

NEW ZEALAND

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# PROPERTY PROFESSIONAL

MAGAZINE



## THE FUTURE OF HOUSING IN NEW ZEALAND

### IN THIS ISSUE

*The challenge of living at higher density*

*Understanding residential investor behaviour*

*Innovation in prefabrication*

*Improving commercial rent assessment*



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# THE CHANGING FACE OF NEW ZEALAND HOUSING

Ashley Church

*The way in which we build, live and interact has changed remarkably over recent years. While the quarter acre dream is still alive and strong for some, the cost, maintenance and care required of such properties has led to other New Zealanders looking for new ways to house themselves. In Auckland, in particular, the pressures of population growth are pushing potential home owners to a crossroads.*

On top of this, attitudes toward what constitutes a 'home' are changing. New generations are shaping different priorities around the way we choose to live with each other (intensification) and how we get from place to place (transport), and these different views will become increasingly influential in the years ahead.

The challenge, for policy-makers, is to find a balance which meets the needs of future generations without isolating those who want to protect their leafy neighborhoods. This is the discussion that is being held in Auckland, right now, as residents of that city debate their proposed Unitary Plan – and it is the same debate which will take place in Wellington, Christchurch and other major centres in the years ahead.

For me – four key challenges stand out when considering New Zealand's future housing needs:

- **Affordability** – particularly in Auckland. As that city pulls away from much of the rest of New Zealand, and brings the surrounding regions with it, the cost of buying a home will prove to be an increasing hurdle.
- **New building methods** – kiwi ingenuity has spurred new creative ways of constructing houses that still fulfil our need for individuality. Will new ideas and the #8 wire mentality provide a potential solution?
- **The restructuring of social housing** – and the transition from public to private sector ownership.
- **The great urban sprawl** – and how this is being addressed by local government. Where is the balance between 'building up' and 'building out'?

Our cousins across the ditch have attempted to combat some of these issues through the recent unprecedented level of apartment supply in Australia's major cities. In Sydney, supply exceeding demand is now benefiting the rental market, but there are important distinctions between investor purchases and owner-occupiers. While studio and one bedroom apartments are largely tenanted, the majority of purchasers of two to three bedroom apartments are owner-occupiers. Meeting what home buyers actually want and need out of an apartment is critical to the success of apartment living, a concept that is still contentious in New Zealand, and not helped by the 'rabbit hutch' reputation that has tarred the market.



Ashley Church  
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Without a doubt, however, apartment living will be a necessary part of city living in the future, particularly for Auckland. Which feeds into the density debate. As Diana Clement discusses in our lead story – we need to achieve quarter acre living in a quarter of the space. The only way to do this is to adapt our building methods, our expectations of inner city living, and improve our infrastructure.

Modular building is one way we might see building improve, both in speed and cost-efficiency, without eliminating quality. Overseas, multi-storey timber residential developments are increasingly popular due to their lightweight design, earthquake resistance and speed at which they can be erected. We aren't there yet in New Zealand, but in the South Island there are a handful of innovative companies doing exciting work in the engineered timber and prefabricated building space.

As the property market adapts and changes to fulfil our future needs, I see the Property Institute playing an increasingly important role in helping to shape policy and attitudes. Our members represent all sectors of the industry, and through them we can accumulate knowledge, ideas and policy positions that will help keep us at the forefront of New Zealand's future housing needs.





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# CONTENTS

## 3 FROM THE CEO

Ashley Church

## 6 COVER ARTICLE

Housing challenges now and in the future

Diana Clement



12



18



## FEATURE ARTICLES

12

### Residential investors and the Auckland housing market

*Ozgur Yildirim and Michael Rehm*

16

### Bold policy necessary to deliver change to housing woes

*Phil Twyford*

18

### Living at higher density

*Blair Johnston*

22

### A value case for prefab

*Pamela Bell*

30

### Commercial rent assessment – current practices and ideas for the future

*Jędrzej Bialkowski*

33

### Auckland and Wellington residential rental markets – a review

*Allan Smee*

## LEGAL AND TECHNICAL

37

### Options to purchase – how can they be protected?

*Mark Allen*

39

### Practical aspects of Cook Islands rent review arbitrations – implications for New Zealand

*Bob Hawkes*

## PROFILE

44

### Peter Loveridge

46

### PINZ branch events

39



46





# HOUSING CHALLENGES **NOW & FUTURE** IN THE

*The kiwi quarter acre paradise is changing – but the reality of mid-21st century living is much different to some of the negative perceptions the general public has about high-density housing.*

*Diana Clement*

*While the government, councils and a wide-ranging variety of property professionals see the need for densification, the public says a resounding: NOT IN MY BACK YARD (NIMBY).*

*Does the New Zealand public need re-educating?*



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## *Density – for and against*

### *Arguments in favour*

'Density done well is a fantastic thing,' says Pip Cheshire, President of the New Zealand Institute of Architects. It's a statement echoed by many in local and central government, as well as property professionals. But selling that idea to a NIMBY public is an uphill struggle.

Historically, kiwis have lived on far more land per family than most other countries in the world. We expanded into the green belt as the population grew. Squeezing more people into the existing footprint, however, is a model that uses existing infrastructure better. It means more employment, more business, and better use of community and recreational facilities, public transport, schools, medical facilities, roading infrastructure, water supplies, sewage pipes and more.

Denser cities are more energy and cost-efficient, points out Professor John Tookey of the AUT School of Engineering.

What's more, adds Cheshire, millennials and post-millennials live different lives to their parents. They text friends and meet up at a restaurant or café, not in the dining room of their rambling home.

One of the misunderstandings about density says developer, Mark Todd of Ockham Residential, is the loss of greenspace. By going up, a development such as Ockham's Isaac Apartments in Auckland retain more green space than if the site had been used for infill housing with driveways and standalone garages. What's more, it means that smaller family units have somewhere to live. It is not economic to build a one or two bedroom home on a 350 or 400 m<sup>2</sup> parcel of land, says Todd. But it is if you build up.

Ironically, many in the NIMBY generation are flocking to live voluntarily in apartments and 'density done well' developments, such as the 'lock up and leave' Altair townhouses in Newtown, Wellington. As Tookey points out, mowing your berm is a 'pain in the tonsils'.

Kiwis need to redefine their definition of quality of life, he adds, to cope with the inevitable change in our cities. 'How do we achieve quarter acre living in a quarter of the space?' he says. 'We are going to have to think of smart ways of providing the same quality of life without the same amount of real estate.'

One of the keys to successful densification is for every square inch to earn its keep, says Cheshire. If designed efficiently, an 80-100 m<sup>2</sup> space can feel like 150 m<sup>2</sup>.

***Historically, kiwis have lived on far more land per family than most other countries in the world.***



New building techniques and materials, as well as adaptive architecture, will make smaller homes more appealing to new generations less interested in the need to grow tomatoes or having the children play cricket in the backyard. Some of New Zealand's newest green spaces are worth 1,000 mown backyards, says Cheshire.

He also says that those who oppose higher-density living are often thinking of the argument in their current timeframes – 10 or 20 years down the track these same people will have moved on in their lives and may want to live more intensively themselves. The problem for most kiwis is that we don't have many prototypes of good medium-density housing, says Cheshire. The Star Flats built around the country by the then Housing Corporation in the 1960s were an example that worked.

## *"How do we achieve quarter acre living in a quarter of the space?"*

In a modern context densification does not just mean much-maligned tenements, such as the Zest Apartments and similar developments at the top of Auckland's Nelson and Hobson streets. The Hobsonville Land Company, for example, built three small prototypes of its Axis Series homes in 2014 to test the market. The aim was to show that medium-density housing could be beautiful and liveable, rather than the rabbit hutches that many kiwis believe these homes to be. Many NIMBYs automatically envisage ugly dwellings.

Of 1,826 visitor cards completed, a total of 69% of people said they could live in the Axis Homes either very or reasonably

comfortably. Only 15% said probably not or definitely not. Some of the features they liked included the clever layout, space, roof height, shutters, light, double glazing and the sense of community.

Likewise, even Housing New Zealand has shown that denser housing can be beautiful, with its acclaimed Church Square development in Christchurch. Here three separate sections housing three families were amalgamated into one title and 10 new two-bedroom homes were built on the site.

Medium density is also showing its head in planning in other cities such as Dunedin.

Medium-density housing in Bealey Avenue, Christchurch

*Credit: Housing New Zealand*







Medium-density container housing in Devonport, Auckland

Credit: Barfoot & Thompson

The city's Spatial Plan lists 23 areas identified for medium-density zoning, which includes areas surrounding the campus, parts of Caversham and Mosgiel, and other suburban areas close to high-frequency public transport services. While cities the size of Dunedin are intensifying, we are unlikely to see densification of housing in the Wellsfords or Matamatas of the world, says Cheshire.

#### Arguments against

If there is anything that will get communities riled it is the suggestion of high-density housing in their own backyards. They complain that it will affect their amenity value and their house prices and it must not happen.

On Auckland's North Shore, for example, local iwi Ngāti Whātua Ōrākei is transforming 82 traditional-style houses on sections on the Devonport peninsula into 300 new residences and also want to build 200 high-rise retirement village apartments nearby. Locals quoted

in the *Devonport Flagstaff* publication are choking over their lattes. They believe that the peninsula's infrastructure won't be able to cope with the additional 687 car trips a day expected as a result of the apartments alone on an already crowded arterial road.

In Wellington the council has scoped a number of areas such as Tawa, Newlands, Karori, Crofton Downs, Berhampore and Miramar for what it calls the Medium Density Residential Area, or MDRA, concept. A medium-density development means more than one dwelling per 350 m<sup>2</sup> of land. That means more multi-storey buildings could be popping up in former bastions of the quarter acre paradise.

Local residents are also up in arms at being 'squeezed' in the words of Peter Sullivan, a member of the Johnsonville Community Association. 'The city council has ignored the basic fact that WCC policies are in direct opposition to what the market wants. Families

*If there is anything that will get communities riled it is the suggestion of high-density housing in their own backyards.*

want to live in suburban Johnsonville, and no-one wants to raise their family in a cheek-by-jowl low-rise high-density suburb, which is what MDRA rules seek to create.'

There are many arguments against densification and they are not all down to NIMBYism, say campaigners. Auckland is the most rapidly densifying urban area in New Zealand and therefore it is not surprising that campaigners in that city are leading the charge against what they see as a planning disaster.





Tattoo building, Wellington

Credit: ArcHaus Architects

Retired planning consultant and founder of the Auckland 2040 group, Richard Burton, believes the problem is that the proposed Auckland Unitary Plan encourages dispersed intensification with unplanned haphazard high-density residential developments scattered over much of the residential areas of Auckland. In his view, it fails to recognise the unique character of varying residential zones where densification will be allowed.

In its submission to Auckland Council, the Auckland 2040 group said the introduction of multi-storey apartment developments in particular into established mature residential suburbs introduces a discordant building form entirely out of character with the existing built form.

'Issues raised by multi-storey apartments include: building height and bulk, dominance both to adjoining properties and to streetscape, loss of privacy, shading and sunlight, car parking, loss of mature trees and

effect on existing infrastructure such as storm water and sewage,' the group says.

The group isn't against densification at all, but argues that councils need to consider the issues raised by multi-storey apartments.

'Development of multi-storey apartments in a suburb leads to the expectation that similar developments will occur in the same area resulting in home owners being reluctant to expend large amounts on renovations and maintenance,' the group says. 'This leads to urban blight as houses are allowed to run down in the expectation that they will eventually be redeveloped for multi-storey apartments.'

It wants to see a clear distinction between specific areas that should be progressively redeveloped more intensively, and existing residential zones that should be preserved while allowing some intensification of a similar character.

The group argues that better planning would allow for quality compact urban forms around

*The changing regulatory environment will dictate much of what the future of housing looks like in New Zealand.*

centres rather than down suburban streets, and that the 2,277 hectares of greenfield land in the Silverdale/Wainui East/Dairy Flat area could be used for significant urban growth rather than sprawl. Also permitted would be infill housing in a similar manner that has occurred in the city for the past 30 years.

On a more basic level, the desire for space and its importance to our perceived quality of living is the trend towards larger and larger homes in New Zealand. While some people are choosing to live small, many others want more space in their new homes.



## The public transport chicken and egg

One of the big issues of densification is public transport. Denser living means that public transport, for example, gets a critical mass that makes better services more affordable. It's technically possible to get commuters from Hamilton to central Auckland in 35 minutes by rail, says Tookey. One day we might see it.

However it's a chicken and egg situation. Until housing intensifies and the public start using public transport, instead of sitting bumper to bumper on motorways, the government is not going to want to provide the services that will improve the amenity value of suburbs.

Patrick Reynolds, one of the editors at Transportblog, says that the chicken and egg can already be seen in Auckland where density has grown rapidly since 1995. Reynolds says 70% of that growth has been within the existing city limits and 30% in greenfield sites. The electrification of trains and other transport improvements have gone hand-in-hand with that densification.

In 1994, says Reynolds, 80% of all trips into the Auckland city centre were by car. These days that's around 45%, although it's the same number of cars. In Sydney, only 18% of trips into the city centre at peak times are by private car.

In Auckland, the population of the city centre has grown from 5,000 in the mid-1990s to 41,000 today. The reality, he says, is that as the city continues to densify the public transport is improving and more people are getting on it – as well as choosing to walk or cycle. Already the annualised number of train journeys is increasing in Auckland by one million every four months. Currently there are 20 trains an hour coming into Britomart. The City Rail Link, for example, will more than double that to 48.

The interesting thing, says Reynolds, is that no-one is being forced out of their villa or their cars because of other people's choices to buy apartments or travel on public transport. They can if they choose continue to buy quarter

acre sections and drive to work if they suffer 'height fright' or are against 'garden-gobbling' intensification. If, however, we build more 'auto-dependent sprawl' communities in outlying greenfield areas such as Pokeno we are increasing the reliance on cars.

## Regulatory change

The changing regulatory environment will dictate much of what the future of housing looks like in New Zealand. It's hard to please everyone, let alone anyone when it comes to the Resource Management Act, the Building Code and other regulations. Depending on your viewpoint, the regulation is too onerous or not onerous enough.

It's almost a given that the leaky homes scandal will have long-ranging effects on New Zealand's homes. No-one is willing to take risks with regulation and planning, says Cheshire, and as a result much bland housing will be built.

Tookey does expect to see some regulation around location and also the materials used as new products are invented and are approved for sale in New Zealand.

One of the big changes as we head towards peak oil and other environmental pressures will be increasing sustainability. We can expect both increased regulation as we have seen with the Special Housing Areas (SHAs) in Auckland, as well as a groundswell from the paying public.

It's likely we will see higher expectations for environmental friendliness, which benefits individuals as well as the nation. Currently, the Building Code includes rules that add up to a 4 Homestar rating. Homestar rates the health, comfort and efficiency of New Zealand homes from 1 to 10 – with 10 being the best.

More desirable than the current Building Code, according to the New Zealand Green Building Council (NZGBC), would be a minimum requirement of a 6 Homestar rating, which is already a requirement for SHAs. 'We simply can't afford not to,' says Alex Cutler,

NZBGC Chief Executive. 'The social and health costs are just too high.' People are dying in state homes and there is a need to reduce pressure on our water supply. Smaller, more densely packed living spaces are less of a drain on resources to build and run.



Isaac Apartments in Auckland  
Credit: Ockham Residential

# RESIDENTIAL INVESTORS AND THE AUCKLAND HOUSING MARKET

Ozgur Yildirim and Michael Rehm

*Investors are key players in the Auckland housing market and have distinctly different dynamics than traditional owner-occupant homebuyers.*

## *Increased investor activity*

Heightened investor activity in housing markets has become a prominent concern for not only the Reserve Bank of New Zealand (RBNZ), but also other central banks such as the Bank of England and Reserve Bank of Australia. A common feature of these economies is the high level of house price appreciation and the impact this has on the economy and housing affordability.

The 'demand for return' by investors represents the more speculative portion of housing demand relative to the 'demand for space' of owner-occupiers. Furthermore excessive investor activity is viewed as a threat to both social welfare and the economy. The social ramifications are often raised by politicians and the media in the context of diminishing home ownership rates and housing affordability. For the economy, it is widely believed that excessive investor activity can cause financial instability and therefore it is a major concern for financial regulators.

The RBNZ's view is that the increased level of investor purchases is a major amplifying force in house price appreciation, which may later result in a more substantial price fall triggered by mass investor exits. It is argued that investors are attracted to housing markets with the motivation of capital gains, and therefore are more prone to sell in falling markets compared to owner-occupiers due to their fewer personal ties with their properties.

Investors are also regarded as a potential risk for lending institutions given their higher sensitivity to interest rate increases and historically higher default rates.

## *Effect on market stability*

However the academic debate on investor activity and market stability is not settled. There are opposing arguments that underline mitigating factors, which make such a mass investor exit unlikely, and some even more assertive views which argue that investors actually help stabilise the market. At present very little empirical research exists that can settle these arguments or quantify the negative and positive impacts that investors exert on the housing market. Nevertheless it is fairly clear and undisputed that investors are now a significant and established player in the housing market.

The RBNZ estimates that in Auckland investors account for around 40% of all residential purchases in 2015. Given the rapid house price increases in Auckland, the RBNZ regularly emphasises the potential threats of heightened investor participation on financial stability. The share of investors in housing transactions and new mortgage lending is also being regularly monitored and used to assess the efficiency of new policy measures, and recently the RBNZ has implemented macro-prudential policy measures to temper investor demand.

While the 40% investor participation presented by the RBNZ is sufficient alone to emphasise the significant role of investors in the housing market, it reflects the average level of investor participation and therefore only provides a limited perspective about the degree of investor activity in the Auckland housing market in general.



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*Investors are now a significant and established player in the housing market... reaching as high as 80% in some Auckland sub-markets.*

## *Different motivations*

In reality, investors have different motivations from traditional owner-occupiers and are more attracted to certain geographical areas and property types, which results in a significantly high concentration of investor activity in certain sub-markets. While the preliminary findings of our research based on the Auckland Council transaction data reveal an estimate of 44% investor share in transactions in the first half of 2015, which is close to the



## Top 10 Auckland locations with highest investor share in 2015 purchases

### FREESTANDING HOMES

MBIE MARKET RENT AREA	INVESTOR SHARE IN PURCHASES						2015 H1 MEDIAN PRICE OF ALL SALES	MEDIAN PRICE RANK # (LOWEST TO HIGHEST)	2015 H1 GROSS YIELD	YIELD RANK # (HIGHEST TO LOWEST)
	2015 H1	2014	2013	2012	2011	2010				
Manukau – Otara	80%	66%	64%	63%	65%	62%	446,000	1	4.90%	1
Manukau – Manurewa North	68%	62%	54%	53%	54%	50%	480,000	4	4.65%	3
Manukau – Mangere	66%	57%	50%	43%	45%	49%	514,000	5	4.46%	4
Manukau – Papatoetoe West	63%	55%	42%	35%	43%	25%	545,000	9	4.12%	9
Manukau – Papatoetoe South	61%	54%	39%	29%	35%	34%	665,000	21	3.42%	31
Manukau – Mangere East	60%	58%	48%	42%	39%	28%	530,000	7	4.17%	8
Manukau – Weymouth	59%	53%	48%	40%	54%	29%	478,500	3	4.76%	2
Auckland – Panmure	59%	45%	43%	24%	16%	29%	766,000	39	3.42%	32
Auckland – Otahuhu	59%	62%	45%	47%	53%	45%	590,000	14	3.56%	21
Manukau – Papatoetoe North	58%	59%	44%	28%	29%	27%	711,250	32	3.28%	40
ALL AUCKLAND	41%	36%	31%	25%	24%	23%				

### APARTMENTS AND UNITS

MBIE MARKET RENT AREA	INVESTOR SHARE IN PURCHASES						2015 H1 MEDIAN PRICE OF ALL SALES	MEDIAN PRICE RANK # (LOWEST TO HIGHEST)	2015 H1 GROSS YIELD	YIELD RANK # (HIGHEST TO LOWEST)
	2015 H1	2014	2013	2012	2011	2010				
Auckland – Newmarket	81%	52%	45%	43%	48%	49%	596,250	24	3.46%	25
Auckland – Mt Eden	75%	54%	54%	54%	67%	42%	583,000	23	3.35%	30
Auckland – Epsom	75%	68%	63%	59%	55%	49%	775,000	40	3.02%	39
Auckland – St Lukes/ Sandringham	71%	54%	57%	61%	56%	50%	532,500	19	3.84%	18
Manukau – Manurewa North	70%	73%	65%	62%	66%	61%	375,000	5	4.54%	9
Auckland – Central East	66%	62%	67%	66%	70%	67%	324,000	1	6.53%	2
Auckland – Royal Oak/One Tree Hill	65%	59%	55%	48%	42%	51%	659,000	33	3.37%	29
Auckland – Central West	64%	61%	61%	60%	70%	62%	331,250	2	6.61%	1
Manukau – Papatoetoe West	63%	67%	61%	38%	38%	57%	390,000	7	4.57%	8
Manukau – Manukau Central	63%	73%	61%	63%	63%	50%	361,800	4	5.19%	4
ALL AUCKLAND	54%	51%	48%	45%	46%	43%				

estimate presented by the RBNZ, investor participation reaches as high as 80% in some Auckland sub-markets.

It is the purpose of this article to highlight this strong asymmetry and provide a better understanding of the preferences, motivations and behaviour of investors.

### Freestanding homes vs apartments/units

The tables highlight the top 10 Auckland sub-markets with the highest investor concentration for freestanding homes and apartments/units property types. The sub-markets were defined based on the market rent areas used in the tenancy bond

data collected by the Ministry of Business, Innovation and Employment (MBIE). About 50% of the market areas were excluded in the analysis of apartments/units as many areas featured no or very few multi-unit dwelling transactions.

Across Auckland in the first half of 2015, investors' share of freestanding home purchases was 41% as opposed to 54% in apartment/unit purchases. Due to more affordable prices and lower maintenance costs, apartments and units tend to be preferred over freestanding homes by investors in New Zealand and internationally. However in the context of the Auckland housing market, the relative proportion of investor purchases in these two

*Investors have different motivations from traditional owner-occupiers and are more attracted to certain geographical areas and property types.*

distinct property types do not indicate an overly significant disproportion. Both types are in high demand compared with international housing markets. It is reasonable to assume that the relatively low stock of multi-unit dwellings in Auckland may work to limit the options for investors for this popular property type.

As will be elaborated upon, areas in Auckland which have higher stocks of multi-unit dwellings experience investor shares as high as 80%. Therefore an increase in the supply of new apartments/units, due in part to increased investor demand for these type of properties, may further unbalance the investor market share in the future.

Leading up to the global financial crisis (GFC) the UK had a similar experience. New-build apartments were the most affected segment of the UK property market after the GFC, due to an unprecedented volume increase aimed at meeting investor demand, which subsequently over-supplied the apartment market. It is important to note that the UK experience was somewhat unique because developers readily shifted their market risks to investors and lenders through off-the-plan sales, and this continued to fuel the over-supply despite apparent market signals of a downturn.

### Low vs high-priced properties

The median price of freestanding homes purchased by investors was \$695,000, whereas the median for owner occupiers was \$810,000 (16.5% higher). For apartments and units, the median prices for investor and owner-occupant buyers were \$470,000 and \$555,000 (18% higher), respectively. Although price differences indicate that inexpensive properties appeal more to investors, it does not reveal substantial disparities.

However the picture is much more prominent when the proportion of investor purchases in the lower quartile is analysed. Sixty-eight percent of the lower quartile of Auckland apartment/unit transactions involved investor buyers in the first half of 2015 and this figure was 55% for lower quartile priced freestanding homes. These numbers suggest a degree of

investor over-crowding and a high amount of investor consumption of starter homes, which results in increased competition between investors and first-time homebuyers.

### Low vs high yields

Gross rental yields were computed with the use of median house prices transacted in the first half of 2015 and the geometric mean rents published by MBIE. For apartments/units, the top 10 areas that experienced the highest investor activity had a yield of 4.5%, whereas the bottom 10 sub-markets had a yield of only 3%. For freestanding homes, the top and bottom 10 market rent areas provided yields of 4.1% and 2.7%, respectively.

When a comparison is made among sub-markets according to their gross yields, apartments/units in sub-markets that have the highest 10 yields experienced a 59% investor share, whereas the lowest yield areas had a 40% share. In the case of freestanding houses, the difference was more pronounced with figures of 56% and 29%, respectively. This may suggest the importance of short-term cash flows for investors and the ability of rental income to cover a significant portion of mortgage payments. However as the highest yield areas also happen to be the most inexpensive areas, it is not possible to draw a definitive conclusion as to whether it is the relatively high rental income or the low prices that attracts investors. Likely it is a combination of both.

### Locational concentration

For freestanding homes, one inference from the figures above is the disproportional investor concentration in certain areas, with South Auckland's Otara suburb leading the way with an 80% investor share in 2015. The table also reflects the tendency of investors to target Auckland's relatively affordable sub-markets, which also tend to offer the highest yields as mentioned earlier. It is not a coincidence that six out of the top 10 locations targeted by investors were also ranked in the top 10 lowest-priced and highest-yield areas.

Multi-unit dwellings also demonstrate a very unbalanced share of investor purchases

compared to the market average, with Newmarket at the top of the list with an investor share of over 80%. Similar to freestanding homes, five out of the top 10 apartment/unit sub-markets targeted by investors were also ranked in the top 10 lowest-priced and highest-yield areas, again revealing the importance of price and rental returns for investors.

However one striking difference is that the top three locations for apartments/units are quite affluent centrally located suburbs (Newmarket, Mt Eden and Epsom). This suggests that accessibility to the CBD and the stable rental demand for smaller units is a selling point for those residential investors who can afford to invest higher amounts of capital. Another possible reason for such a high investor activity in these affluent areas may be the newly-completed apartment developments located there, which are more likely to attract investors due to their superior marketing exposure and ability to reach overseas investors.

### Conclusion

The ratio of investor purchases in transactions within the different sub-markets not only highlights a highly asymmetric distribution of investor activity, but also provides insights into the diverse preferences and motivations of investors who are unlikely to respond uniformly to changes in market conditions or to new government policies aimed at reigning them in.

Investors are certainly one of the key players in the Auckland housing market and have distinctively different dynamics from traditional owner-occupant homebuyers. Their role is not only limited to generating additional demand. Collectively, they have the ability to influence new supply as witnessed in the UK market leading up to the GFC. Therefore the implementation of more effective demand-side and supply-side housing policies requires more residential investor research to foster a deeper understanding of investors' behaviour. This includes their likely reactions to changes in market conditions, which has the potential to destabilise the economy if investors rush to the exits.





# HOME AFFORDABILITY UPDATE

By comparing the average weekly earnings with the median dwelling price and mortgage rate, Massey University's quarterly survey\* for December confirmed an overall 8.7% annual improvement in national affordability.

This infographic shows the affordability changes for the December 2015 quarter.

**Northland:** declined by 0.9%

**Auckland:** declined by 3.7%

**Waikato and Bay of Plenty:** declined by 6.1%

**Hawke's Bay:** 1.8% improvement

**Taranaki:** declined by 0.8%

**Manawatu and Whanganui:** declined by 2.2%

**Wellington:** declined by 3.3%

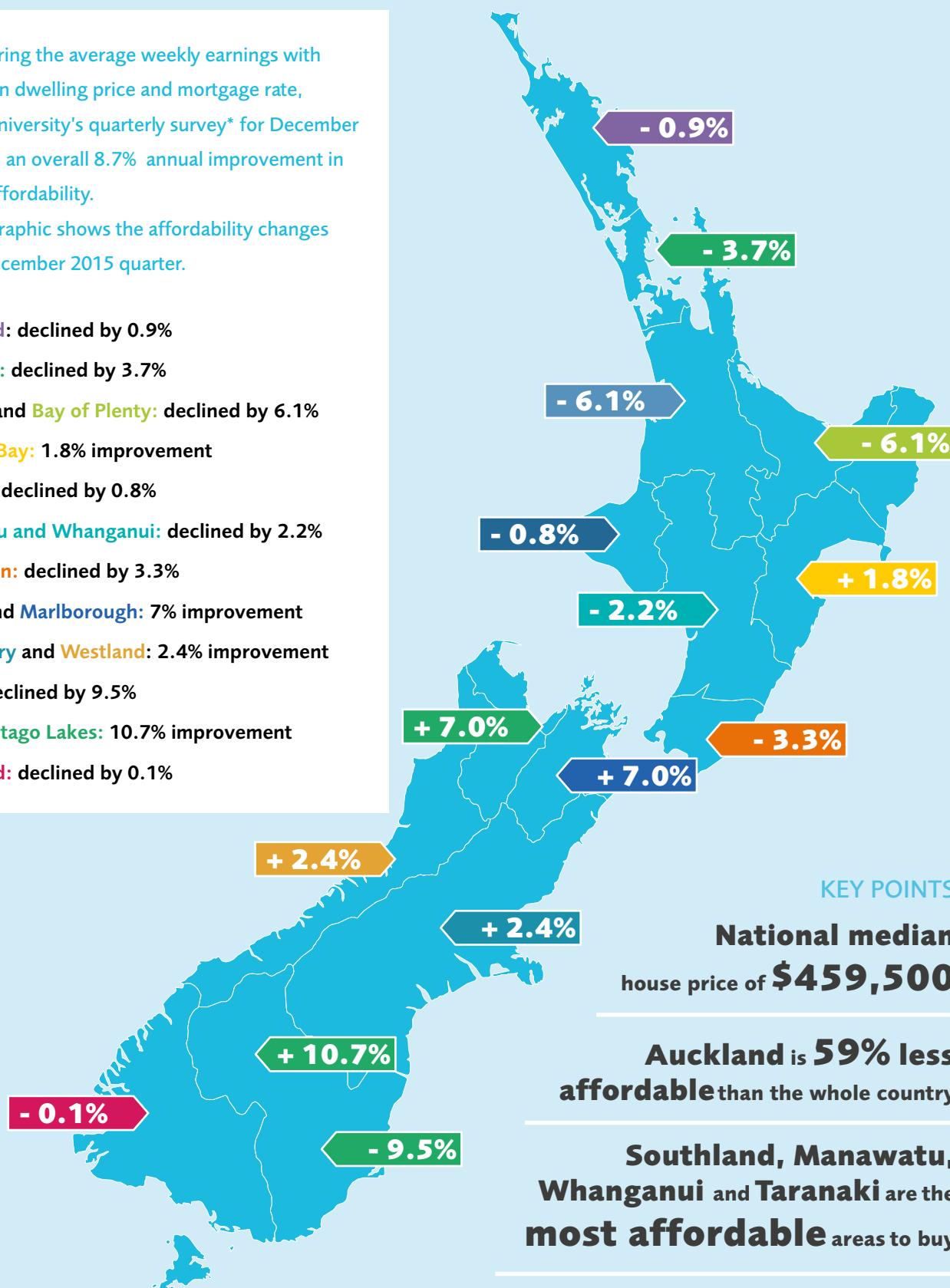
**Nelson and Marlborough:** 7% improvement

**Canterbury and Westland:** 2.4% improvement

**Otago:** declined by 9.5%

**Central Otago Lakes:** 10.7% improvement

**Southland:** declined by 0.1%



## KEY POINTS

**National median**  
house price of **\$459,500**

**Auckland is 59% less**  
**affordable** than the whole country

**Southland, Manawatu,**  
**Whanganui and Taranaki** are the  
**most affordable** areas to buy

\* The Massey University survey is the longest running survey of New Zealand house prices, accumulating data since 1998.



# BOLD POLICY NECESSARY TO DELIVER CHANGE TO HOUSING WOES

Phil Twyford

*Labour Housing Spokesperson Phil Twyford discusses his party's three practical proposals to fix the road blocks to building more and building better*

## **Vigorous public debate**

Who would have believed urban form would become one of the country's hottest political issues?

Fuelled by public concern about unaffordable housing and declining rates of home ownership, we've seen a vigorous public debate that has drawn in all the political parties, local government and a myriad of other community voices from the property industry to ratepayers and Generation Zero.

Two things are increasingly clear. First, pretending Auckland's current housing woes are inevitable, or that the city is a victim of its own success, won't wash. When our housing is less affordable than Tokyo, New York and London, and it takes 50 years to pay off the average home, something is seriously wrong.

Second, it is going to take bold policy reforms on a number of fronts to fix the current woes.

There is no silver bullet. The mess we're in is a result of multi-layered policy failure.

Recently, Labour announced we would reform the planning rules and the way infrastructure is financed. This is in addition to our already comprehensive set of policies designed to fix the housing crisis.

## **Change needed**

Our commitment is to free up the restrictions on density, reform the use of urban growth boundaries to stop them driving up section costs, and modernise the way infrastructure for development is financed. We believe these three changes will allow the property industry to build more and build better. It will also allow the market to be much more responsive to demand.

The changes will deliver an urban form that is more liveable, and more economically efficient. Crucially, it will allow more affordable housing to be built in places where people want to live.

It has become the conventional wisdom that Auckland has to grow up and grow out. We agree. But for that to happen we need to change the rules that are getting in the way. We will publish a National Policy Statement under the Resource Management Act that will direct, for example, Auckland Council to free up the rules on intensification in its

Unitary Plan, because it is a matter of national importance.

## **Overly restrictive rules**

The detail of land use rules is appropriately a matter for local communities and their elected representatives in local government, but overly restrictive rules on height and density shut down housing affordability and choke off supply. That has damaging effects for future generations locked out of affordable home ownership, and fuels a housing bubble that is harmful to the nation's economy.

Hopefully, Auckland Council and the Independent Hearings Panel currently considering changes to the Unitary Plan will sort this out, but we believe it is right for central government to have a say on these issues and a National Policy Statement under the RMA is the best way to do that.

## **Urban growth boundaries**

Tackling urban growth boundaries is the next big challenge. Over the last 25 years the urban boundary, along with density restrictions, have stopped the city building up and out during a time of rapid population increase. It created a pressure cooker which found its only release in skyrocketing section prices.

*When our housing is less affordable than Tokyo, New York and London, and it takes 50 years to pay off the average home, something is seriously wrong.*





The big problem with the urban growth boundary is that it creates an artificial scarcity of land that drives up section prices, creating wonderful business opportunities for land bankers. We believe there are better ways to manage growth on the city fringes. The key to making both these measures work is reforming the inefficient and expensive way infrastructure is financed.

### **Financing infrastructure**

Currently, all of the infrastructure costs within a new development and a share of the connecting infrastructure through development contributions are financed by the developer and directly passed on to the home buyer and paid off through their mortgage. This adds tens of thousands to the price tag of a new home, making it even more unaffordable. Worse, the price of new housing is capitalised into the value of all homes in the market.

Our policy is to finance infrastructure using local government bonds paid off through a targeted rate on the properties in the new development. Bonds are a much cheaper option than funding it via your mortgage. They allow you to spread the cost over the lifetime of the asset. It is fairer and more efficient.

Importantly, the targeted rate ensures the infrastructure costs of a new development land with the new property owners, so the ratepayer at large is not subsidising developments in places where it might be

too expensive to build. And by relieving developers of the job of financing infrastructure it also removes some of the risk and capital costs that can sometimes slow or jeopardise developments.

Interestingly, the Productivity Commission looked at infrastructure financing and settled on a very similar position to ours. Sadly, Building and Housing Minister Nick Smith dismissed the idea out of hand. Bill English and Nick Smith have been blaming the RMA for expensive housing for 10 years now.

### **Road blocks to building better**

After seven years in government they have not yet done anything to tackle the substantive ways that council planning rules block development: density restrictions, urban growth boundaries and infrastructure financing.

In fact, for the last several years the National Government has been on a fruitless quest to weaken the core environmental principles of the RMA. They have not yet been able to get support from the country or the Parliament for these changes, and have wasted years in the process. Labour's policy of a National Policy Statement under the RMA could have delivered on these critical reforms years ago.

So, there are three practical proposals that we believe will fix the real road blocks to building more and building better. They sit alongside a suite of other measures: cracking down on speculators including stopping non-resident

foreigners from buying existing homes, large-scale master planned urban renewal projects, a massive government-backed building programme to deliver 100,000 affordable homes for first home buyers, making all rental properties warm and dry, building more state housing, and the provision of emergency housing to end homelessness.

*The targeted rate ensures the infrastructure costs of a new development land with the new property owners, so the ratepayer at large is not subsidising developments in places where it might be too expensive to build.*



Phil Twyford is the MP for Te Atatu and Labour spokesperson on housing, building and construction, and Auckland issues.  
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# LIVING AT HIGHER DENSITY

*Blair Johnston*

*Buildings are a necessary part of the future for Auckland, but there's an art to adapting them to our way of life.*





### *The value of apartment living*

Aucklanders are growing up. After years of fighting the inevitable, the light-bulb moment has arrived. We've finally bought into the value of apartment living. Let's face it, New Zealand's most populous city doesn't have a great track record of apartment design. Development generally reflects economic conditions, and some apartment buildings certainly mirror less prosperous times.

With horror stories of paper-thin walls, shoebox-size confinement and onerous body corporate rules, people are quite naturally wary. So why should we embrace the idea of introducing a model of higher density into our city, suburbs and way of life?

The truth is there is no choice. Intensification, like death, taxes and the demise of your corner video rental store, is unavoidable. And people want to live in cities. They want to ditch the car in favour of the freedom that cycling to work and the local shops can bring. They've travelled and seen city living like it should be – and they want those benefits here and now. It's not anecdotal, it's evidential; New Zealand has one of the most highly urbanised populations in the world. People are continuing to move to Auckland in rapid numbers. We need to plan for this, not react to it.

The proposal for higher-density housing in parts of Auckland is not a quick-fix; it's a slow, iterative solution. While we're taking baby steps, we're aiming high. We want Auckland to be the world's most liveable city. If we have any hope of achieving this, we need to start (quite literally) in our own backyards, in our personal living environments. To succeed, we need to develop apartment buildings that meet the values we ascribe to our current living conditions. Do we all need to live in stand-alone houses? Maybe we need to value community engagement rather than focusing on creating our own individual fiefdoms.

Fortunately, Auckland doesn't have to reinvent itself without guidance. Every successful city has at some stage experienced this growth and a similar intensification process, including places like Melbourne and Sydney where the lifestyle values are much like our own. The advantage is that we can appropriate these international models – taking lessons from the trees of Brooklyn streets, the construction system of Amsterdam, the vibrant low-rise laneways of Tokyo, the density of Sydney's Paddington – and adapt them to our local conditions.

*Intensification, like death, taxes and the demise of your corner video rental store, is unavoidable.*

### *The outdoors and privacy*

The first Auckland-specific factor to consider is our climate, and our love affair with the outdoors. And that does make development in this part of the world somewhat distinctive. All buildings in Auckland require good orientation and cross-ventilation; in short, ample natural light and the ability to open windows. It may sound obvious, but it's surprising how often this is forgotten in building developments. Creating sustainable apartments should begin with a north-facing aspect and supply of fresh air from both sides of the building. No arguments.

The second threshold that needs to be acknowledged is this: for New Zealanders, our private space is private. In close living environments, it's important that we don't feel too exposed, that we're not confronted by a wall of people. There are creative ways to address this. As an example, within the Altera Apartments in Stonefields, Mt Wellington, Warren and Mahoney developed multiple points of street access. Smaller groups of tenants can access their apartments via their own lifts and stairs, rather than a single entry point. This simple change means a psychological shift: you're one of 10, not 50. By creating small communities within the building, the occupants feel as though they live in an individual, personalised home – not an anonymous housing block.

### *Sense of community*

This brings us to the third factor, how to develop a sense of community – a key component which has been largely overlooked in the intensification debate. In a way,



Altera Apartments interior, Stonefields, Mt Wellington

*Home ownership is becoming less likely for the younger generations. It's a big problem that requires courageous, considered leadership.*

suburban development encourages insularity – you might know your immediate neighbours, but that's usually it. Far from breaking the fabric of community living, higher-intensity models can actually help build neighbourhoods. The key is to include appropriate communal spaces – parks, playgrounds and well-designed streets – that create more frequent moments for social connection and cohesion. We only need look at the success of Freeman's Park, a development designed in the 1950s and 1960s, for proof of this. Its mix of terraced homes and low-rise apartments interspersed with ample communal green space has made it a sought-after place to live.

*Flexibility and affordability*

The fourth consideration is allowing for individual flexibility. Rather than adopting a suburban house model with a cellular division of space, for the Altera Apartments Warren and Mahoney created a central 'pod' that allows a continuous flow of air and light, with concealed sliding doors for home owners to open up or close off as needed. This offers the ability to open up the living space or shut private areas for study – a design idea that allows them to personalise their apartment to suit their own ways of living.

Affordability is the final, and arguably most pressing, factor. It's easy to build expensive

apartments for wealthy people; creating better buildings more cheaply is the real challenge. To be part of the solution, Warren and Mahoney has to operate at the affordable end of the market too. To do so, we have to recognise the economic envelope that we're working within. The rising cost of living, coupled with the migration of people to cities, reinforces the need to rethink how we build; we need to respond with appropriate plans for higher density housing, while still respecting the cultural considerations needed to create quality private living environments.

*Comfortable threshold of density*

New Zealand is dealing with issues of land supply, construction and material costs, along with the downstream effects of the Christchurch earthquake. Home ownership is becoming less likely for the younger generations. It's a big problem that requires courageous, considered leadership. We need





to re-examine the building supply chain, construction techniques, and develop a design approach that's regular and repeatable. As an industry we need to be more efficient, and that requires a degree of revolution.

The truth is that four- and five-storey buildings provide a comfortable threshold of density; we can use land more efficiently than cellular homes, while still creating great streets and vibrant public places. Extrapolated out, this makes for better environments and cities everyone wants to live in. In New Zealand, our personal living spaces are integral to our social construct – we entertain, relax, work and live in our homes. We need to ensure that the apartments we develop are appropriate to these living conditions, to our climate, to cultural expectations and to budgets.

The reality is that some people will like this higher density style of living; others won't. Five-storey housing is part of the solution,

but it's not the only model. The freedom to choose from different living environments is essential to city planning. We need appropriate intensification in appropriate parts of Auckland; overlaying apartment buildings with the development of town houses and preservation of character buildings.

But it's easy to talk about buildings. What's more important is to talk about the residual spaces that they create. In great cities like London, Paris, Amsterdam, you don't remember individual buildings – you remember streets and parks, you remember drinking coffee at a café shadowed by trees and dappled light. That is how community is created; through clever master planning of the entire city, with a level of intensity that supports communal life in public spaces, and yet with enough privacy and personality in our own spaces to suit our distinct and diverse ways of living.

*This article is reprinted with permission from Warren and Mahoney where Blair Johnston is a Principal.  
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# A VALUE CASE FOR **PREFAB**

*Pamela Bell*

*This article looks at why prefabricated buildings are the way of the future.*

Prefabrication, also known as prefab or off-site construction, is an approach to constructing the built environment that has been at the leading edge of innovation for decades. Used extensively in Europe, and increasingly in North America, prefab is a complementary system to traditional construction that delivers measurable benefits across the design and construction supply chain.

Put simply, it means manufacturing entire buildings or substantial parts of buildings undercover and off-site prior to installation at their final location. The benefits of prefab include higher quality buildings, reduced site waste, improved worker safety, reduced overall cost, greater sustainability and faster delivery.

## *PrefabNZ*

PrefabNZ is the hub for pre-built construction in New Zealand. It is a non-profit industry association with a membership ranging from architects, designers, engineers, manufacturers, distributors, builders, building officials to researchers and other property professionals.

*continued on page 26 >>*



Pamela Bell is CEO of PrefabNZ. For more information about prefabrication email [info@prefabnz.com](mailto:info@prefabnz.com) or visit [www.prefabnz.com](http://www.prefabnz.com) e: [pam@prefabnz.com](mailto:pam@prefabnz.com)

Welhaus Ltd owner Dan Tremewan designed the modular North New Brighton home in Christchurch known as the *Beach Barn*. His design won the Novel Application of Timber Award in the 2015 Timber Design Awards in Auckland. The home delivers an affordable, sustainable and energy efficient building that can be transported around the country or exported overseas.

*Pictured: Welhaus Beach Barn exterior and interior (above)*





*The benefits of prefab include higher quality buildings, reduced site waste, improved worker safety, reduced overall cost, greater sustainability and faster delivery.*



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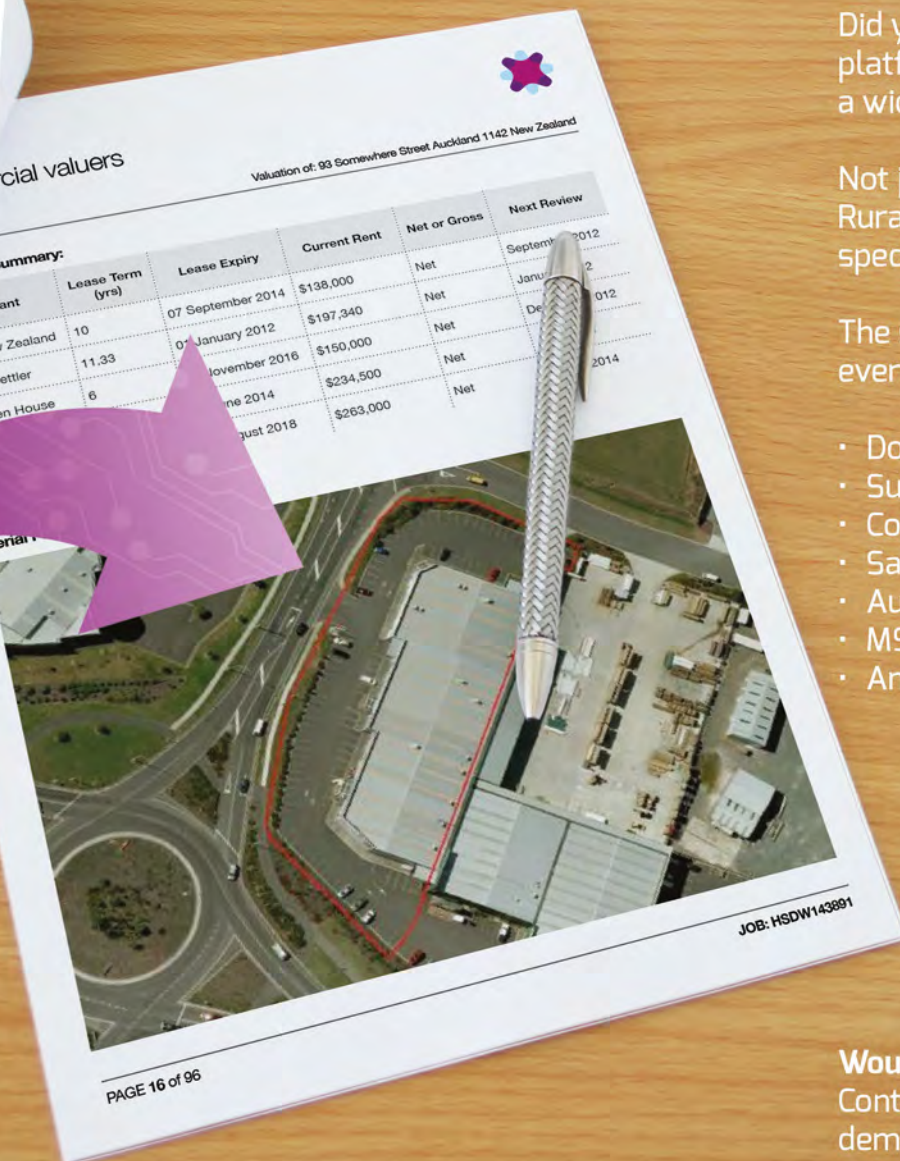
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<< continued from page 23

Established in 2010 following an industry-wide workshop, PrefabNZ is essentially the front door to the prefab or off-site design and building industry. It connects designers, specifiers and producers with clients and government so they can harness opportunities and overcome any challenges facing the uptake of prefabrication in the built environment.

PrefabNZ draws on international and local research in demonstrating how New Zealand can optimise the delivery of innovative, affordable and high-quality buildings through the use of prefabrication technology. This technology can deliver measurable and sustainable productivity outcomes to the New Zealand economy. PrefabNZ's mission is to double the uptake of prefabrication and off-site construction to 40% in the construction sector by 2020.

In 2013, PrefabNZ released the 'Prefab Roadmap for New Zealand' that sets out an industry and government action plan. In 2014, it launched the 'Value Case for Prefab' that presents the evidence from international and local research, demonstrating how prefabrication can reduce the build cost on an average house by 15%. In 2015, PrefabNZ noted in the report 'Levers for Prefab' that the levers identified by large house-builders to increase the uptake of prefabrication were in areas of scale, regulation and 'show-and-tell'.

PrefabNZ works primarily in this 'show-and-tell' space delivering information, education and advocacy through work with the public, local and national government, and industry vehicles such as the Construction Industry Council ([www.nzcic.co.nz](http://www.nzcic.co.nz)).

## *Benefits of prefab for property professionals*

### *Quality*

Greater use of factory-controlled conditions, plus more use of computer numerically-controlled (CNC) and computer-aided drafting and manufacturing (CAD-CAM) technology provides for superior precision, less wastage and a higher-quality end product.

### *Time*

The fastest way to save money is to save time. Prefabrication is a faster construction process that can reduce up to 60% of time at the site. This is primarily through parallel workstreams occurring, i.e. site-based foundations are built at the same time as off-site manufacturing of building parts. The use of prefab parts such as panels and bathroom pods can reduce the cost of a home by \$25,000 to 40,000 according





to research by BRANZ and PrefabNZ (see the 2014 'Value Case for Prefab' report).

#### *Cost vs value*

A reduction in time can see a shorter lending period for capital and reduced lending costs, meaning increased cashflow for developers. It also means less rental time for housing inhabitants. Currently, it is estimated only 25% of construction projects in New Zealand are completed on time and inclement weather adds a further 13% in time to building schedules. Building off-site provides for greater certainty of time and significantly reduces delays caused by weather, labour and re-work.

#### *Skills*

Factory construction enables greater trade specialisation, which provides for increased quality and less on-site labour, thereby

reducing overall costs. Prefab also appeals to more technology-literate workforce entrants and poses less gender barriers than traditional construction. As the workforce dramatically changes shape over the next 15 years, it will be imperative for construction to attract a broader range of industry entrants than at present. Prefab is a way to do this.

#### *Health and safety*

The construction sector has a worker fatality rate that is almost triple that of any other sector. Prefab processes facilitate enhanced health and safety benefits for workers through an effectively managed and controlled working environment, where workers operate at lower heights and away from varying weather conditions. In one case study where a commercial-scale roof was constructed at grade and lifted into position, savings were achieved in time (50%), cost (30%) and

importantly in time at height (just 12% of work time was at roof-level). The potential for life-enhancing safety savings is unquantifiable.

#### *Sustainability*

The construction industry contributes 40% of landfill so pressure is increasing to reduce the level of material waste used in production. Prefab construction reduces up to 90% of waste at the site and enables enhanced energy efficiencies through more accurate building methods. On-site disruption from noise, dust, increased labour and material deliveries is also reduced when using prefab construction, resulting in fewer disturbances to neighbours during construction. This is particularly important for multi-unit developments, retirement villages with residents in place, and medium-density situations where reduced impact to the community is imperative.



## A VALUE CASE FOR PREFAB



Walls under construction at the Concision factory in Christchurch, where finished walls for a three to four bedroom house are constructed in two days. The walls are delivered to the building site, where they are erected and the house made watertight within eight hours.

*Concision is a joint venture between Spanbild Holdings and Mike Greer Homes NZ Limited*



*Showcasing prefab housing at HIVE CH*  
PrefabNZ facilitated New Zealand's first HIVE Home Innovation Village, which was opened in early 2012 in Christchurch in response to the 2010/11 earthquakes. It was set up to respond to demand to provide Cantabrians with more solutions for well-designed, strong and affordable housing ([www.homeinnovation.co.nz](http://www.homeinnovation.co.nz)).

HIVE CH hosted 15,000 visitors over its two-and-a-half years. It was successful due to robust consumer interest and great support from project partners including the Christchurch City Council, industry supporters such as Meridian, and the 10 housing teams intent on shifting mindsets about prefab perceptions towards quality and customisability.

Located at the Canterbury Agricultural Park, HIVE provided Cantabrians with a one-stop

shop of well-designed, affordable homes built using prefab technology, which demonstrated how far New Zealand has come in the design and construction of prefab homes. They were stylish, permanent, high quality, sustainable and much quicker to assemble at the site than traditional building techniques.

### *Find out more*

PrefabNZ members are listed in the online directory searchable by location (e.g. Wellington) or building profession (e.g. architect) – see [www.prefabnz.com/Directory/](http://www.prefabnz.com/Directory/). Property professionals are welcome to come along to PrefabNZ events to meet industry members, learn about new technologies, and view innovative projects showcasing the benefits of building off-site.

PrefabNZ's annual CoLab will be in Auckland on 6-8 April 2016. This is a chance to get

hands-on with pre-built construction through interactive site visits, international and national expert presentations and intimate 'world café' conversations ([www.prefabnz.com/Events/](http://www.prefabnz.com/Events/)).

The CoLab will feature the award-winning universally accessible bathroom design – the UniPod – as won by First Light Studio in a design competition sponsored by PrefabNZ with the NZ Institute of Architects, the Retirement Villages Association, Lifemark and Victoria University of Wellington.

According to PrefabNZ Board Chair and Judge, Daiman Otto, the winning UniPod design 'is innovative and intensive – cleverly combining all of the necessary functional requirements in a smart wall services core that is highly space-efficient. Its small space means a high degree of usability for different building types and assists with installation logistics, manoeuvrability and craneage.'











# COMMERCIAL RENT ASSESSMENT

## CURRENT PRACTICES AND IDEAS FOR THE FUTURE

Jędrzej Białkowski

*This article looks at whether the proficiency of property valuation and the rent assessment process can be improved.*

### *Changes to valuation profession*

Due to social and economic changes, as well as technological developments, the valuers' profession like many others may undergo a transition. To improve the efficiency and effectiveness of upcoming changes, it is important to identify the performance gaps of valuers and the technological opportunities that now exist in the 21st century that can improve the proficiency of property valuation and the rent assessment process.

To identify these gaps, the first step is to respond to existing criticisms of the profession. Valuers as key market participants are often criticised for not bringing transparency into the property market and for making the leasing process more expensive. They are frequently questioned about their methods for property valuation and rent assessment reports. For example, the set of comparable properties they prepare in reports for the tenant and landlord are often materially different, and valuers are repeatedly criticised by tenants and landlords for the selection of the comparable properties. The market perception is that valuers acting for tenants favour lower-end rental evidence comparisons and vice versa for the landlord's valuers.

In the current commercial property market, valuers play a key role as their rent assessment and property valuation reports have a direct impact on the volume and quality of transactions. I believe that shedding light on the common practices of valuers will be beneficial for the profession and the real estate market as a whole. This is also a good starting point for discussing the current condition of the profession and can help it navigate the changing environment and the challenges ahead. I am convinced that only valuers themselves – not any external body – have the key to the success and development of their profession.

As part of my research on the role of valuers in the rent assessment process, I conducted a survey among commercial valuers across New Zealand. The questionnaire was designed to determine what valuation methods are commonly used and how well they perform, and also to examine the importance of property characteristics for the rent assessment process. The survey sought valuers' feedback on proposed innovations aimed at increasing transparency and access to information.



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## The survey

The survey was conducted between 6 December 2015 and 20 January 2016. It consisted of 31 questions and was sent to 470 valuers. Their contact details, including email addresses, were manually extracted from the members' directory of the Property Institute. The survey was distributed via email. The response rate reached a satisfactory level of 32.3%. The decisive majority of respondents provided answers for all questions. Most of the 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 valuers' profession.

The survey targeted experienced professionals. All of the survey participants have a specialty in commercial and industrial property, and their area of registration is property valuation, and 86% of respondents have been in practice for at least 10 years. The examined sample of valuers has a negligible number of individuals relatively new to the profession (less than 1.5% of the sample), and the average annual number of valuations per valuer exceeds 38. The sample of valuers is free of bias toward large metropolitan areas such as Auckland, Christchurch, Wellington and Dunedin; 49.1% of valuers included in the sample work outside these four areas.

## Valuation methods and their performance

There is no point in arguing whether forward-looking or backward-looking rent assessment methods are superior as both methods have indisputable advantages. In my view, they complement each other. Unfortunately, the survey revealed that as many as 81% of respondents use backward-looking methods as their only or main tool for rent evaluation. The comparison method (comparing rent with similar properties as a backward-looking method) is recognised by the vast majority (94%) as the most reliable one.

Not surprisingly, 94% of surveyed valuers use only this method. A forward-looking method, such as the investment/income approach,

is used in conjunction with the comparison method by only 25% of valuers. The survey participants unanimously agreed on the selection of key factors for the comparison method. This backward-looking valuation method is appealing due to its simplicity, but it is unable to detect a trend in property market performance.

The survey sheds some light on the application of the comparison method. It answers the question of whether commercial property valuers have a common agreement on the factors used for the selection of comparable properties. The result confirms that the majority of survey participants have voted for the same factors such as location, size, lease conditions, date of lease, age and quality and standards of a property. Among these, location, size and quality of property were selected as the most important inputs for the valuation process. Of those questioned, 91% agreed with the statement that new leases of comparable properties should be selected as an input for the comparison method, as these leases convey the most relevant information and are much less affected by a long tenant-landlord relationship.

It is also important to know what variables in general are widely used by valuers in the process of rental assessment and property valuation. Do valuers have a common agreement on these variables? Are there any factors that are missing in the process of valuation that can improve the performance of the valuation? The majority of the survey participants voted for similar comparable properties as the key input for any rental assessment. This once again confirms the dominant role of the comparison method.

The information on past rental valuations prepared by a valuer's company and the guidance of the Australia and New Zealand Valuation and Property Standards are recognised as the next two most important input factors. In addition, information obtained from external databases and city council requirements are put at fourth and fifth place, respectively. Inflation is considered as a factor in the valuation process by less than 34%. The

*Valuers as key market participants are often criticised for not bringing transparency into the property market and for making the leasing process more expensive.*

fact that only one-third of valuers take into account changes in the Consumer Price Index indicates that current economic conditions may not be reflected well by a proposed rent. It also again shows bias toward the backward-looking approach among property valuers.

## Illusive comparability

The successful application of the comparison method should lead to representative market rents. However the output is heavily dependent on the selection of properties similar to the valued one. Thus, the ultimate success or failure depends on the definition of 'similar'. There are a number of reasons why the selection of similar properties may be difficult. First, a valuer may operate in a township with a very low number of new leases per year so overall the amount of available information is low. Second, a valuer may have limited access to the information on recent leases, even though there may be few of them. Finally, there may be disagreement between valuers on what similar in terms of size, location, age, etc, really means. A few survey questions were designed to identify how valuers define similarity between properties in terms of those variables.

In terms of property size, the majority recognised that the difference between a valued property and comparable properties should not exceed 20%. The surveyed valuers agreed that similar properties should be leased in the last 12 months and be within a two to five kilometre radius from the valued property.

## *The survey asked valuers to comment on the criticism that they often recommend a lower rent valuation for tenants and a higher rent valuation for landlords for the same property.*

One surprising result was that valuers do not agree on the importance of access to a main road as a key determinant of location. Moreover age and the condition of a property seem to play a marginal role in the process of selecting similar properties.

Assuming that the definition of similar properties is accepted by the industry, and that valuers have access to the same information, they should come up with almost the same list of properties when using the comparison method. Therefore one of the survey questions asked if the comparable properties selected in the report prepared by the tenant's valuer and the comparable properties selected in the report prepared by the landlord's valuer were the same. A 50% or less overlap was reported by 87% of the survey participants. I believe that can be at least partly attributed to the lack of a uniformly accepted definition of similarity or lack of access to the same information.

### *Independent valuation*

Taking into account that valuers are paid either by the tenant or the landlord, one may ask the question to what extent the valuations are truly independent. The survey asked valuers to comment on the criticism that they often recommend a lower rent valuation for tenants and a higher rent valuation for landlords for the same property. Less than 11% of those surveyed agreed with that statement. The majority of those who agreed with it argued that it facilitated negotiations. The vast majority of the surveyed valuers agreed with the statement that the identity of a client does not matter and should not affect a valuation. These results are in line with the fact that 76% of valuers take into account the guidance of the Australia and New Zealand Valuation and Property Standards as a key input in the rent assessment process.

### *How to increase transparency and trust*

Despite the fact that most of the surveyed valuers agreed with the idea that rental assessment reports should not depend on the identity of the client, in reality they often contain a very different set of comparable properties. As a result, the estimated rent for the tenant and landlord is materially different. This often leads to a costly arbitration or an expert determination. I believe that part of the problem is a lack of transparency in the valuation process and unequal or lack of access to information. Therefore the survey seeks feedback on two proposals that might address the problem. The first proposed innovation is the introduction of an external shared comprehensive database containing a diversity of commercial new leaseings and rental valuations.

The second suggestion is related to the situation in which there is a disagreement between the landlord's and the tenant's valuers. In such a case, the two valuers only exchange both assessment reports before an arbitration hearing. To evaluate the usefulness of these proposed innovations, the survey asks whether exchanging the drafts of these reports before finalising them could improve the efficiency of rental assessment. Seventy percent of responders agreed with the idea that the introduction of an external database would make commercial rent assessment more accurate and efficient, and more than half believed that exchanging drafts of the assessment reports will make the process shorter and less expensive.

The last question of the survey gave respondents the opportunity to share any ideas that could add value to the commercial valuers' profession. The majority of comments refer to the issue of client advocacy. A

number of respondents believed that some valuers sometimes act as advocates for their clients (either tenant or landlord). Often this makes the process complex, diminishes public confidence in valuers, and results in arbitrations. However if all were acting independently, as they should, then commercial rent assessment would be easily resolved between parties. Finally, some of them point out that the idea of a comprehensive database is good, but very difficult to implement due to the intellectual rights attached to the valuation report.

### *Concluding remarks*

Property valuation and rent assessment is a combination of science and art. I believe there is no one universal valuation method that suits all purposes. However the scientific part of valuation can be well defined and should not be the subject of disagreement between valuers representing the opposite sides of a transaction. I have no doubt that a prudent valuer should always be fully aware of current market sentiment and the latest prevailing economic situation.

The above survey sheds light on some aspects of valuation that need more attention by the valuation profession in the years to come. It seems to me that 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 is a key issue that should be addressed by the industry itself. There is clearly room for more innovative processes to facilitate a draft report exchange prior to valuers finalising their report and assessment, which in turn should enhance the reputation of, and public confidence in, the valuation profession.

I hope this article will facilitate discussion inside the valuers' community.





# AUCKLAND AND WELLINGTON RESIDENTIAL RENTAL MARKETS – A REVIEW

Allan Smee

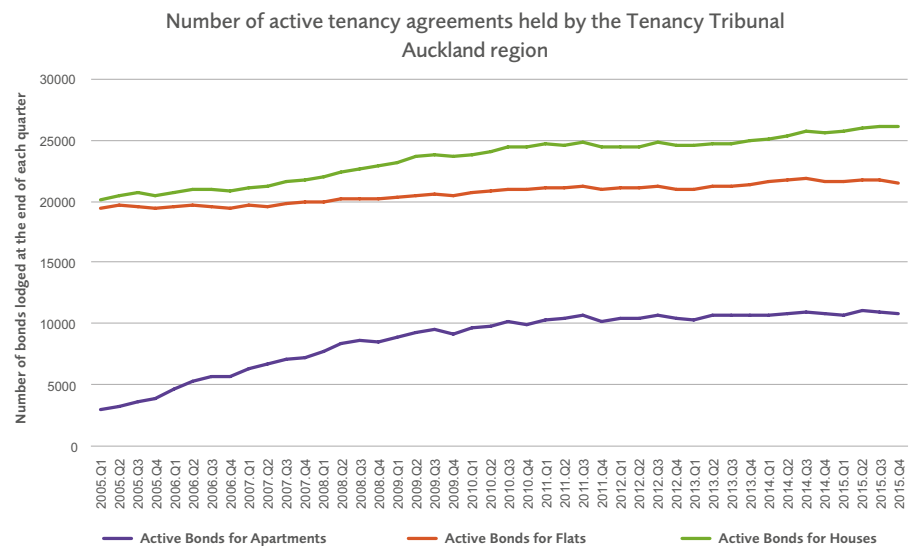
*The number of rental properties in Auckland has increased, as investors look for capital gains rather than regular cash flows from their investment properties.*

The Auckland residential property market has been dynamic over the past 10 years. This article investigates the Auckland and Wellington residential rental markets to determine if active tenancies vary between the two regions. By observing the number of bonds lodged at each quarter it can be surmised that if the number of bonds lodged remains static, then the supply of rental property also remains static.

If the number of bonds lodged is positive, then more bonds are being lodged than being refunded and the supply of rental accommodation increases. A bond must be lodged within 23 days of a landlord receiving it (s19(1)(b) Residential Tenancies Act 1986), so there is a small lag in data. The change in mean weekly rents is also investigated.

The Auckland market depicted in **Figure 1** demonstrates three residential rental markets apartments, flats and houses (stand-alone rental properties). During the 10-year period between 2005-2015 the total number of bonds increased only 20%. In 2005, 39,537 bonds were lodged and in the last quarter of 2015, 47,634 bonds were lodged across all three market sectors.

The most dramatic increase has been in the apartment market, with a 267% increase in



Source: Bond Lodgement Data, The Ministry of Business, Innovation and Employment.

Figure 1. Auckland active bonds 2005-2015



*The most dramatic increase has been in the apartment market, with a 267% increase in the number of bonds lodged.*

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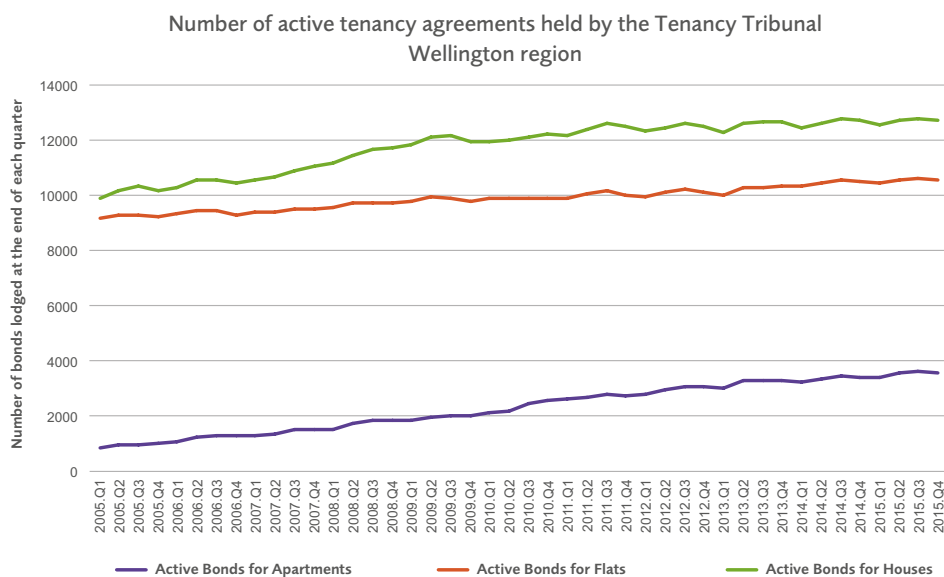


Figure 2. Wellington active bonds 2005-2015

the number of bonds lodged. The increase in the apartment sector is a reflection of the increased number of apartments being built in the Auckland, especially the Central Auckland, area. The number of bonds held for houses increased by 30% for the same period and there was only a 10% increase for flats.

This data compares favourably with the Wellington region as depicted in **Figure 2**, with a similar increase of 22% in total over the same period in all market sectors from the 1<sup>st</sup> quarter of 2005 (19,065) to the 4<sup>th</sup> quarter of 2015 (23,298).

From both Auckland and Wellington bond lodgement data, it appears that there has been an increase in the number of rental properties on the market. It has been reported anecdotally that there is a shortage of rental accommodation in Auckland, with a number of media outlets focusing on the rental crisis there. Traditionally, we would expect to see the market react to the shortage in supply with an increase in rent closely followed by an increase in supply. From this data it does appear that the market has reacted by increasing the supply of rental accommodation.

### Mean rents

Another measure of rental movement is the mean rent. **Figure 3** demonstrates an increase in the mean rent of 40% across all market sectors between the 1<sup>st</sup> quarter of 2005 and the last quarter of 2015. In the separate sectors:

- Apartments increased by 33% (1<sup>st</sup> quarter 2005 \$362, 4<sup>th</sup> quarter 2015 \$484)
- Houses increased by 50% (1<sup>st</sup> quarter 2005 \$410, 4<sup>th</sup> quarter 2015 \$616)
- Flats increased by 48% (1<sup>st</sup> quarter 2005 \$293, 4<sup>th</sup> quarter 2015 \$436).

These results reflect a steady increase in mean rentals across all market sectors in Auckland.

As discussed above, the market has reacted with an increase in both price and supply, and the question is whether or not mean rental price has kept up with the pace of the residential sales market.

To examine this we have created an index of median sales price for: residential dwellings (stand-alone houses); mean rents for residential dwellings; and mean weekly wages. As indicated in **Figure 4**, the median

house price has increased by 112% during this period (1<sup>st</sup> quarter 2005 \$480,000, 4<sup>th</sup> quarter 2015 \$1,020,000). There is no indication that the median sales prices increases have been reflected in the mean weekly rentals for houses. This would indicate that landlords are looking at capital gain rather than regular cash flows from rent for a return on their investments. A further question is whether this will change with the introduction of the government's Bright-line test and the Residential Tenancies Act Bill.

The Bright-line test requires international investors to have a bank account in New Zealand and an IRD number. The compliance in their own countries also needs to be addressed. This is expected to restrict international investment in New Zealand property until requirements have been met. The Residential Tenancies Act Bill may require private landlords to improve the insulation of their investment properties. Some landlords may choose to exit the market rather than spend money on complying with insulation and other requirements in the proposed Bill.

Increasing current rents would be problematic as depicted in **Figure 4**. Mean weekly rentals have increased at a faster pace than the mean weekly wage in the Auckland region. Any further increase is unlikely to be sustainable in the market.

**Figure 4** demonstrates that the cost of housing has outstripped mean wages. The increase in rentals has been higher than the rise of mean wages in the past 12 months. The median sale price of housing far exceeds the mean wage increase, with a base of 100 in the year 2005.

### Key findings

- Overall there has been an increase in the number of bonds lodged (20%) in the Auckland market for the 2005-2015 period across all sectors
- There has also been an increase in the number of bonds in the Wellington market across all sectors (22%)



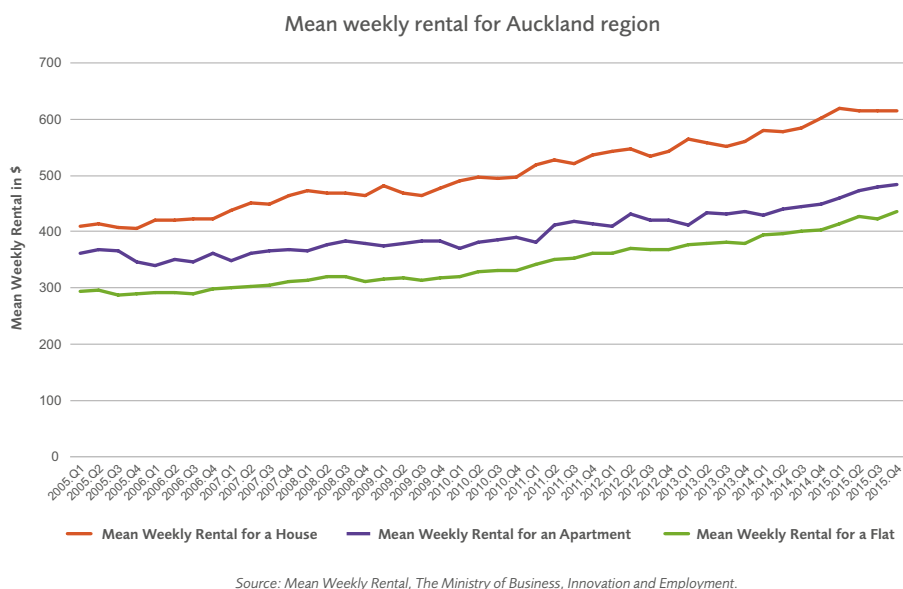


Figure 3. Mean rents for Auckland 2005-2015

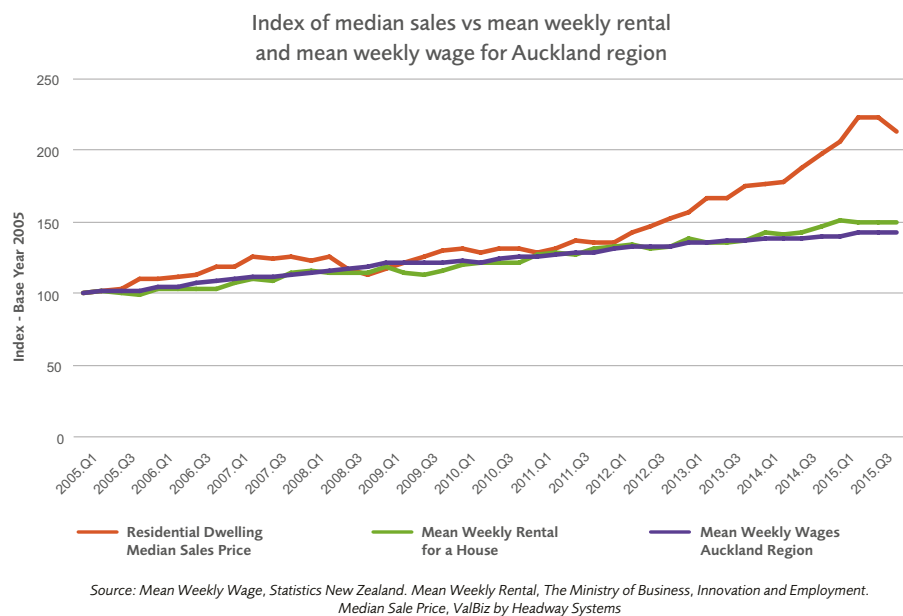


Figure 4: Median sales, rents and wages – Auckland 2005-2015

Some landlords may choose to exit the market rather than spend money on complying with insulation and other requirements in the proposed Bill.

- Mean weekly rents have increased (40%) in the past 10 years across all market sectors
- Since 2012, increases in median house sales prices have not reflected an increase in mean weekly rent
- Mean weekly rent has increased at a faster pace than mean weekly wages since 2013
- It appears that there is strong focus on capital gain for landlords over cash flows from rent.

This report will be updated in the coming months to see if any changes occur in the marketplace, and reviews of the Wellington and Christchurch residential rental markets will also be carried out.

### Data sources

- Bonds lodged with Tenancy Tribunal – Ministry of Business Innovation and Employment (MBIE)
- Mean weekly wage data: Statistics New Zealand [www.stats.govt.nz/infoshare/default.aspx?](http://www.stats.govt.nz/infoshare/default.aspx?)
- Rental data: MBIE [www.mbie.govt.nz/info-services/housing-property/sector-information-and-statistics/rental-bond-data](http://www.mbie.govt.nz/info-services/housing-property/sector-information-and-statistics/rental-bond-data)  
This data comes from MBIE's tenancy bond database, which records all new rental bonds that are lodged with them each month:
  - the type of property is determined by the landlord and there currently is no description provided by MBIE
  - not all tenancy agreements are lodged with the Tribunal
  - geographically, areas have been artificially created by the Tribunal and are based on combined areas and are therefore not an exact match to suburbs
  - it only represents the non-government residential rental market
- Sales data: ValBiz for Headway Systems [www.headway.co.nz/](http://www.headway.co.nz/)



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# OPTIONS TO PURCHASE – HOW CAN THEY BE PROTECTED?



Mark Allen

*Tenants can negotiate an option to purchase land within their commercial leases, but issues arise where the underlying land is sold, or attempted to be sold, without reference to the option.*

To help protect a tenant's interests under an option, a tenant can include provisions within a lease to allow them to register a caveat and to ensure the option is enforceable against a future landowner. While not all options will support a caveat or bind a future landowner, careful drafting of the option can help improve a tenant's chances of obtaining these protections.

## *What is an option to purchase?*

An option can be defined as a right provided by a landlord to a tenant for the tenant to elect to purchase the underlying title of leased land. An option is often drafted to be subject to:

- Performance conditions, e.g. performance of the lease, and
- A triggering event.

Once the conditions of the option have been met and the option has been triggered, the landlord and tenant are immediately bound by an agreement for sale and purchase of land on a pre-agreed price, or valuation mechanism, and in line with the settlement obligations and timeframes set out in the option. Outside of the normal rules of contract law, there is no special form or content requirements for options other than the requirement that contracts affecting land must be in writing.

Understanding options is important for land professionals because they can impact on:

- Land value, as the price or a valuation process may have already been agreed
- The ability of the registered proprietor to develop or deal with the land, and
- Sale processes, especially where options involve rights of first refusal and lengthy valuation processes.

## *Why is an option to purchase useful?*

Commercial tenants can use options to help overcome anxieties about lease terms – if a tenant has the discretion to take full control of the land by purchasing it, then any anxiety over being granted an extension of term or new lease falls away. Options can also be an effective strategy to mitigate counter-party landlord risks. By having a power to purchase, the tenant can prevent the land being sold to an entity who may have competing plans for the land, e.g. a developer or a competitor.

From an economic perspective, providing the tenant's interests under the option can be sufficiently protected, an option can give the tenant:

- Certainty of tenure without requiring the capital outlay to complete the purchase, and
- Protection against dramatic rental increases if the tenant can purchase at a set price.

From a landlord's perspective, an option can assist with incentivising performance of the lease. For this reason, landlords will often

make the exercise of an option subject to the tenant's performance of the lease, meaning the tenant may be prevented from exercising the option if there are any unremedied defaults under the lease.

## *Key aspects of an option*

Terms and conditions of options can vary substantially. Options are generally negotiated to address bespoke requirements of the affected land and the parties' respective interests. Options can include:



*Options are generally negotiated to address bespoke requirements of the affected land and the parties' respective interests.*

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- Conditions to be satisfied prior to trigger, which can be conditions precedent or conditions subsequent, e.g. a condition requiring development works to be completed
- A process for triggering the option, e.g. notice requirements and timeframes
- An agreement for sale and purchase of land including:
  - Price (or a valuation process)
  - Obligations on settlement, and
  - Settlement timeframes.

### *Can a tenant protect their interests under an option?*

A common risk lies in the land being dealt with in a way that is inconsistent with the rights provided to a tenant under the option. This can arise through the option being either overlooked or otherwise side-stepped, perhaps deliberately, leaving a marginalised tenant to assess their legal and enforcement options. Of the many available options to a tenant to help protect against this risk, they can look to protect their interests through the drafting of an option by ensuring the option:

- Gives rise to a sufficient interest in land to support a caveat, and
- Will be enforceable against future landowners.

A caveat, once registered, can prevent dealings with the caveated title that affects the caveated interest. What amounts to a caveatable interest is discussed below under the heading 'When is an option caveatable?' Options may not always automatically be enforceable against all future landowners. This is further discussed below under the heading 'When will an option bind future landowners?'

### *When is an option caveatable?*

An option can only be protected by a caveat where the option is a sufficient interest in land that amounts to a caveatable interest. If a caveat is registered where there is not in fact a

caveatable interest, the caveator is liable under the Land Transfer Act 1952 to any person who may have sustained damage as a result.

To caveat a title, the generally accepted position (as detailed by Hinde, McMorland & Sim in *Land Law in New Zealand*) is that a tenant will need to establish in accordance with the Land Transfer Act that they have a present (as distinct from a potential) interest in land. This issue has been tested a number of times through the courts who will assess the option on a case-by-case basis by reference to its terms.

*Options can be useful to both landlords and tenants.*

In summary, case law has shown that a caveatable interest can arise where:

- The option may be exercised by the tenant at any time – it does not have to actually be exercised first
- The option is unconditional
- The option is conditional, but:
  - All conditions have been inserted for the sole benefit of the tenant, so the tenant can waive them at any time
  - The option confers power on the tenant to require a transfer of the land without the further permission of the owner, such that the result is outside of the landlord's control
  - The parties intend to be bound and remain bound subject to fulfilment of the condition(s), or
  - The option has been drafted in such a way that the landowner cannot revoke the arrangement.

Should a tenant elect not to exercise the option, or the time period to exercise the

option has expired, then the caveatable interest will lapse. If an option includes a true conditions precedent, i.e. a condition that must be satisfied before the parties can be regarded as intending to create any interest in land, then the option cannot create a sufficient present interest in the land to sustain a caveat until that condition is satisfied.

### *When will an option bind future landowners?*

Following the enactment of the Property Law Act 2007, options are able to bind future landowners when they are included in leases (registered or unregistered) entered into after 1 January 2008, unless a contrary intention is expressed in the option. For registered leases, as the option is incorporated as a term of a registered instrument on the title, all new purchasers of the land are automatically bound, unless expressly excluded. The option, as with the lease, will also provide the tenant with indefeasible rights, i.e. protection against other non-registered interests in the land.

For unregistered leases, options will generally only bind new purchasers if incorporated into a lease that was entered into after 1 January 2008. For options incorporated into leases prior to this date, a future landowner will not be bound, unless expressly referred to in the option. Options included within unregistered leases do not in general provide the tenant with indefeasible rights.

### *Concluding comments*

Options can be useful to both landlords and tenants. It is recommended that an option, as with other contracts involving land, should if possible be protected by way of a caveat. Given the potential impact of an option on the leased land and a tenant's business operations, a careful review of the terms of the option is required. When drafting options, there are a number of factors to address in order to provide assurance that the option will both be caveatable and binding on future landowners.





# PRACTICAL ASPECTS OF COOK ISLANDS RENT REVIEW ARBITRATIONS IMPLICATIONS FOR NEW ZEALAND

Bob Hawkes

*This is the third article in a three-part series by the author on the new Cook Island Arbitration Act 2014 and its implications for similar situations in New Zealand.*

## *Evidence – comparing lease terms*

It is important to compare lease terms, particularly to clarify:

- The landlord and tenant identities, including clarification as to whether the transaction is arm's length. Related party transactions have a strong possibility of not passing the arm's length (market rent) test
- Lease commencement date
- Lease duration, both the current term and the ultimate potential term after exercising rights of renewal
- Rent
- Rights of renewal
- Ratchet provisions
- Special features attaching to rights of renewal such as rent review instructions
- Use restrictions
- Extent of landlord's and tenant's respective maintenance responsibilities
- Assignment rights
- Identification of the party responsible for insurances, plus the amount involved in premiums
- Liability for ground rent, where appropriate

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- Unusual provisions in a particular lease and not normally found in general commercial or market practice
- Document execution.

### Ratchet clauses

A ratchet clause, or provision, is a statement in the lease that a rent cannot reduce at review. Sometimes we see limited ratchet clauses such as the rent at review to be not less than that at a fixed previous date. Quite often the fixed date is the lease commencement. An example of a Cook Islands ratchet provision can be seen in the final words of a lease rent review clause which states the rent was to be not less than the rental payable for the preceding five years.

Discussion on the alternative of no ratchet provision can be found in *Apex Agencies Limited and Ors v Cook Islands Trading Corporation Limited*, Hugh Williams J, High Court of the Cook Islands (Civil Division), 15/6/2013 (NZ time), OA 4/2013. The rent review provision is cited at [9] of the judgment.

### Ground rent implications in building rents

It is understood that at least most, if not all, leases in the Cook Islands do not impose a ground rent liability on sub-tenants, no doubt a carryover from the days of ground rents being more or less peppercorn, i.e. insignificant. As ground rents are reviewed, and particularly when a financial gap starts to appear between the low rents and the higher-bracketed modern examples, an argument might arise that rents for buildings on the latter reflect a ground rent margin over and above those of the peppercorn examples. In using the term peppercorn I have in mind, for instance, \$1 per annum rents.

Maintaining truly comparable analysis could require consideration of the respective ground rents. In New Zealand, with our freehold land tenure running parallel with leaseholds as in the Cook Islands, the rents for buildings are analysed on an equivalent basis. All rents are assumed to be a combination of land and

buildings. The freehold examples are relatively straightforward, being simply a calculation of the rent applying to a given building component floor area as that rent is for the combination of the building and the land related to it.

*A counter to a subpoena for comparable rents to present as evidence in arbitration can be that the information is not for release as it is private between the landlord and tenant.*

The leasehold examples are analysed by adding the related ground rent to the building rent and in turn calculating a combined rent on a floor area basis. This picks up on the normal New Zealand practice of the building lessor paying the ground rent to the ground lessor. It requires careful analysis because often the building lessee pays the ground rent, either within the structured rent or as an extra through building levies. Furthermore, ground rent review dates can vary. In the ideal market the rents should be equal for adjacent buildings of the same character apart from one being on freehold and the other on leasehold.

### Transaction confidentiality

A counter to a subpoena for comparable rents to present as evidence in arbitration can be that the information is not for release as it is private between the landlord and tenant. Such a challenge exercised the New Zealand Court of Appeal in *Re Dickinson; Board of Trustees of National Provident Fund v Dickinson and Ors* 24/9/91, Court of Appeal (Cooke P, Gault

and McKay JJ), [1992] 2 NZLR 43, CA 268/91. It came at a time of economic downturn, when landlords and tenants were completing transactions subject to confidentiality agreements.

Landlords were offering sweeteners to attract tenants and were insisting the details of negotiations and the resultant deal be kept confidential to the particular parties. They did not want the information in the market arena. Sweeteners included discounted rents and lump sum payments to tenants for committing to premises. They were inclined to be recorded in separate documents from the ultimate lease document, with the lease prescribing the rent the landlord otherwise expected to achieve before conceding to incentives.

Valuers assessing rents for comparable properties were eager to obtain full details of these transactions, so that the true market rents could be analysed. The subpoenas were sustained on the grounds that the public interest in fixing and reviewing commercial rents by reference to comparable rents outweighed the private interests of maintaining contract confidentiality. The overriding interest is in as fair a fixation of market rents as possible.

### Arbitration confidentiality

The arbitration is confidential and this includes the award. This is one of the fundamental attributes of arbitration and it needs to be impressed on all participants, whether they are parties, expert witnesses or others involved. Confidentiality should only be broken by agreement of both parties or through the award becoming public as a consequence of presentation in court, or in the occasional situations when the arbitral tribunal allows disclosure.

The confidentiality and privacy of the process is highlighted in the current Arbitration Acts. In a rent dispute context there are a variety of reasons driving parties to opt for arbitral confidentiality, including the ability to:





- Table sensitive commercial information, such as trading performance data and lease details, away from scrutiny by trade competitors and others
- Discuss private matters, such as a phase of strained landlord/tenant relationships, out of the public eye.

### The role of the valuer

The traditional valuer role in rent disputes is the production of a rent assessment for a party. It is common in New Zealand for the valuer to be subsequently called upon to give expert evidence at arbitration. Sometimes the valuer will not only provide evidence, but also conduct a party's case. This has a cost advantage for the client, but it raises serious questions as to whether the valuer is acting as an advocate, and has thus cast off the total independence expected of an expert witness.

An honest, factual and complete coverage opinion is to be normally expected from the valuer. A trained and skilled valuer can be expected to analyse and interpret relevant data to arrive at the rent assessment, even when there is only a small amount or possibly no equivalent transaction data. In so doing the valuer derives an assessment by applying that person's past experience gained from

analysing various markets. In those cases when there is no valuation data or comparable evidence on which to rely, then the valuer will quite possibly draw on experience from other markets outside that which is the subject of a particular assessment.

The valuer must resist any temptation to bow to client pressure to present arguments that lack substance or credibility and which are an attempt to unreasonably advance the client's case.

Hopefully the valuers will leave advocacy to the parties and/or legal counsel. A seasoned arbitrator will place much less weight on the evidence of an advocate than a balanced and informed expert witness. I understand there is a relatively short supply of qualified valuers within the Cook Islands and that at least some of the service is provided by valuers from New Zealand. When choosing a valuer it is prudent to check whether or not the particular candidate is trained and skilled in the profession and is maintaining professional development.

### Award status as precedent

Arbitration awards do not gain precedent status. Each award arises from the particular qualities of the evidence and the case-

particular submissions presented. A New Zealand case of interest out of the 1908 Act, where the High Court did not accept an award as precedent-setting, is *Superannuation Investments Limited v Woolworths (NZ) Limited*, Williams J, High Court Auckland, 25/9/96, [1998] 2 NZLR 463, CL 22/96.

The case is a challenge to an umpire's award regarding a Whangarei supermarket rent review. The plaintiff submitted the umpire made an error in law on the face of the award by not following another umpire's methodology in the preceding rent review. In the alternative, the claimant contended the parties were bound by issue estoppel because of the previous rent review award. In this context umpire can be read as arbitrator. The two awards were only a matter of some three years apart. The court found against the plaintiff and made the following interesting comments (the respective umpires are Messrs X and Y):

*The issue before both Messrs X and Y was the fixing of the Market Rent, which was the equivalent of base rent. To that extent it was the same issue before both umpires. However, in this court's view, the method by which the umpires achieved the resolution of that issue was a matter for them.*



*Neither party is a clear winner if the award results in a rent greater than the tenant expectation and less than the landlord expectation.*

*... it needs to be borne in mind that the parties have themselves contemplated regular rent arbitrations. The parties must therefore have expected that each umpire in fulfilling his or her arbitral function would assess the evidence presented, and apply their own competence in reaching their individual decisions. Each was a separate determination under the lease. The sublease does not require the umpires to follow the same methodology.*

A balancing view shows in the Court of Appeal *Casata* judgment, where at [87] it acknowledges earlier awards are permissible as evidence. It is for the arbitrator to determine the admissibility and weight of the evidence. The court accepted the arbitrator had approached that evidence carefully and accorded it limited weight. The concept in *Casata* can raise a dilemma over confidentiality of awards. Under the current Cook Islands and New Zealand Acts other awards can only be available in the limited circumstances of party/party or arbitrator authority, or court ruling.

### *Points of law*

It is not uncommon for apparent points of law to arise in rental arbitrations and they usually do so in interpretation of lease provisions. The parties need to consider:

- Are they to be decided by the chosen arbitrator? or
- Is the arbitrator to be required to obtain an independent expert opinion, as provided for in the Act? This can be a costly and long-winded process.

### *Award format*

The expected award content is set out in the Act. The normal basic format I adopt for rent review substantive awards is:

- Introduction – briefly identifying the parties, the nature of the dispute and my role



- Set out the authority for arbitration:
  - (i) The relevant lease provisions
  - (ii) The follow-up agreement to arbitrate
- Identify the issue(s) in more detail
- Summarise the processes followed in the arbitration
- Identify the party representatives and witnesses
- Summarise the claim and response
- Describe the hearing format
- Summarise the evidence
- Discuss any idiosyncrasies in the evidence
- Detail the conclusions reached out of the evidence
- Discuss the way forward with costs
- State the decision/award, which will include a timetable for submissions as to costs.

Additional headings can arise when side issues, such as interpretation of particular lease provisions relative to the rent review, are in question. The chosen format is to tell the story in such a manner that it can be sensibly understood by the court in challenge deliberations. The arbitrator is not a party to such proceedings.

## Costs

The arbitrator is empowered to award costs and there is provision for the parties to opt out. As with the arbitration proceedings on the substantive matter, each party is entitled to make submissions as to the allocation of costs. This is usually effected after the award on the substantive matter has been issued. The award on the substantive matter is often described as an interim or partial award. In this context the interim or partial award is the final award on the substantive matter. The subsequent costs award is the ultimate final award.

Costs in arbitration arise under two headings:

- The respective party costs in attending to case preparation and presentation
- The cost of the arbitrator.

The default position in the Act is that the parties are responsible for their own expenses and for an equal share of the arbitrator's fees and expenses and any other expenses relating to the arbitration, unless the parties have agreed otherwise. It is important to comply with the requirement to not reveal to the arbitrator the fact that there has been an offer to settle until after the award on the substantive matter. It can be a matter which gains importance at the costs deliberation stage.

It is not unusual with rent review arbitrations for the ultimate costs award to reflect the default provision in the Act. The underlying reasoning is that neither party is a clear winner if the award results in a rent greater than the tenant expectation and less than the landlord expectation. See, for example, the New Zealand case of *Auckland Technical Institute v Photinia Properties Ltd* 10/9/93, Henry J, High Court Auckland, CP334/92. The general rule that costs should follow the event therefore does not apply when it is shown that neither party is substantially successful.

## Interest

It is not uncommon for lessors in rent review arbitrations to claim interest on unpaid rents between the effective date for the rent review and any increased ultimate payment falling due as a result of an arbitration award. Expectedly, lessees may claim likewise if the outcome is a rent reduction. This would be unusual in those instances where ratchet clauses apply. Either way, one needs to consider whether or not a debt has fallen due prior to arbitration and on which an interest liability might apply.

Of interest in this regard is a New Zealand Court of Appeal judgment *Body Corporate No 95035 and Ors v Auckland Regional*

*Council and Auckland City Council* 22/3/93, Hardie Boyes J, CA (Casey, Hardie Boys and Gault JJ), CA 215/92, forming part of several actions consequent upon an Auckland ground rent review arbitration pursuant to the 1908 Act. It is a somewhat dated judgment, but nevertheless still makes sense at least on the matter of interest. That matter is whether interest should be awarded on the rent increase arising from the award and be backdated to the review date. It had been granted by the High Court. The Court of Appeal overturned the High Court decision, concluding the new rent was an inchoate liability until there was a valid binding award and the landlords could not make out a valid interest claim until a new rent had been fixed in excess of the old. The definitions for inchoate in the *Oxford Compact Dictionary* are 'just begun' and 'undeveloped'.

A decision on interest in the Cook Islands can be found *In re Harnish and in the matter of Aremango Section 7A1A1, Ngatatangiia*, Cook Islands High Court (Land Division) 17/8/84, [1984] CKHC 2, HC 74/84. It is not an arbitration judgment, but a ground rent review decision where in summary the judge comments that if landowners and lessees delay due rent reviews they must suffer the consequences. The owner is deprived of the use of a rent increase, if any, and the lessees have the use of that money. The judgment is silent as to the judge's identity. This does not preclude an award that interest apply post the award.

## Concluding comments

This is the final in the series of three articles published in the past three consecutive issues of this publication. The most cost-effective option for resolving rent review disputes should be party/party negotiation. If that fails, consider arbitration as the appropriate alternative. A copy of the original version of this paper incorporating a list of contents and referencing through numbered paragraphs and footnotes is available on request to the author.



## PROFILE

# PETE LOVERIDGE

*Pete Loveridge is a rural valuer, a member of the PINZ Board and the Finance, Audit and Risk sub-committee, and currently President of the NZIV. This profile looks at his career development and professional involvement in both organisations.*



### *Early roles*

Pete grew up in the rural villages of Ahaura (West Coast) and Spring Creek (near Blenheim) before his family shifted into Christchurch in 1975. His early memories of visiting his grandfather's farm in Bishopdale, near Stoke in Nelson, may well have drawn him to rural studies at Lincoln College in 1979. After obtaining a Bachelor of Commerce in Valuation and Property Management, he commenced work with the Valuation Department in Palmerston North where he gained registration in 1985 and still resides there today.

He resigned from government duties in 1995 to take on an agribusiness role with Trust Bank where he managed around 60 farmer clients within the greater Manawatu region. After a Westpac takeover he was made redundant in 1999 and took up a vacancy at Blackmore & Associates as their rural valuer and advisor on all things farming. He soon became a director and continues to enjoy the challenges of being a provincial valuer within the central to lower North Island.

### *Professional involvement*

In terms of 'giving something back' he did his first two-year stint with the NZIV Manawatu branch in the mid-1990s. He returned for two more years with Manawatu's PINZ branch in the mid-2000s before taking up the branch chairman role in 2008-2009. In 2010, he joined the NZIV Council as one of three Central North Island representatives. In June 2015, he was elected as the NZIV President, although the understanding is that he will stand down at the AGM in Auckland in June of this year.



## *Pete advises caution about accepting any instruction you are not comfortable with, and making sure you charge plenty for the extra time needed to satisfy trading bank and NZTA reporting requirements.*

### *Future of rural valuation*

Pete enjoys the opportunity to take out any second or third-year rural valuation students from Massey University who want to learn about what a rural valuer does. While this doesn't usually result in employment, it will assist in their confidence when it comes to their next interview and job opportunity. He is also a realist and is quick to tell the student 'valuers' that they are unlikely to find a job as a rural specialist until they have at least achieved registration and made vital connections with local networks such as accountants, bankers, lawyers, real estate agents and surveyors, to name a few.

Pete is concerned about the lack of practical field-trips for students within each of the three tertiary institutions offering valuation degrees. He has come to the conclusion that unless the more experienced valuers amongst us contribute to the younger valuers' education, we are not going to have anyone to pass our businesses onto – let alone sell them. He feels that, sadly, it is apparent that universities are now preoccupied with their lecturers contributing to funding by way of a quantum of research rather than spending money on the practical aspects of our profession. It may be that alternative tertiary training will have to be sought.

Pete agrees with fellow valuers that our profession must find ways to attract new members and retain graduates in the valuation industry. But he says that in reality, while the trading banks are offering \$60k plus a car from year one, it seems most

unlikely that valuing firms nationwide will be able to attract rural graduates. This is unless they are either burnt out or perhaps ready to start a family and looking for a lifestyle change.

### *Professional development and accepting instructions*

In his role as President of the NZIV, Pete also sits on the PINZ Board as well as PINZ's Audit and Finance sub-committee. He met earlier this year with Mike Zissler, the CEO of the Australian Property Institute. He told Pete the underwriters of their capped liability insurance have recently suggested that they believe all valuers should be doing more than 20 hours a year professional development, and are talking that up to 60 hours a year may be necessary. While Pete is not suggesting this will soon be compulsory for all valuers over the ditch, it is worth noting that there remain plenty of challenges ahead of us and extra demands seem to be a constant!

He believes it is important for valuers not to begrudge attending professional development events, recommending at least 20 hours per year. At the same time Pete advises caution about accepting any instruction you are not comfortable with, and making sure you charge plenty for the extra time needed to satisfy trading bank and NZTA reporting requirements. His recommendation is not to accept instructions if the timeline or fee is not reasonable. Also if you get a request from a young person to go out with you for the day, make sure you say yes, smile, and tell them you would be privileged to do so. One day they might be

back in your town and be keen to buy part of your business.

### *New CEO making positive changes*

Pete is particularly enthused about the recent appointment of Ashley Church as CEO of PINZ (and NZIV). He hopes that all readers of the *Property Professional* quarterly magazine have had the opportunity to either listen to or read Ashley's power-point presentation outlining the way ahead for PINZ. The proposed plan offers an option of services for each of the current four property professional groups (Valuers, Property Advisors, Property Managers, Plant & Machinery Valuers), and it is planned this membership base will grow and our profile will strengthen, which should attract better numbers to our beloved profession. He believes that Ashley's proposal has been well received by valuer members as a whole, and hopes those critical of such changes will use their common sense and come around to reason in their own good time.

### *Other activities*

When asked what motivates him out of bed each morning, apart from the next IRD invoice, he says he continues to enjoy good health, plays tennis once or twice a week, looks forward to his weekly mountain-bike ride, loves the occasional fishing trip off the Whanganui coast and of course never misses a Blackcaps match, a Manawatu Turbo or an All Blacks rugby game. He is also happily married to Lyn, with both proud of their four adult children, their daughter-in-law and grandson.





## NORTHLAND

**Whangarei-based branch**

**Branch Chair: Reuben Archer**

## AUCKLAND

**Branch Chair: Patrick Foote**

**Branch Secretary: James Wilson**

The Auckland branch holds networking functions, presentations from industry speakers and professional development events.

### UPCOMING EVENTS

#### PINZ AUCKLAND BRANCH YOUNG GUNS EVENT – LATE MARCH 2016

An opportunity for the 'younger' members to network with the wider profession in a less formal setting. Remember, you're only as 'young' as you feel.

#### AUCKLAND BRANCH BREAKFAST SEMINAR – JUNE 2016

An opportunity for the membership to network while also listening to an industry-relevant speaker. A light breakfast is provided.

Further event details will be available on the [www.property.org.nz](http://www.property.org.nz) website.

## WAIKATO

**Hamilton-based branch**

**Branch Chair: Jeff Alexander**

The Waikato branch runs professional development events, including presentations for people in the property industry, and site tours. They also hold regular NZIV breakfast meetings and an annual Christmas function for members.

## ROTORUA

**Branch Chair: Helen Brumby**

The Rotorua branch runs regular informative events about topical issues in the region, keynote presentations, field trips and on-site building tours. They also hold an annual Christmas function.

## TAURANGA

**Branch Chair: Paul Higson**

The Tauranga branch organises regular site tours and professional development events.

## GISBORNE

**Branch Chair: Che Whitaker**

The Gisborne branch runs field trips directly relevant for the valuation profession in their region. These have historically included a range of 'high-end' coastal locations, houses under construction, large format commercial and industrial premises, and properties with horticultural use.

## TARANAKI

**Branch Chair: Stephen Hodge**

**Branch Secretary: Ben Hunt**

The Taranaki Branch runs presentations about Taranaki-wide projects and property issues, as well as regular networking events and an annual Christmas function.

## HAWKES BAY

**Napier-based branch**

**Branch Chair: Trevor Kitchin**

The Hawkes Bay branch runs networking events and events for young members, generally centered around an activity. They also hold regular professional development events and informative career-focused presentations.

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## WANGANUI

### Branch Chair: Guy Hoban

The Wanganui branch is a small but active branch that holds networking functions and bi-monthly members meetings to discuss market activity and share information.

## MANAWATU

### Palmerston North-based branch

### Branch Chair: Bruce Lavender

The Manawatu branch runs regular networking events and informative presentations about local issues, as well as their annual Massey Spring Seminars and Christmas function.

## WELLINGTON

### Branch Chair (PINZ): Callum Taylor

### Branch Chair (NZIV): Hamish Bills

The Wellington branch runs networking events, on-site tours and presentations about current issues for property professionals.

## NELSON

### Branch Chair: Simon Charles

The Nelson branch runs field trips and presentations on issues faced by industry. They also hold an annual Christmas function.

## CANTERBURY

### Christchurch-based branch

### Branch Chair (PINZ): Simon Newberry

### Branch Chair (NZIV): Gavin Kingston

This year the Canterbury branch will be running networking events, field trips, presentations and their annual Lincoln mainland seminar.

## SOUTH/MID-CANTERBURY

### Ashburton-based branch

### Branch Chair: Alistair Wing

The small South/Mid-Canterbury branch will be holding networking functions, with guest speakers on occasion to discuss current property issues.

## CENTRAL OTAGO

### Queenstown-based branch

### Branch Chair: Geoff McElrea

The Central Otago branch will be running networking events in 2016.

## OTAGO

### Dunedin-based branch

### Branch Chair: Adam Binns

The Otago branch runs rural field trips for property professionals, and will be focusing on professional development events for 2016.

## SOUTHLAND

### Invercargill-based branch

### Branch Chair: Regan Johns





## MASTER SERIES SEMINAR

**AUCKLAND**  
23 MARCH 9.30AM TO 12PM

**WELLINGTON**  
4 APRIL 9.30AM TO 12PM

**CHRISTCHURCH**  
5 APRIL 1.30PM TO 4PM

## CUTTING THROUGH THE RED TAPE

### An insider's view of current council plans

Join local developers and senior council representatives for a no-holds-barred view of current trends and planning.

#### YOU'LL LEARN:

1. What councils think property professionals should focus on in the next five years.
2. Common issues property professionals face when dealing with councils – and how to avoid them.
3. Upcoming changes to policies and plans, and how they could affect the property industry.

#### COST PER EVENT:

**MEMBERS \$250 PLUS GST**

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## WEBINAR

**24 MARCH 2016**  
**3PM TO 4PM**

## TURBO CHARGING YOUR PROPERTY CAREER

### How to get further, faster

Join Bill Kirkley of Massey University for an interactive and engaging webinar about how to enhance your career. With a PhD, an international reputation for developing businesses, and extensive senior executive and management consulting experience in the chemical, construction, education and manufacturing sectors of industry, Bill Kirkley will inspire you and provide you with the tools that you need to get ahead.

#### YOU'LL LEARN:

1. Personality traits to nurture, and which ones to avoid.
2. How to take a personal inventory of your skills.
3. How to set goals that help you create the future you want.
4. How to become a leader in your field.

**COST: \$90 INCLUDING GST.**

*Attendance at this webinar is worth 1 CPD point.*



## WEBINAR

**31 MARCH 2016**  
**2PM TO 3PM**

## TOP TRENDS IN COMMERCIAL BUILDING

### The current and emerging trends in contemporary construction projects across New Zealand

Join Greg Pritchard, General Manager of Fletcher Construction's Building and Interiors Division, for an informative webinar about current and emerging trends in the design and reconstruction of commercial buildings.

This is an excellent opportunity to hear an acknowledged expert talk about trend-driven development.

#### YOU'LL HEAR ABOUT:

1. An overview of construction trends seen over the past two years.
2. Current and emerging building trends – construction models, products, layout and design.
3. How Fletcher's Building and Interiors Division has integrated these trends into their projects.

**COST: \$90 INCLUDING GST.**

*Early bird pricing available for a limited time.*

*Attendance at this webinar is worth 1 CPD point.*





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