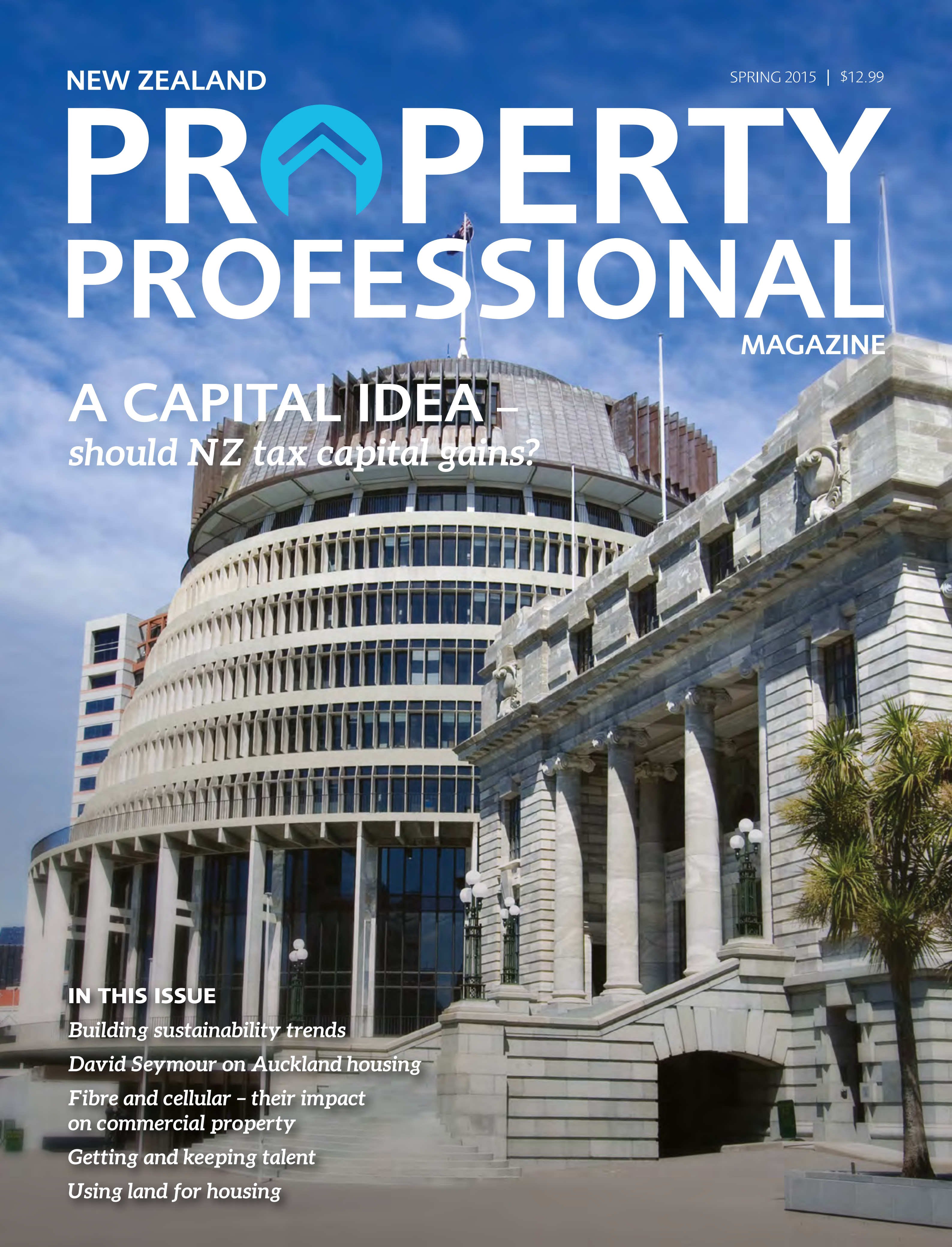

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PROPERTY PROFESSIONAL

MAGAZINE

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should NZ tax capital gains?

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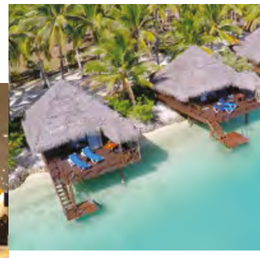

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A STRONG VOICE IN PROPERTY

Ashley Church

Perhaps it's just my age – but it seems to me that property used to be much easier.

Back in the day, the government seemed to have much more control over the market. It financed houses at low interest rates, built houses and rented them to those in need – and even exercised a form a price control. If you had kids – you could go to the government and cash in your family benefit so that you had enough money for a deposit on a home. They even monopolised the process of valuing a property – we had a government department specifically for that purpose!

So it wouldn't be an exaggeration to say that every aspect of home ownership was either controlled or heavily influenced by the government in some respect.

Times have certainly changed.

Since the mid-1980s the property market has increasingly become the domain of the private sector – and with that change has come the gradual removal of government guarantees and a general trend toward caveat emptor (buyer beware). We've been through leaky buildings, state house sales, the collapse of blue chip and a slew of finance companies and the Canterbury earthquakes – to name just a few.

But the flip side of increased personal responsibility is much greater choice. There's an enormous range of variables and a far greater range of options available when a Kiwi wants to get into the property market. There are also many more places to look to for advice and information.

If you came from the 1960s and woke up today you'd struggle to make sense of our current property market with its plethora of consultants, media personalities, DIY home building reality TV shows – all telling you what you should be doing and often pointing in different directions.

It's for this reason that it's so important that the Property Institute takes a position at the centre of public debate. We represent a range of the professionals most suited and qualified to guide the public's decisions, and it's our public duty to provide a strong independent voice of reason in any property discussions. Hopefully you've seen some of the work I've been doing on this front, ensuring that the Institute's views are seen more widely across the media. Over the next few months you can expect this to step up even further, as a lot of the research we've been doing and data we've been gathering starts to reach the public and the media.

I'm determined to make sure the Institute is the leading voice in the property market, and that our members and their professions carry the public prestige they warrant.

Ashley Church
Chief Executive
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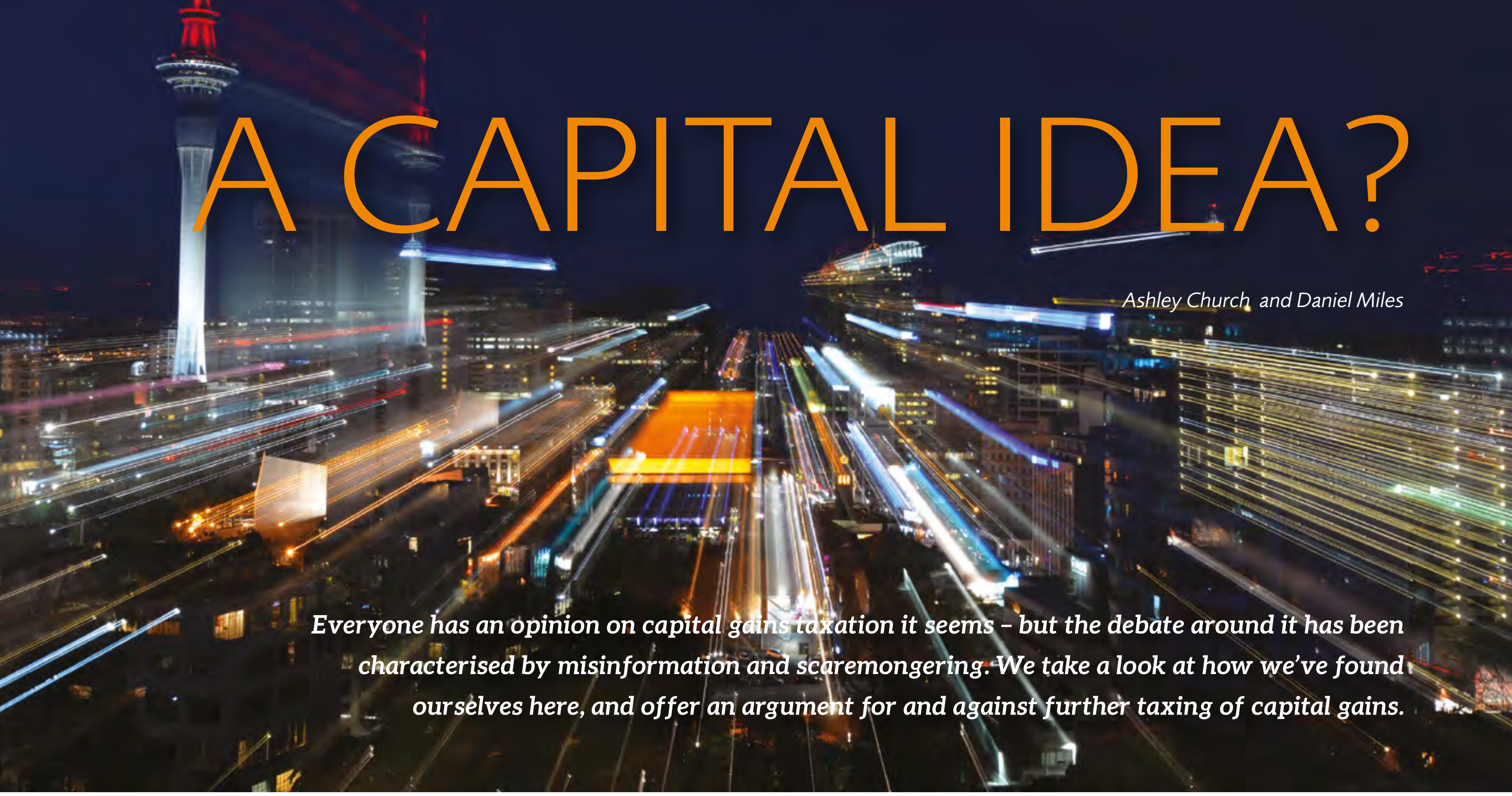
Property Institute of New Zealand



A CAPITAL IDEA?

Ashley Church and Daniel Miles

Everyone has an opinion on capital gains taxation it seems – but the debate around it has been characterised by misinformation and scaremongering. We take a look at how we've found ourselves here, and offer an argument for and against further taxing of capital gains.

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Background

Following a brief flirtation with the political spotlight as a keynote Labour election promise in 2014 under David Cunliffe, the policy seemed to fade away after the party's defeat at the election. The Labour policy proposed to make capital gains taxation comprehensive across the property market, with the exception of the family home – although quite how ironclad the definition of that was going to be was never clear.

This was perceived as a new tax, but really was an extension of an existing capital gains tax in the property market, one which considers not only the existence of any capital gain when assessing whether the tax would apply, but also the intention for why the property asset was purchased in the first place. Broadly speaking, if an asset is purchased with the intention of selling it for a capital gain in the short term, then you are considered a trader and the gain is taxable. If the asset is instead purchased as a long-term investment, then any capital gains realised are exempt from taxation.

It will come as little surprise to anyone that very few properties in New Zealand are acknowledged as being purchased with the intention of selling for a short-term capital gain.

More recently the discussion has reared its head again – in a more watered down form – with the National Government's proposed bright line test on investment property. The proposed test would remove a degree of subjectivity around whether a property was purchased for trading or investment purposes, deeming almost any property sold within two years of purchasing as being bought for trading rather than investment purposes. Again, though, the bright line test would exclude the owner's primary dwelling, dodging the spectre of a government seen to tax gains on the family home.

Global standing

A 2006 OECD report makes it clear that New Zealand is an outlier by western, global standards in not having a formalised comprehensive capital gains tax. Capital gains taxation is common amongst the western world, though normally at a reduced rate to standard income tax – maintaining a differential between income earned actively and income earned passively.

For example, some form of comprehensive capital gains tax is levied in Australia, Canada, France, Germany, Spain, the UK and the US. Further, the average rate of capital gains tax in the OECD, as of 2015, sits at 18.4%.

A controversial concept

One need only look at the reaction to Labour's 2014 policy to see how controversial the introduction of a capital gains tax in New Zealand would be. In reality, though, capital gains taxation isn't a simple, binary, yes or no situation. Rather, as Bryce Edwards argued, capital gains is a continuum:

> The definition of a capital gains tax isn't black or white – instead there is a continuum on which such taxes exist. At one end of the continuum are New Zealand's current arrangements – based on the 1956 Income Tax Act – and at the other end of the continuum is a totally comprehensive capital gains regime without exemptions. Even the so-called CGT regimes that Labour and Green campaigned upon were only partial – with lots of loopholes and exemptions.

In public discourse, though, capital gains taxes are treated like they are a yes or no concept – you're either for them or against them. Even within our office at the Property Institute, when we discuss the issue we often fall victim to turning it into a for-or-against proposition.

It's also a concept where two reasonable people can disagree, can have differing priorities over what's important in an economy and an equitable tax system, but where people often have strong views. And so, rather than offering you a carefully worded non-committal argument so watered down it would make a politician jealous, we've instead opted to put our individual cards on the table and make a case for a treatment of capital gains taxation which two of us, as individuals, each think best suits the country.

AGAINST

Ashley Church, Chief Executive

The case against a capital gains tax to cool house price inflation in Auckland

In order to understand the call for a capital gains tax on property you first need to understand that not everyone sees tax purely as a mechanism by which to raise revenue. A significant number of the 'more tax' advocates see the process of taxation as a way of achieving a range of social aims, and sadly not all of those aims are well intentioned.

Historically, taxes have mostly been created for one of three reasons:

1. To fund increases in the size, and activities, of the state.
2. To prop up the government's accounts during periods of austerity, such as the 'Black Budget' from Arnold Nordmeyer in 1958.
3. To 'penalise' the rich and force them to pay more as a percentage of their earnings or overall wealth.

Sadly, there are plenty of people (and political parties) who are all too willing to demand taxes to achieve the latter – a reality made all the more sad by the fact that such calls usually have nothing to do with a 'need' for the extra tax revenue, but are simply driven by envy and a desire to punish those they perceive to be 'wealthy' and those who have earned their displeasure. There's nothing new in this, of course, as taxes have been a tool for the exercise of power for as long as man has been living in collective social groupings.

The first known system of taxation was in Ancient Egypt around 3000-2800 BC in the first dynasty of the Old Kingdom and was generally in the form of either the corvée or the tithe. The corvée was forced labour provided to the state by peasants too poor to pay other forms of taxation, whereas the tithe was collected by the Pharaoh who generally took a fifth of the crops produced by his subjects (Genesis 47: 24).

Later, in 500 BC, Darius 1 the Great introduced a regulated and sustainable tax system tailored to each Satrapy – the area ruled by a Satrap or provincial governor. At differing times, there were between 20 and 30 Satrapies in the Empire and each was assessed according to its supposed productivity, but the underlying principle was far more about control than a fair share of the spoils of each governor.

More recently, taxation has even contributed to our understanding of ancient empires. The Rosetta Stone, which allowed us to unlock the meaning of hieroglyphics, was actually a tax proclamation issued by Ptolemy V in 196 BC and written in three languages.

But to track the develop of modern taxation you need look no further than the US, a nation which understood how taxation could be used to facilitate an abuse of power and which was founded on an aversion to centralised taxation which led to the Boston Tea Party and the Revolutionary War. Americans had no stomach for creating another centralised government with the power to collect and disperse vast amounts of money, so the Articles of Confederation therefore contained no taxation power since each state retained its own sovereignty. Monies required by the Union had to be requested from the states, who were not obliged to pay.

> *A significant number of the 'more tax' advocates see the process of taxation as a way of achieving a range of social aims, and sadly not all of those aims are well intentioned.*

The Founding Fathers were very aware of the anti-tax sentiment and knew that a compromise had to be struck, but of all the types of taxes loathed by them direct taxes were at the top of their list, and the Constitution prohibited any direct taxes that were not levied in proportion to each state's population. A first attempt to bypass this in 1894 was defeated when the Supreme Court declared a flat tax proposal contained in the Wilson-Gorman Tariff Act to be unconstitutional – so in 1913 the 16th Amendment was introduced to pave the way to an income tax.

This was quickly followed by an income tax on people with an annual income of over $3,000. This tax touched less than 1% of Americans and its rates weren't high enough to significantly undermine the spirit of enterprise. For example, under this system single taxpayers today would pay no tax on any earnings up to almost $45,000 and married couples on earnings up to almost $60,000. A 1% tax rate would be in effect on incomes up to about $300,000. The top rate of 7% would not take hold until earnings hit almost $7.5 million.

Sadly, governments quickly transformed this basic income tax from a light tax on high incomes to a heavy tax on almost all incomes, and between 1913 and 1994 inflation-adjusted federal government expenditures increased by 13,592%! Over this same period, personal and corporate income taxes grew from 7% of total federal revenues and 0.1% of the economy, to more than 54% of total federal revenues and over 10% of US GDP.

If we were to track the history of taxation in New Zealand the details would differ, but the trend would be the same. We would see a dramatic increase in taxation over the past 80 years, and a commensurate increase in state spending as governments moved to centralise control and create a bigger and bigger role for the so-called 'state sector'.

Over the same period we have seen a myriad of taxes designed to extract more money from long-suffering taxpayers and punish those who had earned the displeasure of different administrations. In addition to income tax we've seen death duties, stamp duties, gift duties, land taxes, a 'poll tax' levied specifically on Chinese immigrants (in 1881), customs duties and excise taxes – to name just a few.

Which brings us to capital gains tax.

The dramatic increase in house prices in Auckland since 2011 has led to inevitable calls for a capital gains tax to 'slow house price inflation' and 'tax unrealised gains'. The argument goes that 'property investors' are pushing up house prices and that the imposition of a capital gains tax will scare them out of the market – or at least slow them down.

So strong was this call that it made the manifesto of at least two political parties at the 2014 General Election, and while neither of those parties were elected to government, the call continued and earlier this year the National

Over the same period we have seen a myriad of taxes designed to extract more money from long-suffering taxpayers.

> *History teaches us repeatedly that creating exemptions to taxes leads to unintended consequences, and often to avoidance behaviours that end up skewing the market and making the original problem worse.*

Government relented and introduced what it refers to as a 'bright line' test which comes into effect on 1 October.

The test requires the mandatory registration of all properties purchased after 1 October (except the family home) using an IRD number as the identifier. This affects all purchasers, including foreign buyers. The purchaser of any property subsequently sold within two years of the purchase date will be liable to pay tax on any increase in the value of the property between the time of purchase and the time of sale, at their own marginal tax rate.

The new policy is reasonably clear and politically pragmatic, so much so that the opponents of the government have gone largely quiet on the matter of a capital gains tax since the announcement of the change and the media have lost interest in the topic.

All of which would be great news, but for one thing. The policy won't work – for five reasons:

1. It's a political stunt

No-one seriously believes that the government has introduced this policy to raise additional revenue. In fact, it's widely understood that the rationale for the new tax is political rather than economic. That may assist the re-election prospects of the current administration, but it makes for bad tax policy that will do nothing to fix the Auckland housing crisis.

2. It isn't new

The new 'bright line' test isn't actually new. It's an amendment to a capital gains tax on property that has existed since at least the fifties and, arguably, the new test for taxability is actually less onerous than the old one.

Under the former policy IRD had the power to collect tax on any gains made where a property was sold within 10 years of purchase, and it's not clear whether the new policy still retains these powers or whether they're superseded by the new rules. If the latter is true, the policy may actually open the door to greater speculation than is currently the case once speculators start to realise that they can make a tax-free windfall after as little as two years. Either way, the policy has been in place for almost 70 years and doesn't appear to have been particularly effective in slowing house price inflation over that time.

3. Exemptions skew the market

Even if capital gains taxes were 'fair' (they're not, but that's an argument for another day), such a tax could only work properly if it was 'pure' (i.e. levied on ALL capital gains in much the same way as GST is levied on all goods and services). But no political party is advocating that – and for good reason. Such a policy would be tantamount to political suicide. Even advocates of 'punishing the rich' usually support a capital gains tax exemption on the family home, primarily because their motivation is to hit the wealthy, not lose the capital gain on their own home. Yet history teaches us repeatedly that creating exemptions to taxes leads to unintended consequences, and often to avoidance behaviours that end up skewing the market and making the original problem worse. Time will tell.

4. Property investment is not the same thing as property speculation

Not all advocates of a capital gains tax are out to 'punish the rich'. In fact, there are some very rational people who argue for such a tax because they see it as a means by which to dampen speculation. The problem with this argument is that it fails to recognise that property investment and property speculation are not the same thing. Property investors are typically Mums and Dads who buy for the long term – often measured in decades – and for whom their investment is a plank in their retirement plan and a step toward financial independence.

Speculators are a different breed. They buy and sell property quickly, sometimes within weeks, in the expectation of making a quick gain through capital growth or by adding value in the form of renovations. For these people trading in property is a business and they already pay tax on their gain because it falls within the legal definition of 'income'. However, speculators aren't a particularly large group and are dwarfed compared to the much larger group who make up investors – as many as 50,000 kiwis by some estimates. Those people aren't generally affected by a capital gains tax that is levied after two (or even 10) years because they buy property for the long term – another reason why capital gains taxes don't work.

5. It hasn't worked elsewhere

If a capital gains tax on property was a new idea there might be some merit in trying it to see if it had any effect on slowing house prices. But it's not new. Australia, the UK, the US and other markets all have various forms of a capital gains tax on property. Has it worked? Not that you'd notice. Sydney and Melbourne are two of the hottest property markets in the world, with prices accelerating at a rate even faster than Auckland. Similarly, other markets in which a capital gains tax is a factor have hardly missed a beat and continue to grow strongly. If your argument for a capital gains tax is your desire to slow house price inflation the precedent has already been set by other countries which have already been there. The jury is in – and capital gains taxes don't work.

IN FAVOUR

Daniel Miles, Communications Manager

Before I get too wrapped up in discussing why New Zealand needs a strong, comprehensive capital gains tax, first I need to explain why we don't.

It's often characterised as an envy tax, as yet another way to penalise the rich. Obviously, a comprehensive capital gains tax is going to impact on those with capital more than on those without – but that's not its purpose, and if your goal is just to redistribute wealth, there are much better ways to do it. It's also not about making housing more affordable and home ownership more widespread, although it may have that effect, depending on which economist you talk to.

So, what's the rationale then? A capital gains tax is squarely about rebalancing the tax system, removing the perverse incentives that makes investing for capital gain substantially more efficient than investing on a cashflow basis.

Consider this example: you win a million dollars. Sounds good so far, right? You look at the options for where to put that money, and you decide that property is right for you – you'd like to become a budding mogul in the Auckland market. So you go and have a chat with two different property advisors, each of whom writes you a different plan for what to do with your new million.

> *We've made a bunch of assumptions in order to come up with these broad, indicative numbers – here they are if you want to reproduce it yourself! We've assumed outgoings of around 2%, being insurance, rates, etc, a tax rate of 28%, as a lot of people would presumably use a company as an investment vehicle, and a weekly rent on our hypothetical property of $800.*

Property Advisor One thinks you'd be best to buy one million dollar property, four bedrooms all up. You'd easily be able to cover your expenses out of your rental income. After collecting your rent, accumulating the book value of the capital gain, and paying your expenses and tax, you'll have a profit of around $115,000.

Property Advisor Two says you're better off thinking bigger – buy two of those houses instead, and mortgage each of them with 50% equity in each. Sure, you'll wind up paying a ton of interest, but you'll almost cover all of that out of the rent. What's more, he says, if you listen to the first guy, you'll pay tax on your cashflow income – but if you listen to him, you won't earn any cashflow profits, and all your profit will come in the form of untaxable capital gain, just waiting to one day cash out either through a sale or increasing your mortgages. After all, profit's profit, and it doesn't matter to you whether you realise it through a sale or through ongoing income.

Desperately trying to keep your business, Property Advisor One warns you to think about the future – what if interest rates shoot up, or capital gains slacken off? So you sit down and knock together a table, looking at how much better off you'd be with Property Advisor Two at a bunch of different interest rates and capital growth rates. It'd take up a whole page to cover all possible combinations of interest rates and capital gains (the Reserve Bank records a capital growth rate of 37.1% in 1982 and interest rates of 20.5% in 1987!), but here's a selection of more common values.

	5% FLOATING RATE	6% FLOATING RATE	7% FLOATING RATE	8% FLOATING RATE	9% FLOATING RATE
4% capital gain	$17,648	$7,648	$-2,352 (early 2001)	$-12.352	$-22,352
6% capital gain	$37,648	$27,648	$17,648	$7,648	$-2,352
8% capital gain	$57,648	$47,648	$37,648 (early 2015)	$27,648	$17,648
10% capital gain	$77,648	$67,648	$57,648	$47,648	$37,648

How much better off are you investing with Advisor Two?

In almost every situation, you're better off investing your money with Advisor Two, up to $77,000 better off in times of high gains and low interest. So obviously he gets your business. And maybe you decide to go even riskier, and buy three houses with lower equity in each, or even four, bringing you down to 25% equity – still a respectable amount by anyone's standards.

Why is this though? How much of an impact on your decision did the non-taxability of capital gains have? So you sit down and do the table again, and this time you assume that all your profit is now taxable, regardless of whether it's rental income or capital gain.

	5% FLOATING RATE	6% FLOATING RATE	7% FLOATING RATE	8% FLOATING RATE	9% FLOATING RATE
4% capital gain	$-5,648	$-15,648	$-25,648 (early 2001)	$-35,648	$-45,648
6% capital gain	$8,752	$-1,248	$-11,248	$-21,248	$-31,248
8% capital gain	$23,152	$13,152	$3,152 (early 2015)	$-6,848	$-16,848
10% capital gain	$37,552	$27,552	$17,552	$7,552	$-2,448

By making it attractive to leverage your equity as far as you can, the tax system exaggerates demand for property.

All of a sudden, it's about half and half. In times of low interest rates and high capital growth, you're better off investing for capital growth, while in times of high interest rates and low capital growth, you're better off investing for cashflow. Sounds pretty obvious!

So, we have a tax system which makes it economically rational for people who have money and want to invest in property, at long-term averages of interest and capital growth rates, to buy multiple properties and accumulate the book value. This has a couple of major consequences.

Increased demand and exposure

By making it attractive to leverage your equity as far as you can, the tax system exaggerates demand for property. Profitability is almost solely related to how far you can push your mortgage(s), so people investing in property will buy more, and more expensive, properties than they otherwise would. This drives demand, drives capital growth rates, and makes buying for capital growth even more attractive – which causes the cycle to repeat yet again.

It also exposes us massively to negative movements in capital values. By encouraging as much leverage as possible, people benefit hugely during the good times of high growth – but conversely, the negative impact of a 2008-style 9% drop wreaks havoc on an individual's asset base.

Another aspect of the emphasis on reaping capital gains is the perverse consequences on development of further property. As Allan Smee notes in his article in this issue regarding the Productivity Commission's report, there's a strong incentive on existing homeowners – be they resident in the house or investors – to prevent further development in their area, stopping new housing from undermining the scarcity value present in their property. Rebalancing the tax system to widen the profit sources which concern them more than just the capital gain would go some way to mitigating this.

You pay too much tax

As I said at the beginning, a capital gains tax isn't about raising more money through tax – it's about rebalancing. People earning income through wages or rental income are paying more tax than they should. The New Zealand Government costs money to run. It's a political discussion completely beyond the scope of this article to ask whether the government is taxing and spending more (or less) than it should be – suffice to say, it is how it is. Currently, between the three key tax revenue sources – PAYE, GST and corporate tax – we raise just under $60 billion of tax each year, $30 billion of which comes from individuals' taxes.

BERL estimated that the Labour Party's proposed capital gains tax (15%, excluding the family home) would be raising $3.7 billion per annum once fully implemented. That's the potential to reduce tax on individuals by over 10%. A comprehensive capital gains tax would obviously raise substantially more – it's not outrageous to imagine a tax system where income tax rates could be halved with the revenue gained from a modest capital gains tax across all manner of assets.

Property will always be a viable investment

This isn't about grinding people who have invested in property into the dust. Property will always remain a solid long-term investment. It's tangible, it's accessible, you can physically live in it, and New Zealanders feel a certain romanticism about it. It is, however, about putting all types of property investment on an even footing – it should be an equally valid decision to buy one investment property outright than to buy five of them, but at the moment it's not.

It's simply not realistic to think that a capital gains tax would cause New Zealanders to stop buying and investing in property outright. It would, however, substantially dampen foreign investment in property – one of the key reasons New Zealand is a popular destination for foreign investment in residential property is the combination of high long-term growth rates with no capital gains taxation. The concern around foreign investment, and the associated spectre of racism that haunts the current debate around the property market, would largely cease to be an issue. New Zealanders would continue to invest here, as investing domestically will always be easier than internationally, but foreigners with the will and resources to invest internationally will no longer see New Zealand as offering a dramatically better rate of return than other nations.

Undoubtedly, some amount of foreign investment would remain, but at a lowered level, and largely driven by those who have an actual relationship with New Zealand.

Not all sunshine and rainbows

We need to face facts, though, that a capital gains tax with a huge variety of exclusions is unworkable and pointless – as Ashley quite rightly points out. If we're going to rebalance the tax system so that people aren't penalised for earning their money through other methods than capital gains, such as renting out their assets or simply working for a wage, then a capital gains tax needs to be comprehensive – shares, the family home, any major asset above a certain value. It is generally accepted wisdom that people simply won't accept this, but it's never been argued for as just one part of a total package – a rebalancing of the tax system with cuts in other areas instead of just attacking capital gains.

There are also unanswered questions about how to deal with capital losses – if an asset really has depreciated on realisation, then you should logically be able to offset your tax liability.

It's certainly true that implementation of a capital gains tax wouldn't be a simple, straightforward process, and that it would need substantial consideration and thought to get it right. But what's our alternative? The current system is simply broken.

We cannot continue to complain about rampant demand, looming bubbles, pricing young people out of the market, and all manner of issues which we addressed in the previous edition of *Property Professional*, without accepting that a capital gains tax would go a long way towards solving all these issues.

The concern around foreign investment, and the associated spectre of racism that haunts the current debate around the property market, would largely cease to be an issue.

BUILDING SUSTAINABILITY TRENDS

Diana Clement

Exterior at 11 Church Square, Addington, Christchurch

Clean green New Zealand. We're a world leader in sustainability. Or are we? Sometimes New Zealand's green credentials don't make the grade we set.

A mixed report card

When it comes to building sustainability, Godzone gets a mixed report card at best. In fact we can be 'slow on the uptake', says Alex Cutler, Chief Executive of the New Zealand Green Building Council.

Surprisingly there are very few rules from central or local government around sustainability. What's driving the market is demand – mostly commercial, but some residential. Businesses and some individuals like the idea of their buildings being sustainable. Our record for sustainability in residential housing is, however, low despite a few trendsetters. By OECD standards 'not achieved' would be a fair assessment for New Zealand.

Our houses are not orientated correctly to take advantage of natural warmth from the sun. They're not insulated, and they're not ventilated. Around three-quarters of a million homes are still not insulated and even our Building Code's sustainability requirements are below OECD average.

In short, most New Zealand homes are damp and uninsulated compared to housing abroad in countries of similar socio-economic levels. The good news is that on the commercial front we are improving and there is growing demand from investors and tenants for green buildings.

Diana Clement is an Auckland-based freelance journalist. She has written property-related and personal finance features for publications in the UK and New Zealand in her 20-year career.
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Ratings

One of the drivers of sustainable building in New Zealand is the growing use of commercial and residential standards. In New Zealand that's the Greenstar, Homestar and NABERSNZ ratings systems – all promoted by the New Zealand Green Building Council.

The ratings tell both buyers and tenants just how healthy and efficient their buildings are. The higher the rating, the lower energy and water use, which in turn saves the occupants money.

The Greenstar ratings on commercial buildings are qualitative, which means buildings are only rated if they meet standards. A 4 Greenstar rating means the design, building or interior meet best practice, a 5 Greenstar means it is excellent, and a 6 Greenstar shows world leadership.

Homestar rates the health, comfort and efficiency of New Zealand homes on a scale of 1 to 10. Unlike Greenstar, Homestar covers all buildings, not just those that are sustainable. An uninsulated damp state house might be very unsustainable but will still get a 1 rating.

'Sustainability ratings are not set in stone,' says Cutler. 'They, like the technology, need to be upgraded from time to time. When Greenstar ratings were first brought to New Zealand in 2009 they concentrated on environmental sustainability. Nowadays social and financial sustainability are playing an increasingly important role in the overall ratings.'

Residential

What sustainable residential building there is in New Zealand is being driven by customer demand – mostly at the top end of the market. This country's first 10 Homestar home – a show home – opened its doors in Christchurch in August 2015.

The 140 square metre, two-storey home at 11 Church Square, Addington has a solar wall ventilation system that uses the sun's energy to pre-heat ventilation air, substantially reducing heating expenses. It uses high-tech slab-edge insulation to stop heat loss from

Most New Zealand homes are damp and uninsulated compared to housing abroad in countries of similar socio-economic levels.

Interior at 11 Church Square, Addington, Christchurch concrete floor slabs and innovative hydronic underfloor heating that also keeps the home snug. A high-performance thermal envelope includes external wall frames that are least 140 millimetres thick and provide resistance to wind.

Architectural designer Bob Burnett, who represents the SUPERHOME movement, an industry group encouraging the building of homes that rate between 6 and 10, says building high-quality green houses should be standard practice in New Zealand. The group plans to make detailed plans available for a small royalty fee and keep the Addington show home open to the public for at least 12 months. 'By sharing information about how to build these homes we hope to help people understand it's simpler than you imagine,' he says.

Christchurch Bus Interchange

Photo courtesy CERA

Sadly, however, New Zealand falls well behind the OECD average when it comes to the sustainability of its housing stock. 'There are no specific requirements under law,' says Cutler, 'other than the Building Code, which is a bare minimum standard. In fact, the Building Code is scorned by sustainability experts. And developers don't want to spend money on sustainable features over and above the basic requirements of the Building Code if they don't have to.'

On the Homestar rating from 1 to 10, Cutler says most of the existing housing stock in New Zealand sits around the 2-3 level. The Building Code is the equivalent of a 4 on the scale. 'A 6 Homestar rating is about the equivalent of standard homes in other OECD countries.'

One ray of light came when the Auckland Council enshrined a 6 Homestar grade in its proposed Unitary Plan. Thanks to the Central Housing Accord the requirement is already in place for special housing areas (SHAs). The big 'but' is that under planning law there is a get-out clause in the restricted discretionary pathway, which only requires that the work meets the Building Code. The Council says it cannot enforce its wishes.

Cutler says a minority of builders are implementing the 6 Homestar rating in the SHAs. 'Some developers are implementing the standard, but others are using the law as a get-out.' Likewise, Christchurch City Council had incorporated Homestar ratings into its district plan, but took it out again, she says, due to 'pressure from the property industry'.

Architect and Sustainability Educator Jerome Partington, the Sustainability Manager and Senior Associate at Jasmax and Chair of Living Future NZ, believes that New Zealand is short-sighted when it comes to sustainability. 'Our building code is woefully inadequate compared to other countries such as Germany with its passive house standard. Building a zero energy passive home adds around 2% to the building cost,' he says.

One change for the better on the horizon for residential housing will be the requirement by government for all residential rental properties to be insulated. The new rules will be included in the Residential Tenancies Act 1986 and should be in place by mid-2019. The government estimates 280,000 rental properties are below the standard that will be required, but around 100,000 of those have insufficient space in the ceiling or are so low to the ground that it may not be possible to insulate them, and would be exempt.

> *Building high-quality green houses should be standard practice in New Zealand.*

Commercial gets a pass mark

We do better on a commercial level, with demand coming from building investors and tenants alike. Developers such as Mansons are willing to include sustainable features even in its spec builds.

National Director, Property and Asset Management at Jones Lang LaSalle, Regan Simpson, believes in part that having the rating tools gives architects, developers, landlords and tenants a common standard by which to rate buildings. 'A lot of the new developments nationally have been driven by tenant requirements to be in a Greenstar space,' he says.

One new trend in commercial sustainability is the demand by tenants for better standards in existing buildings, he says. They are increasingly demanding NABERSNZ ratings. 'NABERSNZ is a very tenant-driven tool,' says Simpson. 'It is an easy tool to manage your energy usage. The tool is similar to one used in Australia where it is mandatory. Over the ditch any space lease out is required to show its rating.'

Unlike our residential housing stock, some New Zealand commercial buildings are attracting international attention. The über-green Geyser Building in Parnell, Auckland was our first building to meet the 6 Greenstar standard, making it a world leader. It features a naturally ventilated double-skin facade.

Meanwhile the Christchurch City Council's Civic Building (Te Hononga) was the first New Zealand building to get the trifecta of a 6 Green Star rating for design, build and interior stages. The upgrade of an old New Zealand Post building features a world-leading trigeneration (combined cooling, heat and power) system.

Entrance of Christchurch City Council Civic Building (Te Hononga) Worcester Street, Christchurch

The New Zealand Green Building Council launched a Performance Leasing Guide in June this year, along with model clauses that can be used in agreements between landlords and tenants. The clauses encourage greater transparency about building performance and set clear expectations about building performance at the beginning of the relationship.

Christchurch

Awful as the earthquakes were, the demolition and subsequent rebuild has enabled Christchurch to become New Zealand's most sustainable city. The Christchurch Central Recovery Plan launched in 2014 aimed to ensure a green and sustainable city. Although there are no particular rules around sustainable building in Christchurch, a Canterbury Earthquake Recovery Authority (CERA) staff member said she expected that tenants will demand these modern standards of property owners and developers.

Some examples of sustainable dreams coming to fruition in the Garden City include the newly-opened Christchurch Bus Interchange, the Convention Centre Precinct and the Metro Sports Facility. Sustainability isn't just a factor in Christchurch's public building – commercial buildings such as the Awly Building and the Forté Health building also have a sustainability theme.

The Awly Building has a 5 Greenstar rating and includes a high-performance façade with solar-control glazing, and tailored external shading and a very efficient central heating system, says Simon Brown, architect at Warren and Mahoney. The three linked structures in the Awly project are oriented towards the different sun conditions and the timber is Forest Stewardship Council (FSC) approved. During construction, which is due for completion in early 2016, around 90% of the compactable site waste will be recycled.

> *Precinct planning looks at buildings in a wider context, and examines how you apply sustainability to a broader development through green spaces and how people use the environment.*

The Forté Health building, which opened last year at 132 Peterborough Street in Christchurch Central,was New Zealand's first 4 Greenstar hospital. 'The building design has provided for solar power, smart lighting, heat recovery air conditioning system, waste reduction and a built-in energy optimising building management system,' says Forté Health shareholder and Christchurch urologist, Peter Davidson.

Precincts

Another trend in sustainability that affects both commercial and residential development is that of precinct planning, says Cutler. 'Precinct planning looks at buildings in a wider context, and examines how you apply sustainability to a broader development through green spaces and how people use the environment, such as with multi-building energy initiatives, and so on.' She cites the example of the Auckland waterfront – 'This style of urban planning with a sustainability framework drives decision-making.'

Precincts are also popular in the new Christchurch. One of the key design principles of the Avon River Precinct project is to ensure the river environment is made healthier.

SUPPLY IS KEY:
ADDRESSING AUCKLAND HOUSING

David Seymour

It's tempting for politicians to jump into Auckland's housing debate with demand-side prescriptions. A tax on capital gains, reduced immigration, a ban on foreign buyers.

All solutions that are easily articulated and scratch the itch of politicians wanting to be seen 'doing something'.

But the road ahead for legislators is long. Addressing Auckland's genuine housing supply shortfall will take persistence and resolve as multiple supply factors need to be addressed. Perhaps because of the strength of action needed to address the issue, Parliament rarely acknowledges the full extent of the housing shortfall.

So here are the numbers. In the last 10 years we have had 55,710 new houses built in Auckland. Contrast this with the 1990s, which saw 77,414 new houses built. So, over a period which saw Auckland's population increase by 27%, house construction rates have decreased by 28%.

The Productivity Commission estimates 13,000 new houses are needed each year to accommodate Auckland's growth. Last year, even with the government's much-vaunted efforts to speed up consents and open special housing areas, only 8,300 new houses were consented, and only 7,400 actually built.

According to the Demographia International Housing Affordability Survey, for housing markets to rate as 'affordable', house prices should not exceed three times the annual household income. In Auckland, median house prices are more than eight times the annual household income. It's therefore no wonder that according to the survey, Auckland ranks 78th of 86 high-income housing markets for affordability.

These figures ought to make legislators sit up straight and acknowledge there is something seriously broken on the supply side of the Auckland housing market. Fiddling around with tools to restrict demand will only delay the steady squeeze of housing supply by Auckland's booming population.

> *In a housing market as tight as Auckland's, it's no wonder renters are forced to settle for hovels.*

The Demographia Survey's diagnosis is clear: in every market with severe housing unaffordability there are significant artificial restrictions on land supply. In contrast, no major market without 'urban containment' policy has been rated as having severely unaffordable housing.

In considering New Zealand's urban containment policies, the Resource Management Act 1991 deserves the most scrutiny. Ever since Parliament's balance of power shifted with Winston Peters' victory in Northland, the government has made a long, slow U-turn away from its promise to seriously reform the Act. Until the government finds itself with stronger coalition partners on the right, New Zealand is stuck with a law enabling

council ideologues to suffocate land use with restrictions like Auckland's rural-urban boundary, which literally bans the utilisation of city-fringe land for housing.

The effects of constrained land supply don't just manifest themselves in the home ownership market. The costs flow on to rental properties, partially through increased prices, but also through decreased quality. Low rental standards have become a favourite issue for Opposition parties, who decry housing costs on one hand while supporting costly rental warrants of fitness on the other.

It's true that we have substandard rental accommodation in Auckland and across New Zealand, but again, jumping to regulation as a solution ignores the more difficult supply-side problem. In a housing market as tight as Auckland's, it's no wonder renters are forced to settle for hovels. Laws like the Resource Management Act stack incentives against development, meaning there is a dearth of new, warm, dry homes while older houses are kept around past their use-by-date.

This is made worse by the fact that the large renting population is forced to compete for the limited number of rental properties. Only once it is the landlords who compete for renters will there be real incentives to improve rental standards.

The Demographia Survey says Auckland's housing market has 'virtually spiralled out of control'. Anti-sprawl policies are being challenged by the increasing awareness that strong restrictions on land supply drive up housing costs, which reduces the standard of living. It's this tangible effect on people's livelihoods that should be spurring legislators into action.

It appears that regulators and planners, while doing their best to promote sustainable values and liveable communities, have forgone the most fundamental motivation behind residential policy and policy in general – improving living standards and reducing poverty. Until the powers that be relax their approach to the city's expansion, it will be all the harder to meet those needs.

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THE NEXT GENERATION OF PROPERTY

Jo Parry

Making the property profession attractive for the next generation is a key undertaking and responsibility.

Changing demographics

By 2050, out of a global projected population of nine-and-a-half billion people, over two billion will be aged 60 or over. The OECD estimates that over the next 50 years we will see a steep increase in the proportion of elderly persons in the population, as well as a steep decline in the prime working-age population.

Naturally, changing demographics like these bring a corresponding shift in the labour supply. Industries will need to adapt to ensure a sustainable ongoing labour supply – through bringing more of the youth population into its workforce, attracting workers from other industries, and ensuring that existing industry workers stay in the industry until retirement.

So how do we attract fresh talent into the profession, how do we ensure that existing professionals stay in the property industry, and how do we catch career jumpers? If we understand what motivates vocational choice and people's preferred workplace environment, we have a better chance of both targeting new professionals into the property profession and maintaining our current pool.

Attracting new talent

When trying to understand people's motivations and what they respond to, it's always easiest to try to segment them into groups. Within the property sector, our potential workforce sources can be split into three groups based on where they're coming from:

- Professionals who have changed into property as a career
- New graduates
- Professionals who have always been in property.

All groups have different expectations of their career, which we need to cater to in order to attract them into the industry.

New graduates

The majority of students decide to enrol in tertiary education for one key reason, which is to seek employment in their chosen field

following graduation. Studies about vocational choices made by students in New Zealand show that when picking a career students think about what they enjoy, what they are good at, what they are capable of, and what has long-term prospects.

There's a limited amount any one organisation can do to attract students – rather, this requires industry cooperation. As an industry we need to:

- Showcase our industry collectively, not just in parts – this highlights the breadth of opportunity available to a graduate within the property sector
- Ensure students at college know about the benefits of our industry and what requirements there are for entry into our qualifications
- Work closely with universities to ensure students are able to gain practical work experience while studying
- Support universities to deliver fit-for-purpose qualifications that will meet the expectations of the industry
- Ensure our pathways for professional development and career advancement are transparent.

Career changers

Attracting a workforce out of mid-career changes is difficult, but the property industry is more geared to support this than most because the industry encompasses a large scope of opportunity and variety in the type of property-related work available. We need to make transitional pathways clear and show how property professionals can enjoy varied aspects of the property industry.

Mid-career changes happen for the most part due to unhappiness in the workplace and lack of fulfilment in career choice. The expectations of the employee are either not being realised, or they have shifted due to life circumstances, and workers consider their options knowing that their career lifespan will be longer and they can do more.

None are more motivated to change than women after having children. While most now will return to the workplace for a range of reasons, including financial necessity, there is a need for this group to have flexibility so ensure their work-life balance is stable. The days of working 9-5 are shifting and flexible work hours have increasingly become the norm. Employers need to adapt to this new way of working because it's not going to change. New professionals will need pathways to enable

New professionals will need pathways to enable them to transition from other property, or even non-property, related careers

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The baby boomer generation coined terms such as the 'glass ceiling' and the 'equal opportunity workplace'

them to transition from other property, or even non-property, related careers and it's up to the profession to develop these transitional pathways.

Industry bodies will also play an increasing role in preparing pathway options that are sustainable and fit-for-purpose, as well as working with universities to ensure that retraining into the property professions is a viable option.

Existing professionals

Existing professionals are often the most valued group to attract to a firm, bringing with them a wealth of experience which new graduates and career switchers have yet to develop. For those who have devoted themselves to a particular career, the importance placed on enjoying their time becomes more important. To lure an existing professional to your firm:

- Make the workplace feel less like a workplace and more like a space to create and belong
- Create a sense of identity and brand that employees will buy into and want to stick with
- Make work a place to be happy and express individuality without detracting from the core vision of the firm
- Create a culture of rewarding hard work with flexible working hours
- Incentivise long-term employees and assure them of their job security.

Alternative groupings

Of course, the way they found their way into the profession isn't the only type of grouping which can help understand, attract and retain employees. Just as important is understanding their generation and what stage they are at in life and the expectations of their career which come alongside that. Broadly, the existing workforce consists of:

- Baby boomers
- Generation X, and
- Generation Y.

Baby boomers

Statistically speaking, most of the readers of this article will be from the baby boomer generation, meaning you were born roughly between 1946 and 1964. With their access to higher education, and as a consequence financial and social mobility opportunities, the boomer generation can be considered collectively as one that views the world with optimism and opportunity to become more financially successful than their parents.

Compared with previous generations, this generation took the chance to think big and relocate to opportunities more readily. During the late 1940s and early 1950s, the strength of the upper class started to shift and the middle class emerged more influential than it had been previously. Middle class families realised they did not need to be defined by their upbringing and could in fact climb the career ladder with higher education and hard work.

As a consequence, the face of the workplace began evolving from a fairly racially homogenous and male-dominated environment to one of increased racial and gender diversity. The workplace slowly began to reflect the rapid political and social changes occurring. The baby boomer generation coined terms such as the 'glass ceiling' and the 'equal opportunity workplace', and began using personality profiles to build awareness of how to get along with all co-workers.

Employment advantages in hiring a baby boomer include:

- They will be retiring much later than expected so their commitment to their career is strong
- They know with hard work they can achieve and consequently have a strong work ethic
- They are used to change.

Generation X

This generation was born between the 1960s and 1980s. Shaped by global politics and the beginning of the awareness of globalisation, this generation grew into a society that was exposed to wider racial, religious and social diversity and as such have more liberal views. They also observed the growth of the 'get rich fast' schemes and big crashes. Gen X saw the rapid development of the computer and computer-related products and services. This generation experienced the rapid emergence of extreme forms of self-expression (pop culture), which means they are more accepting of variety and far more tolerant than any other generation.

There is less push in this generation to achieve the financial aspirations of the baby boomers. They are more balanced in their views on work-life experience, but interestingly it is this generation who are the first to enter the profession with the knowledge that they will highly likely need to change careers at some stage because of increasing competition for employment driven by the baby boomers staying in the workplace longer.

Employment advantages in hiring a Gen X employee:

- They think about the impact of business
- They have a good work-life balance so tend not to burn out
- They are risk-takers so challenge ideas
- They recognise common sense goes a long way in resolving problems.

Generation Y

This generation was born between the 1980s and 2000. They were raised by the baby boomers and tend to have a more moderate view on working long hours. This generation was raised with technology and see it as a natural extension in most aspects of their lives.

Generation Y, also referred to as the Echo Boomers, Millennial Generation and Generation Next are now entering the workforce and have the talent to shape and transform your organisation.

So what will motivate a Gen Y into the property profession and keep them in it? Consider Gen Y instead as Gen "why". *Why do it that way when there's an app for this? Why can't I be CEO now? Why do I need to work 9-5pm if I get my job done earlier*? Harness the power of a Gen Y employee and innovation will be guaranteed.

It would be naturally frustrating for baby boomers being confronted with the energy and drive and unnerving 'have it now' attitude that comes with a Gen Y. But if they can see that it's not born of arrogance but social circumstance, and the worldview that has been projected to them, then that will go a long way in ensuring the collaborative success of these two diverse generations.

The challenge for the employer of a Gen Y will be to navigate the pace at which a Gen Y can work. Because their pace is fast. They are adaptable workers as long as they see a challenge and opportunity to shine. This is a staff member with ambition who will want to be part of a team and achieve.

> *Harness the power of a Gen Y employee and innovation will be guaranteed.*

To retain a Gen Y consider:

- Casual work days
- A more relaxed work environment that is more home than office
- Setting high goals and monitor them with incentivisation
- Facilitating their understanding of technology into the workplace
- Including them in big picture discussions – don't dismiss them.

Many larger property firms interview potential employees in a wider social setting to see how the candidates interact with customers and then pick those who are able to communicate effectively together. Personality plays an important role in picking a new team. These firms are identifying cohorts to employ, not individuals, and they want them to work well together. For smaller firms you should visit university meet and greets.

Suggestions for the way forward

As mentioned, making the property profession attractive for the next generation is a key undertaking and responsibility, which needs to be recognised by all stakeholders. The Institute recognises this with the establishment of its Young Leaders Program. The program allows younger members of the Institute to join in the workings of several of the Institute's committees. As a part of the program, young leaders are cycled between several committees of their choice and have a chance to have input at all levels of Institute policy and decision-making.

Young leaders work closely with the Professional Development Manager supporting professional development initiatives, in particular the relationships with students and universities. In 2016, the young leaders will play an increasing role in supporting the development of internship programmes and career expos.

Universities play a central part in attracting students in to various professions, but they are facing the challenge of increasing costs and competition with other professions. The Institute will be carefully considering and putting into place mechanisms to drive enrolment in property courses. With a strong network of branches throughout New Zealand, the Institute and its membership are well positioned to succeed in driving uptake in property qualifications and supporting graduates entering the workplace.

To retain property professionals once they enter the workplace, they will need to be allowed a voice in the workplace and member organisations they belong to. That means offering them a seat at the table and allowing their ideas to translate into actions.

All generations need to play in the professional sandpit nicely and accept the differences of opinion on working styles and values. Each generation has an important viewpoint that, if balanced, will ensure that all staff feel respected and valued. The baby boomers are going to have to concede that the Gen Y and Gen X generations are not going to fade away, and if left unsupported and unvalued will not be around to take their companies over or buy their companies off them.

Because baby boomers will be in the workplace longer, as will Gen Y, the tolerance for difference of opinion will have to grow sharply. There will need to be a fine balance between the baby boomers who will monopolise by sheer volume, and Gen Y, who will need to be represented in a way that reflects their values and expectations in the workplace. Gen Y are not the generation to stick around if they can be better represented elsewhere. On balance, this applies for most workers.

We have an exciting and dynamic industry. We have professionals with a wealth of knowledge that needs to be translated thoughtfully down the workplace generations, and new exciting ideas that need to be translated upwards. Exciting times lie ahead for the company that sees this and carefully directs the collision of these factors.

HIGH TECH PROPERTIES:

FIBRE & CELLULAR'S IMPACT ON COMMERCIAL PROPERTY

Vaughan Wilson

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New Zealand and the rest of the developed world are going through a revolution in communications, not seen since the initial copper telephone network was installed 100 years ago.

This development, largely based around fibre optic cable but also including improvements in mobile and microwave technology, is designed to supply New Zealand's ongoing hunger for faster and data hungrier communication needs. What effect does this have on property values and how does it position properties for leasing?

CFH initiative

In 2010, the government announced its Crown Fibre Holdings (CFH) initiative forecasting for the future growth and justification for NZ$1.35 billion to be spent on public-private partnerships for installing Ultra-Fast Broadband (UFB). Over the following 12 months CFH announced it had contracts with four providers to install fibre networks:

- Northpower Limited (for Whangarei)
- WEL Networks through its subsidiary Waikato Networks Limited (Hamilton, Tauranga, Whanganui, New Plymouth, Tokoroa, Hawera, Cambridge, Te Awamutu)
- Enable Networks (Christchurch, Rangiora including satellite areas such as Rolleston, Kaiapoi etc)
- Chorus, formerly the network arm of Telecom Corporation of NZ covering Auckland (including parts of Waiheke Island, Waiuku and Pukekohe), Rotorua, Taupo, Whakatane, Gisborne, Masterton, Napier-Hastings, Palmerston North, Feilding, Kapiti, Levin, Wellington, Nelson, Blenheim, Ashburton, Dunedin, Timaru, Oamaru, Greymouth, Queenstown, Invercargill.

CFH have a UFB policy to supply 100/50Mbps. That means 100 Megabits per second downstream (from the exchange or cabinet to your home or business) and 50 Megabits per second upstream (from your home or business back to the exchange or cabinet).

UFB roll-out by 2019

UFB is being deployed to the 33 largest towns and cities in New Zealand by 2019. These were chosen to target 75% of this country's population as at 2021 as forecasted by Statistics New Zealand. Within these towns and cities access will be enabled to most businesses, health facilities and schools by the end of 2015. Access for residential properties is well underway, but will not be completed until 2019. Areas such as greenfield residential, poor existing broadband access areas, and those with high propensity to purchase UFB are being prioritised.

Earlier this year the government launched a $152 to $210 million extension of the original UFB programme, with the aim of extending the programme coverage from 75% to 80% of New Zealanders. For the remainder of the country, the government has a separate Rural Broadband Initiative (RBI), which aims to improve broadband services in rural areas to at least 5Mbps to 86% of rural customers by 2016. This is a $300 million project and has been spearheaded by two contracts. One is with Chorus to deploy fibre to regional and rural schools. The second is with Vodafone to build 154 mobile towers large enough to house all three cellular network providers and upgrade 387 existing mobile towers to improve mobile and broadband services. The CFH website notes:

> As of March 2015, 113 new towers have been installed and 308 towers upgraded, covering approximately 239,150 addresses. As of June 2014, there are 6,064 customers on the RBI wireless network. Chorus will provide fibre to the new Vodafone towers, 1,040 schools, 183 libraries and 50 health providers. Chorus will also be upgrading or installing 1,215 new cabinets to increase GPON, VDSL and ADSL coverage to 100,969 lines. As of March 2015, 85,240 lines have been upgraded, with an 80% uptake rate.

Fibre over copper

But why do we need this? New Zealand, like all other first world countries, had been relying on its copper network for the bulk of its internet connections. The copper networks have been installed since early in the 20th century. The advent of cellular in the late 1980s initially provided mobile calling, followed by texting. With mobile data speeds improving as the technology of the mobile networks improved, data speed en masse could be provided and the smartphone became the next necessity after water and oxygen for the majority of people.

For the copper network, its life was extended with the asymmetric digital subscriber line (ADSL), symmetric (SDSL) and very fast (VDSL – very fast DSL), which took the 100-year-old technology of copper pairs to every property and provided enhanced capacity via new technology in phone exchanges and cabinets in suburbia. This technology provided a stop gap until fibre could be laid.

Fibre has advantages over copper in that its capacity is much, much greater and it is not restricted by distance like copper is to the nearest cabinet or exchange. Copper works using electrons and electrical conductivity. Fibre works using light and consequently, working at the speed of light, which is 299,792,458 metres per second (or 1,079,253,000 kilometres per hour), is constant.

With that sort of speed, it is only the equipment at either end of the fibre that slows down the flow of information. Light is the fastest thing we know of and that we can harvest, and this is why the government is spending so much money on its future (Einstein proved there can be nothing faster – E=MC2).

All of New Zealand's communications to the rest of the world are connected via fibre, except some island nations in the South Pacific, the Chatham Islands and Scott Base in Antarctica, which is why when you go to a website based overseas (and most are) it is so quick. That website you are on in New Zealand, if housed in Los Angeles e.g. Disney.com, is travelling from the US to here under the ocean inside a fibre cable at 1/28.5th of a second!

Ultra-Fast Broadband is being deployed to the 33 largest towns and cities in New Zealand by 2019.

The speed of the equipment at the end of the fibre will continue to improve, further increasing the flow and volume of information. Technology can even break light down into the colour spectrums – red, orange, blue etc – further increasing the capacity of fibre to carry more information. Not bad for a very thin straw of glass. In addition, there are other advances such as improved digital microwave (DMR), which is used to connect some mobile phone sites and landline sites (predominantly in the rural and remote locations such as Great Barrier Island) to the main phone network. These are now at almost fibre capacities and are called EDMR (Ethernet DMR).

Data speeds are also affected by the TV revolution, with more and more people downloading from internet sites and specialised services such as Lightbox and Apple TV. This growing change in the way we watch TV is further putting significant pressure on the telecommunication networks around New Zealand, particularly at peak times such as 5:00 pm onwards. This type of demand, where internet speeds can be affected by surrounding users, is called contention.

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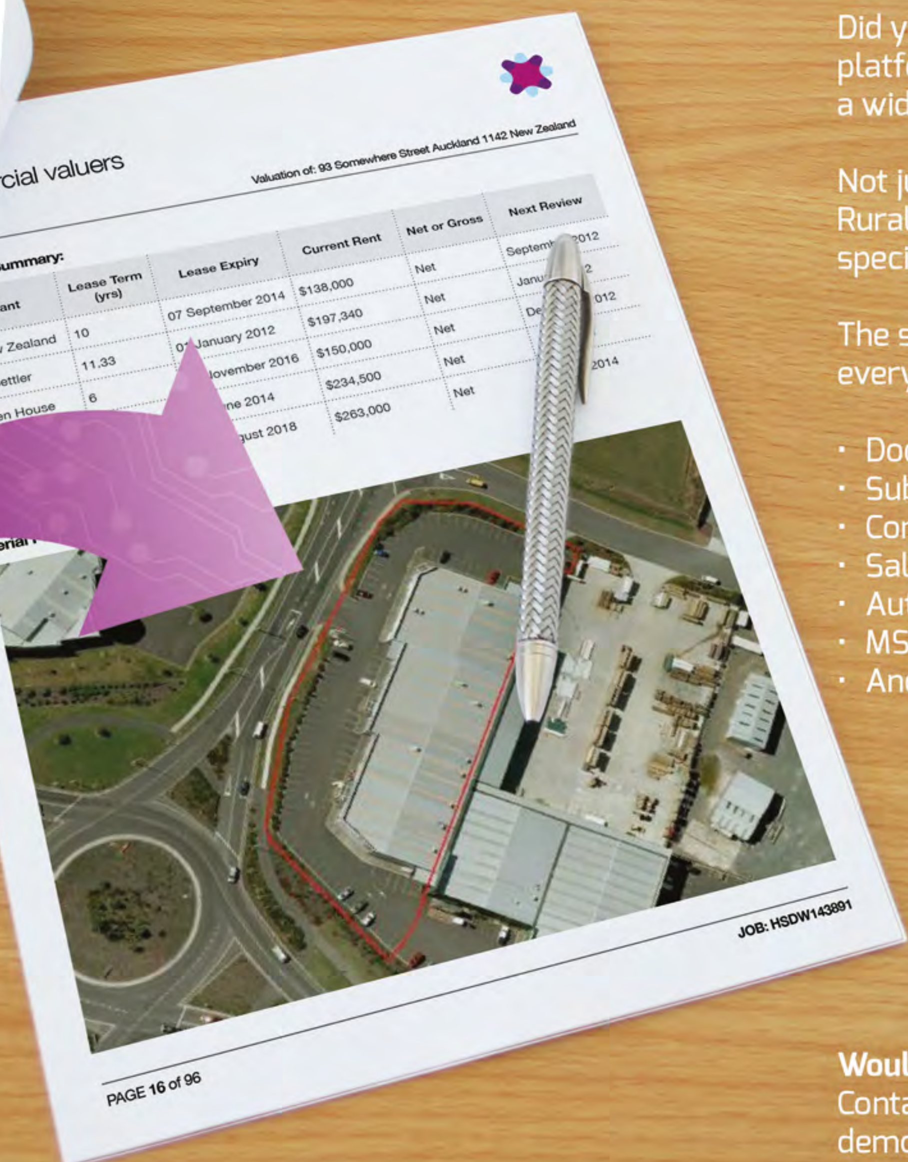

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Prospective purchasers are beginning to ask real estate agents about the availability of fibre in subdivisions and streets and this is impacting their purchase decisions.

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4G technology

Mobile cellular networks continue to improve with the three networks in New Zealand upgrading their mobile sites to the 4th Generation (4G) technology, often called LTE (Long Term Evolution) by the planners of the networks. The future will likely include microcells, whereby cellular coverage is further enhanced by miniature cell sites, further improving coverage near where people want it, as well as capacity. As more and more people use their mobile devices for data, these enhancements are necessary to ensure there is enough bandwidth to cope with demand.

Effect on property values

So how does this affect property values? It is too early to statistically compare sales of residential property with and without fibre to assess the impact on value. However, feedback from agents shows that prospective purchasers are beginning to ask real estate agents about the availability of fibre in subdivisions and streets and this is impacting their purchase decisions.

In the UK, the demand for fibre and other forms of high speed internet connection is more advanced, with real estate websites having a function showing the internet speed for each property listed (see www.rightmove.co.uk/broadband-speed-in-my-area.html;j-sessionid=971889A2115C425FA362A9D68B-360D2C#PL23_1HN/svr/1123).

New subdivisions are typically constructed including fibre to each new section, provisioning for the demand by new property owners. In many cases copper is not laid at all, making fibre the only choice for the new house occupant.

Work from home programmes

Businesses are moving to 'work from home' programmes. In many cases a minimum of VDSL is required – and preferably fibre – for staff to be able to do this in a regular or planned format. For instance Medibank, an Australian company involved in supplying medical services in New Zealand, have 120 people working from home as a virtual call centre. Each person is set up to work from home taking calls, updating Clinical Record Systems and providing services such as in a regular call centre, and yet each is in a different location.

Commercial property

For commercial property, it is far more important. Not only can the availability of fibre affect the potential value but, more importantly, the leasability of the property. Tenants are very particular about their communication requirements and the availability or lack of fibre can have a major impact on their decision-making when looking for new premises.

A good example of this is the significant growth of cloud-based software available over the web and it is becoming widespread for everything from in-house access security to day-to-day applications such as Word and Excel. Without good internet access, reliable and significant bandwidth, this dependency is found wanting. It is expected that this is just the tip of the iceberg, with more and more applications coming out in the cloud, further demanding good communications.

Mobile cell sites

Cities are dense with users and mobile phones. Mobile phone companies that operate their own networks – Spark, Vodafone and 2 Degrees in New Zealand – cater for this with a large number of mobile cell sites in cities. They are typically connected to building roofs, taking advantage of the elevation to cover the buildings and roads. Indoor coverage is sometimes affected by the level of concrete and steel in buildings and in many cases small antennas are installed in the ceiling to further enhance this. These exist in buildings such as offices, stadiums, and even hospital wards and surgery theatres, e.g. Hutt Valley DHB tracks its patients using wireless technology.

Stadiums are often seen as arenas for additional revenue as regular sporting events are on only a small number of hours per average week. These additional revenue initiatives can be university campuses, wedding venues, conferences and formal dinner venues. Many of these uses require high speed communications, both hard line (including Wifi) and cellular.

In addition, New Zealand sport is slowly following American sport where arena-based Wifi is built into the spectator experience and interaction with the game can happen on-site in real time. This requires high speed Wifi and cellular to cope with data-hungry applications that utilise photo uploading and action TV replays to users' devices.

Building owners and copper termination rental

Building owners have for some time tried to extract rental from copper and fibre network operators, such as Chorus, for terminating these networks within their properties. This has worked against them in most cases as network operators are not enjoying any revenue from a copper or fibre termination. Instead they get their revenue from the retail service provider, such as Spark and Vodafone, selling services over the network to their customer in the same building.

The network operators either strike up a deal for free with the building operator or leave that property out, which means the property does not have all the potential capacity. For copper, this has happened very infrequently as most copper was installed under the old Post Office or early Telecom days. Now with the free market and the advent of fibre, and with the government initiative to fibre properties, landlords are being approached to have fibre installed.

Landlords are therefore short-sighted if they demand a rental for a fibre termination. Not only will network operators be unlikely to pay it, they are now giving up an opportunity to have fibre installed either for free or at a relatively modest charge. Modest, that is, to the true cost of installation as network operators may in some complex situations charge for the installation.

The network operators are not installing fibre to tenants' equipment, merely to a suitable point of interconnect, and it is up to the landlord, tenant and their retail service provider to do the rest. Without this fibre, the landlord's property looks lack lustre compared to the opposition property that has the fibre. And let's face it, when it comes to leasing vacant property, you want to have all weapons you can to compete with.

A copper termination is, for many commercial properties, an absolute necessity and more than one large organisation has been caught out trying to charge for one in their property. If the network operator does not install, and there is no copper in the property, then the lift alarms and emergency phones found in lifts will not operate. Therefore, the building cannot obtain a sign-off from the Independent Qualified Person (IQP) and the property will not have a Building Warrant of Fitness (BWOF).

New Zealand is in a communications revolution, both in fibre and cellular, with more to come to feed existing and future requirements.

Communications revolution

In summary, New Zealand is in a communications revolution, both in fibre and cellular, with more to come to feed existing and future requirements. The future leasability and saleability of properties, not to mention rental levels and property values, will depend on the connectivity with these forms of communication and a lack of them will be at the landlord's peril.

PROJECT BLUE

AWARD-WINNING INNOVATION

Mike Hall

Colliers International's marketing team won the Innovation Award in the annual Property Institute of New Zealand (PINZ) Awards. The award, presented at the PINZ gala event in Christchurch, acknowledges the development of outstanding products, services and/or processes within the property sector.

Colliers' winning entry was based around the company's recent revamp of its print and digital marketing interface. The company's new go-to market strategy, launched in February this year, was called Project Blue.

Judges' comments praised the winning entry for the way Colliers developed a comprehensive and unified marketing program for 'revolutionising the way commercial property is promoted and seamlessly utilising digital and real world strategies.'

Colliers International's marketing director, Jeremy Graham, says the award reflects the effort the company has gone to in integrating its traditional mediums with online and digital mediums, as well as driving customers and all online traffic to our website. 'We've effectively re-engineered our property marketing strategy, introducing more lead-generating mediums to set us up for the digital future, and provide a point of difference with our competitors.'

Colliers' winning entry was based around the company's recent revamp of its print and digital marketing interface.

New look property advert

Previous style property advert

Colliers overhauled its coalface advertising, introducing iconography as a new standard to commercial property advertising. See the comparison of their new look property ads (left) with their earlier style.

'There was an immediate impression of a de-cluttered message. The iconography also gave customers more reasons to engage with us, leading to greater enquiries,' says Graham.

At the same time, this new visual impact was complemented with a strategic one of adapting their 'sell to client' from being everywhere to being strategic. 'It was all about turning up the volume on digital marketing and media, with an emphasis from offline to online.'

'Our research told us our clients wanted to partner with a technologically savvy partner – this was a big driver of choice. It also proved the majority of leads come from online sources which tells us the market place is digitally savvy – customers can typically conduct up to five online searches before contacting a sales person,' says Graham, who believes the results to date have been incredibly encouraging.

'We are recording an average of 40,000 to 50,000 visits per month. This is a 15% increase on the same period last year.'

Colliers International has 19 offices around New Zealand and provides valuation, real estate management, corporate solutions, building consultancy, research and consulting services, as well as tenant representation. This is alongside its sales and leasing agency business which includes hotels, rural and agribusiness, and residential project marketing.

In 2014, Colliers International completed more than $1.7 billion worth of commercial property sales transactions in New Zealand and leased over one million square metres of commercial property.

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MAKING THE MOST OF OUR LAND:

A REVIEW OF THE PRODUCTIVITY COMMISSION'S REPORT

Allan Smee

This article reviews the major findings of the New Zealand Productivity Commission Report on Using Land for Housing and looks at the possible implications of the Commission's solutions.

Background

The New Zealand Productivity Commission (NZPC) was tasked by the government to undertake an inquiry into the supply and development capacity of land for housing in New Zealand cities. The main aims of the report were to:

> Identify leading practices, and make recommendations to improve performance with respect to:
>
> (i) policies, strategies, outcomes and processes for urban land supply, including the provision of infrastructure;
>
> (ii) funding and governance of water and transport infrastructure;
>
> (iii) governance, transparency and accountability of the planning system;
>
> (iv) the implication of leading practice for the range of laws governing local authority planning;
>
> (v) involvement and engagement with the community (NZPC Report, p. 4).

Their draft report released in June this year contains over 100 findings and 26 recommendations of various topics, from the participation of the public in setting district plan requirements through to removal of minimum size requirements from these plans. The findings of the report indicate three major issues:

1. Planning rules and processes
2. Infrastructure
3. Attitudes and behaviour towards releasing land for development.

Planning rules and processes

The Commission research indicated that three main pieces of legislation have the biggest impact on the supply of land – the Resource Management Act 1991, the Local Government Act 2002 and the Land Transport Management Act 2003 – along with a host of others including the Building Act 2004, the Public Works Act 1981, the Reserves Act 1977, the Property Law Act 2007, the Unit Titles Act 2010 and the Local Government (Rating) Act 2002.

The Commission felt that councils were struggling to coordinate land use, infrastructure and transport planning requirements, an issue which stems from 'New Zealand's planning system [which] creates a complex web of legislative obligations and plans that, collectively, can make it difficult to effectively and efficiently coordinate land use, transport and infrastructure decisions' (NZPC Report, p. 5).

The Commission believed that current homeowners are using the district plan process to restrict development and protect perceived value in their homes at the expense of the wider community.

It noted that some councils have been attempting to provide a coordinated planning approach via spatial plans, but that these did not have any statutory authority. Nonetheless, they believe that spatial plans represent a strong way forward, and that central government should play an active role in developing these plans for the country as a whole.

One area the Commission believed was hindering the availability of land for residential use was the over-restricted control put in place by district plans. An example of this was the requirement in some district plans for private open spaces/balconies for apartments, which was a higher requirement than what was contained in the Building Act 2004.

The Commission believed that current homeowners are using the district plan process to restrict development and protect perceived value in their homes at the expense of the wider community. The Commission also point to the use of covenants to place restrictions on the use of land. Increasingly subdivision covenants are used to impose more restrictive land use rules than are provided for in district plans, effectively removing the ability to increase dwelling capacity over time.

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Overall, the Commission indicated that councils should take a more proactive approach to providing housing and should include targets for affordable housing in their annual plans.

Infrastructure

The Commission identified the main types of infrastructure required for residential development as:

- Transport – highways, local roads, footpaths and cycleways, and public transport
- Water – drinking water supply (potable water), collection and treatment of wastewater, and the removal of stormwater
- Energy – electricity and natural gas transmission and distribution
- Telecommunications – fixed line, mobile coverage and internet
- Social and community infrastructure, e.g. schools, public recreation spaces and libraries.

Primarily, they focus on transportation, water, energy and telecommunications which they see as one of the largest areas of tension between local authorities and developers. According to the Commission this tension comes down to two main areas: planning and delivery of infrastructure, and who is going to pay for it. The Commission believe that councils currently experiencing high levels of growth could face difficulty in maintaining aging infrastructure and providing for growing demands for housing in future.

The Commission argues that effective management of these infrastructure assets is required to ensure that councils are able to plan for future demand, maintenance etc. They say that effective management of existing assets has, in the case of Wellington City, resulted in 'significant inner-city residential and commercial development [which] could be accommodated entirely with existing infrastructure capacity.'

Although effective management of assets is important, there will always be a need for capital investment in infrastructure. In this area the Commission is in favour of a user pays system, with targeted rates for end users who benefit from new infrastructure, or through the use of toll roads. In conjunction with this, effective use of debt can be used to fund infrastructure over the life of the asset.

Attitudes and behaviour towards releasing land for development

Another major issue is people's attitudes towards development. The Commission argues that existing homeowners benefit from local regulations that restrict new dwellings because this restriction on supply leads directly to an increase in the value of their homes. Existing ratepayers also benefit from restricting development through minimisation of rates increases, which would otherwise be needed for new infrastructure.

The Commission indicated that district plans are being used to place unnecessary restrictions on dwellings, such as height restrictions, minimum apartment sizes, minimum lot sizes and so on, all of which hinder the development of new residential homes. To overcome these issues the Commission is recommending central government take a more active role in the planning process, and develop national policy statements on provision of housing to meet population growth. They also recommend the Minister be given power under the RMA to change district plans and regional policy statements that do not adequately provide for population growth.

This would be a major change to the RMA, which has traditionally placed emphasis on local communities developing plans to use resources, including land, in a sustainable way.

The Commission's way forward

The Commission's report proposes an interesting way forward to resolve these issues – the establishment of an Urban Development Authority (UDA) which would have wide-ranging powers to deal with these issues.

One of the powers the proposed UDA will have is the ability to compulsorily acquire parcels of land, greenfield, brownfield and existing residential dwellings, to enable intensive residential development. The Commission believes that there is precedent for this, with the Public Works Act giving the government the power to acquire land for public works, and that acquiring land for residential development is in the interest of the wider community due to the economic and social harms a lack of housing causes. It is also interesting to note that they believe that 'The existence of an agency with compulsory acquisition powers can encourage land owners to develop their land or sell it to those that will.'

This is obviously an extremely heavy-handed approach – essentially saying that you either develop your land how we want it, or we'll do it for you.

It is also interesting to note that the Commission doesn't see the UDA acquiring the land for immediate development – rather it indicates that the Authority should be able to hold and trade in land, and that any revenue generated would be used to fund infrastructure development. It goes on to indicate that 'An agency participating in the land market could purchase and release to developers sufficiently large sites on a scale that would enable better planned, denser developments.' If adopted, this would give the agency unprecedented powers in the market place, and could well have dramatic unintended consequences if the right checks and balances were not put in place.

The acquiring of large parcels of land is not the only power the UDA is proposed to have. The Commission believes that the agency should have the power to develop a master plan for the acquired land, which would be excluded from the existing district plans – giving the agency the ability to essentially ignore any restrictions imposed by local authorities on development. The Commission indicated this ability to make changes to planning restrictions would result in an increase in value for the land, which could be captured by the agency once the land has been disposed of.

Although physical infrastructure such as power, water etc are mentioned as being developed by the UDA, there is no mention of the social infrastructure that is required for residential developments. Increases in residential dwelling, with the corresponding increase in population, would require additional schools, parks, libraries and so on. There is no indication the UDA would be required to be involved in paying for or developing social infrastructure for these intensive urban areas.

There are number of questions still surrounding a proposed UDA, e.g. what input would the public or local residents have in the development of master plans? Would residents be able to retain height restrictions, or could they potentially end up living next to multi-storey tower block style apartment buildings? Would developments be required

There is no indication the UDA would be required to be involved in paying for or developing social infrastructure for these intensive urban areas.

to follow good urban design principles, including open spaces etc? After all, the Commission believes that good urban design can have benefits, but it believes these can be outweighed by the cost.

In the UK high-density unlimited apartment tower blocks have led to a number of issues. Poor design decisions ruined the anticipated benefits of the buildings. Open spaces, which were supposed to benefit the residents, were instead unattractive, unused and inadequately supervised. Residents felt it was difficult to maintain the large open spaces around the blocks because they realistically belonged to no-one. Social problems increased as the tower blocks quickly degraded because of poor maintenance and an insecure communal environment. The tower blocks, many of which were on the periphery of the city, made residents feel isolated and cut off from society. These and other issues could be easily replicated in New Zealand if the correct controls are not put in place.

Overall, the Commission has identified a number of problems which they have attempted to solve, but in doing so they have the potential to simply replace them with another set of problems, arguably worse than what they were trying to fix in the first place. The biggest question of all is whether the public would accept their solution, and would the government have enough of a mandate to see it through?

NEW DEGREE FOR LINCOLN STUDENTS

John McDonagh

Lincoln University introduced a new degree in 2014 for those seeking a career in a wide variety of land-based careers.

Why replace older degrees?

The Bachelor of Land and Property Management replaces the long established B.Com (Valuation and Property Management) and the Rural Valuation Specialisation within the B.Com (Agriculture).

Some years back Lincoln reaffirmed its position as New Zealand's specialist land-based university and decided this focus should be clearly articulated in its strategy, programmes and marketing. This led to the most comprehensive review of its qualifications ever undertaken. Out of that came a decision to introduce three common core courses that all Lincoln undergraduate students will take:

- Land, People and Economies
- Research and Analytical Skills
- Sustainable Futures.

This university-wide core ensures that all students have a common understanding of land-based issues, and this cross-disciplinary approach is what makes a Lincoln graduate unique.

The introduction of these additional compulsory core courses presented an opportunity to take a fresh look at all existing property programmes at Lincoln. The three-year degrees were already fully specified to meet professional accreditation requirements. The mandatory inclusion of three more courses therefore provided the impetus to re-examine the whole structure and naming of property degrees at the university to reposition them for the future. This seemed especially appropriate as Lincoln has just celebrated 75 years of teaching property courses, making it one of the oldest institutions in the world active in this area.

Attracting young people into a property career

A desire of both Lincoln and the professions is to attract more young people to property as a career. A 2014 article in the *Christchurch Press* identified property, along with engineering and IT, as one of the most lucrative and under-supplied careers. Lincoln has data to prove that all its property graduates readily find employment and this is well known to people connected to both the urban and rural property industry. Surveys reveal we already attract students who have a family connection to property. However, a need was identified to attract young people from a much wider catchment for graduate numbers to grow in a sustainable manner to meet increasing demand.

The renaming of the existing degrees was considered essential to attract this wider cohort of students. It has also ensured that the new degree is not buried as a specialisation within more general qualifications, as was the case with the old degrees such as the B. Com or B. Com (Agriculture). Moving to a four-year degree has also opened up opportunities to broaden the appeal of the new degree to a much wider group of potential students and differentiate the programme from traditional commerce-based property degrees.

Lincoln therefore now has a new and separate uniquely named degree clearly focused on the management of land and property in its widest sense. Prospective students can easily find and readily identify with what this degree is about. Within the regulations of a single degree they can focus on their particular interests. Traditional specialisations include Valuation and Farm Management (VFM) for rural students and Valuation and Property Management (VPM) for urban students.

Property Plus degree

The space for additional courses within a four-year programme facilitates what is now called a Property Plus degree. Students with a traditional interest in property and commerce can now take all the courses necessary for a professionally accredited property degree, but also include a suite of accounting, banking or finance courses drawn from another degree. Similarly, a student can have a primary focus on valuation, but add a specialisation in environmental management.

Other combinations could include property development and town planning/resource management or property management and project management. For those with an interest in computing, it is possible to add geomatics onto the property core. Another innovation is the possibility of students spending a semester or a whole year at a university overseas within their four-year programme of study.

Urban and rural

The extra space in the new Bachelor of Land and Property Management degree also allows for the reintroduction of a dual urban and rural valuation specialisation. This was a popular option in the past, but in recent times the complexity of both the rural and urban sectors has precluded this combination within a three-year degree.

A programme with a professionally accredited core, plus the ability to specialise or generalise if desired by taking courses from a variety of areas, is unique. It is also aligned with Lincoln University's wider strategy of preparing graduates for a range of land-based careers via a broadly-based cross-disciplinary education rooted in an understanding of land and all it encompasses. The new degree is now a flagship degree for Lincoln and is aimed at attracting students with a much wider range of interests than the old property degrees, with their traditional focus on urban and rural valuation.

The broadening of degree content, while retaining the core property coverage essential for professional accreditation, also caters for the changing needs of rural and urban businesses. All organisations, both public and private and in every sector, are constantly dealing with the ever-increasing complexity and interdependence of real estate assets, business productivity, finance, science, environmental management, politics and international relations.

Evolution of education

The new degree has been a bold step for Lincoln, but a necessary one given the changing environment and the significant challenges that the property professions and related educational bodies currently face. No doubt further changes and refinements to the programmes will continue to be made over time, but the evolution of education is necessary to ensure the university has another 75 years of leadership in property education.

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COMPENSATION RELATING TO LAND WITH SPECIAL SUITABILITY

Phillip Merfield

The Court of Appeal recently discussed the issue of compensation where the land to be taken potentially had special suitability.

Introduction

Obviously, in some circumstances such characteristics can enhance the value of that land. Generally, under the Public Works Act 1981 (PWA) the owner of land is to receive full compensation if his or her land is to be acquired for a public work. However, provisions in the PWA state that the special suitability of that land in some circumstances should not be taken into account when assessing compensation. The effect of the statutory provisions was considered by the Court of Appeal in *Palmerston North City Council v Hardiway Enterprises Limited*.

Significant difference in compensation assessed

The issue faced was not minor. The valuations for compensation purposes ranged from $350,000 for the landowner (Hardiway) down to $2,000 from the council's perspective, the higher amount reflecting an element of ransom. The Land Valuation Tribunal awarded compensation of $36,000.

Facts

The piece of land (the 'ransom strip') involved was small, at only 70 square metres, but was strategically placed at the end of a road and separated the road from a large piece of land to be subdivided (the 'development land'). This small piece of land could be described as a 'spite strip' or 'ransom strip'. Such small strips of land are often owned by councils to limit access from a property to an otherwise adjoining road.

However, in this case the ransom strip was privately owned. It therefore had the potential for the ransom strip's owner to hold the owner of the development land to ransom by preventing access from the development land to the road. Hardiway argued that the ransom strip could be worth a higher value because it effectively limited the ability of the owner of the development land to subdivide that land. There were other alternatives to gain access to the development land, but these were more costly.

To enable a subdivision of the development land to proceed, the council issued a notice of desire to take the ransom strip for use as a public road as the first step towards compulsory acquisition. The parties could not agree on the amount of compensation for the ransom strip, and Hardiway therefore sought under section 80 of the PWA to have the Land Valuation Tribunal assess the amount of compensation in accordance with section 62 of that Act. The parties did not dispute the fact that the ransom strip was being acquired for a public work, i.e. a public road (but see the comment on this point at the end of this article). Nor did the parties dispute that Hardiway was entitled to full compensation.

What was full compensation?

The main issue concerned the wording of section 62(1)(d) of the PWA. This section makes it clear that in two circumstances the special suitability or adaptability of the land is to be excluded when assessing full compensation. These two situations are as follows. The first limb provides: 'The special suitability or adaptability of the land... for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only pursuant to statutory powers...' The second limb provides: 'The special suitability or adaptability of the land... for any purpose shall not be taken into account if that purpose is... a purpose for which there is no market apart from the special needs of a particular purchaser or the requirements of... any local authority... '

Were the section 62(1)(d) full compensation exclusions relevant?

In the High Court the council argued that both limbs of section 62(1)(d)) applied, saying that a ransom strip should not be effective against local authorities and the Crown if the ransom strip has a public good value. Hardiway argued that in respect of the first limb, the ransom strip could be used as a private road and therefore did not need a statutory power to make it suitable as a private road. Thus, the first limb of the exclusion did not apply.

In respect of the second limb, Hardiway argued that the word 'market' in the section imported an opportunity for commercial comparison or selection of choices that went beyond one particular purchaser. This argument maintained that there were at least two potential purchasers, the council and the owner of the development land, and therefore there was in effect a market. Hardiway went on to argue that if the council's argument was right, then the use of a spite strip or ransom strip was of no effect. This reflected the English authorities, who allowed for such spite or ransom strips and that the owner of such a strip was entitled to expect a substantial premium on the value of that strip.

Court of Appeal's view

The Court of Appeal looked at the interpretation and application of section 62(1)(d). In respect of the first limb, the court had little difficulty in concluding that the requirements of the first limb were met. The ransom strip did have special suitability for the provision of access to the development land by extending the existing road to give the development land road frontage. That purpose was a purpose that could only be applied pursuant to the statutory powers of the council. The acquisition of the ransom strip by the owner of the development land, although providing access to that land, would be providing a different purpose because it would not involve the extension of the existing road as a public road.

The court considered the second limb in more depth and started with an examination of when the second limb applied, which was only if:

(a) the land has a "special suitability or adaptability" for "any purpose"; and

(b) "that" purpose is a purpose for which there is "no market" apart from:

   (i) the special needs of a particular purchaser; and/or

   (ii) the requirements of any government department or local authority.

When these requirements are met, the special suitability of the land for a particular purpose is not to be taken into account in determining the value of the land if that land is sold in the open market by a willing seller to a willing buyer. In these circumstances the value of the land must be determined on the basis that the land did not have that special suitability for that particular purpose.

In other words the question is: 'What would a willing seller and a willing buyer agree the price should be for the land disregarding its "special suitability"?' The first stage in this procedure was to identify the purpose for which the land is specially suitable. The identification of that purpose was critical, because it was that purpose which must be the purpose for which there was no market except for the special needs of a particular purchaser or requirements of a local authority or the Crown.

The reference is to 'any purpose' and therefore the land may have special suitability for more than one purpose. These special purpose or purposes will then be disregarded in the valuation exercise. However, other purposes that do not meet the special suitability requirement may be taken into account in the valuation exercise.

The court found in this case that the ransom strip did have special suitability for the purpose of providing road access to the development land from the existing road. If the ransom strip was to be used as *private access* then that would be a different purpose for which there was also no market apart from the special needs of the owner of the development land.

> *In the High Court the council argued that a ransom strip should not be effective against local authorities and the Crown if the ransom strip has a public good value.*

The second stage in the process was that once the ransom strip was determined to have special suitability for the purpose of providing public road access to the development land, then the question was whether that purpose is a purpose for which there is no market apart from one or other of the prescribed categories. In their view, the court felt that the reference to 'no market' is to the absence of any actual market for the land for its identified purpose. Evidence was necessary to show that there was no demand for the identified purpose. The court underlined this by noting the following:

(a) section 62(1)(d) creates an express exclusion from the application of the willing buyer/willing seller test;

(b) the focus is on the special suitability of the particular land for a particular purpose for which there is no market apart from the two prescribed categories – there is no market for that purpose;

(c) the two prescribed categories i.e. the special needs of a particular purchaser or the requirements of any Government Department or of any local authority – are concerned with their position in the actual market; and

(d) lastly, the provision did not apply to a speculator.

continued from page 21

The Land Valuation Tribunal had established as a matter of fact that there was no market for the ransom strip as the ransom strip's only purpose was for the extension of the existing road to the development land. Or, conversely, its purpose was to stop that extension!

The Court of Appeal concluded that the second limb of section 62(1)(d) was applicable by giving practical effect to the provision in this case. The court concluded that it would have been surprising if the ransom strip were to be valued on the basis of the price some hypothetical purchaser might be prepared to pay to obtain control of the land and to block access to the development land. Such a proposition would not be consistent with the purpose of the provision, which was intended to overcome factors that might inflate compensation beyond the level that is considered reasonable in the public interest. This is the reason for section 62(1)(d).

Result

The Court of Appeal therefore reinstated the Land Valuation Tribunal decision that the compensation figure was $36,000.

An aside

What is interesting is that, in effect, this public work was being acquired really for the benefit of the owner of the development land. Therefore, it could have been argued that the land was being acquired for a private benefit and therefore the exercise of the council's power was unreasonable. This was the decision the court came to in *Bartram v Manurewa Borough* [1962] NZLR 21.

This issue never seems to have been raised in the case, and in the writer's view it would have been interesting to see what would have happened if that argument in the *Bartram* case had been raised. Generally, a local authority or government body that has a statutory power should exercise it reasonably. It should not usually be exercised for the benefit of a private individual but for the benefit of the public.

POSSIBLE BETTERMENT
AUCKLAND COUNCIL v GREEN

Phillip Merfield

The recent Court of Appeal decision in Auckland Council v Green & McCahill Holdings Ltd will be of interest to all valuers.

Introduction

The decision has cast doubt over the way in which valuers have usually taken betterment into account when doing a 'before and after' assessment of compensation under section 62(1)(b)(ii) of the Public Works Act 1981.

The Court of Appeal agreed with the High Court's approach to the determination of compensation under section 62. Therefore, when determining whether the value of land has increased by the public work or the prospect of the work, the Land Valuation Tribunal should not assume that the work is, or will be, completed.

Brief facts

In brief, the situation was that the Council had acquired just over 33 hectares out of Green & McCahill's larger land area of over 888 hectares. This land was acquired in October 2003 for the purpose of building a new road, known as Penlink Road, between the Auckland Northern Motorway and the Whangaparaoa Peninsula. However, the construction of Penlink Road had been delayed and was unlikely to commence before 2024. When constructed, the road would enhance road access to the balance of Green & McCahill's land, so there was significant potential for betterment. The parties accepted that the 33 hectares that had been acquired was not marketable on its own.

Land Valuation Tribunal decision

The Land Valuation Tribunal had said that the prospect of the Penlink Road should be ignored when assessing the 'before' value, but must be taken into account as being in existence when assessing the 'after' value. The Land Valuation Tribunal concluded that no compensation was payable to Green & McCahill because the betterment from the construction of Penlink Road assessed to the remainder of their land outweighed the value of the land acquired. Green & McCahill appealed.

High Court decision

The High Court held that a two-stage process was involved. First, assess the value of the land on a 'before and after' basis. Then assess betterment caused by the work or prospect of the work. In this second stage, the Land Valuation Tribunal was not to assume that the Penlink Road would be completed. Rather, there must be a proven causative connection arising out of the work, or prospect of the work, that results in betterment. The question was: How should the likelihood of completion of Penlink Road be treated in assessing the compensation payable to Green & McCahill?

> *For betterment to be taken into account there must be a public work in existence or certainty that one will exist.*

NOT ENOUGH:
& McCAHILL HOLDINGS LTD

Court of Appeal decision

The Court of Appeal had to determine whether or not this approach by the High Court was correct. The court reviewed the statutory scheme of both section 60, which sets out the basic entitlement to compensation, and section 62, which deals with the assessment of compensation. As noted by the High Court, this section deals with the assessment of compensation for land taken (and injurious affection) in 'a rather confused manner.'

The Council and Green & McCahill agreed that there was no market for the 33 hectares to be acquired. Therefore, the 'before and after' approach contained in section 62(1)(b)(ii) applied.

This section is interesting in that it provides that compensation of the piece of land to be acquired is assessed by deducting the hypothetical market value of the remaining land from the hypothetical market value of the original larger piece of land. This will normally give an amount of compensation payable to the landowner. It then went on to agree with the High Court that betterment should in this case not be taken into account.

Court of Appeal reasoning

The court noted two main points.

The first was the causative link referred to in section 62(1)(e), which requires betterment to be '*caused* before the specified date or *likely* to be *caused* after that date by the work or the *prospect* of the work.' Betterment must be proved as a matter of fact.

Secondly, 'the prospect' of the work indicates that the work may cause an increase in value. This is a question of fact to be answered in each case. One cannot assume that the work will be completed.

Then the Court continues on what seems to be a slightly different tack – that betterment is 'only deductible from compensation that would otherwise be awarded for the market value of the land taken...' Therefore, betterment is not deductible from the other heads of loss contained in section 62.

Comments on Court of Appeal decision

First, the court, at least in part, seems to require that for betterment to be taken into account there must be a public work in existence or certainty that one will exist. However, the word 'likely' in section 62(1)(e) seems to refer to a probability, not a certainty. In the writer's experience, at the time the compensation is assessed it will be most unlikely that the public work exists.

However, having said that, the chances that the public work will exist are usually very high. If not, the acquiring authority would not be putting in the effort and funds to acquire the land.

However, in this case the court took into account the lengthy time delays and lack of evidence to show that the road was to proceed and therefore must have had serious doubts about what was to happen. This type of situation is unusual.

Secondly, I am not entirely sure betterment only can apply to market value compensation assessment under section 62(1)(b). Market value is also referred to in the 'before and after' market values in section 62(1)(b)(ii). To apply betterment to the term market value in the first part of section 62(1)(b), but not to sub-paragraph (ii) of that section, seems odd. However, strictly speaking betterment cannot be taken into account in the compensation figure arrived at after a 'before and after' assessment because this is an assessment of compensation for land which by definition can have no market value of its own. There is no market for the land.

The outcome in this case makes reasonable sense. However, the way the courts deal with section 62 may not always bring about such a result.

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

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This is the first 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.

New Act

The Cook Islands Arbitration Act 2014 is very similar to the New Zealand Arbitration Act 1996. Consequently, while the focus is the Cook Islands much of the article applies equally in New Zealand. Also, the emphasis is on rent reviews but applies equally to other disputes.

A client comes to you with a request to pursue arbitration for a rent review dispute in which the landlord and tenant have been unable to agree in respect of a major downtown commercial building. The client requests it be resolved by arbitration. What do you do? You have already become acquainted with the bones of the arbitration legislation. How is it adapted for rent arbitrations?

Current Cook Islands arbitration legislation

The abolition of the Arbitration Act 1908 of New Zealand and its substitution by the Cook Islands Arbitration Act 2009, and more recently the Cook Islands Arbitration Act 2014 (the Act), brought the Cook Islands in parallel with wide international arbitration practice through adoption of the United Nations, i.e. United Nations Commission on International Trade Law or UNCITRAL, model law. Other countries with a similar type legislation include Australia, New Zealand and the UK. The New Zealand parallel is the Arbitration Act 1996.

Note that arbitrator and arbitral tribunal can be taken as synonymous throughout this article, and remember the arbitral tribunal can

Arbitration is a private court where the parties have an opportunity to choose their decision-maker.

comprise of one or more arbitrators. In the Cook Islands, the legislation to be referenced is the jurisdiction's Arbitration Act 2014 and in New Zealand the Arbitration Act 1996.

Arbitration defined and activated

Arbitration is a private court where the parties have an opportunity to choose their decision-maker. The decision-maker selection may not necessarily apply if the arbitrator appointment is imposed, such as that which would result from an application to the High Court pursuant to the Act or application to an appointing body such as a Law Society. Some jurisdictions include legislated primary objectives for arbitration such as:

- Allowing parties to agree about how their commercial disputes are to be resolved, subject to certain safeguards as are necessary in the public interest, and
- Providing arbitration procedures that allow commercial disputes to be resolved in a cost-effective manner, informally and quickly.

Parallel principles are identified in the Cook Islands legislation and inherent in New Zealand. The importance of cost-effectiveness, informality and speed of process cannot be overstated. They are aspects that can be significantly affected by and often frustrated by the parties involved and their advisers. There is a need to weigh the wisdom of pursuing an unwieldy process as it can often defeat cost-effectiveness. At all stages, it is important to consider whether the steps a party is considering pursuing are in fact needed to advance its cause towards a fair arbitral dispute resolution outcome.

There are two initial steps in activating the arbitration (confirming the authority to arbitrate, and carrying out the selection of arbitrator) and these are discussed below.

Authority to arbitrate – the submission or arbitration agreement

The term 'submission' is defined in the 1908 Act and it is the agreement to arbitrate. The parallel in the current legislation is arbitration agreement set out in the Interpretation section: 'an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.' Examples of arbitration submissions in leases are:

- *A Cook Islands land lease example*
  For and during each succeeding... years of the said term an annual rental as shall be agreed upon by the lessors and the lessee or failing agreement at such rentals as shall be fixed by arbitration in accordance with the Arbitration Act 1908 such rental to be based upon then market rentals for comparable unimproved land and the terms and conditions and provisions of this deed but to be not less than the rental payable for the preceding... years.
- *A simplification of a Cook Islands and older New Zealand commercial property lease example*
  The new rent at review shall be agreed between the landlord and tenant or failing agreement the rental shall be fixed by arbitration in accordance with the Arbitration Act 1908. The reference to arbitration shall be deemed to be a reference to the arbitration of two independent persons, one to be appointed by each party and to an umpire appointed by the arbitrators before entering consideration of the matters submitted.

The legislation applies in parallel; the provisions of the 2014 Act apply except as otherwise agreed by the parties in the case of non-mandatory discretionary powers. The agreement to arbitrate in the lease will be supplemented by further ancillary arbitration agreements between the parties and the arbitrator. Such a further agreement will define the arbitrator's terms of engagement. Another may be an agreement that either party may appeal to the High Court on questions of law – if the parties so elect.

The importance of ensuring the arbitration agreement complies with the law is demonstrated in a recent series of New Zealand court actions resulting from arbitration, culminating in the Supreme Court judgment *Carr and Anor v Gallaway Cook Allan* [2014] NZSC 75, 20/6/2014. (Elias CJ, McGrath, William Young and Glazebrook, with Arnold J partly dissenting). Basically, the Supreme Court supports an earlier High Court conclusion that an arbitration agreement which includes for a right of appeal on 'questions of law and fact' is illegal in terms of the Act and therefore the award is unenforceable on grounds it is founded on an invalid contract under Article 34(2)(a)(1) of the first schedule. The offending words are 'and fact'.

It is common for arbitrators to require an upfront deposit to be paid on account of arbitrator's fees and expenses, to be lodged before the arbitrator's involvement advances beyond completion of the terms of engagement agreement. This payment is to be interpreted as nothing more than an advance. It is no indication of the likely final invoice from the arbitrator. It can be expected the arbitrator will not advance formal proceedings until the supplementary agreement is fully executed and any special conditions such as a fee deposit payment are satisfied.

It can also be expected the arbitrator will require a provision in the arbitration agreement that the arbitrator's invoice is to be settled in full before any award is released. It is not unknown for the new arbitration agreement to be the sole arbitration agreement, such as those occasions when a lease has no arbitration provision or when the parties choose to amend the pre-existing provision.

Selecting an arbitrator

There are two potential initial steps depending on whether or not the authority to arbitrate calls for: first, the parties agree to a sole arbitrator; or, second, each party is to appoint its own arbitrator. In turn those two arbitrators appoint a third arbitrator (umpire of earlier times).

Coupled with the initial steps is a need for the parties to consider whether or not the respective optional provisions in the Act apply. In cases where the timing for release of the arbitration decision is important to the parties, it is prudent for the parties or their advocates to check with the chosen arbitrator or arbitrators that the time for delivery of the award is achievable. This is best undertaken at arbitrator selection time. Sometimes the parties will stipulate that the award must be issued by a specified date, but usually such a clause allows the arbitral tribunal to extend that time.

Appointment of sole arbitrator by party/party agreement

The first step is for each party to prepare its list of preferred arbitrator candidates, after first checking with each candidate as to their availability and willingness to act. The next step is for the parties to exchange candidate lists and identify a common name or common names which are then acceptable to both parties. Assuming agreement, the parties jointly appoint the ultimately agreed candidate simultaneously with agreeing the arbitrator's terms and conditions of engagement. This is also an ideal time to confirm the status of the optional provisions. It is not unusual for second and subsequent lists to be exchanged before a commonly acceptable arbitrator is identified.

Stalemate in appointing sole arbitrator

If all else fails, an imposed arbitrator appointment might be sought. Hopefully, consensus prevails and the extra costs of this step are avoided. It is always preferable to avoid an imposed selection which may produce an appointment which is not enthusiastically approved by either party.

Appointment of separate arbitrators by each party

Many of the pre-modern arbitration legislation leases provided for dispute resolution through two arbitrators and an umpire appointed by them. The umpire had no jurisdiction to act unless and until the arbitrators advised of their inability to agree. In the event of disagreement the umpire acted on the reference in place of the arbitrators. This comment is subject to the exception when the court rules the umpire to be sole arbitrator. Section 20 of the Cook Islands 2014 Act 'Transitional Provisions' now covers this matter. In New Zealand, umpire has been abolished and replaced by a third arbitrator. Umpire should not appear in any leases drawn up since commencement of the respective modern New Zealand and Cook Islands Arbitration Acts, the policy being to have a sole arbitrator.

This option involves each party selecting their own appointee and agreeing terms of engagement with that arbitrator. With the modern legislation emphasis on a sole arbitrator for other than international disputes it is not recommended. The terms of engagement for each arbitrator ultimately become the joint and several responsibility

> *It is always preferable to avoid an imposed selection which may produce an appointment which is not enthusiastically approved by either party.*

> *With the modern legislation emphasis on a sole arbitrator for other than international disputes it is not recommended.*

of both parties. This is in keeping with the fundamentals of the Act that the parties are jointly responsible for the arbitral tribunal fees and expenses. The fees and expenses liability extends to those of the third arbitrator. Natural justice requirements outlaw any sense that there continues to be some form of connection between party-appointed arbitrators and the party that appointed them. Once appointed, all three members of the panel become totally independent of the parties.

Continuing with multi-member tribunal or not

The wisdom of continuing with a three-member tribunal for rent review disputes needs consideration, particularly from a cost perspective. The three-member tribunal is more expensive than a sole arbitrator, and this can be exacerbated when tribunal members are required to travel. All three are of equal standing within the tribunal and participate in all of the arbitration proceedings, unless the parties agree otherwise.

Control can be achieved by the parties agreeing to a sole arbitrator before the arbitration proper proceeds. Furthermore, the concept is in keeping with the theme of the modern law where the norm is for a sole arbitrator for domestic disputes. Helpful discussion can be seen in the New Zealand Law Commission Report leading to the 2007 Act amendment that abolished 'umpire' as a term. It highlights some of the then apparently conflicting court judgments as to the umpire role under the transitional provisions in the modern Act.

Discretionary provisions in the Act

The Act includes many provisions which the parties may mutually opt out of. I leave it to the lawyers to identify these and appropriately advise clients in each given set of circumstances. The optional provisions become mandatory if the parties do not mutually agree otherwise.

The umpire

Confusion continues to reign when the tribunal arises from a contract calling for arbitrators and their umpire. Consideration is not unknown as to the appointee's role once the office becomes arbitrator pursuant to the modern legislation. Examples are: impasse-breaker, much as applied under the 1908 legislation; a full arbitrator role within the tribunal; or something in between? Unless the parties agree otherwise, the appointee is third arbitrator and a full participant within the tribunal. A potential for removing any doubt is for the parties to agree a sole arbitrator in lieu of a multi-member tribunal. The quandary surrounding the role has exercised the minds of the judiciary in New Zealand on a few occasions since the new Act came into effect.

One example is *The Cornwall Park Trust Board (Inc) v Brown* 22/4/2008, Harrison J, HC Auckland, CIV 2007-404-7934 case. It arose from a ground rent setting mechanism at renewal option for a Auckland suburban residential site where the expiring lease called for:

- The parties to respectively appoint an arbitrator when certain required values were disputed
- The arbitrators to each undertake the required valuations
- The arbitrators to appoint an umpire before commencing their valuations
- Any differences between the arbitrators to be referred to the umpire for final determination.

The lease was for 21 years from September 1984 and deemed the dispute resolution provisions as being a submission to arbitration pursuant to the Arbitration Act 1908 or any substitution Act. The parties appointed qualified valuers as their arbitrators. The court action stems from disagreement as to the umpire appointee. The lessor sought a registered real estate valuer and the lessee a retired High Court judge. In pressing for the respective nominees, the valuers were acting on instructions from their respective parties.

The judgment includes discussion as to whether the appointee is an umpire or arbitrator, plus the role the appointee should play. In naming the appointee the court decided the role is pursuant to the modern Act and is as arbitrator, but only activated if the party-appointed valuers reached disagreement. Furthermore, it concludes the appointee is sole arbitrator regardless of whether the old or new Act applies. This judgment follows the 2007 cessation of the term 'umpire' in New Zealand.

Supply of lease copy to arbitrator candidate

It can be expected that soon after an initial approach to consider acting as arbitrator the candidate will request a copy of the relevant lease. A copy of the executed document is required and is used at this stage to: check the basic authority to arbitrate; check for any pre-conditions applying to arbitration; confirm the identity of the involved parties; and check for constraints on who should act as arbitrator. The purpose is to ensure there is a valid authority to arbitrate, involving the particular parties seeking arbitration and the specific arbitrator candidate.

Condition optionally overriding lease arbitration provision

The Cook Islands Act 1915 as adopted in the Cook Islands and amended from time-to-time by the Cook Islands Legislature includes a provision at section 409B:

In my view, the most cost-effective option is party/party negotiation. If that fails, consider arbitration.

> 409B Land Rental Arbitration – Notwithstanding anything in any lease, contract or other document conferring rights in any person to land or an interest in land the Land Court may upon application by any interested party and upon sufficient cause being shown, hear, determine and fix the capital value of any land or interest in land or the current market rental of any land or interest in land.

It is important to note this provision does not appear in the Cook Islands Act 1915 of the New Zealand Legislature. The Cook Islands version of this Act differs quite extensively from its New Zealand counterpart. It is also important the arbitrator be assured both parties have abandoned their rights pursuant to section 409B before advancing arbitral proceedings. In some instances, the potential of court involvement through section 409(g) may also need checking. It reads: 'Upon application by any interested party, to fix the capital value of any land or interest in land or the current market rental of any land or interest in land.'

Concluding comments

This first article is intended to provoke interest and discussion about how coming rent reviews are actioned. In my view, the most cost-effective option is party/party negotiation. If that fails, consider arbitration. Parts 2 and 3 in this series look at the arbitration process and rent review basics. Note that this is an abridged and adapted version of a paper presented to the Cook Islands Law Society at Rarotonga in November 2014.

PROFILE

KATE FLUKER

The Property Institute is proud to announce Kate Fluker, Queenstown-based valuer and world-class mountain biker, as the professional face of the Institute.

Kate grew up riding horses, and had never tried mountain biking until 2010. After moving to Queenstown, she purchased her first $400 bike, trying to take up a hobby where she could meet people. Her newfound friends suggested they train to complete the 2010 Motatapu, the famous Queenstown area race taking in Lake Wanaka, Arrowtown and the surroundings – and before she knew it, mountain biking had become part of her life. Within four years, she had won both rounds of the 2014 New Zealand National Mountain Bike Cup and the New Zealand National Championship, placing her at the number one ranking in the country.

On the international stage, she's competed a number of times in major events through Europe against the world's best, including the Red Bull iXS European Downhill Cup. She was also selected in 2014 to represent New Zealand at the 2014 World Championships in Norway and the 2014 Commonwealth Games in Glasgow.

In 2013, Kate joined the NZXC racing team following her success in the National Series, picking up a range of sponsors including Giant Bicycles. She also still carries sponsorship from a range of prior sponsors local to Queenstown, and the Institute's now proud to be one of them.

From a professional standpoint, Kate works for QV in Queenstown, and graduated from Massey University with a degree in rural valuation and management. She's been a member of the Institute since 2012.

Kate will be a vital part of the new Institute brand work in the future, giving a human face to the professions which constitute us. You can look forward to seeing more of her throughout our membership marketing material and material promoting the Institute, as well as across our new website when that goes live later this year.

The next goal for Kate is to head to the 2016 Olympic Games in Rio de Janeiro, but in order to do this she's got another season of fundraising, training and working in store. If you'd like to help support Kate in her sport as a successful professional within the property industry, you can donate to her or contact her through her website at www.katefluker.com