

NEW ZEALAND

SPRING 2022

# PROPERTY PROFESSIONAL MAGAZINE



THE MOST UNFAMILIAR OF  
FAMILIAR PROPERTY CYCLES

**BUILDINGS  
AND CLIMATE  
CHANGE**

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Retirement  
home  
ownership  
models

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**PLANT &  
MACHINERY  
VALUER ROLE**

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Falling house  
prices

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**BUYER BEWARE  
WITH LAND  
COVENANTS**

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Property Institute of New Zealand.  
*Property Professional* is published quarterly and a copy goes to every New Zealand based member of the Property Institute. The articles are not peer reviewed and represent the unaudited views of the relevant authors. If you have any questions about the content of an article please contact the Editor or the relevant author.

ISSN 2253 5195 (Online)



**VIV GURREY**

# A stronger home for property professionals

As we draw the curtain on another challenging year, I take great pride in what the Property Institute has achieved in the last 12 months.

I know that it has been a very busy time for most members, and for some, that has brought extra stress and pressure which won't have been seen.

It's why I think that one of our biggest achievements this year has been a free counselling and employee assistance programme for members. It's confidential and free, and its introduction to our suite of benefits could not have been better timed. Please contact me if you need help accessing this benefit.

The past three years have been a roller coaster – and it is now time for regrouping, consolidation and progressing significant pieces of work that may not be flashy but carry important substance.

Your National Support Team and governing bodies have been working diligently behind the scenes to deliver robust and future-proofed processes and policy that will form the solid foundation to take PINZ and NZIV into the 21st century.

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## We have a number of exciting initiatives for 2023, including our comprehensive rules and by-laws review driven by the Incorporated Societies Act changes that were signed into law in April this year.

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As a modern and forward-thinking membership organisation, we have moved with technology and delivered a first-class education programme that has been highly rated by members in recent surveys.

We presented our first-ever online National Property Conference, we're rolling out a new digital solutions strategy that will serve members into the future, and have expanded and improved our Future Leaders programme to ensure we have strong pathways in place for the coming generations of property professionals.

Our membership strategy and marketing plans are bedding in, while the National Support Team continues to provide outstanding service that exceeds the comprehensive work programme put in place.

Our events have been well supported and, financially, the Institutes are in good shape and the future looks bright.

As we turn the page on 2022, our minds have already turned to next year, and the opportunities afforded to us by the solid foundations we have built.

We have a number of exciting initiatives for 2023, including our comprehensive rules and by-laws review driven by the Incorporated

Societies Act changes that were signed into law in April this year.

We will share the review and our roadmap with you in early 2023.

The review provides us with opportunities to further strengthen and modernise the way we operate, and we look forward to sharing our vision for the future with you.

Our organisation would not exist without the support, effort and enthusiasm of our branches. Our fundamental philosophy is that a membership organisation thrives based on the success and participation of its members.

Part of my role is to understand what that means to you and to drive the processes, priorities and activities that will nurture and shape our branches and our membership. This echoes our objectives of putting our members first in everything we do and building strong and robust branch membership.

Over 2021 and 2022 we have worked closely with your Branch Chairs, and 2023 will see us develop this relationship further.

Part of that outreach for 2023 begins with the Branch Annual General Meeting series. I will attend each one, the environment permitting, as we did last year along with, where possible, our PINZ

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A big highlight of the year will be our 2023 National Property Conference at the Te Pae Christchurch Convention Centre. Held in conjunction with the WAVO/IVSC Global Valuation Conference, this promises to be an outstanding international event at a superb purpose-built facility.

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President Ben Gill and Scott McLew our Chief of Engagement. NZIV will be represented by Dr Gary Garner, NZIV General Secretary, and local Regional Councillors.

A big highlight of the year will be our 2023 National Property Conference at the Te Pae Christchurch Convention Centre. Held in conjunction with the WAVO/IVSC Global Valuation Conference, this promises to be an outstanding international event at a superb purpose-built facility.

This is our chance to showcase the work we do and the huge amount of talent that our organisation is fortunate enough to have within its ranks.

As sure as night follows day, change continues.

We've shown ourselves to be extremely successful at adapting to that change and rising to the challenges, often by doing things differently and retaining a strong focus on the things that matter to our members.

Looking ahead, there's little doubt we will need to be nimble to ensure we stay relevant and add value to member activities.

The support we receive from members is hugely satisfying, and I'm really looking forward to 2023 and the opportunities to see more of you in-person and hearing from you directly.

**Viv Gurrey**

*Chief Executive Officer*

*Property Institute of New Zealand*



# THE EFFECT OF BUILDINGS ON CLIMATE CHANGE

Buildings should be designed to use energy efficiently and to cope with the stresses arising from a changing climate.

DAVID HINDLEY



### Direct and indirect responsibility

A report from the New Zealand Productivity Commission notes that while New Zealand's absolute contribution to global emissions is small, our per person gross emissions are some of the highest among developed countries.

It has been estimated that buildings are directly and indirectly responsible for up to 20% of New Zealand's energy-related greenhouse gas emissions (GHGs), contributing to climate change. These emissions come from the use of fossil fuels:

- For services such as water heating, cooking and space heating while the building is occupied
- In the production of the building's construction materials and their transport to site.

### Designing for climate change

There is abundant evidence that New Zealand's climate is changing, although the impacts vary from place to place. Changing rainfall, wind, temperature, storm and other climatic patterns will all influence building design (e.g. by requiring buildings in some parts of the country to cope with stronger wind loads or more intense rainfall).

Buildings should be designed to minimise GHG emissions from energy use. Most importantly, passive design features can help to reduce energy use for heating, cooling, lighting and other activities. Over the life of a building, small gains in efficiency can add up to significant reductions in emissions.

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## It has been estimated that buildings are directly and indirectly responsible for up to 20% of New Zealand's energy-related greenhouse gas emissions.

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The National Institute of Water and Atmospheric Research (NIWA) has warned that the biggest effects may be due to more extreme and more frequent weather events, such as floods, droughts and storms, rather than changes in average weather conditions.

Climate changes will affect home design. When designing for climate change, designers will need to consider changes to:

- Temperature
- Rainfall
- Solar radiation and UV intensity
- Wind
- Rising sea levels
- Fire risk
- Reducing emissions in the building sector
- Changes to building/planning rules.



It is not just the design of new buildings that needs to be considered. Most of the buildings that will be standing in 2050 already exist, so improving the energy efficiency of the current building stock is important.

## Temperature

Ministry for the Environment projections for likely future average temperature rises are around 0.9°C by 2040 and 2.0–2.1°C by 2090. The strongest warming is likely to be experienced in winter, and warming may be greater in eastern and northern parts of the country. An increase in the number of days above 25°C is expected, particularly in northern locations.

If these changes occur, they may affect thermal comfort and the demand for cooling inside homes. If there is also an associated rise in humidity, there may potentially be an increase in mould and fungi growth that could in turn result in a rise in health issues.

## Rainfall

The Ministry for the Environment also gives projections for likely future changes in rainfall, and in some areas this will be considerable. Hokitika is expected to see an increase in average winter rainfall of 21% by 2090. For Queenstown, the average winter rainfall is expected to increase by 29%.

Rainfall is expected to increase in southern and western areas (Taranaki, Manawatu-Wanganui, West Coast, Otago and Southland) and decrease in northern and eastern areas (Hawke's Bay, Gisborne, eastern Marlborough and eastern Canterbury). This means



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Most of the buildings that will be standing in 2050 already exist, so improving the energy efficiency of the current building stock is important.

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that the difference between current rainfall levels in east and western areas will increase.

Extreme rainfall is expected to become more common, particularly in the south and west. This will put more pressure on stormwater and sewer systems and on roof drainage. The risk of flooding could increase, and properties in low-lying areas are likely to be at risk. In Auckland, an estimated 16,000 homes are flood-prone according to council records. Climate change forecasts point to increased street flooding as a result of increased heavy rainfall.

A report *Climate Change and Stormwater and Wastewater Systems* found that extreme rainfall events could lead to some homes being unliveable for long periods of time. This is partly because when stormwater infrastructure cannot cope, stormwater can become contaminated with raw sewage, which happened during a severe flood in Edgumbe in 2017. Six months after the flood, 500 homes could still not be reoccupied.

The Ministry for the Environment estimates that West Coast winter thunderstorms could occur four times as often by the end of the century as they do now.

Summer rainfall is expected to reduce, which will put pressure on urban water supplies. More droughts are expected in areas that are already currently drought-prone.

Higher temperatures, lower summer rainfall, increased winter rainfall, increased evapo-transpiration and changes to water table levels will all change seasonal patterns of soil wetting/drying. This could increase the risk of subsidence, particularly for building foundations on clay soil or for buildings adjacent to banks or cliffs.

## Wind

The westerly wind flow across New Zealand is expected to increase, and it is likely there will be more stronger winds. According to one projection, the frequency of winds of 30 m/s or more may double. The number of storms and tropical cyclones could also increase, although projections are uncertain. One scenario is that the number of tropical cyclones reaching New Zealand may reduce, but those that do get here may have greater impact.

## Rising sea levels

Growing concentrations of GHGs have caused the ocean to warm up as it absorbs most of the excess heat. Warming leads to thermal expansion and increasing sea levels, in addition to the rise from melting ice sheets and glaciers. Warmer oceans also mean stronger storms and more extreme rainfall.

The Coastal Hazards and Climate Change Guidance for Local Government from the Ministry for the Environment projects that the sea level could rise by as much as 1.2 m by 2100 if high emissions continue. The Intergovernmental Panel on Climate Change (IPCC) says that oceans around the world have risen around 20 cm on average since the beginning of the 20th century. The seas around New Zealand have risen in line with the global average, but could potentially rise more quickly in future.

In November 2015, the Parliamentary Commissioner for the Environment released a report *Preparing New Zealand for Rising Seas: Certainty and Uncertainty*. The report estimates that about



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**Around 15,000 New Zealanders live almost on the high tide mark, 71,000 within 1 m and 240,000 within 2 m of the mean high tide line.**

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9,000 New Zealand homes stand less than 0.5 m above spring high tide levels. Cities with large areas that are particularly low-lying include Napier, Lower Hutt, Christchurch and Dunedin. Dunedin has 2,600 homes below this threshold. Some small towns will also be significantly affected. Whakatane, for example, has 276 homes in this category.

A 2019 study based on a new way of calculating land elevations indicates that around 15,000 New Zealanders live almost on the high tide mark, 71,000 within 1 m and 240,000 within 2 m of the mean high tide line.

The occurrence of extreme sea level and coastal flooding events changes rapidly as mean sea levels rise, according to a 2016 Royal Society of New Zealand report. For example, with a 30 cm rise in sea level, the current '1-in-100-year' extreme sea level event would be expected to occur once every year or so in many coastal regions.

Some house insurers are changing how they calculate premiums. Houses at greater risk for disasters, such as floods caused by rising sea levels and extreme weather events, are attracting higher premiums. Homes in extremely low-lying areas may eventually become uninsurable.

### **Fire risk**

The fire risk is expected to increase significantly by the middle of the 21st century in eastern locations because of reduced summer rainfall and increasingly dry vegetation.

## Reducing emissions in the building sector

The 2016 Royal Society report found that GHG emissions can be reduced in the New Zealand residential and commercial building sectors through better energy management and improved minimum performance standards for appliances. Emissions reductions can also result from:

- Improving insulation levels
- Retrofitting existing building stock
- Integrating renewable energy systems
- Supporting innovative 'green building' designs.

## Changes to building/planning rules

Climate change is likely to affect building and urban planning requirements as the Government and local councils seek greater energy efficiency from buildings and require that increased structure, durability and weathertightness issues are met in the face of more extreme weather events.

The threat of rising sea levels, and increased numbers of storms and storm surges, mean that local governments are likely to implement restrictions on coastal developments, and to refuse consent applications for alterations and additions to existing building in low-lying coastal regions.

## Acknowledgement

The article is based on information published on the [level.org.nz](https://level.org.nz) section of the BRANZ website 

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VAUGHAN WILSON

# RETIREMENT HOME OWNERSHIP MODELS IN NEW ZEALAND



**Retirement villages are one of the largest forms of property development in New Zealand. With a huge upswing in demand over the next 30 years due to an aging Baby Boomer population, there is plenty of interest in how developers and operators realise profits in this growing industry.**

### Changing demographics over time

In the first four decades of the 20th century New Zealand was still finding its feet with a population one-fifth of today. It was developing its roading, rail, electrical and telecommunications infrastructure, and its exports were largely in farming with some mining left over from the 1800s.

The average age was modest, the mortality rate of newborns was in line with other first world countries, and the split between men and women was around 50/50. Aside from the deaths due to World War 1 and the Spanish flu, things were progressing nicely.

Advancements and improvements in health and medicine were occurring, with inventions and discoveries such as penicillin, and this meant people were living longer by surviving disease and afflictions that would have killed them in the 19th century. Migration was strong and the birth rate was much higher than today. The population in New Zealand had reached 1 million in 1908. In the same year, the number of live births per 1,000 people was 27, and this fell to under 20 live births per 1,000 people during the Great Depression.

Then along came World War 2 and, unbeknownst at the time, it would change New Zealand's demographics for at least the next 100 years. Allied nations, such as Canada, the US, Australia and New Zealand, sent thousands of military personnel into the theatre of war to counter Germany, Italy and Japan. Some of course never returned. But many did and they returned home eager to get on with their lives, to make a living, get married and have families.

This was the start of the Baby Boomer period, which began in 1946 and continued until 1964. Live births per 1,000 rose steadily, reaching as high as 28 per 1,000 in the early to mid-1950s. New Zealand's population doubled from that of 1908 to 2 million in 1952.

New Zealand was not alone as the other allied nations also increased their birth rates and populations sizes during this time. Men and women came from other countries, often as refugees, and also settled adding further to the increasing population.

After the Baby Boomers, the next phase is known as Generation X from 1965 to 1980. The birth rates in this group are also impressive as the early Baby Boomers started having children of their own, although birth rates dropped to under 20 per 1,000 people around 1973 and have stayed under 20 ever since. The oldest Baby Boomer in New Zealand is now 76 years old.

### Rising number of over-65s

The last New Zealand Census in 2018 showed an average life expectancy across New Zealand of 80 years for men and 83.4 years for women. The combination of living longer and the massive increase in population during the Baby Boomer years has resulted in



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**The target market for retirement villages is 75 and over, and in 2021 there were almost 346,000 New Zealanders in this group. By 2033, it is estimated this will increase to 567,000.**

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a significant number of people over 65 years old, and this will continue to increase well into the future.

In 2018, those over 65 were 14.9% of the population. In 2050, the median age in New Zealand is forecast to rise from 36 years to 43 years, with people over 60 rising from 18% to 29% of the population. The target market for retirement villages is 75 and over, and in 2021 there were almost 346,000 New Zealanders in this group. By 2033, it is estimated this will increase to 567,000 and by 2048 that number is expected to grow to 833,000 people.

### **Retirement homes a growth industry**

It is no surprise then to see a significant rise in retirement home providers and a rise in the number of facilities built and operating in this country. It is a growth industry unlike almost any other and New Zealand has been slower than the other allied countries to embrace this type of development. Retirement villages on a mass scale have been operating successfully in the US for many decades on the back of wealthy retirees seeking warmer climates than their home states such as Minnesota, Michigan and New York.

The largest retirement village is in Florida called inventively 'The Villages'. It is a vast area of well laid out streets, thoroughfares, hospitals, homes and apartments along with all the facilities you could possibly desire. The population of The Villages has recently exceeded 130,000 and is cited as one of the fastest-growing areas in the US.

Some interesting statistics on The Villages:

- Comprised of 103 square kilometres (10,300 square hectares) of land
- Over 1,200 kilometres of roading
- It has its own supermarkets, bars and restaurants and over 3,000 social clubs
- There are 54 golf courses, 70 swimming pools, 96 recreation centres, its own newspaper, radio station and TV station
- There are even schools for the children of the staff and of course a plastic surgery clinic.

In New Zealand we typically develop much smaller villages built in existing suburban locations. They usually have less than 500 residences and have been developed on land that was previously golf courses, market gardens, hotels, schools and other former uses. They also typically comprise of different accommodation types:

1. **Independent living** – usually in the form of an apartment or townhouse. Apartment living is normally of a modest height of six storeys or less.
2. **Assisted living** – usually in the form of an apartment with housekeeping and meals provided.
3. **Additional services** – sometimes in the townhouse or apartment or in a facility within the retirement village. These services can vary from resthome (showering, medical assistance) through to hospital services, specialist dementia care and respite care.

As of 2021, New Zealand had just over 47,000 people living in

retirement villages, up on 45,000 people a year ago in 2020. In 2021, around 11,000 new village units were constructed with a similar number in 2022.

In 2021, New Zealand had 422 retirement villages, an increase over 343 villages in 2012. Auckland has the most villages of anywhere in the country with 94 (as of 2021), being around 22% of the nation's total. Auckland's villages tend to be larger than those found in other parts of the country.

Canterbury has the second-largest concentration of villages in New Zealand, but they are generally smaller than those in Auckland with an average of 64 units per village. The region accounts for just 13% of the country's retirement village units due to the smaller size of the villages.

### Six companies dominate the market

New Zealand's large-scale retirement villages are built and operated by the same companies. The six largest of these are Ryman Healthcare, Metlifecare, Summerset Group, Bupa, Oceania Healthcare and Arvida Group. These six dominate the market with around 42% of the villages, but operate the largest of the villages by individual unit number (around 60% of the market).

For these operators, the target demographic for retirement villages is 75-plus year olds, with some villages now having a minimum age of 70 years old (up from 65 only a few years ago). It is estimated that by 2033 over 81,000 people will live in retirement villages. Using a ratio per unit of 1.3 people means New Zealand will need around 26,000 more units by 2033.






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Some see the retirement village companies as property developers. Village developers spend years acquiring the land and obtaining resource consents, often through an expensive and protracted process. Building consents and tendering with construction companies and sub-contractors follows and each village is built (often in stages). However, at this point there is a major difference with typical property developers who would either sell the final properties held in the form of certificates of freehold title and/or lease the properties with legalised forms of tenure.

However, retirement village developers are usually also operators of retirement villages so they are developing for the long term. They do not obtain certificates of title for each unit, which would also increase the rates paid to local councils if each unit was titled, and do not normally sell off a completed village to a third party.

### **Occupation Right Agreements**

Instead, the retirement village developers/operators provide what is essentially a licence to occupy called an Occupation Right Agreement (ORA). This provides a legal access to live in the townhouse/apartment and rights to use the village's facilities. The operators have three effective lines of revenue:

1. **A weekly fee paid per unit** – Think of this as the operating expenses aspect of a commercial net lease. The main aspects are rates and insurance, but it also covers external maintenance and gardens. It varies from village to village and city to city as rates and insurance vary across the country. It is often noted to potential inhabitants



as a daily charge. For Ryman's Bob Scott Village in Petone, a large multi-storey complex of around 500 people, the current day rate per apartment (there are no townhouses on-site) is \$19 per day. Other operators are around the \$150 per week, but the extent of services included varies (e.g. some have free weekly drinks events).

This is the same whether there is one person in a unit or two. Also like a commercial net lease this excludes utilities, so electricity is individually metered as in a normal residence. Electricity is modest, although as the apartments are modern and well-insulated a typical power bill in the height of winter is around \$130 per month for a two-bedroom apartment.

Operators approach the daily/monthly rate in different ways. For instance, Ryman guarantee to fix it for the time you are at the village. If you entered Bob Scott Village today you would pay \$19 per day, and if you were still there in 2032 your daily rate would still be \$19 per day. The daily rate typically covers things such as:

- Rates, water rates and building insurance
- Gardening and ground maintenance
- Maintaining and operating the community amenities
- Exterior maintenance of your apartment, including inside and outside window cleaning.

It is unclear what margin operators put on these items. At \$19 per day (i.e. \$7,000 p.a.), but it seems good value when taking into account all the items above and comparing them to typical rates and insurance and maintenance costs on sub-\$1 million townhouses in Lower Hutt.

**2. Add-ons** – There is an almost infinite list of things the village operator can do for you, and these are added to your bill each week or month for being at the village. These items can vary from showering and providing meals, to more palliative care, being in a dementia ward or hospice, to getting a nurse to place eye drops in your eyes.

Services vary from operator to operator and are largely based on a margin on the true cost of providing the service. The add-on costs vary according to how intensive they are. For example, showering might be \$15 per day, whereas being on a dementia ward could add thousands to an annual cost of being in a village.

**3. Selling of an ORA (selling the licence to occupy)** – This is the third and most contentious form of revenue. The websites for the six largest retirement village operators are purposely vague about this aspect of habitation. The volume of information they each send out to prospective customers is extensive in page numbers (often 60 pages or more dominated by older people smiling and having fun), but incredibly light on information about the on-selling of units (both townhouses and apartments).

The basic premise of selling an ORA for each of the big six is essentially the same. That is, the operator is the only entity who can sell a unit. They set the price and manage the sale and they are of course selling the ORA – the licence to occupy. The former occupier (or their estate as they have often passed away and hence the motivation for selling the licence to occupy) receives a percentage of the amount first expended to purchase the licence less a management fee. This fee is usually called a Deferred Management Fee (DMF).

## The operator is the only entity who can sell a unit. They set the price and manage the sale and they are of course selling the ORA – the licence to occupy.

For instance, if you entered a village in 2019 and acquired an ORA for \$620,000 and then sell this in late 2022 for \$850,000, you or your family would receive \$620,000 less 20% equalling \$496,000. The operator then pockets the difference, some \$354,000, including the DMF of \$124,000.

Of course the operator such as Ryman has costs and expenses when selling an ORA. The operators all typically redecorate each unit between occupations (e.g. paint, carpets, curtains). Occupants usually own the fridge, washing machine and dryer. The operator owns the chattels, including the oven and dishwasher. Depending on the conditions, the operator may replace the chattels, bathrooms and kitchens.

Older townhouses may also be single glazed and operators sometimes upgrade these between ORAs. Occupants can volunteer to double glaze, which the operator coordinates and charges between 50% and 100% of the cost. Some operators defer this type

of capital improvement cost paid by the occupant and add it to the DMF, so the DMF effectively increases.

This revenue stream is believed to be the single largest provider of margin to an operator, and they effectively set the price. Therefore, if the general property market is increasing then so is the cost of an ORA. Turnover is around seven years on average, and the more often there is a turnover the better it is for the operator, hence the relatively high minimum age of many of the villages, typically 70 years old.

On the flip side, with the residential property market being in a slump at the current time, prospective occupiers of retirement villages are having difficulty selling their freehold homes and at a price which is less than what they may have planned. This lower price, coupled with increasing construction costs, is affecting the demand for new units in some locations at the current time.

### Managing the resale

The main six operators have varying details on how they manage the resale. Some use a 20% DMF, some use 25% and at least one uses 30%. Some operators have a fixed DMF, whereas others have a DMF that increases each year of occupancy up to a maximum percentage (e.g. it starts at 7% and increases by 7% p.a. to a maximum of say 28%). It is therefore difficult to compare one operator to another as the variables and mechanisms vary over the initial years of occupancy.

There has been a lot of media attention recently on this aspect of the business, with numerous complaints to government about how it is handled. Complaints have varied from the cost of the management fee, the fact that the seller has no benefit from capital gain (the

opportunity cost of leaving the capital in a regular house is forgone), to the delay in receiving the capital.

Most, if not all, operators only repay once a new ORA has been finalised. This could take months given the operator has to redecorate first. The complaints extend to the previous occupant or their estate having to pay the management fee in the interim even though the unit is unoccupied.

Related complaints suggest operators favour selling new units in the same village as a preference over selling a second-hand unit, as the emphasis is to sell new units where there is no-one paying the existing operating expenses.

The operators are quick to point out they guarantee the sale price of the ORA will not be less than the original purchase price, but given that they control the resale market of each village it is hard to believe this is realistic scenario.

Operators often state that they price the units (townhouses and apartments) on a fair market value based on typical sales of freehold in the area. It is not transparent what the size of the net is that they cast in terms of market sales and what they do in an area that does not have freehold sale of townhouses or apartments. It is also unclear if they make any allowances for freehold market evidence to take into account of other aspects, such as floor area, section size, age of improvements etc.

### Resale complaints by residents

In a 2020 survey by *Consumer* magazine, the number one complaint by residents of retirement villages was not getting a share of

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**In a 2020 survey by *Consumer* magazine, the number one complaint by residents of retirement villages was not getting a share of capital gains.**

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## Other complaints include the length of time it takes to get the capital back when an ORA is sold, and the ongoing charging of the daily/weekly operating expenses after the unit has been vacated.

capital gains. Some operators do share capital gains in Australia and at least one new entrant into the industry in New Zealand has this in their contracts.

Other complaints included the length of time it takes to get the capital back when an ORA is sold. In New Zealand over 75% of ORAs are sold within six months, but some are much longer. Some of the larger operators do pay interest if the sale takes longer than six months, some nine months, and some do not offer interest payments. Other complaints in their survey included the level of DMF and the restriction on which tradespeople occupants can engage to carry out internal maintenance on premises and chattels.

Other significant complaints against the industry include the ongoing charging of the daily/weekly operating expenses after the

unit has been vacated. Some operators cease charging this once it is vacant, but many continue until the ORA is sold. To be fair, the largest two expenses (local body rates and insurance) continue to be paid by the operator on each unit, even if it is vacant, so the fact the resident has left doesn't mean this type of expense is at an end.

Residents of retirement villages are represented by the Retirement Villages Residence Association of NZ (RVRANZ). In August, they made a submission to Parliament's Social Services and Community Committee proposing changes to the Retirement Villages Act and its Code of Practice to allow a maximum 28 days for capital to be returned to an occupant upon vacating the unit whether it has sold or not.

The Retirement Village Association (RVA), which represents around 95% of all villages operating), also submitted saying this change would result in increased costs put onto the occupants as operators would have to borrow capital in order to repay. This and other submissions, largely about the major complaints above and other issues, are being considered.

The Retirement Village Act was introduced in 2003 to protect village occupants. It has a Code of Practice that came into existence in 2008. Neither has kept pace with changes in the Fair Trading Act about unfair terms in consumer contracts.

I have spoken to a number of occupants of apartments and townhouses and without exception all were happy, if not thrilled, with their operator and the service and facilities they receive. They were happy with the daily expenses rate and the option to add on additional services, of which some of them did. They loved



the social connections they made at the village they live in and the security it provides. None had issues with the DMF as they entered the village well informed, and they accepted this as part and parcel of the occupation.

### The future

Smaller operators are entering the retirement village market. At least one has a scheme by which a resale involves a sharing of the capital gains with the previous occupant or their estate. This seems a much fairer method considering the money involved.

It will be interesting to see what recommendations the Social Services and Community Committee determine and where these will lead. The village market, like the general real estate market, has done well in recent years with increased demand as the Baby Boomer bubble matures into the target age range for this type of accommodation.

The village market has also benefited from low interest rates and the large increases in residential real estate values, making sales of the family home financially significant. This enhanced windfall by many retirees has made affording the village lifestyle easier. Higher interest rates and a deflated residential property market will likely affect demand for retirement villages while people hold onto their houses in the short to medium term 🏡

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**The village market has also benefited from low interest rates and the large increases in residential real estate values, making sales of the family home financially significant.**

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# Same but different **THE RIGHT PERSON FOR THE RIGHT JOB**

MARVIN CLOUGH

In a world of constant change and greater scrutiny it is important to understand the role of the professional in the wider property industry. In particular, while the term Registered Valuer is widely recognised throughout New Zealand, there is another important role of the Registered Plant & Machinery Valuer working across infrastructure, plant and equipment. These professionals are protecting the valuation profession and the interests of the public and private sectors.



## Registered Valuers vs Registered P&M Valuers

Registered Valuers ensure the quality of the valuation, the credibility of valuers and provide an accurate and consistent application of international and local standards. They are legislated by the Valuers Act 1948 and governed by the Valuers Registration Board. Registered Valuers must undertake Continuing Professional Development (CPD) to ensure they are up to date with best practice and are acting fairly and ethically.

Likewise, Registered P&M Valuers ensure the quality of the valuation, the credibility of valuers and provide an accurate and consistent application of international and local standards. While there is no Act of Parliament, Registered P&M Valuers are governed by PMVI Council and run a three-year system to reach registration through CPD, reports, exams and interviews.

Ultimately, we are experts in our field, and it is important to be using the right professional for the job.

Registered Valuers (whether property or plant) have the knowledge and understanding that no two properties/assets are the same. Hence, why there are many factors and inputs to consider when assessing a value on any asset. None of the factors can be 'computerised completely' without human interaction from a skilled registered professional, which is why you should choose a registered professional experienced in the asset they are valuing.

## Why is it important to use Registered P&M Valuers?

Registered P&M Valuers are recognised in New Zealand and have authority when assessing the value of infrastructure, plant and equipment. Upon being registered, you must adhere to ethical standards and apply due consideration during the valuation of assets. The registration is regarded highly in the industry, and by using a valuer with these skills it means you are receiving an accurate representation of the value of your assets.

Another major responsibility we uphold is ensuring market participants are informed about any movements in the market or other disruptions they should be aware of. Registered P&M Valuers follow best practice standards that cement the outcomes they conclude.





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**Registered P&M Valuers are recognised in New Zealand and have authority when assessing the value of infrastructure, plant and equipment.**

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### **Audit requirements are comprehensive**

Another big moving part is the audit requirements that are ultimately becoming much more comprehensive. Choosing a Registered P&M Valuer to approach the value of your assets means ensuring compliance and an understanding of potential audit issues. We have audit processes in place to show we are acting in accordance with the relevant standards while protecting the profession.

Registered P&M Valuers can use extensive evidence of factors to come to their solution, and professional judgement also comes into play when reaching the outcome. The professional judgement comes from experience and understanding market trends, as well as collaboration with colleagues to assess a fair representation of an asset's value.

A Registered P&M Valuer deals with the audit process regularly, so they understand the best way to tackle the process and achieve an appropriate outcome for the client.

### **Industry regulation**

It is important to use a valuer who is registered due to the extensive regulation they adhere to, as well as the integrity and ethical approach they employ when valuing an asset.

For a Registered P&M Valuer to provide a valuation they must stay up to date in the market and analyse trends, market changes and any major events that influence a fair representation of any asset. This provides confidence that the valuer is acting professionally and impartially throughout the valuation process.



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## Plant and property valuers adhere to the same international and local valuations standards, although their skills and experience based on the asset being valued are very different.

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Registration is renewed annually after regular training and CPD requirements. If there are any concerns about the valuation process the client can contact the regulatory body to discuss the industry expectations.

### The way the industry is going

Now more than ever there is opportunity for new professionals to enter the market and prepare for the future of valuation. It is great to see the increasing use of innovative technology that is available, which allows professionals to focus on the result for the client. The way we conduct valuations is changing for the better. Various inputs that were once manual have now become automated, which allows more room for critical thinking and focus on the advice being presented to clients, ultimately making assets work better for business.

If you are not using a Registered P&M Valuer when needing professional services governed by industry standards, then you run the risk of not receiving quality advice that meets the required valuation standards.

In summary, plant and property valuers adhere to the same international and local valuations standards, although their skills and experience based on the asset being valued are very different.

The experiences and opportunities during a career in complex asset valuations are a highlight for me – I can't wait to see what the future of valuation holds.

### Acknowledgement

I acknowledge the assistance of Lillie Cripps, Assistant Valuer in writing this article 



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DAVID NAGEL

# 2022

## THE MOST UNFAMILIAR OF FAMILIAR PROPERTY CYCLES

## Unprecedented changes

I'm a homeowner and I have a mortgage. I have two adult children who both have ambitions of owning their own homes. In the week of writing this article (late October), the latest inflation data was released showing a surprisingly high 2.2% consumer price increase for the September quarter, which takes the annual inflation rate to 7.2%. Only a whisker below its previous level at 7.3% which was a 32 year high. I'm worried.

I've been valuing property in New Zealand for over 35 years, but I've never experienced a market like this. Sure, we've had cycles upon cycles of price gains and corrections. That's nothing new. But this latest property cycle seems a bit different. And that's what makes it so difficult to predict what might happen next.

## Home value reductions

QV's latest House Price Index (known as HPI) data shows that home values have slipped by an average of 2.1% nationwide in the 12 months to the end of September 2022. It's the first annual home value reduction since June 2011, and marks nine straight months of declining home values nationally.

The average home decreased in value by 5.4% nationally over the past three-month period to the end of September, just 0.1% better than the rate of quarterly decline reported at the end of August, with the national average value now sitting at \$956,592. That figure is 9.2% lower than at the start of this calendar year.

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## I've been valuing property in New Zealand for over 35 years, but I've never experienced a market like this.

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The Reserve Bank's decision in October to raise the Official Cash Rate (OCR) by another 50 points all but ensures that the path we're on will continue for the foreseeable future. Interest rate rises, credit constraints, the increasing cost of living – it's a sure-fire recipe for declining home values. Plus there's still new houses coming onto the market up and down the country, putting further downward pressure on prices almost everywhere.

This will be worrying news for people looking to sell their homes, as well as those who purchased at the peak of the market now concerned about negative equity. The exceptional house price increases throughout 2020 and 2021 have impacted affordability and impeded access to the property market for most New Zealanders. This market correction, as painful as it is for some, will hopefully afford others an opportunity to get into the market in the future. Though it's still very tough out there for prospective first-home buyers, they're now gaining the upper hand when it comes to negotiations.

## Will the market bottom out?

But how low will it go? When will the market bottom out and when will we see house prices start rising again? These are questions I get asked during every media interview. It's hard because your predictions are retained on the internet forever as a record of your failings!

The best way to look forward is first to look back. If we look back over the last 15 years (see **Figure 1**), which of course encompasses the market just prior to the Global Financial Crisis (GFC), then we can see a market behaving in a generally orderly fashion. Gradual, sustainable value growth leading up to the GFC, a relatively soft landing post-GFC, followed by a long period of market consolidation between mid-2009 to 2012.

But then, as is usual after a lull in the market, values began to rise in late 2012. The increases were moderate at first and mainly confined to Auckland, but the rate of growth ramped up further between 2014 and 2016, before seemingly running out of gas until the middle of 2019. Late 2019 saw a further surge in value growth, before COVID-19 hit us in early 2020!

It is exciting, but extremely daunting being a media commentator during a pandemic. I recall one headline early on where I was quoted as saying, 'House Prices Teetering On The Edge Of A Cliff'. My colleagues

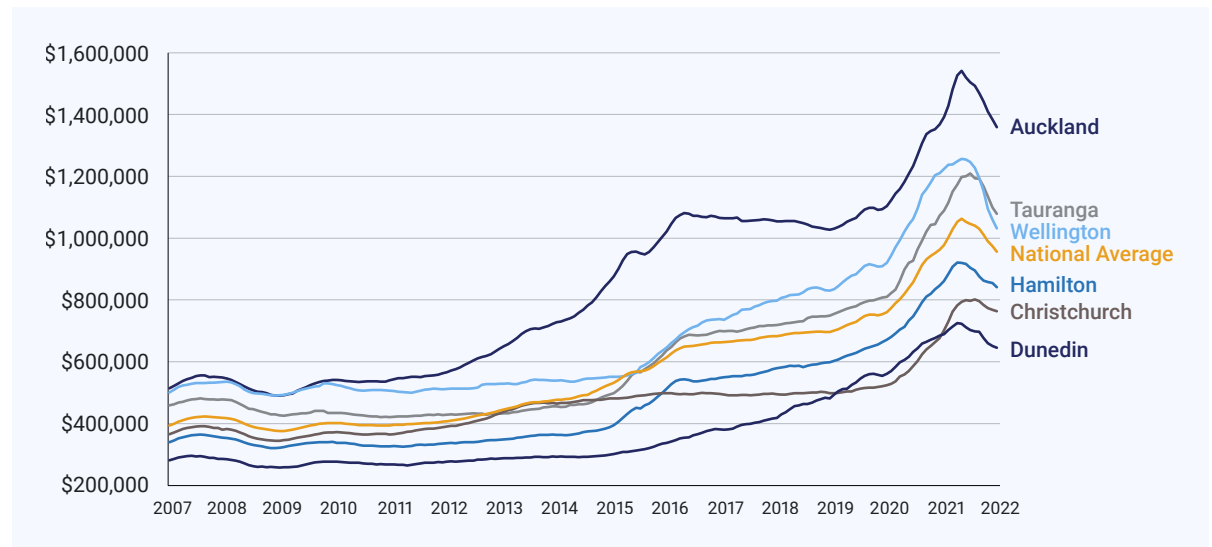


Figure 1: New Zealand average HPI 2007-2022

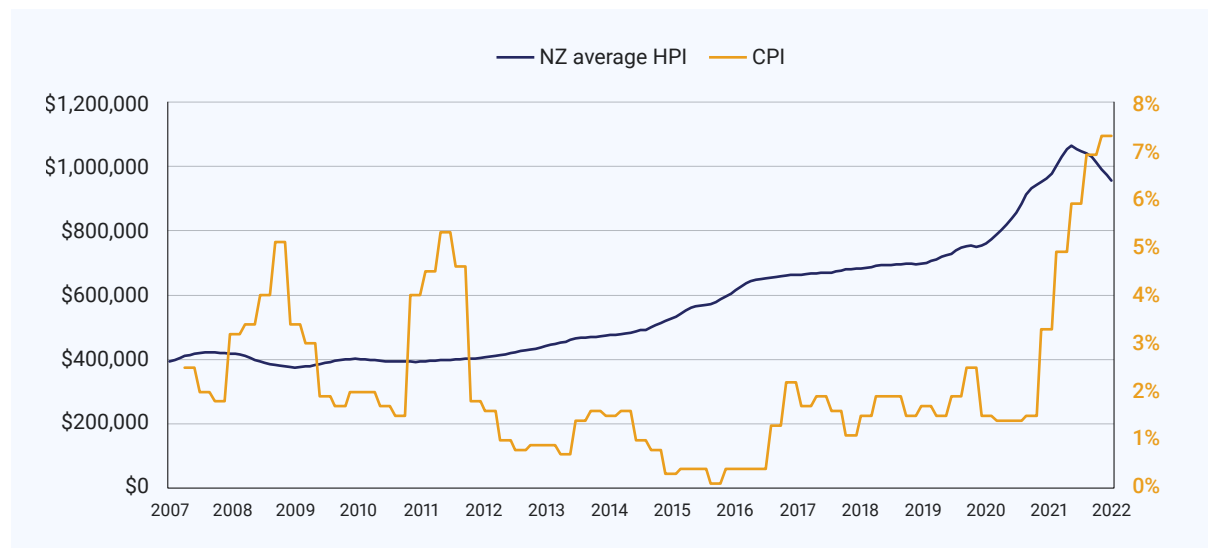


Figure 2: New Zealand average HPI vs CPI (Consumer Price Index)



will never let me live that comment down, as house values rose at a rate never seen before, with some hitting annual growth rates in excess of 30% p.a.

This was unfamiliar territory for all of us. Buyers and sellers were confused, which created uncertainty for the financial sector, the real estate industry and valuers alike. How could agents present a property during a lockdown? How could buyers select a property without viewing it in person? And, ultimately, how could a bank lend on a property if a valuer couldn't get inside to value it? Without sales transactions we would be valuing blind. But New Zealanders were quick to innovate. The Valuers Institute quickly took a leadership role in providing us guidance and eventually new standards were introduced to assist us when valuing in uncertain times.

The market went gangbusters. A range of irritating new terms were introduced to media channels such as FOMO (Fear Of Missing Out), which was later followed by FOOP (Fear Of Over-Paying) after the market peaked. Then it became all about picking the trough.

## Inflation

The key to predicting what will happen next is to analyse the key market levers that have impacted the market cycles previously. So let's look at those and overlay them to the market since the GFC.

First, let's look at inflation (see **Figure 2**). It was understandably pretty lumpy post-GFC, rising from 1.8% late in September 2007 up to 5.1% just a year later, largely as a result of rising oil prices. Sound familiar? But it was quickly brought under control, falling back to 1.7% by September 2009. That was followed by New Zealanders

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**With the latest inflationary data, it seems the OCR could easily exceed 4.5% by early next year, climbing to as high as 5%.**

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facing what was 21-year high inflation in 2011 as rising transport and food prices combined with an increase in GST pushed annual inflation to 5.3%.

Interestingly, house prices were pretty steady throughout this period, despite rapid spikes and troughs in inflation. But house prices gradually began to rise again after 2012 while New Zealand enjoyed a period of nearly 10 years of inflation staying within the 1-3% Reserve Bank of New Zealand (RBNZ) target. Rapid rises in house prices occurred with the onset of COVID-19 as inflationary pressures from supply chain disruptions, coupled with New Zealand's quantitative easing packages to help stimulate the economy, took effect. So this was a somewhat artificial economic environment of high inflation that created the buying frenzy of 2020-2021 that led to the latest house value spike.

Inflation appears to be a bigger challenge than we first thought. With the war in Ukraine, and supply chain disruptions from China's zero-COVID-19 policy continuing throughout 2023, there's no end in

sight for significantly improved inflationary data until well into next year.

The OCR is one of the principal tools used by the RBNZ to influence inflation. This obviously flows through to mortgage interest rates, which impacts affordability for those requiring funds to purchase property. At the time of the GFC, the OCR was 8.25%, well above the 1985-2022 average benchmark of 6.8% (see **Figure 3**). It fell dramatically in the months following the GFC as the RBNZ tried to stimulate a struggling economy. The relatively high level of interest rates before the downturn meant that deep cuts were possible. The RBNZ was able to cut the OCR by 575 basis points between July 2008 and April 2009.

The OCR remained relatively stable through to early 2020 when, with the onset of the pandemic, the OCR was repeatedly reduced down to an unprecedented 0.25%, and it is no surprise that a material reduction in the cost of borrowing had a significant impact on the housing market. Subsequent increases have led to the converse effects, signalling the importance of interest rates on the housing market. With the latest inflationary data, it seems the OCR could easily exceed 4.5% by early next year, climbing to as high as 5%.

This creates major concerns for homeowners, particularly those who bought close to peak and have

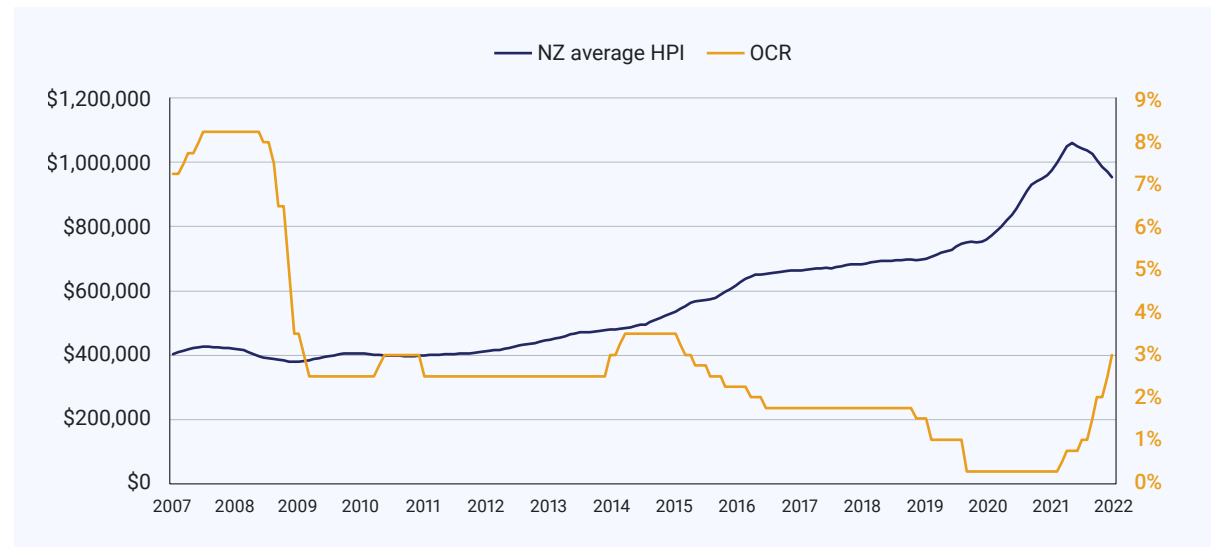


Figure 3: New Zealand average HPI vs OCR

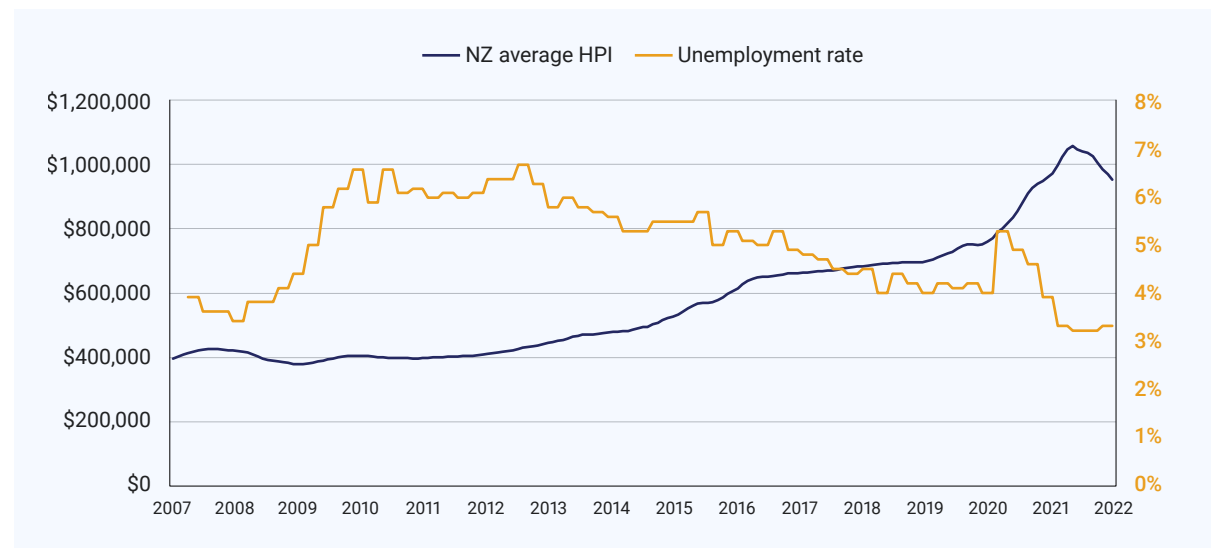


Figure 4: New Zealand average HPI vs unemployment rate

fixed-term mortgages coming up for review. Higher interest costs, coupled with other cost of living increases, will inevitably create real-life challenges for some New Zealanders.

Inflation tends to hurt those who are most vulnerable and least able to tolerate increased prices in the economy, which includes people who are on low or fixed incomes. For them, the near future will present daunting challenges, regardless of inflation being short term or long term.

Fortunately almost all New Zealanders are currently employed, meaning that bank default rates are not expected to climb considerably in the short to medium term, which is a major variation from what we saw after the GFC (see **Figure 4**). New Zealand's economy was seriously impacted as a result of the GFC, with unemployment jumping from 3.6% at the end of 2007 to 6.1% by the end of 2010, and with rates remaining close to 6% through to 2013. The effects for younger adults were worse. As a consequence, we saw transactions occurring under duress and this created downward pressure on house prices.

Unemployment is forecast to remain at the current low levels throughout 2023, as the now open borders gradually provide for the additional labour resources our economy desperately needs.

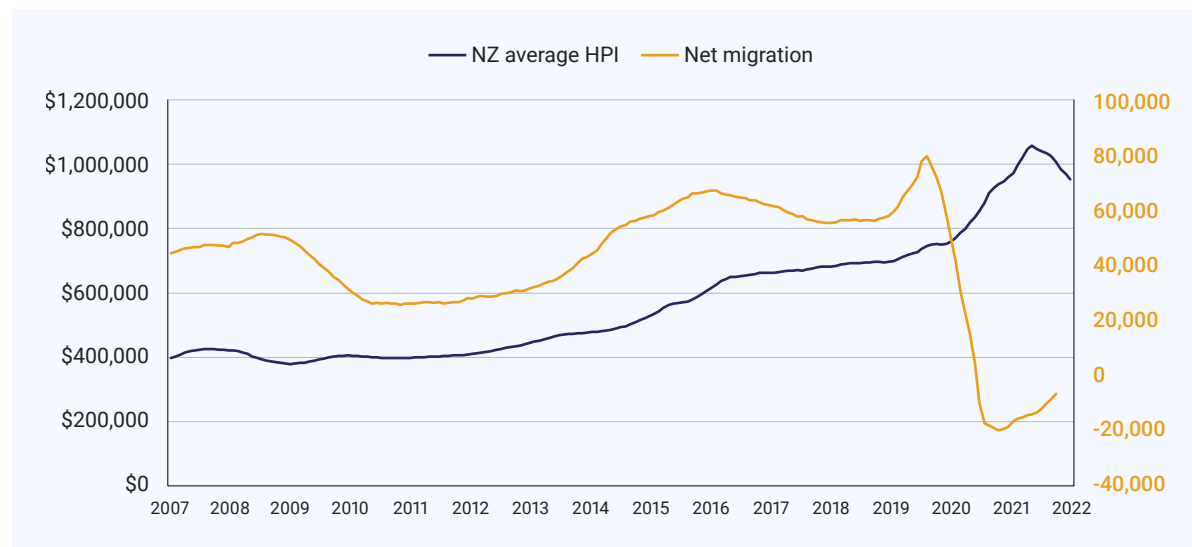


Figure 5: New Zealand average HPI vs net migration

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**Unemployment is forecast to remain at the current low levels throughout 2023, as the now open borders gradually provide for the additional labour resources our economy desperately needs.**

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## Net migration

That leads us to the final (but very important) key to the puzzle, being net migration. We can see from the graph the clear relationship between strong migration data and value growth (see **Figure 5**). This is particularly strong when comparing Auckland value growth where the rise in property values between 2014 and 2016 corresponds to a steep climb in net migration numbers. The Auckland property market then experienced a correction when migration numbers contracted following the 2017 general election, which saw a tightening in immigration policy.

So this data endorses the common perception that Auckland's housing market gains the most from strong migration policy. People coming into the country need somewhere to live, regardless of whether they buy or rent, and it contributes to housing demand which pushes up prices. That said, it's been a long time since we saw 'housing shortage' headlines in the news media. Housing demand had eased as population growth hit its lowest rate last year since the 1980s. But it's also a double whammy as the acute shortage of workers is putting upward pressure on labour costs, contributing to inflation.

Net migration fell into dangerous negative territory last year, and while borders are now open significant outflows of our young people mean we still have more people leaving than coming in. 2023 will likely see this statistic continue to recover, taking net migration into positive territory for the first time since September 2020 and providing the market with some desperately needed oxygen.





## Looking ahead to 2023

It's likely that inflation will continue to be a thorn in the side of the RBNZ, meaning interest rates will rise further throughout early 2023 before peaking and settling later in the year. Job security will thankfully remain strong, with close to full employment throughout 2023, and with new migrants and returning Kiwis feeding an economy desperate for workers.

Add to this the gradual recovery of the tourism sector, and we will likely see a property market that will bottom out within the first two quarters of 2023. But what will follow will be a short period of stagnation, far shorter than post-GFC, before normal transmission resumes and the market gets back to some sustainable growth of between 5-10% p.a. There are a multitude of other drivers that impact the housing market, but limitations of time and space prevent me

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## We will likely see a property market that will bottom out within the first two quarters of 2023.

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from covering all of them. Essentially, anything that impacts supply or demand of goods will have a flow-on impact on prices. Housing supply has been barely mentioned, except to say we no longer have a dire shortage, but an abundance of pipeline developments will certainly have an impact.

But things can change so quickly. And what if the Ukraine war was to resolve itself in the next few months or the supply chain problems disappeared? The challenges New Zealand is facing are not dissimilar to those around the world. As I write this, I'm reading about Liz Truss' resignation overnight following what could only be described as economic policy suicide over the last six weeks.

There are a lot of moving parts to this puzzle and more uncertainty than is usual for the property market. So any predictions must come with a thousand caveats! 🤖



David Nagel has recently been appointed Chief Operating Officer at QV. He is a Registered Valuer and Associate Member of the NZIV. He has been valuing property for over 35 years and is currently media spokesperson at QV. [david.nagel@qv.co.nz](mailto:david.nagel@qv.co.nz)



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# ENCUMBRANCES AND LAND COVENANTS

Buyer beware –  
read and understand  
the requirements

NATALIE WILSON  
& NICK WILSON





Encumbrances and land covenants are means by which a third party can create limitations and restrictions on how a parcel of land is dealt with. Covenants contained within either of these instruments can be extensive and sometimes impose onerous obligations, but despite this are often overlooked.

It is vital that purchasers and landowners understand the full effect of these instruments when dealing with land (whether it be by transfer, subdivision or works on the land) as the obligations may complicate financing, settlement or delay the completion of works if identified too late.

This article explains the operation of encumbrances and land covenants and when these instruments are commonly used. It also discusses common pitfalls that arise from failing to understand the terms of an encumbrance or land covenant that is registered against land.

## **Recap: What are encumbrances and land covenants?**

Encumbrances and land covenants are each instruments that can be registered on a parcel of land's record of title, setting out the covenants which a landowner must abide by when dealing with the burdened land. The owner of the land to be burdened by an encumbrance or land covenant must consent to their registration on their title, but once registered all future owners of the land will be bound to the terms of the encumbrance or land covenant.

Land covenants have been traditionally used where covenants are made in favour of surrounding parcels of land, whereas encumbrances are used in circumstances where covenants are made for the benefit of a third party (referred to as 'in gross'). These instruments typically do not 'expire' unless an end date is written into the terms of the instrument, and will (where subdivision occurs) automatically 'drop down' onto new titles that issue from the land they were first registered against.

## **Land covenants and covenants in gross**

Up until the Land Transfer Act 2017 (LTA 2017), land covenants had to be in favour of nearby parcels of land and were not able to be lawfully granted 'in gross' (in favour of an individual or entity). As a result of section 242 of the LTA 2017, land covenants can now also be 'in gross' (i.e. for the benefit of a third party rather than the benefit of neighbouring land).

The change in law to allow land covenants in gross was established as a result of a 2010 Law Commission report, which



recommended that encumbrances should no longer be permitted to secure collateral covenants in gross, with the intention of covenants in gross replacing the creation and use of encumbrances.

The uptake of covenants in gross by the legal profession has been mixed to date, with many solicitors disliking the lack of established case law relating to covenants in gross, instead preferring the legal certainty that comes with using encumbrances. To date, the LTA 2017 does not expressly prohibit the use of encumbrances.

Land covenants or covenants in gross are commonly used in the following situations:

- On subdivisions to ensure properties are developed and maintained to a high standard and not further subdivided
- Where a new residents association is created to record obligations of residents and set fees to be paid to the association for the maintenance of common areas
- On newly subdivided lots to prevent objections to works by other purchasers, commonly known in the industry as a 'no-objections' covenant.

Historically, land covenants were not often recorded on the title of the benefiting land, resulting in landowners often being unaware their land benefited from a land covenant. This practice has now changed to require a land covenant to be registered on both the burdened and benefiting titles, better allowing benefiting landowners to be aware of and enforce their rights.

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## Encumbrances

Encumbrances are a type of instrument (formerly referred to as a memorandum of encumbrance), by which a charge is registered against a property's record of title creating a security interest over the property in favour of a third party for the performance of an obligation. They include the concept of a 'rent charge' to secure the obligation, with the rent charge not being payable if the obligations in the encumbrance are complied with. Under the previous Land Transfer Act an encumbrance was expressly considered to be a mortgage.

The use for an encumbrance has been expanded over time and is now most commonly used to secure and record covenants for the benefit of a third party (i.e. gross) where the covenants do not benefit any nearby land. With the introduction of covenants in gross for this same purpose, some argue encumbrances should no longer be used.

Encumbrances are typically used to record obligations of a landowner in favour of a separate third party, such as:

- To local authorities to record resource consents, obligations or other agreements pertaining to the burdened land; or
- By binding franchisees, and the land which they operate on, to the commercial obligations they owe a franchiser.

## Current issues arising from encumbrances and land covenants

### A. Powers of sale and liquidated damages

Schedule 2 of the Property Law Act 2007 (PLA 2007) implies a power of sale into all encumbrances (unless expressly excluded within its terms), giving benefiting parties the right to sell the burdened land to recoup unpaid sums. However, it is most typical for the power to be excluded from an encumbrance to reflect that only a true mortgagee has the benefit of a power of sale. A land covenant can also establish a power of sale for the covenantor where expressly included, but to do so has (to date) been uncommon.

This practice appears to be changing. The banking industry has had growing concern about powers of sale now being expressly included in encumbrances and land covenants, for example, to allow residents associations to exercise a sale right when annual fees are unpaid. This is significant, as the encumbrance or land covenant will rank higher in priority to other mortgages where registration of the encumbrance pre-dates any mortgage on a title. It would also potentially allow the benefiting party to exercise their power without the mortgagee's consent.

The banking industry has pushed back on this trend due to the uncertainty the clause creates around a mortgagee's right to the land as security. It is therefore important that those registering an encumbrance or land covenant for the purpose of establishing a residents association, or similar, understand the potential impacts that registering an instrument with a power of sale may cause.

Most significant is the potential financial impact that a developer who has registered the instrument with a power of sale against all of their lots may experience. Banks will likely be reluctant to lend to potential purchasers of that developer's lots given another party already has a power of sale against the land which would rank above the bank's mortgage.

The Property Law Section advised in a recent bulletin:

*Lawyers acting for developer clients should discourage the use of these clauses, to protect the long-term health of the subdivision ... and to bear in mind the viewpoint of lenders and be commercially sensible when drafting such clauses.*

In a similar vein, the same considerations should be made when introducing a liquidated damages clause into a land covenant. This is because a liquidated damages clause can often be enforced by each party who benefits from the covenant. For instance, where a covenant is for the benefit of 10 different properties, all 10 landowners may potentially claim for liquidated damages against the covenantor who breached the covenant. Unsurprisingly, banks therefore see these clauses as a risk to a borrower's financial stability, reducing their willingness to approve lending or affecting the terms on which a mortgage is granted.

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**The banking industry has had growing concern about powers of sale now being expressly included in encumbrances and land covenants.**

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## B. Encumbrancee consent

Another point for purchasers and landowners to note is that an encumbrancee's consent will often be required when dealing with the land, and that consent can be burdensome to obtain and take time. It is not uncommon for encumbrances or covenants to stipulate a variety of situations where the consent of all benefiting parties must be obtained prior to dealing with the burdened land. Examples of this could be:

- Consent to register further instruments against the title of the burdened land
- Consent to any subdivision of the burdened land; or
- Consent to transfer of the burdened land.

It is also not uncommon for the time it takes to obtain consent to be underestimated, which in turn can lead to costly delays. Simply opting to remove the encumbrance instead of obtaining consent is not a simple Plan B either, as we will discuss later in the article. A review of all instruments on a title should be completed prior to commencing any dealings or works with land burdened by an encumbrance. This is to clearly understand the circumstances during which a benefiting party's consent may be required, and the required timeframe for obtaining the consent that needs to be taken into account.

On receiving a request for consent, an encumbrancee will often need time to review any new instruments or changes which are intended to occur to the land or title. This is to ensure they do not prejudice the encumbrancee's position, and they may treat the request

as an opportunity to ensure all other covenants of the encumbrance are being complied with. If external documents are associated with or required by the encumbrance, these may also need to be reviewed or prepared prior to consent being provided.

If consent is required, we recommend giving thought to the following points *prior* to seeking consent:

- Whether any fees payable under the encumbrance are paid
- Whether all the terms of the encumbrance have been complied with, including the review of external documents referred to in the encumbrance, such as a residents association's constitution; and
- Whether there will be other documents that may need to be signed in conjunction with obtaining consent, such as a purchaser entering into a Deed of Covenant to abide by a residents association's rules.

Following the above considerations will ensure an encumbrancer is in a strong position to request consent and reduce the likelihood of unforeseen delays arising when obtaining consent from the benefiting party.

## Can encumbrances and land covenants be removed?

Removal of an encumbrance or land covenant requires the consent of all benefiting parties and this can be a difficult and complex process. This is because often the benefiting persons can be difficult to trace due to the passage of time or (where the benefiting land has been subdivided) there can be a large number of benefiting parties whose consent would be required.

A court order may be sought for the removal of a covenant under section 317 of the PLA 2017, provided the court is persuaded that the circumstances render the covenant redundant or that the covenant should no longer apply. Simply opting to remove an encumbrance or land covenant rather than comply with it is not generally feasible.


### Know your obligations

Encumbrances and land covenants can impact and restrict how a parcel of land is dealt with, and are a useful tool to allow third parties to place limitations and restrictions on land to protect their interests. However, it remains important if registering these instruments to take a practical and balanced approach when deciding the covenants by which a landowner will be bound.

Purchasers will be more open to buying property subject to these instruments when they are used for legitimate purposes, such as establishing a residents association or preventing nearby landowners from objecting to or restricting development. However, as discussed in this article, restrictions that are unduly onerous or unreasonable, such as extensive powers of sale or excessive liquidated damages provisions, can have wide-reaching consequences which might reduce interest in the land when it comes to selling a burdened parcel.

We would recommend legal advice be obtained about the potential commercial or financial impacts the registration of any instrument may have before a covenant or encumbrance is registered, or before a property is purchased that is subject to a covenant or encumbrance, to ensure the requirements of these instruments are fully understood.

### Disclaimer

This article is only intended to provide general comments on the subject matter. Specialist advice should be sought about your specific circumstances 



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# NZIV MENTORING SUPPORT PROGRAMME

During the course of anyone's professional career, Valuers who become the subject of a formal complaint invariably experience a very stressful time. The main purpose of the Mentoring Support Programme is to assist such people. Any member of NZIV subject to a complaint may turn to the Institute's Mentor Panel to receive guidance and support. There are no costs involved in the provision of this service.



## Overview

It is important to note that this scheme operates in tandem with, but completely independent from, the NZIV Professional Conduct Committee (PCC). It provides confidential support for the Valuer, operating completely autonomously to any NZIV obligations that serve to protect the public.

While there is no specific legislative requirement enforcing NZIV to establish or operate a Mentoring Support Programme, its implementation nonetheless gives effect to the mandated functions of the Institute under section 9 of the Valuers Act 1948 with regard to the management of its affairs and the way it is required to conduct its business.

## Objective of the Programme

The NZIV Mentoring Support Programme has been designed to support those members finding themselves under complaint investigation. In this context, the extent (or lack) of merit relating to assertions being made under an investigation is not relevant.

In a nutshell, the Programme seeks to provide well-being support to Registered Valuers.

It should be borne in mind that the Programme does not seek to condone misconduct of NZIV members, nor pursue abdication of professional or client responsibilities, or professional competencies – particularly those specified within the NZIV Code of Ethics. In contrast, the Mentoring Programme's goal is to help members cope with the inevitable stresses that the complaints process invokes.

## The mentor's role

Primarily, the mentor's role is to provide a sounding board for the Valuer. This includes providing a 'reality check' to establish the level of substance involved in each situation, or otherwise determine if the circumstances warrant progression in an alternate way.

The mentor is likely to act as a role model for the mentee and, as such, they may sometimes find themselves in a 'coaching' position – either informally or otherwise.

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**The Mentoring Programme's goal is to help members cope with the inevitable stresses that the complaints process invokes.**

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## Who are the mentors?

Mentors are appointed in the first instance to a Panel by the NZIV President. Selection criteria are largely based on identifying those persons who have demonstrated their capacity to operate with patience, empathy and discretion. They need to be:

- Highly respected and experienced in valuation
- Have a good understanding of the Complaints and Concerns processes and will ideally have had personal experience or involvement in these
- Have a sound working knowledge of the NZIV Code of Ethics
- Possess a detailed knowledge of Valuers Registration Board (VRB) procedures for handling complaints
- Need to be an active listener, capable of analysing situations that pave the way for the delivery of tailored advice
- Able to provide practicable suggestions, such as having the Valuer inform their insurer or obtain legal counsel, or identify those areas having regard to the technical aspects of the matter to hand.

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## Confidentiality is an absolute priority for anyone involved.

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## How the Programme works

The mentor's involvement starts after a formal complaint is made, with the process typically proceeding as follows:

1. In the first instance, Valuers contact the NZIV President.
2. The President can then subsequently assign a Mentor Support person from the Panel (that's where the President's involvement ends). The mentor selected is one assessed as being someone most likely to be empathetic with the complainant. A process of streaming counselling towards the most appropriate mentor is employed (e.g. Rural Valuers being ideally directed towards a rural-based/empathetic mentor).
3. Rather than arranging their selection through the President, alternatively the Valuer can directly approach the mentor themselves according to their preferences without any need to contact the President in the first instance.
4. The support person commences their involvement.

The NZIV General Secretary provides administrative support, acting independently from organisational governance roles including, for example, the PCC Chair and the NZIV President. Reporting back to the NZIV Council is completed strictly on a non-disclosure basis (i.e. just 'bare numbers' and not disclosure of individuals or their details).

Confidentiality is an absolute priority for anyone involved. While a mentor may make notes of particular discussions, they are not required to maintain a file. This ensures the robustness of the process, noting that in any event a mentor's guidance is unlikely to be relevant to any specific charge that may be laid in the complaints process. This

level of confidentiality avoids the mentor being called as a witness in the complaints process, noting that it is not likely to be legally privileged unless routed through the Valuer's legal team.

### **Communication is key – in all circumstances**

As an initial first step, potential complainants (typically members of the public) are usually encouraged by the NZIV where possible to raise any issue directly with the Registered Valuer concerned. The purpose here is to seek resolution before escalating towards a more formal complaints or disciplinary process.

It is important to note that the Registered Valuer is able to seek access to a mentor from the Panel at any time, including in this early phase.

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**Reporting back to the NZIV Council is completed strictly on a non-disclosure basis (i.e. just 'bare numbers' and not disclosure of individuals or their details).**

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# MENTOR PROFILES ▶





# Robyn Davis

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Robyn considers that she may possibly be regarded as an original member of the NZIV 'old girls' network, having gained her registration as a Property Valuer in 1986. Academically she obtained her BBS (VPM) from Massey, Palmerston North and also holds a Post Graduate Diploma in Teaching (Primary).

Robyn's professional experience in the valuation of residential property has extended from her initial training as a Bursar with the Government Valuation Department in the early 1980s through to travelling abroad and holding the position of Principal Valuer – Residential for a London Local Authority. For the last 12 years or so she has worked in the Auckland residential property market and currently contracts to an Auckland-based private practice.

Personally, Robyn not only identifies as being a Registered Valuer but also a spouse, mother, sister, business owner/operator, motelier, small-time property developer, traveller, adventurer and fisherman. While Robyn considers that she's had her share of life experiences, she is also well aware that

to become 'old and wise' one must also have once been 'young and stupid'!

In a nutshell, people are Robyn's passion, and communication, education and integrity her values.

Robyn sees her role as a mentor within the NZIV Mentoring Support Programme as primarily being able to provide one-on-one support and guidance throughout the complaints process as an unbiased confidante and sounding board. She has personally experienced the range of emotions that come from having a disgruntled client lodge a formal complaint against her with the VRB. From this experience, she has learned the importance of surrounding oneself with a trusted support network.

When one's professional status and integrity is at risk, having a peer who has experienced the process, has the technical understanding and is able to provide holistic support, is a resource certainly worth tapping into. 'Please do' is her message to any Valuer out there who find themselves in this somewhat difficult and unwelcome position.



# Michael Sprague

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Michael graduated from the University of Auckland with a Diploma in Valuation in 1976. He has been a Registered Valuer since February 1977, an Associate of NZIV since 1988, and a Fellow of the NZIV and the Property Institute of New Zealand (PINZ) also since 1998. Previously Chairman of the Auckland Branch Committee of NZIV, Michael was a member of the National Council and NZIV representing Auckland and Northland for the four years preceding 2016.

Since 2011, Michael has appeared as an Expert Witness in proceedings in the Family, District and High Courts, the Land Valuation Tribunal, the Weathertight Homes Tribunal and before the VRB. It is noteworthy that on leaving Auckland Grammar School, Michael studied accountancy for three years before concluding that the accountancy profession was not for him. Having travelled overseas for three years, on his return he attended the School of Architecture, then went on to university to study valuation.

Michael considers himself to be something of a general practitioner these days; primarily in commercial, industrial and

high-end residential. He has had considerable involvement as an Expert Witness in various matters, particularly VRB proceedings which he finds interesting. The latter incidentally played a small part in deciding that a mentoring role would be important as a service provided by the NZIV, particularly to Valuers involved in proceedings against them.

Michael has been married to Angela 'for 40-odd years', and has three children, four grandchildren, a dog and two boats (Seabird and Seahorse). He also has a holiday home on Kawau Island, which he considers that he does not spend nearly enough time at.

Michael believes that working at Gribble Churton Taylor alongside men such as Iain Gribble, Matt Taylor, Richard Lawson and Pat Foote provides a great example in terms of service to the Institute. As a result, Michael has endeavoured to continue in this tradition throughout his professional career.

In a wider sense, Michael has involvement in the Big Buddy Programme. He has been mentoring a young fellow from his age of 11 through to now 22, which for him has been a very satisfying experience.



# Peter Loveridge

FNZIV, FPINZ

## Registered Valuer

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Peter is a proud Rural Valuer and is very well known professionally throughout the industry.

He has worked in the Manawatu for over 39 years and still enjoys valuing rural property. An ex-Director of TelferYoung (Manawatu) Limited, Peter now finds himself an employee of CBRE and is integrally involved in valuing, training and office management duties.

Apart from rural valuation, Peter specialises in asset valuation, reporting to Māori owners, and conducting compensation assessments and easement valuations for national power companies and local authorities.

Graduating with a Bachelor of Commerce in Valuation and Property Management from Lincoln University in 1982, he enjoyed a number of positions until joining Blackmore & Associates Limited as Director in 1999. Prior to joining there, he worked with the Valuation Department and Trust Bank Central (before it was taken over by Westpac).

Aside from holding Fellowships with the New Zealand Institute of Valuers (FNZIV) and the Property Institute of New Zealand

(FPINZ), Peter is a Trustee of Valuers Education & Integrity Foundation (VEIF).

Peter has a long history of various governance roles for the NZIV, including being formerly a member of the NZIV Council and Past President in 2015-2016.

Peter lives in Palmerston North, but his professional activities are quite widespread, primarily covering the lower North Island (e.g. Manawatu Rangitikei, Horowhenua, Taranaki and Wairarapa regions).

Peter describes himself as both a family man – and an ‘empty nester’ with his wife of 35+ years – Lyn. Together they have four adult children (three of whom dwell in Tāmaki Makaurau), along with three grandchildren. As an avid All Blacks and Black Caps supporter, Peter is a bit of a rugby/ cricket fanatic, a former tennis player, a very average golfer and keen mountain biker. He also enjoys listening to music of all genres, but particularly likes Pink Floyd, Neil Young, the Eagles and George Michael. A passionate gardener, Peter is also interested in all aspects of Te Ao Māori, but in particular Te Reo Māori, waiata tawhito and kapa haka.





# Gwendoline Callaghan

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Gwendoline was born and educated in Wellington. After obtaining her Urban Professional Valuation Qualification in 1982 (receiving the Institute's prize for the student completing the practical and oral examination with the most merit that year), she became a Registered Valuer on 9 June 1983.

Nowadays, Gwendoline undertakes valuations mostly involving commercial, industrial and retail properties, being mortgage, acquisition and disposal valuations, as well as rent reviews and also development land of all types. Asset valuations also form part of the total compendium. While she works in the Wellington CBD, she lives in the Wairarapa and undertakes valuations primarily over the Wellington Regional Council area plus Manawatu. Occasionally, Gwendoline ventures further afield if required for special jobs.

Intermittently between 1983 and 1986, Gwendoline worked in London for Barclays Bank – enabling her to become thoroughly familiar with all types of leases over that time. As a result, lease documents and case law are a particular area of interest, as are education and training.

Gwendoline was awarded a Fellowship of the FNZIV and of the FPINZ in 1998 and a Fellowship of the Royal Institute of Chartered Surveyors (FRICS) in 2014. An active supporter and member of the Wellington branch, Gwendoline was first elected to the branch committee in 1987 and continued to serve as a committee member through to the end of the 1991-1992.

She has also enjoyed various industry governance roles, including the institute's Education Board in 1989 right through to 1995, and being involved on the PINZ National Education Committees (2003-2007) and the PINZ Valuers Act Review Group (2007-2009). She was a member of the VRB from 1994 to 2003. In 2016, Gwendoline was appointed Trustee of VEIF and has been a Member of the Land Valuation Tribunal since 2001.

Areas of interest outside property, which she shares with husband Simon, are an active involvement in the outdoors – especially fishing, deer hunting and trees. Gwendoline also has an interest in food as medicine and natural remedies, cooking and food, and art.



# Grant Utteridge

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Grant Utteridge is a Commercial Valuer. His valuation career dates back to 1981 when he graduated from Lincoln College with a Bachelor of Commerce in Valuation and Property Management.

Grant was initially employed by the then Valuation Department in the Rotorua office. In 1987, he then joined Reid and Reynolds Ltd (now TelferYoung (Rotorua) Limited and subsequently CBRE) and became a partner of the firm in 1989, retiring as a director in 2020. He continues to work for the firm, mostly in the Rotorua/Taupo regions, as a Commercial Valuer with a special emphasis on accommodation and tourism properties.

Grant has acted as an Expert Witness in a range of arbitrations, Family Court, District Court and High Court proceedings. He has also served on a working party on Māori land and has presented on the valuation of Māori land to the PINZ conference.

Previously a Branch Chair of the Rotorua/Taupo branch, Grant has been awarded his Fellowship with both NZIV and PINZ. He is also a current member of the Land Valuation Tribunal. This underpins his experience as an

Expert Witness in both courts and arbitrations, and as an umpire in valuation matters.

Grant has always been, and still is, a very active sportsman. Sport has been a huge part of his life and he is an active multi-sporter, cyclist, mountain biker, runner and swimmer. Alongside this, he has also been active in sports governance with various previous roles with Sport Bay of Plenty, Squash NZ and Bay of Plenty Cricket to name a few. He is the current Chair of the Rotorua Trails Trust.

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