

VALUERS REGISTRATION BOARD

IN THE MATTER OF an Inquiry under Section 32(2) of the Valuers Act 1948 (the Act)

AND

IN THE MATTER OF Charges under Section 31(1)(c) of the Act against **Valuer W**

BOARD OF INQUIRY: KR Taylor (Inquiry Chairperson)
H J Puketapu
P A Curnow

COUNSEL: S Carter for the Valuer General
M Francis for Valuer W

DATE OF HEARING: 15 February 2016

DATE OF ORAL DECISION: 15 February 2016

DATE OF WRITTEN DECISION: 31 March 2017

THE COMPLAINT

The Valuers Registration Board ("Board") received a letter of complaint from the complainant on 13 September 2013. The complaint alleged gross under valuation of a property.

The matter was investigated by the Valuer General who reported to the Board on 17 October 2014. On consideration of the investigation report, the Board determined under Section 32(2) of the Valuers Act 1948 that there were no reasonable grounds not to hold an inquiry.

THE CHARGE

Section 31(1)(c) of the Valuers Act 1948:

That you have been guilty of such incompetent conduct in the performance of your duties as a valuer as renders you liable to a penalty provided by the Valuers Act 1948 **in that** in compiling a report dated 28 May 2013 with respect to a property you grossly under-valued the said property.

Valuer W denied the charge.

BACKGROUND

The property comprises two adjoining retail units and an upstairs apartment situated on a 334m² site on the main street of a coastal town. At the date of valuation, it is understood that the Eastern unit was vacant and the Western unit was rented as a takeaways outlet. The apartment was also rented.

Valuer W provided a valuation of \$385,000 plus GST if any (Land Value \$200,000). The complainant, provided a valuation by Valuer 1 who valued the property at \$535,000 plus GST if payable (Land Value \$250,000). The Valuer General obtained a retrospective valuation from Valuer 2 who valued the property at \$590,000 plus GST if any. Valuer W's valuation is 28.04% below that of Valuer 1's and 34.75% below that of Valuer 2's

EVIDENCE FOR THE VALUER GENERAL

The Valuer General called two witnesses, both of whom are Registered Valuers. Valuer 1 who had provided a valuation for the complainant and had inspected the property the day following Valuer W, and Valuer 2 who completed a retrospective valuation for the Valuer General and had inspected the property in June 2014 some 13 months after Valuer 2.

Valuer 1

Valuer 1 advised that he had 48 years' experience as a valuer including 23 years specialising in commercial and industrial valuation based out of the subject region. He stated that he had practiced in most of the small boroughs in the region.

Valuer 1 spoke to his valuation report and noted that he had relied on a "Capitalisation of Income" method to the valuation. He advised that while it is accepted practice to use more than one approach, he regarded a "Depreciated Building Cost plus Land Value" method to be a check method only.

Valuer 1 advised that the rental stream available is the most relevant factor in determining the market value of this type of property. He noted that at the date of inspection the property was

subject to one Deed of Lease for the western takeaway shop. The eastern retail tenancy was vacant and the first floor residential flat was let on a weekly basis. He confirmed that he had perused the original Lease document for the takeaway shop and concluded that the gross rental was \$19,890 per annum including GST. He then ascertained the operating expenses which were split 50/50 between the landlord and tenant. From this the net rental of \$14,181.52 per annum plus GST was derived. He broke this down to the toilet-freezer area of 12.18m² at \$80/m² per annum and the rentable main area of 49.44m² at \$267.13m² per annum.

In order to determine a current market rental for the vacant eastern retail tenancy (and indeed to check the existing net lease rental for the western takeaway shop) Valuer 1 investigated the available rental evidence which had been set in recent times in the subject township. He noted that this information was somewhat limited. Key evidence included:

Property 1 analysed as a retail area of 95m² at a net rate of \$339.47/m² per annum and a workshop area of 77m² let at \$152.60/m² per annum. He noted that these premises are just to the west of the subject, and have a wide frontage and therefore in his opinion were of a better shape and quality.

Property 2 analysed as a retail area of 60m² at a net rental of \$275.46/m² per annum. He noted that this was a new lease for older type premises with a splayed relatively narrow frontage adjoining the subject on its eastern side with a suspended panel ceiling. Subsequently this tenancy under a renamed business has been amalgamated with the adjoining shop. Valuer 1 adjusted this rental for comparison of the subject vacant space to \$247.91/m² per annum by a reduction of 10% for step up access.

Property 3 analysed as a retail area of 78m² at a net rental of \$217/m² per annum. Valuer 1 made adjustments to this rental by reducing it for the step up access to the subject but increasing it for location because its location is a secondary street. He also made a size adjustment. This provided an indicated rate for the subject of \$239.75/m² per annum.

Property 4 analysed to a retail area of 130m² at net rental of \$307.69/m² per annum. Valuer 1 made adjustments to compare with the subject vacant space being less for step up and size but more for a better location indicating a rate for the subject property of \$276.92/m² per annum.

Property 5 analysed as 80.19m² at a net rental of \$293.68/m² per annum. Adjustments made in comparison to the subject balanced each other.

Property 6 analysed as a retail area of 72m² (adjusted from 86m² during the hearing) at \$268.54/m² per annum and with the adjustments \$295.40/m² per annum. Valuer 1 advised that he considered the most relevant new lease rental closest to the date of valuation was for Property 1, therefore, having particular regard to this he adopted a current market rental rate for the subject vacant eastern tenancy retail rentable area at \$300 per metre squared per annum net inclusive of car parking plus a nominal rental rate of \$80 per metre squared per annum net for the toilet rentable area.

After having considered the available retail rental evidence, Valuer 1 opined the existing net lease rental for the takeaway shop was fair and reasonable.

He confirmed that the first floor, two bedroom residential flat is presently let at \$220 per week. His investigations ascertained that stand alone, 2 bedroom residential accommodation in the subject township at the operative date was let in the vicinity of \$250 to \$260 per week. He noted a lack of directly comparable residential rental evidence to the subject first floor accommodation and accepted that the present rental level of \$220 per week was realistic and should be adopted. In considering the overall net income that is to come from the residential flat he treated this cash flow on the basis of 50 weeks to allow for a vacancy factor and deducted estimated operating expenses of \$1000 that included an arbitrary estimate for the share of local body rates and insurance premium payable by the landlord in terms of the existing western tenancy being responsible for 50% of the total operating expenses at least for approximately 4 years. This indicated an annual net rental of \$10,000 as being achievable from the subject residential flat.

Valuer 1 advised that having ascertained the rental stream available from the property it was then necessary to consider the capitalisation rates which should be applied. In this regard he notes a lack of relevant market information in the subject township to use as a basis from which to determine his capitalisation rate. He therefore considered sales from other Boroughs in the subject region. These sales indicated a wide capitalisation rate range from 5% to 9.5% depending upon the quality of property, its location and tenant plus the remaining term of the lease.

Having particular regard to these factors weighed against its elongated shape and older type of building, Valuer 1 opined that the western tenancy present net lease rental should be capitalised at 7.5%, the vacant eastern retail tenancy a higher capitalisation rate of 9.5% should be adopted to take into account the risk factor in obtaining a suitable viable tenant and a capitalisation rate of 6% for the residential tenancy reflecting a relatively lower risk factor.

Valuer 1 valued the property at \$535,000 which was assessed using a net cash flow of \$41,372 capitalised at an average rate of 7.73%. He adopted the Land Value (\$250,000) from the Rating Valuation as he did not consider there to be any directly comparable commercially zoned land sales evidence in the subject township.

Valuer 1 was asked to comment on Valuer W's valuation. He advised that there were no substantive differences in the general description of the premises or the basic income data used between his or Valuer W's report. He observed however, that there was a difference in the adopted capitalisation rate. He adopted a rate of 7.73% whereas Valuer W adopted 9.28%. He noted that to his knowledge there was no directly comparable recent investment property sales evidence within the subject township from which to determine the appropriate capitalisation rate. To rectify this he had adopted a global basis considering sales evidence in other towns in the subject Region. Valuer W on the other hand had adopted older evidence and endeavoured to adjust this.

Valuer 1 further noted that Valuer W had made a substantial deduction (\$40,000) for deferred maintenance and noted that this perception appeared to have influenced Valuer W's conclusions.

During cross examination Valuer 1 was questioned on the operating expenses that he had applied to the components of the building and while confirming his approach accepted that the alternate split adopted by Valuer W would not be unrealistic. He was also questioned in relation to his measurements of the building and how those differed from Valuer W. He confirmed that he had adopted external measurements. While there was a difference relating to some components these were not material to the valuation with the main variance being in the upstairs apartment.

Valuer 1 was further examined in relation to the rentals applied to the components of the building and the effect of vacancy rates. He confirmed that in his view the market was relatively flat from 2010 to the date of valuation in 2013. He did not agree with Valuer 2's view that because of limited vacancy there was strong rental growth within the subject area. He accepted however that there had been limited rental growth in that period. Valuer 1 confirmed that in order to obtain market evidence in 2013 he had sought information from Valuer W as the latter had more available evidence at that time.

Valuer 1 was asked to comment on the approach taken by Valuer 2 in relation to the western tenancy by dividing this into a front and rear portion rather than considering it in one length. Valuer 1 did not consider this to be an appropriate methodology but could understand the desire to do so due to the long and narrow nature of this portion. When questioned as to if this methodology was applied to the western tenancy why not apply that approach with the eastern tenancy he responded that the latter had a better frontage to depth ratio. He accepted that the \$420/m² adopted by Valuer 2 for the western tenancy by adopting this approach seemed high.

Valuer 1 was questioned at length about the quality of the subject property relative to the comparables used. It was suggested to him that this was the worst property on the street, a matter that he did not agree with as there was a lot of deferred maintenance to properties in the subject township that was not obvious from the street frontage. He noted that he had made adjustments for these factors. The questioning extended to the quality of information on some of the properties including the correct areas. In the light of additional information his key sale of the Property 1 rental required an adjustment from \$297.50/m² to \$288/m².

Counsel entered into considerable debate about the vacancy subsequent to the valuation date and also subsequent rentals. The Board found the subsequent rentals did not confirm trends that would have been obvious to Valuer 1 at the date of valuation, and therefore could not place reliance on this information.

On the topic of market yields both Valuer 1 and Valuer W accepted that there was a lack of good market evidence within the subject area. The valuers therefore relied on either older evidence from within the subject area or interpreted evidence from the wider region. In his brief Valuer 1 made the comment that Valuer W had applied a rate of 9.28% which was outside their sales

range of 2.23% to 8.55%. Valuer 1 accepted that the sales evidence he used was not directly comparable, but was merely to inform him of the likely parameters. When questioned as to the applicability of banks (as included by Valuer 2) he felt that these were not comparable. He also agreed that he would not have adopted Valuer 2's approach of deducting a lump sum for deferred maintenance after capitalising the revenue.

Counsel for Valuer W put the proposition that prime property in the subject area would attract a return of 6.5% to 8.5% and secondary property 8.5% to 10%. Valuer 1 did not disagree with the likely return, but did not accept that the subject property was secondary. He did however adopt an average rate of 7.73% that included a lower rate of 6% for the residential flat and having made allowance for scarcity and lifestyle. Counsel drew attention to the extended period that the property had been marketed for as indicating that scarcity was not an issue (even though no evidence was presented as to the marketing of the property). The lifestyle aspect was disputed but not resolved for the Board.

The aspect of deferred maintenance was discussed, but not resolved to the satisfaction of the Board. The matter was to be introduced further in the evidence for the defence. While it appears that a subsequent purchaser has spent a substantial sum on the property, it was not resolved as to what extent this represented maintenance as opposed to capital investment. Conversely, Valuer 1 was criticised for the lack of transparency in the way he had dealt with deferred maintenance in his report.

Valuer 1's use of depreciated building cost as a check method was reviewed, in particular the point at which a variation between the check method and the primary method would trigger cause for reconsideration. This aspect was not resolved and focus shifted to the areas of the building and appropriate depreciation rates. Counsel maintained that the areas adopted by Valuer 1 were too high and the depreciated rates too low. On this basis he contended that the depreciated replacement cost would have been significantly below Valuer 1's valuation and should have triggered a review of the value. The Board was not provided with sufficient evidence to confirm this.

During re-direction Valuer 1 conceded that on the information that had emerged during the hearing he could review aspects of his valuation. On the basis that the eastern tenancy had been vacant for 12 months rather than 6 months the rental for that area should be reduced by 5% to \$15,675 and therefore the total income stream to \$40,542. He also advised that due to the time the property had been on the market he was willing to capitalise that at 8%. This gave a valuation of \$507,000 (compared to \$535,000).

In response to questions from the Board Valuer 1 acknowledged that it was a difficult valuation in particular due to the lack of market evidence. His view was that two valuers could be \$50,000 to \$75,000 apart. Further doubt also emerged as to the true area of the building with Valuer 1 basing his measurements as external and Valuer W as internal. Irregularity in shape contributed to this.

Valuer 2

Valuer 2 advised that he had 21 years' experience in the property industry including 18 years as a valuer. He advised that he inspected the property on 16 June 2014 and completed a retrospective valuation as at 28 May 2013. As it was evident that substantial changes had been made to the property in the interim he obtained copies of photographs taken in 2013.

Valuer 2 spoke to his valuation and noted that he had valued the property at \$590,000 plus GST if any. On receiving a copy of Valuer W's report he reviewed his assessment of floor areas and subsequently reviewed his valuation to \$545,000 plus GST if any.

Aspects of his description of the property are repeated below as they aid the understanding of his valuation.

"Accommodation provides for 2 separate retail tenancies to the ground level and a residential flat above the eastern retail premises. At the time of the effective valuation date the building was of overall poor appearance and condition."

"It appears that the original portion of the building encompassing the large (eastern) retail tenancy and the residential flat above was constructed in the 1950s and the smaller (western) retail premises was added sometime not too long after. Externally the buildings comprise a mixture of walls and cladding, including concrete block, fibrolite sheet and concrete. Both buildings include iron roof cladding and a mixture of timber and aluminium joinery. The floor to the eastern tenancy is above the level of the footpath and consequently there are steps up to the shop entrances and further internal steps to the main retail area. There is timber flooring to both the ground and upper level of the original building of which the ground level appears to be supported by a concrete pile foundation. The western tenancy includes a concrete floor at street level. Internally both retail premises and the residential flat include mostly plasterboard lined walls and a mixture of plasterboard and Pinex lined ceilings."

"The western retail tenancy comprises the smaller of the 2 retail premises and includes a long narrow shop with street frontage of less than three metres. At the time of inspection it was occupied by a takeaway shop and although the business may have changed since the effective valuation date the use remains the same. The accommodation is quite basic and includes the main retail/waiting area to the front. Behind this is the kitchen and preparation area and then further to the rear is storage area. There is external access to a toilet to the rear of the building. Overall the quality of accommodation is of a fair standard, and although narrow in shape is quite functional for its current and historic use as a takeaway shop."

"At the time of inspection the eastern retail tenancy was occupied by a dairy operator, although at the effective valuation date the eastern retail tenancy was vacant. There have been refurbishment works carried out to the interior of this retail area but I placed reliance on photographs and the report extract that I have been provided with to establish the value of the property, rather than the state of the premises as inspected. I have included some photographs showing the steps that extend

up from the footpath to the shop entrance. It appears the frontage has, since the effective valuation date, been altered by the purchaser, and additional access has been provided at street level as a result of installing new aluminium doors that have replaced the window joinery. My valuation disregards these subsequent improvements."

"To the rear of the shop is a door that leads to a corridor that provides access to the first floor residential flat. The partitioning has been altered and in the most part appears to have been removed since the effective valuation date. To the rear of the building is a lean to structure that provides a storage area, and covered access to the externally accessed toilet. The lean to has since been enclosed and the toilet upgraded to a bathroom. As regards the residential flat, the stairs within the eastern retail tenancy provide the only access to the residential flat. The accommodation comprises 2 bedrooms, open plan living and kitchen area and bathroom. Amenities at the time of my inspection were very basic and understood to be generally unchanged from the valuation date. I again relied on the photographic evidence that I was supplied with to establish the standard of accommodation as at the valuation date."

Valuer 2 reviewed the leases, rentals and outgoings before commenting on the market. He noted that transactional evidence within the commercial market of the subject area was extremely limited, and that this was largely the result of properties seldom becoming available for purchase. He observed that the market appeared to be largely influenced by the lifestyle characteristics offered by the subject township, as opposed to commercial returns. He felt that this was evidenced by the limited number of transactions and low returns in comparison to other similar sized townships in the region.

By way of comparison he noted that commercial properties that had transacted within nearby townships showed returns in the order of 7.5% to 8.5% at the time leading up to the date of valuation. He compared this to the subject area transactions quoted in his report at a far lower level of return of 6.7% and sub 5%. His conclusion was that the commercial market in the subject area is unique and doesn't appear to be solely based on financial return.

Valuer 2 concluded that rentals in the subject township ranged from \$225/m² to \$440/m² with the best evidence being Property 7 (main retail \$307/m², Secondary \$130/m²), Property 8 (\$442/m²) and Property 9 (\$429/m²). On this basis he adopted the following values for the western tenancy: \$420/m² for the main area, \$130/m² for storage and \$75/m² for secondary storage. For the eastern tenancy he adopted \$320/m² for main area, \$100/m² for the canopy and ablutions and \$75/m² for the storage. Rounded this established a gross rental of \$22,320 (on his revised areas). He assessed market rentals for a standalone flat of \$170 to \$250 per week which he discounted for the subject to \$165 plus GST (as it is a commercial premises) per week on the basis that with the current configuration access could only be gained through the eastern retail.

To establish market yields Valuer 2 relied on two older sales; Sale 1 in 2010 which he assessed with a passing yield of 4.68%/market yield 7.20% and Sale 2 in 2011 which assessed at a passing yield of 6.7%/market yield 5.26 %. For more current evidence he considered a range of nearby

towns providing passing yields in the range of 5.83% to 8.73%/market yields 6.14% to 9.46%. On this basis he adopted 7% for the subject giving a value of \$545,000.

As a check method Valuer 2 applied a net rate approach from his analysed sales applying these to the components of the structure leading to a valuation of \$600,000 from which he deducted a lump sum of \$60,000 for upgrade works giving a market value of \$540,000.

Valuer 2 then identified the main points of difference between his valuation and that of Valuer W:

Firstly that there was a difference in the market rental adopted (Valuer W \$35,739 per annum versus Valuer 2 \$44,454 per annum). He identified that this was partially the result of differing areas, but more significantly influenced by the differing rental rates applied (\$230/m² versus \$320/m² and \$420/m²).

Secondly, the yield rates applied (Valuer W 8% versus Valuer 2 7%). Of particular note was that Valuer W quoted Sale 2 at the passing yield of 6.7% but did not make any comment on the market yield which Valuer 2 analysed at 5.26%. He also noted that Valuer W made no mention of Sale 1 which he considered to be of high importance from a yield determination perspective. He concluded that a yield of 8% did not reflect the market profile associated with a location like the subject area, as supported by sales evidence. He acknowledged that a limited number of transactions of commercial property leading into the effective valuation date provided a challenge in concluding a valuation of the subject property.

Valuer 2 was of the view that if the subject property was marketed openly then there would also be potential owner occupiers that would form part of the market, particularly given the lifestyle nature of the subject area that tends to influence the market. He questioned whether Valuer W also took this into account, rather than focussing purely on the investment characteristics of the property.

Under cross examination Valuer 2 agreed that the subject property was a difficult valuation. He also accepted that it was difficult to value when he did not inspect until over 12 months after the date of valuation and relying on evidence from others. Aspects of the building structure were identified as having been changed that he was not aware of, suggesting that the premises as inspected were better than they would have been at the date of valuation. One aspect was the access to the upstairs flat that had been changed with Counsel noting that the configuration in 2013 would have posed a security risk. Valuer 2 however had recognised this and determined that had the eastern tenancy been occupied the flat could not have been separately occupied. The Board notes that his rental assessment was on that basis.

Valuer 2 was further questioned on the areas that he adopted and in particular the rentable areas. He accepted that there were a number of errors and on that basis was led through a recalculation of his gross rental to arrive at \$41,626 (versus \$51,590). A review of the OPEX and

provision for a two week vacancy in relation to the residential tenancy provided a net income of \$37,374 (versus \$42,908). If capitalised at Valuer 2's rate of 7%, this indicated a value of \$533,914.

Counsel then led Valuer 2 to make further "capital" reductions for six months vacancy in the eastern commercial tenancy (\$9,200), leasing costs for the eastern tenancy (\$2,944) and deferred maintenance (\$55,000) to give an indicative value for the property of \$466,770. As this is some \$123,230 below Valuer 2's original valuation of \$590,000 Counsel suggested that the Board could not have confidence in the valuation.

At this point in the decision the Board notes its concern that a witness is led to revise components of a valuation without the witness having the opportunity to consider this in the context of proper valuation practice.

Valuer 2 was questioned on his adopted capitalisation rate of 7% and rental of \$320/m² for the eastern tenancy. He was challenged by defence counsel on his analysis of the market evidence used. Valuer 2 confirmed that the rates that he had adopted were appropriate for the subject area and was not willing to concede on these matters. In doing so he repeated his view that the subject area was a very specific market.

During re-examination Valuer 2 was asked if he was comfortable with a valuation of \$466,000 in the context of the market. He responded that he was uncomfortable revising numbers in the forum of the Board of Inquiry. He considered that the subject could be worth \$100,000 less, but definitely would not accept any further reduction.

When questioned by the Board, Valuer 2 was led to review his calculations again as the Board was unclear as to the accuracy of the approach put forward by the defence counsel. The revised figures were:

Western Tenancy Rental	\$14,182
Eastern Tenancy Rental	\$18,400
Flat Rental	<u>\$9,043</u>
Total Income	\$41,625
Less OPEX for Top Floor	<u>\$2,125</u>
Nett Income adopted	\$39,500
Less two weeks vacancy for flat	<u>\$350</u>
Adjusted Net Income	\$39,150
Capitalised at 7%	\$559,286
Less capital adjustments	\$12,144
Less capital works	<u>\$55,000</u>
Adopted Market Value	\$492,000
Less outgoings on vacant tenancy	<u>\$2,107</u>
Market Value	\$489,893

The Board also questioned Valuer 2 to ascertain his perception of how difficult the valuation was. Valuer 2 considered that a difference 20% either side of what is perceived as an appropriate figure would be acceptable.

SUBMISSIONS FOR Valuer W

Mr Francis made submissions on behalf of Valuer W:

He reminded the Board that the charge before the Board was that Valuer W had been incompetent in their conduct and grossly undervalued this property.

He submitted the King decision (*King v. Valuer General 17 December 2009, DC Wellington CIV2009-085-32*) as to how the Board should address this issue noting that the Valuer General must put sufficient evidence before the Board for it to be able to determine a probable market value. He advised that if there is no evidence for the Board to determine a probable market value, then the Valuer General had not discharged his obligations. He emphasised that the Board must consider what the probable market value might be and then make an assessment of the valuer's competence. He prompted the Board that this is not enough in accordance with the King decision, there must also be evidence that the incompetence is of such a level that it warrants sanction.

Mr Francis noted that the Valuer General's case was closed and that the Board had heard from two expert Valuers. He summarised that neither valuer could be critical in any way of Valuer W's valuation methodology, and that they also agreed with their judgement calls around capitalisation rates, deferred maintenance and yields. He noted that Valuer 1 relied on evidence from Valuer W, and that both valuers conceded that Valuer W has better market knowledge. His submission was that there was no evidence that would support a finding that Valuer W had been incompetent and therefore no evidence that any incompetence had been at such a level that it warrants sanction.

Mr Francis questioned how the Board was going to determine probable market value based on the evidence presented. He noted Valuer W's valuation at \$385,000 and Valuer 1's valuation at \$535,000. In this regard he also noted Valuer 1's reluctance to make any concessions in the light of new information. He then referred to Valuer 2's initial value of \$590,000 as the basis on which this charge was brought. He drew the Board's attention to the fact that Valuer 2 had revised the valuation once and come to a figure of \$540,000. He then noted that in the course of the hearing Valuer 2 "quite properly as a very professional expert witness" made appropriate concessions and reduced his market value further to, depending on the calculations given of between \$466,000 and \$490,000. Mr Francis also restated his view that this was utilising capitalisation and evidence of market rentals which were unsupported.

Mr Francis submitted that if the Board was going to determine probable market value it was going to need something in addition to the advice of Valuer 1 and Valuer W. He concluded that; firstly there was no evidence for the Board to reach probable market value safely. Secondly, even if the Board could reach a probable market value there is just no evidence of incompetence which would warrant applying the sanction.

In response, Ms Carter for the Valuer General submitted that the Board had before it a lot of information on how to assess the correct valuation and noted that the Board are well familiar with balancing the evidence they had heard to determine what is the correct value. Her submission was that the valuations were relatively consistent and that when you consider all the valuations, Valuer W's valuation was significantly low. She noted that even if Valuer 2's lowest figure of \$466,000 was adopted then the value that Valuer W put on the property of \$385,000 was significantly below that by quite an amount.

She put to the Board that from the decision from King, it is necessary to look at the decision in two stages. Once the Board determines the correct valuation, it must then turn its mind as to whether any difference with Valuer W's assessment is of such significance to then consider incompetence. She noted that in King, the Board set a range of between 10 and 15 percent and she accepted that where there was a much more difficult valuation the Board will sometimes allow a margin slightly higher than that.

Ms Carter noted that Valuer W's lowest figure was \$466,000. She noted that if the Board were to adopt this assessment in isolation then it would have to rule out the evidence of Valuer 1. Valuer 1 started at \$535,000 and made various concessions to adjust his assessment down to \$507,000.

In her submission, Ms Carter remarked that when the Board considers the evidence in relation to the various market capitalisation rates, Valuer W was beyond 10% variation. On this basis it was, in her view clearly a matter for the Board then to go further and to hear other evidence. Ms Carter put to the Board that there was sufficient evidence on which the Board could ascertain a correct valuation and that having balanced the evidence from Valuer 1 as well, it was unlikely to be as low as \$466,000. She submitted that if this were the case, then the disparity between Valuer W and the correct valuation would be such that the Board would need to carry on and consider further evidence.

The Board asked Ms Carter as to the advantage of hearing further evidence given that both witnesses had said that Valuer W had more knowledge and more evidence. Ms Carter noted that it was not really a question of what is going to be new but the test this stage was if on the case to date there was insufficient evidence to properly direct the Board to find them guilty then the case should stop at this point. However, if on the evidence heard so far there was reasonable evidence upon which to find them guilty then it was right for the proceedings to continue.

Mr Francis responded by noting another recent case that it is not merely a matter of percentages, but also the reliance that can be placed on witnesses. He then advised the Board that for the second step there also has to be separate and distinct evidence before the Board to show there

has either been a deliberate departure or there has been an indifference such that is abusive of Valuer W's status and on that point no evidence had been offered. He pointed out that no one had been able to say that Valuer W did this wrong. No expert had come along and said "I can't believe what Valuer W has done, this is ridiculous he appears to have completely ignored everything. No expert has come along and said this is a scandal and they have ignored all the rules of valuation, seemed to be motivated on something else, whatever it is there is no evidence of that."

The Board adjourned to consider the submissions and returned with the following oral decision:

Both witnesses we have heard have accepted this was a very difficult market to work in, both witnesses have made a number of concessions to their evidence, both Valuers acknowledged that Valuer W had more market knowledge and neither had significant criticisms of Valuer W's report. The prosecution has not brought sufficient evidence to support a charge of gross under valuation. However, the Board does consider on the evidence submitted that the valuation was an under valuation.

The decision of the Board is that the charge is dismissed.

A written decision will follow.

The Board has reviewed the evidence presented and noted the following:

Valuer 1 had valued the property at a similar time to Valuer W and concluded a significantly higher value of \$535,000 or 38.96% above that of Valuer W at \$385,000. In the course of the inquiry Valuer 1 was presented with new evidence and on this basis conceded that a more correct valuation was \$507,000. This was still 31.7% above Valuer W. Conversely Valuer W's valuation would be 24% below Valuer 1.

Valuer 2 had undertaken a retrospective valuation of the property and concluded a valuation at the effective date (May 2013) of \$590,000. Prior to the commencement of the hearing he had reviewed his measurements of the property leading to a revised valuation of \$545,000 or 41.56% above Valuer W. Valuer 2 admitted that doing a retrospective valuation had been difficult as considerable work had been done in the interim. He was led to review his valuation to \$466,000 or 21% above Valuer W. Conversely Valuer W's valuation would be 17% below Valuer 2.

The Board has not in this case determined what the "correct valuation" would be, but on the evidence presented could be in the vicinity of \$490,000. If this were the case Valuer W's valuation would be \$105,000 or 21.4% lower. In evidence Valuer 1 indicated that two valuers could be up to \$75,000 apart (\$37,500 either side of a "correct Valuation"). Valuer 2 indicated 20% either side of a correct valuation.

Given the wide variation in the values presented by the Valuer General, the difficult market alluded to by the valuers, and the adjustments made in the course of the inquiry the Board

accepts that a valuer could be 20% either side of a "correct" value and not have erred. In fact Valuer 2's initial valuation was at just this margin.

The Board also notes some doubt as to the appropriate capitalisation rates to apply in this situation.

It is also of note that both valuers heard by the Board acknowledged that Valuer W has a better knowledge of the market in the subject area than they do.

The Board therefore confirms that while Valuer W's valuation at \$385,000 is definitely low, the Valuer General did not bring sufficient evidence that the valuation was a gross under valuation, or that a sanction would be warranted. Continuing the hearing could not have added to the case.

The Board confirms its oral decision that the charge be dismissed.

A handwritten signature in blue ink that reads "Kenneth R Taylor". The signature is written in a cursive style.

KR Taylor
Inquiry Chairperson
31 March 2017