

### **The clanging chimes of doom?**

Only time will tell what the future of retailing looks like, assuming there is one. It is clear that the sector is under pressure, and it's hard to see how most retailers will innovate their way out of the danger zone. While there are some glimpses of hope, retailers will have to go back to the drawing board, potentially re-imagining the whole concept of shopping for a new generation. Perhaps, as has been seen in recent months, it is time for online retailers (such as Amazon's takeover of Whole Foods) to take what looks like a backwards step and enter into the world of bricks and mortar 🏠



**Ben Gill is a commercial real estate consultant in London and contributes here in a personal capacity only.**  
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# NOT JUST ANOTHER LANEWAY

## Press Hall in Wellington's CBD

**Wellington city is currently experiencing less than 1% vacancy rates for prime office space, compared to Auckland at 4%. Strengthened commercial 'character' space also continues to be in high demand despite the high number of earthquake-prone and older buildings being strengthened and refitted over recent years.**

While the sound of demolition teams pulling down earthquake-prone and old commercial buildings around Wellington has become all too familiar, McKee Fehl Construction have made a habit of finding ways to re-use and strengthen buildings which have been under-used for some time.

In 2015, owner Maurice Clark bought an 85-year-old five-storey building called Community House at 84 Willis Street. Because the building was landlocked, he also bought a smaller two-storey building that held the street frontage at 78 Willis Street. This was demolished in 2016 to create a spacious laneway and courtyard leading into the old Community House.

The \$15 million dollar redevelopment of Community House was a project that grew over time. The building was originally purchased to provide pedestrian access from Willis Street through to the *Dominion Post* building on Boulcott Street, also owned by Mr Clark, which was directly behind Community House and being refurbished for Transpower.

At the time of purchase he had not yet decided how to redevelop Community House and the laneway.

'Initially we had the issue that the existing tenants in the building were lower value in terms of rent, but they were largely providing a good community service,' says Mr Clark. 'The building was being under-used and needed significant work, and luckily we were able to relocate most of the tenants, including local charity Vincent's Art Workshop.'

'At first back in 2015 we were heading towards residential apartments, but it soon became apparent that with the courtyard, the laneway, and the six metre high stud in the ground floor, there was a great opportunity for a commercial character development.

'We then realised that at completion there would be around 1,000 pedestrians using the laneway each day just to access their offices so there was an opportunity to create some sort of public hospitality space on the ground floor to maximise foot traffic. The strength of the vision was so strong we actually secured a main tenant before we had appointed an architect. They ended up taking the top three floors.'

The final product, designed by Warren and Mahoney, saw Clark's vision to fruition with the industrial aesthetic featuring exposed beams, concrete floors, elegantly displayed lighting and ventilation systems, and strengthened to 80% NBS.

The development became known as Press Hall over time, harking back to the original use of Community House – as the space that once housed the old *Evening Post* printing presses for the first half of the 20th century.

The main tenant, IT services company Interogen, moved into the Warren and Mahoney fit-out in February 2016. The three floors of over 2,700 square metres are linked by two atria, one with an elegant steel stair. The remaining character office space on Level One was quickly tenanted to a group of three boutique design, IT and creative agencies.

While the building has had 250 tenants working from it for the past year, the laneway, courtyard and hospitality development has been under construction and is due to open in January 2018. McKee Fehl Construction Development Manager Will Broadmore believes the final mix of tenancies is an exciting and eclectic mix of Wellington's best known eateries. The laneway also features a rooftop bar overlooking Willis Street.

'This sort of mix of eateries is something Wellington really needed, especially in this part of the CBD,' he says. 'There is a strong base of public and private sector workers in the city and they need somewhere to eat at lunchtime. Up until now the food options in this area were really lacking.'

Hospitality specialist architect Allistar Cox joined the project to design the unique laneway kiosk along with guiding the feel of the courtyard development. 'Allistar's judgement and input has been really valuable during the tenant marketing and design phase due to his familiarity with the hospitality scene,' says Mr Broadmore. 'It's been a challenge to pull the right mix of operators together for this development, but it's come together really well. We are in the final stages of fitting out each tenant's space ready for opening.' 🍷



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Jay Sorensen is embracing his rural valuation career with a passion.



# JAY SORENSEN

## Entering rural valuation

Jay acknowledges that when he started university he wasn't entirely sure where he was heading, except he knew he enjoyed the agriculture sector and was interested in numbers. Then he 'fell' into rural valuation and embarked on his career with a passion.

From a Hawke's Bay farming family, Jay was at Massey University studying for a Bachelor in Applied Science when he encountered rural valuation as an option. Until then it had been something he knew little about, and says it was not well marketed.

## Logan Stone opportunity

At the end of his second year at Massey Jay sent out emails looking for holiday experience. Logan Stone, a national valuation and property specialist firm based in Hawke's Bay for 30 years, responded. Boyd Gross, the firm's primary industries sector leader, opened Jay's eyes to the rural valuation world and that has been his 'home' ever since.

Graduating with a double major in rural valuation and management, and agribusiness, Jay joined the firm in 2008, at the age of 21, and seven years later became a director of the firm.

In the intervening years, he has actively pursued his career, and in 2015 was selected as the Property Institute of New Zealand Young Professional of the Year (an award his mentor Boyd Gross won in 1997).

## Promoting valuation as a career

Drawing on his own experience of not knowing about valuation as a career option, Jay sees it as a responsibility and challenge to bring a younger voice to raising the

profile of his chosen career among students and graduates.

As a past member of the Property Institute Young Leaders' Committee, he was involved in a project to develop resources for secondary school students to encourage greater interest in property as a career option. He enjoys making presentations to students in Hawke's Bay at careers days and, having developed an affinity with some of the region's schools, talks to groups of 10 to 25 young people at a time.

He is heartened by the good questions that arise from these discussions and the growth in numbers taking up valuation studies at university in recent years. He is also pleased to see the Property Institute's attendance now at careers days.

## Addressing industry challenges

Aware that the industry is top heavy with older males, Jay sees his role on the Property Institute Standards and Valuation Committee as important, providing a younger perspective in reviewing and enhancing new standards and preparing for the changes facing the industry.

The automation of valuations is one growing trend that Jay believes will change the industry, with much of the simpler work possibly eroded, as well as the potential for more limited client contact and feedback opportunities.

Jay believes that the industry needs to continue to ensure members provide quality advice so they can maintain client contact and add value through robust conclusions that are well thought out and not a time-pressured output. This is something that an automated valuation model will never be able to do.

## Young directorship

Business ownership was always a future aspiration, but very quickly became a goal that Jay worked progressively towards. He says that while still studying it became quite apparent that there were many older valuers within the industry, and that if he committed long term there would likely be ownership opportunities, particularly in the rural sector.

Having the opportunity to learn more about how a business operates, and being involved in the firm's strategic direction to keep it at the forefront of an evolving industry, is proving pleasingly challenging.

Again, Jay believes he brings a valuable younger generation view to the board table where he sits with fellow directors, Frank Spencer and Boyd Gross. It is an ongoing learning situation, but Jay is stimulated by the challenges and sees bringing the staff on board with the firm's growth goals as one of his particular contributions. The same goes for being able to train and help shape his younger colleagues and their careers.

## Mentoring paying it forward

In Jay's view, mentoring has been a significant aspect of his success and he is proud to be 'paying it forward' now, mentoring three younger professionals on the staff (one of whom, Hayley Mortleman, has recently gained registration). The firm regularly takes on students for holiday experience and provides an opportunity for them to work and observe valuation in practice.

When he first joined Logan Stone, director Roger Stone took Jay and a second graduate to lunch each Friday and work began from 'day one' on gaining their





Jay Sorensen with Hayley Mortleman, another young rural valuer based at Logan Stone

registration. During these sessions Roger shared his personal strategy for growing his reputation and business. Jay took this advice on board and actively works on networking and looking for ways to stand out and to brand himself.

Making himself available for industry committees has been part of this strategy that he feels has returned invaluable knowledge and opportunities to learn from industry leaders.

### Building networks

From the outset of his career, armed with Roger's advice Jay has worked to develop relationships throughout Hawke's Bay, the North Island, and further afield. Even as an extrovert he acknowledges this has required determination. However, he says the effort has stood him in good stead, with early networking contacts now getting in touch with work and opportunities.

Some of these contacts have come from members of a Young Professionals Group in Hawke's Bay that Jay helped establish in 2012. This was set up to provide a networking forum for up-and-coming professionals, many of whom were new to the region and also looking to establish themselves and make contacts.

Jay says it takes time to gain traction as a work generator – five to six years of constant effort establishing a reputation, gaining registration and associate status, and building up personal knowledge and resources. He also believes that the learning needs to never stop.

### Nutrient sustainability advice

As a rural valuer, Jay recognises the challenges facing farmers in the area of sustainability and the growing need to implement and prove sustainable farming practices. He therefore made the conscious effort to upskill and increase his knowledge, gaining an Advanced Certificate in Sustainable Nutrient Management.

Maintaining and improving profitability, while meeting new water management rules imposed by regional authorities, will be a challenge for many farmers. Jay believes that decisions made today could pose problems for compliance in the future.

He sees huge advantages for rural operators in gaining an understanding of property, values, farming systems and environmental issues. Nutrient management is becoming increasingly critical for rural businesses – for their pockets as well as the planet.

In his view, smart nutrient management will help farmers get the most out of their land while limiting their environmental impact. It is an area that Logan Stone is placing significant emphasis on, with two other valuers within the firm also having gained the qualification.

### A successful career path

Not even a decade into his career, Jay feels valuation provides a good balance that keeps him stimulated. He thrives on meeting and talking with people involved in the rural sector – farmers, growers and the professional services that support them. Understanding their business and what makes it tick, and being out on the farm, orchard or vineyard, gives him satisfaction.

He also enjoys the opportunity to add value to a primary industry operation, with robust conclusions that draw on his own and the collective intelligence of his firm, as well as the ability to help motivate and train young people.

Jay is keen to spread the word that the profession is one well worth pursuing. He sees plenty of demand into the future for valuation services of good standing and high ethics. In short, he believes there is an abundance of opportunities for career success 🌱



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The Land Transfer Act 2017 appears to be technologically driven

# PLAYING CATCH UP?

## The transition to a new Land Transfer Act 2017

RACHAEL WITNEY AND NICK WILSON

### Easy transition

The new Land Transfer Act 2017 (the Act) was given Royal Assent on 10 July 2017, even though it was only introduced as a Bill into Parliament in early 2016. The quick progression of this enactment perhaps

explains the importance and need for the change it will bring. Put simply, the Act's predecessor is outdated, now being over 60 years old. The law surrounding land registration and the transfer of interests is in need of a modern approach – one that

With the Land Transfer Act 2017 receiving the royal assent earlier this year, the law surrounding land transfer is set to be updated. While the new Act will bring some changes, the transfer to it will be an easy change over and one that largely brings the law into line with current practice.

better reflects the digitisation of the law surrounding land transfer.

For most of us, the transition to the new Act will be an easy one. The Act appears to be technologically driven and is generally playing catch up with current practice.



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## The law surrounding land registration and the transfer of interests is in need of a modern approach – one that better reflects the digitisation of the law surrounding land transfer.

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Below we look at key changes the Act will bring including:

- New provisions around indefeasibility and the compensation regime, which (given that title fraud is rare) will have limited application
- Some changes to terminology with the introduction of a 'record of title' and a definition of fraud
- Perhaps the most notable for property lawyers is the introduction of covenants in gross, which until now have only been able to be registered via the use of an encumbrance.

For the more day-to-day tasks, it will be business as usual with minor adjustments.

### Time for a change

The Act is the Government's response to the Law Commission's Report *A New Land Transfer Act* (the Report). This was a response to the review of the Land Transfer Act 1952 (1952 Act), and will repeal the 1952 Act along with its two amendments Acts – the Land Transfer Amendment Act 1963 and the Land Transfer (Computer Registration and Electronic Lodgment) Amendment Act 2002.

The Act will come into force on a date appointed by the Governor-General by Order in Council, or will otherwise come into force 18 months after the date of assent (10 January 2019). A new set of regulations will accompany the Act, replacing the Land Transfer Regulations 2002.

Section 3 of the new Act sets out its purpose – to replace the Land Transfer Act 1952 with a modern Act. While New Zealand has been renowned in recent years for having a world-leading land title registration system, the legislation that

governs our system is outdated, or at least was until now. It is time to bring the law up to speed with current practice.

### Torrens system retained

The Torrens system is the current land transfer registration system in New Zealand and holds that no legal interest in land may be created except by registration under the 1952 Act. The register is deemed to mirror the state of the title and provides state guarantee to the title and interests registered on the title.

While the Land Transfer Act 2017 aims to modernise the legislation surrounding land transfer, it retains the fundamental core principles of the Torrens system, being to:

- Provide security of ownership of estates and interests in land
- Facilitate the transfer of and dealings with estates and interests in land
- Provide adequate compensation to innocent owners who suffer a loss from the operation of the system
- Provide a register of land that accurately describes and records the ownership and state of the land (section 3, Land Transfer Act 2017).

The Act does, however, amongst other changes to the legislation, make two changes to the underpinning principles to indefeasibility and compensation within the Torrens system.

### Key changes

#### *Indefeasibility*

In circumstances where indefeasibility would result in 'manifest injustice', the new Act gives the High Court the discretion to cancel or alter land title registers (section 55, Land Transfer Act 2017).

An application may be made for the cancellation of the registration of an estate or interest by 'person A' if under section 54 of the Act:

- (a) Person A has been deprived of an estate or interest in land by the registration of a void or voidable instrument by another person ('person B') as owner of that estate or interest in the land, or
- (b) Person A is the owner of an estate or interest in land, and suffers loss or damage by the registration under a void or voidable instrument of person B as the owner of an estate or interest in the land.

The new Act does not define the terms 'void' or 'voidable', nor are they defined under the Property Law Act 2007 or the Interpretation Act 1999. The *Concise Oxford English Dictionary* defines 'void' as being 'not valid or legally binding'. The *LexisNexis New Zealand Law Dictionary* (8th edn) defines 'void' as legally non-existent, having no legal effect and highlights that a transaction is said to be void when it is a 'mere nullity and incapable of confirmation'. 'Voidable' is defined as something which has 'the ability to be set aside' as a result of a legal defect, either by one of the parties, by operation of the law or by a court order.

Some examples of void instruments were discussed in *Housing New Zealand Corporation v Maori Trustee* [1998] 2 NZLR 662. The High Court provided the following examples of void instruments which all failed to meet certain statutory requirements:

- A mortgage of Maori freehold land not submitted to the Registrar of the Maori Land Court for noting and endorsing prior to registration

*The Act also now provides that no compensation is payable for any loss or damage suffered by a claimant if that loss or damage is the result of the claimant's own fraud or own lack of care.*

- A memorandum of transfer executed without the name of the purchase being written in ink as required by the Queensland Stamp Act 1894 (Queensland, Australia)
- A lease registered without the requisite approval of a statutory body under the Industrial Arbitration Act 1940 (New South Wales, Australia).

The threshold for this exception to indefeasibility is high. The Act provides some general rules on when an order can be made:

- An application can only be brought within a six-month timeframe of person A becoming aware, or of when person A ought to have reasonably been aware, of the estate of interest of person B
- Forgery or dishonest conduct does not, in itself, constitute manifest injustice (section 55(2), Land Transfer Act 2017)
- The court must be satisfied that the injustice cannot be properly addressed by compensation or damages (section 55(3), Land Transfer Act 2017)
- An order may not be granted if person B has transferred the estate or interest to a third party, and that third party was acting in good faith (section 56, Land Transfer Act 2017).

Fraud is also now defined under the new Act as an exception to indefeasibility. Section 6 of the new Act defines 'fraud' as forgery or other dishonest conduct by the registered owner or the registered owner's agent in acquiring a registered estate or interest in land. The definition is further clarified in subsections (2) and (3) of the Act. Fraud must be against:

- The registered owner of an estate or interest, or

- The owner of an unregistered interest, if the registered owner or their agent in acquiring the estate or interest had actual knowledge of, or was willfully blind to the existence of, the unregistered interest and intended at the time of registration that the registration would defeat the unregistered interest.

#### **Compensation regime**

Central to the Torrens land registration system is the principle that the register accurately mirrors the state of the title so that purchasers of land do not have to look any further than the register itself. For that reason, compensation is granted by the Crown (being responsible for the administration of the register) for any loss that occurs as a result of inaccuracies on the title.

Under the 1952 Act, there are three statutory bases to a claim for compensation:

- A loss caused by an omission, mistake or misfeasance of the Registrar
- A loss of any land or estate or interest in land through the operation of the Act and the land transfer system, or
- For any loss caused in reliance on a guaranteed search.

Compensation under the 1952 Act is based on land value at the date of the loss. The new Act retains the system of 'state compensation' for loss that results from the operation of the land transfer system but makes a few changes.

For the purposes of land transfer compensation, 'land value' is now to be assessed at the date the claimant discovers (or should reasonably have discovered) the

loss, rather than the value at the date of the loss (section 65, Land Transfer Act 2017).

The court also has the ability to adjust the compensation amount (by using the market value as at a different date), if it considers the amount of compensation determined under the Act to be inadequate or excessive (section 68, Land Transfer Act 2017).

The Act also now provides that no compensation is payable for any loss or damage suffered by a claimant if that loss or damage is the result of the claimant's own fraud or own lack of care. The Act provides that 'lack of proper care' may include, but is not limited to, circumstances where the claimant has failed to seek independent legal advice or take other reasonable and prudent steps to ascertain the effect of an instrument (section 69, Land Transfer Act 2017).

Compensation timeframes have also been amended. Under the 1952 Act, the period in which a guaranteed title search would need to be obtained to be eligible for compensation was within 14 days before settlement. The timeframe to bring a compensation claim was for a period of two months after the date of settlement.

To be eligible for compensation under the new Act, the period for which a guaranteed search may now be obtained is five working days before settlement, and the period of protection pursuant to a guaranteed search is now reduced to 20 working days (commencing on the day after settlement). These reduced timeframes reflect the changing nature of obtaining search copies as they are now readily accessible.

### ***Covenants in gross***

The new Act provides for covenants in gross, allowing land covenants that are for the benefit of a person rather than a parcel of land to be noted on the register. Under the 1952 Act, only land covenants benefitting other land were able to be noted.

It is envisaged that covenants in gross will replace encumbrance instruments, which have been used in recent years to circumvent the restriction on covenants in gross by way of a 'rent charge' mechanism to secure collateral covenants. Whether encumbrance instruments will cease to be used and become redundant altogether under the new Act remains to be seen.

Practically, there is uncertainty around the form of covenants in gross. It is possible that at least until covenants in gross are widely used and people have become familiar with them that encumbrance instruments may continue to be used into the near future, particularly by local authorities. While encumbrances are a 'clunky' method of securing a covenant in gross, people know them and there is certainty they are enforceable.

### ***Record of title***

The new Act introduces the concept of a 'record of title' under section 12 whereby the Registrar-General of Land may create a record of registered ownership and interests that affect the title. The new concept of a record of title will replace the terms traditionally referred to as 'certificate of title' and 'computer register'.

Upon commencement of the Act, all existing certificate of titles and computer registers established under the 1952 Act are to be treated as if they were a record of title (created under the new Act), until a record of title has been created for it (Schedule 1, section 12, Land Transfer Act 2017).

Practically, it appears that other than a change of name, there will be no real change to a 'title' as we know it.

### ***Powers of correction by Registrar-General of Land***

The new Act codifies current practice to provide a clearer scope about the Registrar-General of Land's powers of correction. Under the 1952 Act, the Registrar was permitted to correct errors and supply omissions in the register. However, the nature and scope of the Registrar's powers under the 1952 Act, which are wide, have been deemed unclear and confusing in their application.

The Act attempts to clarify the scope of the Registrar's correction powers. Under section 21 of the Act, the Registrar has the power to:

- Correct an error made by the Registrar
- Correct an error made by a person in preparing or submitting a document or information for registration
- Make corrections to allow for boundary adjustments from accretion or erosion
- Make corrections to give effect to a court order.

However, the first three corrections above may only be made by the Registrar-General of Land if either written consent has been given by all affected parties, or if all affected parties have been notified and do not oppose the correction. In practice, this may mean that where proposed corrections do have a material impact, that an owner's consent may not be forthcoming and an error on a title will not be fixed.

### ***Overall impact of the Act***

On the whole, the new Act provides greater clarity and certainty to the land transfer system. The new Act provides a much-needed modernisation to our current land transfer law to allow it to catch up with technological advances in the area and to bring it into line with current practice. For most, the transition to the new Act should be business as usual. While noticeable changes will be apparent, such as to the change in terminology to a 'record of title'

and the likely (eventual) replacement of encumbrances with the use of covenants in gross, the Act appears to largely codify current industry practice.

### ***Disclaimer***

The information contained in this article is general in nature. It does not constitute legal advice and should not be relied on as such. Specialist advice should be sought in particular matters 🌀



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### Rent assessment process

The rent assessment process is more challenging in the case of commercial properties than for residential because the former are more heterogeneous in terms of size, layout, location and purpose. In addition, the transactions in the commercial property market are less frequent. This results in fewer data points that reveal information about market trends. In contrast to non-commercial properties, the lack of a comprehensive database on recent and past leases makes the assessment process more demanding.

The survey questionnaire used was designed to determine how well valuers perform and to examine the importance of property characteristics for the rent assessment process. The survey also sought feedback from valuers' clients on proposed innovations aimed at increasing transparency and access to information.

The survey was conducted between March and October 2017 and consisted of 35 questions. It was distributed via email with a request that survey participants should have day-to-day interaction with valuers. Most of the

Past studies have examined court cases to estimate the level of valuation inaccuracy. Expert witnesses in the legal process in the UK and Australia have attempted to extend the accepted margin of error to no more than 20%. In British legal cases, nearly 75% of decisions fall within the range of 10-15%. In the case of Australia, scholars have found that valuers' estimations are within 5-10% of the market value (or rent). These examples show the existence of inaccuracy in rent assessments in Commonwealth countries. In recent years, we have heard critical voices on the role of professional valuers and their methods. The next section offers a brief summary of these voices together with references to my past research on the topic.

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## *The transactions in the commercial property market are less frequent. This results in fewer data points that reveal information about market trends.*

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Taking these difficulties into account, there is no doubt that market participants leave some space for inaccuracy in rent assessments prepared by professional valuers. The aim of this article is to answer the following questions:

- What can valuers do to improve the accuracy of assessments?
- What do commercial property valuer clients think about their work? Do they see any existing limitations? What concerns them in the current commercial rent assessment set up in New Zealand?

Finally, the article sets out a potential solution to improve commercial rent assessment in New Zealand.

### Survey base

The approach and methodology of this study is based on a survey of key employees of publicly NZX listed companies who have day-to-day interactions with commercial valuers.

questions have a multi-choice format with the option of providing individual answers. The questionnaire concludes by asking for ideas to add value to the commercial valuer profession. All of the survey participants have a specialty in commercial and industrial property, and 90% of them have been in practice for at least 10 years. The average annual number of involvements in rent valuations per respondent exceeds 45. Around 37% of survey participants review 50 or more reports per year.

### How accurate are rent valuation reports?

Human beings make mistakes in their judgement and errors in their calculations – this is part of our nature. For some professions, the accepted margin of error is very, very small, and some even wish for no oversights at all (judges and physicians). A legitimate question is what is a tolerable margin of error for professional valuers.

### Quality of the rent assessment process in New Zealand

Valuers are key participants in the process of setting rents. From time to time, they are criticised for client advocacy and the valuation methods used in their calculation. The type of client, the characteristics of valuers' valuation firms, the purpose of valuation and the information endowment of clients should not impact the rent valuation process. In other words, the valuation process should be independent of those factors and the level of proposed rents should not depend on whether the valuer works for the tenant or the landlord.

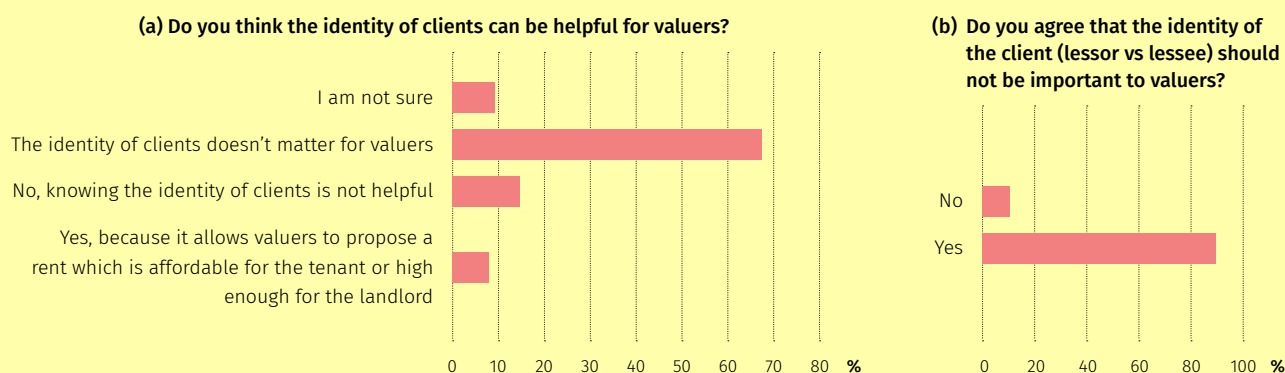
In practice, some valuers engage in client advocacy, i.e. they act as advocates for their client – either the tenant or the landlord. To examine client advocacy in New Zealand, in my past article (published in Autumn 2016 *Property Professional*) I surveyed 470 New Zealand valuers. The result of the survey confirmed that some valuers do occasionally act as advocates for their clients.

# REVIEW OF COMMERCIAL RENT ASSESSMENTS

the voice of NZX listed companies

Human beings make mistakes in their judgement and errors in their calculations – this is part of our nature. For some professions, the accepted margin of error is very, very small. What is a tolerable margin of error for professional valuers?

JĘDRZEJ BIAŁKOWSKI

**Figure 1: Client advocacy the result of a survey among (a) valuers and (b) managers of NZX listed companies**

Another aspect of valuers' work attracting substantial attention is the selection of valuation methods for property valuation and rent assessment reports. For example, the reports on comparable properties that they prepare for the tenant and the landlord are sometimes materially different. As a result, they often recommend a lower rent valuation for tenants and a higher rent valuation for landlords for the same property. The result of my survey among valuers shows that a 50% or less overlap in selected properties was reported by 87% of the survey participants. Less than 11% of those surveyed agreed with the statement that they often recommend a lower rent valuation for tenants and a higher rent valuation for landlords.

A review of 34 rental assessment reports prepared for seven properties over a 20-year timespan in Christchurch (published in Winter 2016 *Property Professional*) revealed that valuers struggle to find matched and comparable properties in line with the common agreed definition of comparability. As a result, considering not-comparable properties may result in an incorrect rent for a given property.

In my past work, I showed a disjunction between what New Zealand valuers recognise as an appropriate method for rent assessment and their actual performance. Relying on the comparison method with little attention to factors such as inflation, disagreement on the definition of similar properties and a lack of transparency in

the valuation process were also identified as key reasons for inaccuracy in the rent valuation process.

### **NZX listed companies' views on the rent assessment process**

NZX listed companies are the important players in the commercial property market. Their voice in the discussion on the quality of the rent assessment process should be heard as they represent the landlord's side of leasing. Moreover, their opinion is important due to the high volume of rent assessment reports examined.

The survey I conducted revealed that, on average, 78% of respondents describe the methods used by valuers to assess a rent for commercial properties as satisfactory. In their experience, on average, they have found 88% of valuers to be ethical (they stay inside the range of justifiable rent values). However, the majority of respondents agreed that rent valuation methods differ across companies. For example, based on their experience only 41% of rent valuation reports consider the growth of the CPI index in their calculations. Almost all of them have experienced an inconsistency in rent valuations from year to year, more specifically when they have used the rent valuation services of different companies. The respondents believe that 28% of rental valuation reports are prepared by a valuer who has failed to take some factors into account or has made a mistake.

The respondents, when they are negotiating new leases, mostly use their knowledge but occasionally use the last rent for the property assessed as the main indicator. Only sometimes do they accept advice from a valuer without their input. Of the respondents, 55% rarely read the full rental valuation reports. The survey participants claim that in most cases the key input data for the valuation are already available on the page with the assessed rental rates and total rent, so there is no need for an extensive analysis of reports.

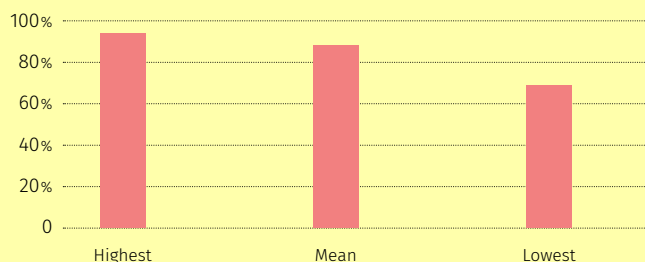
All of the respondents agreed on the importance of the selection of comparable properties for the rent assessment process. They stated that they check the comparable properties to get an idea of the rental rates for very similar properties that have been recently leased. However, they believe that, on average, only 51% of comparable properties are newly leased and that the rest are renewed leases. Also, on average, only 60% of the comparable properties listed in reports are reasonably comparable after taking into account type, location, size, age and condition. According to the questionnaire responses, when the landlord's valuer and the tenant's valuer provide an assessment for the same property, on average, only 48% of the comparable properties are present in both reports.

The survey also asked about the details of the valuation processes. It revealed that every third respondent does not check



**Figure 2: Evidence of client advocacy the result of the survey among managers of NZX listed companies**

**In your experience, what percentage of rental valuation reports obtained by tenants have a lower rent assessed than the report for the same property obtained by their landlord?**



the accuracy of the rental assessments of parking and yard areas. Among those who do check the methodology of the rent assessment for parking areas, in most cases (85%) the rent for parking areas is estimated using a weekly rental for each parking space times the number of marked car spaces. It is worth highlighting that 45% of respondents believe that this is an improper method. The survey also revealed that 71% of participants think it is not acceptable that valuers do not assess rent on the asphalt yard areas provided by a landlord.

To establish a good relationship with a client, valuers may engage in client advocacy. Of the respondents, 41% believed that some valuers might have acted as advocates for their clients – either tenant or landlord. Based on their experience, on average, 89% of rental valuation reports obtained by tenants have a lower rent assessed than the report for the same property obtained by their landlords. The survey revealed that usually the two valuers involved in the rent review determine the rent after discussions, but in 27% of the cases the two valuers have another valuer decide on the rent after an arbitration hearing.

The majority of the respondents believe that rental disputes involving two or more valuers generate more income for valuers, consume the time and money of landlords and tenants, and adversely affect the relationship between landlords and

tenants. More than 35% of the respondents believe that if valuers had access to a comprehensive database of all new leases and rent reviews this would result in more accurate rental reports and eliminate many rental disputes.

### Concluding remarks

Property valuation and rent assessment is a complex process. It requires knowledge, experience and very good access to the information about a given property and recent leases.

The technical part of valuation can be well defined and should not be the subject of disagreement between valuers representing opposite sides of a transaction. The above survey among NZX companies and my analysis of reports on properties in Christchurch highlight important aspects of the rent assessment process which need more attention by the profession in the years to come, namely, relying on the comparison method with little attention to factors such as inflation, disagreement on the definition of similar properties and a lack of transparency in the valuation process.

There is agreement between managers of NZX listed companies and valuers themselves that the characteristics of clients should not have an impact on the rent assessment process and the estimated rent. On the other hand, the managers of NZX listed companies claim that, on average, in 89% of cases the rent proposed

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*The managers of NZX listed companies claim that, on average, in 89% of cases the rent proposed by the tenant's valuer is lower than the rent estimated by the landlord's valuer.*

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by the tenant's valuer is lower than the rent estimated by the landlord's valuer. Client advocacy seems to be a problem that is recognised by managers of NZX listed companies. The issues identified in this research should be addressed by the industry itself, as this would help to enhance the reputation of and public confidence in the valuation profession 🐾



**Dr Jędrzej Białkowski is an Associate Professor at the University of Canterbury. His recent research focuses on the relationship between capital and real estate markets and he has published in finance journals, including the Journal of Banking and Finance, the Journal of Futures Markets, the Journal of Derivatives and the International Review of Financial Analysis.**  
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# 2017 US STUDY TOUR



## San Francisco & New York



**The world is a much smaller place than it used to be. But even advances in technology and information are no substitute for first-hand real-life experiences. And that's what makes the Study Tour an important part of the Property Institute's calendar.**

After taking a hiatus in 2016, this year's Study Tour saw our tour group head to the United States. Not even two hurricanes were able to stop the 10-day adventure. The 13-member group learned a lot, confirmed that similar challenges face property professionals right around the globe, and they managed to have a good time in the process.

The Institute would like to thank those who took part, their employers for letting them leave the office, and especially PINZ Operations Manager Jenny Houdalakis for organising the whole thing – which was no mean feat.

### Acts of God

As they say, the best laid plans of mice and men often go awry, so thank goodness for comprehensive travel insurance. After months of planning and consultation with members about the destination for the 2017 Study Tour, two major hurricanes slammed into the US. First, Hurricane Harvey pounded Houston, the first scheduled stop on the trip. As the scale of the disaster unfolded the phone calls from the US started. Some of the places on the itinerary had been destroyed, some were under water – but the message was clear. Don't come.

San Francisco was added to the mix. Then on the day before arriving in America, Hurricane Irma brought chaos to the east coast. When New Orleans became a major evacuation centre the phone calls started again – don't come. New Orleans had to be dropped from the itinerary. This meant frantic last minute organisation, a claim on our Chubb travel insurance, and an Operations Manager who must have thought the world was trying to tell her something.





## Overcoming challenges

Despite all the obstacles that had been put in the way the Study Tour went ahead and the party arrived in San Francisco on 10 September. It was an extremely informative visit, including a bus tour of the city, taking in the history of the commercial and retail districts and the unique heritage.

Among the businesses visited were Pacific Eagle and Bespoke. Pacific Eagle is a San Francisco-based real estate manager with a more than 20-year track record investing in hotels, offices and condominiums. Bespoke is a Westfield-based co-working and event space converging tech and retail marketplaces.

## The Big Apple

Next came New York. The first day included a three-hour walking tour of the financial district – starting at Wall Street and ending in the famous Soho district. The tour was dripping with history, giving visitors some real insights into the reasons why New York has developed and grown the way it has.

The party visited One Liberty Plaza – a 54-storey skyscraper in Lower Manhattan (formerly the US Steel Building), learning

about its sophisticated energy management system and touring the building to see how it worked.

On the last day the Kiwi visitors met with the American Society of Appraisers, the US version of the NZ Institute of Valuers. This was a fascinating lesson in how valuers operate in the US, particularly with the vast number of state, federal and city laws that valuers have to navigate their way around. The tour party was told that within a hundred miles of New York there were four or five different sets of rules for county, state, federal and city valuers, making the red tape we see in New Zealand seem relatively straightforward.

It was also clear that the American Society of Appraisers faces similar challenges to those that are faced by the industry in New Zealand. This includes declining membership due to technological advances, and an ageing, mostly male, membership base – offering insights into strategies they are adopting to remain relevant, change and grow.

## Planning for 2018

Those who took part in this year's tour have generously offered universally positive

feedback. Despite the forced changes to the itinerary, the trip was still great value for money thanks largely to Jenny's exceptional organisational skills.

As many readers may already know, the Property Institute has been canvassing member thoughts on destinations for the 2018 Study Tour. Options on the table so far include another North American adventure, South East Asia, South America, or Gulf countries like Bahrain, Dubai, Oman or Qatar – with a strong preference for travelling in September next year. Be sure to watch this space.

## Tour party

**Pat O'Reilly** (Trust Management, Auckland), **Roger Gordon** (Telfer Young, Waikato), **Ian Dewar** (Ngai Tahu, Christchurch), **Lyn Chung** (Private Property Investor), **Des Wai** (RCG, Auckland), **Ken and wife Sandra Goldfinch** (Property Valuer, Queenstown), **John Abel-Pattinson** (Blackstone, Auckland), **Inez White** (Property Valuer, Rotorua), **Ian Danby** (Octa Project Management), **Ross Porter** (Urban Partners, Auckland), **Ashley Church** (PINZ CEO) and **Jenny Houdalakis** (PINZ Operations Manager) 📷

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# PINZ branch events

## Northland

**Branch Chair: Melody Richards**  
[melody.richards@telferyoung.com](mailto:melody.richards@telferyoung.com)

## Auckland

**Branch Chair: Patrick Foote**  
[patrick@gctvaluers.co.nz](mailto:patrick@gctvaluers.co.nz)

## Waikato

**Branch Chair: Glenda Whitehead**  
[glenda.whitehead@tetumupaeroa.co.nz](mailto:glenda.whitehead@tetumupaeroa.co.nz)

### 📅 Upcoming events:

- 30 November 2017, 4pm – Come fly (or perch) with us at the Wayward Pigeon, 2a Gordonton Road (just through the round-about off Wairere Drive), drinks and nibbles on the branch

## Rotorua

**Branch Chair: Kendall Russ**  
[kendall.russ@telferyoung.com](mailto:kendall.russ@telferyoung.com)

## Tauranga

**Branch Chair: Paul Higson**  
[paul.higson@telferyoung.com](mailto:paul.higson@telferyoung.com)

## Gisborne

**Branch Chair: Che Whitaker**  
[cwhitaker@lewiswright.co.nz](mailto:cwhitaker@lewiswright.co.nz)

## Taranaki

**Branch Chair: Stephen Hodge**  
[stephen@taranakipropertyvaluers.nz](mailto:stephen@taranakipropertyvaluers.nz)

### 📅 Upcoming events:

- 7 December, 5pm – Taranaki branch Christmas function to be held at QV offices, 31-33 Devon Street West, New Plymouth
- Building weathertightness issues in Taranaki hosted by local building inspector Nigel Purdie (date and venue TBC)

## Hawke's Bay

**Branch Chair: George Macmillan**  
[george@morice.co.nz](mailto:george@morice.co.nz)

## Wanganui

**Branch Chair: Rob Boyd**  
[rob@morganval.co.nz](mailto:rob@morganval.co.nz)





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## Manawatu

**Branch Chair: Bruce Lavender**  
[brucel@blackmores.co.nz](mailto:brucel@blackmores.co.nz)

## Wellington

**Branch Chair: Hamish Merriman**  
[hamish.merriman@darroch.co.nz](mailto:hamish.merriman@darroch.co.nz)

## Nelson

**Branch Chair: Simon Charles**  
[simon@dukeandcooke.co.nz](mailto:simon@dukeandcooke.co.nz)

### 🕒 Upcoming event:

- The Nelson/Marlborough branch will have both a Nelson and a separate Blenheim Christmas function at some stage in December (exact dates yet to be confirmed)

## Canterbury Westland

**Branch Chair: Simon Newberry**  
[simon@fordbaker.co.nz](mailto:simon@fordbaker.co.nz)

## South/Mid-Canterbury

**Branch Chair: Alistair Wing**  
[awing@xtra.co.nz](mailto:awing@xtra.co.nz)

## Central Otago

**Branch Chair: Heather Beard**  
[heather.beard@colliersotago.com](mailto:heather.beard@colliersotago.com)

### 🕒 Upcoming events:

- 15 December, 4pm (venue TBC) – End of year Christmas function
- Study group – this has wound up for the year and will reconvene in February 2017

## Otago

**Branch Chair: Adam Binns**  
[adam.binns@abcommercial.nz](mailto:adam.binns@abcommercial.nz)

## Southland

**Branch Chair: Hunter Milne**  
[hunter@hmvaluation.co.nz](mailto:hunter@hmvaluation.co.nz)

# Changes in Rental Yields

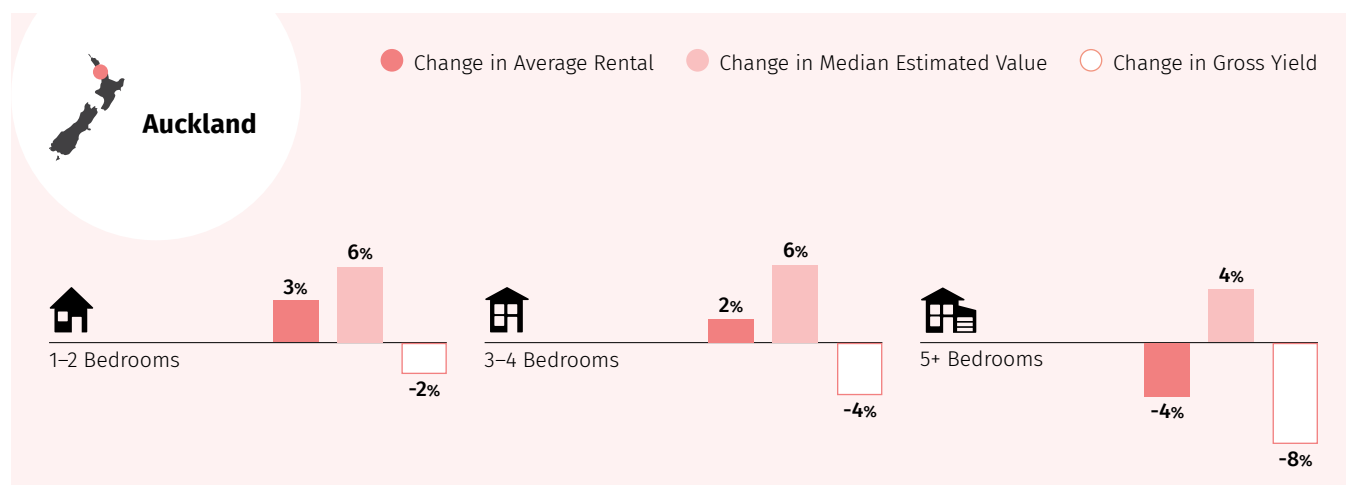
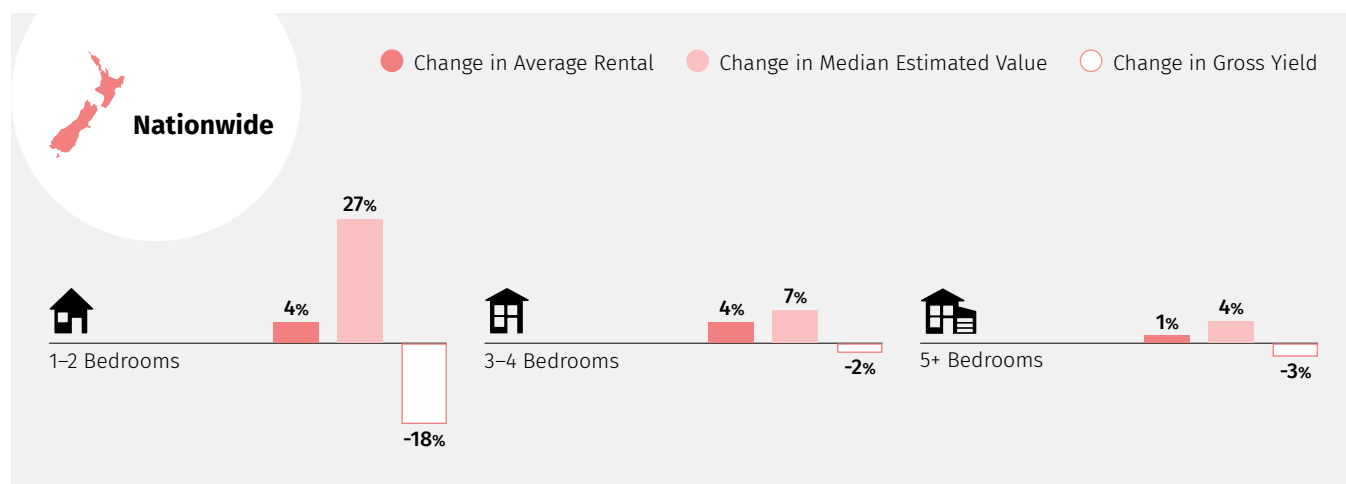


Q3 2017 – Q3 2016

2016

2017

"With yields on those properties generally earning less than 4% before expenses, it's already unattractive to invest in property in a flat property market. Add the prospect of capital gains taxes, ring-fencing of tax losses, and increased compliance costs to that and it's going to get much harder to get the private sector too excited about providing some of the tens of thousands of rental units that the country is going to need" – PINZ CEO Ashley Church



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