

VALUER REGISTRATION BOARD

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

AND

IN THE MATTER OF two charges under
Section 31(1)(c) of the Valuers Act 1948
against Valuer S

BOARD OF INQUIRY:	K R Taylor (Inquiry Chairperson) M E L Gamby P A Curnow
COUNSEL:	P McCarthy for the Valuer General A Lovelock for Valuer S
DATE OF HEARING:	11-12 April 2011
DATE OF DECISION:	1 August 2012

The Complaint

The complaint against Valuer S was received by the Registrar of the Valuers Registration Board. The complaint was in connection with two valuation reports dated 11 September 2007 and 7 August 2009 respectively carried out on a rural property.

In the first report Valuer S had valued the property at \$400,000 inclusive of GST if any as at 9 September 2007.

In the second report Valuer S re-valued the property as at 10 August 2009 with a valuation of \$250,000 inclusive of chattels and GSR if any. Their initial valuation made a recommendation that the property was suitable for advance by way of first mortgage funds of up to 60% of their assessment of current market value.

The complainant noted that in the period between the two valuations their clients had constructed a new work shed/temporary living accommodation type improvement on the property.

The complainant notes that the resulting final position has had an adverse effect on both their client and the bank. The complainant also noted inconsistencies in relation to the reporting of GST.

Investigation:

The complaint was investigated by the Valuer General.

As part of the investigation, the Valuer General requested two retrospective valuations effective as at the date of each of Valuer S' reports.

The first valuations by Valuer 1, concluded the current market value as at 9 September 2007 was \$275,000 plus GST if any. This valuation was subject to the property becoming a fully titled and serviced vacant rural lifestyle holding.

Valuer 1 provided a second valuation as at 10 August 2009 with a current market value of \$375,000 assuming code compliance plus GST if any. This valuation was split up as follows:

Value of Improvements	\$150,000
Land Value	\$225,000

Further valuations were commissioned from Valuer 2.

Valuer 2's valuation as at 9 September 2007 was \$275,000 plus GST if any. This valuation was subject to the completion of services, compliant subdivision and title.

Valuer 2 provided a second valuation as at 10 August 2009. His valuation was \$325,000 subject to code of compliance plus GST if any. This valuation was split up as follows:

Value of Improvements	\$125,000
Land Value	\$200,000

Following the investigation, the Valuers Registration Board concluded, there was sufficient cause to hold an inquiry.

The Charges

(1) 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 valuation report dated 11 September 2007 with respect to a property, you grossly overvalued that property.

(2) Section 31(1)(c) of the Valuers Act 1948 and the New Zealand Institute of Valuers Code of Ethics:

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 valuation report dated 7 August 2009 with respect to a property you grossly undervalued that property.

Valuer S denied both charges.

The annual practising certificate details for Valuer S were admitted by consent. The Board notes that Valuer S has been registered as a valuer since 1976. Records commencing in 1990 indicate

that they held an annual practising certificate in 1990 and 1991 and then continuously from 2005. In evidence Valuer S advised that they had joined their current employers in 2006.

For the purposes of focus each charge is considered separately in this decision.

CHARGE RELATING TO OVER-VALUATION AS AT 11 SEPTEMBER 2007:

Background

The Board was advised that the subject property is an 8-hectare bare land rural lifestyle holding. The Board received conflicting evidence as to the distance to servicing centres. This distinction becomes significant in the perception of relevant sales considered in evidence.

At the time of the valuation the property was an untitled lot within a proposed 23 lot subdivision of a former 205-hectare farm. The Board noted a discrepancy in the area of the original block between Valuer 1 who cited 205 hectares and Valuer S who quoted the area as 180.2484 hectares. The latter area is that recorded on the computer freehold register. However, it is noted that the first three lots of the 23-lot subdivision had already been separated off hence the likely discrepancy. Valuer S also noted that the property was located at different distances from servicing centres. Valuer S noted that the conditions of the consent to complete the subdivision included construction and sealing of a 6-meter-wide access road, installation of a domestic water supply pipe to all allotments, together with underground power and telephone services. The Board notes that all three valuers completed their valuation on the basis of a separate freehold title being issued for the subject property with a compliance certificate having been obtained from the district council.

Valuer S noted the area as being 8.01 hectares based on the subdivision plan. However, the plan attached by Valuer S identifies the area as 8.0130 hectares and this is the area quoted by the other two valuers. The difference is not material to the outcome of the valuations.

Summary of Values

The valuations considered in the investigation report and before The Board are outlined below.

Valuer	Date	Market Value	Remarks	% Variation
Valuer S (11.09.07)	09.09.07	\$400,000 (land only)	Subject to issue of title, inclusive of GST if any	
Valuer 1 (30.03.10)	09.09.07	\$275,000(Land only) (\$309,375)	Property fully titled and serviced, plus GST if any (if GST included)	45.5% 29.3%
Valuer 2 (16.07.10)	09.09.07	\$275,000 (Land only) \$309,375	Completion of subdivision in accordance with consent, issue of	45.5% 29.3%

			unencumbered freehold title, plus GST if any (if GST added)	
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Notes:

All of the percentage variations are to the gross assessment or value with the percentage of Valuer S above the other valuers.

In making the adjustment for GST The Board has accepted the closing statements made. by Mr Lovelock on behalf of Valuer S

Evidence for the Prosecution.

The prosecution called two witnesses, both of whom are registered valuers who had undertaken retrospective assessments between 2 ½ - 3 years after Valuer S' initial valuation in 2007. The prosecution valuer witnesses were instructed to take into account only evidence that would have been known to a valuer doing a valuation as at 11 September 2007.

Valuer 1

Both counsel in closing submissions have made reference to Valuer 1's qualifications and ability to provide expert evidence to The Board. Valuer 1 himself made reference to the fact that he did not normally value lifestyle units. He did however advise The Board that he carried out prior research both on normal data sources and had extensively inspected the sales throughout the district to ascertain comparability. Mr McCarthy confirmed the above statements made by Valuer 1 and it is also noted that Valuer 1 has practised valuation in the subject region for much of his working career. Mr McCarthy confirmed the approach taken by Valuer 1 to overcome any shortcomings in his direct expertise in this locality.

Mr Lovelock went to considerable effort in his closing statement in an attempt to discredit Valuer 1 as being an expert witness in the matter of this hearing.

The Board does however also note that Valuer S had only recently commenced practice in the subject area having recently previously practiced elsewhere, although the extent of that practice is unclear. The Board therefore sees little to differentiate Valuer S' expertise in this type of valuation in this locality versus that of Valuer 1. In fact, The Board is of the view that Valuer 1 would be better prepared to understand the market in which he was operating. The Board has accepted the evidence of Valuer 1 in relation to this matter.

Valuer 1 summarized the property as being an 8-hectare bare land rural lifestyle holding. The block is of semi-rectangular shape and is a mix of easy undulating terrace top, steep hill face with a dry gully and sidling traversing the frontage. At the time of this valuation the property was an untitled lot within a proposed 23 lot subdivision of a former 205-hectare farm that sold in 2003. At the time of the 9 September 2007 valuation inspection, the property is stated to be devoid of any improvements. Valuer 1 valued the property at \$275,000, comprising entirely land value. Later in his written brief of evidence he says he allowed \$1,100 for partial fencing of the boundaries. However, this is not reflected in the valuation report.

Valuer 1 had investigated the rural lifestyle market throughout the subject area noting a significant number of sales. In his valuation he relied largely on six sales, two of which were of smaller blocks and sold for \$270,000 and \$230,000 respectively. Both sales were in 2006. A further two sales were listed to the north of the subject property. These sold for \$250,000 and \$310,000 in 2003. These four sales were regarded as the most useful.

Valuer 1 listed two further sales which occurred in 2007. These sold for \$312,000 and \$325,000 respectively. In his valuation report Valuer 1 alludes to locality factors being involved in his adopting sales east of the local river in preference to those to the west. He does not elaborate on this comment in the valuation report.

Valuer 1 provided a useful graph in his valuation report which identified the general trend of lifestyle blocks throughout the area. He referred to this in his written brief presented to The Board and elaborated a little on the distinction; "in that context I noted that the "local sales", namely sales A, B, G and D are in the lower area of the analysed sales data which was reflective of their location". In response to questioning by The Board Valuer 1 elaborated somewhat further indicating that he felt that the western side of the local river would attract a premium. of 20%. While he did not provide sales evidence to support this in his reports, his assessment was that a building site in that area would have a site value of at least \$250,000 compared to \$200,000 on the eastern side of the river.

While further analysis of the information provided in the graph presented by Valuer 1 in his evidence would have been helpful, The Board found this information and Valuer 1's response to questions of assistance.

In his valuation report Valuer 1 adopted two different approaches to establishing land value. In the first he assessed the value of the 4.5 hectares of easy terrace country at \$48,500 per hectare and 2.6 hectares of steep hill face and gully at \$5,000 per hectare. Under cross examination from Mr Lovelock Valuer 1 agreed that he had provided no market evidence to support the split and the assessment of the relative values.

As a second approach Valuer 1 allowed \$200,000 for a nominal house site of 0.45 hectares and allowed \$10,000 per hectare for the remaining 7.6 hectares. He noted that both approaches gave him a value in the vicinity of \$275,000 which he adopted. Mr Lovelock questioned Valuer 1 on this approach as in later evidence Valuer S did not consider this approach to be valid. Valuer 1's response was that the building platform approach was the most useful and explained the basis for assessing a nominal building platform when undertaking these valuations. Mr Lovelock further pressed the point that as there was no consented building platform on the site, how this could be done. Valuer 1's response was this was a standard methodology when valuing lifestyle type property.

As noted in the introduction, there was some confusion relating to the application of GST by the various valuers, including Valuer 1. Mr Lovelock in his closing statements chose to adjust all valuations to a GST inclusive basis in which he added GST to the valuations prepared by the other valuers. The Board remains somewhat uncertain as to whether or not the sales provided by Valuer 1 (and indeed the other valuers) were inclusive of GST or otherwise. To give Valuer S the benefit of the doubt The Board notes that if GST is added to Valuer 1's valuation the market value becomes \$309,375. This places Valuer S' valuation some 29% above that of Valuer 1.

Valuer 1 also stated in evidence that he considered the property could fall within a range of values, with his upper value being \$289,000. If this is adjusted for GST, then the market value could be deemed to be as high as \$325,125. Valuer S' valuation is still some 23% above this at \$400,000.

To summarize, Valuer 1 provided the Valuer General with a valuation at \$275,000. Depending on how Valuer 1's range of valuations is considered this could be as high as \$325,125. Arriving at these values Valuer 1 has considered local sales east of the local river to be the most relevant and his valuation is consistent with this analysis.

Valuer 2

Valuer 2 provided a retrospective valuation on 16 July 2010.

Valuer 2 briefly described the property as an elevated rural lifestyle block with some 8.0130 hectares, of varying contour and requiring the formation of road access. Extending along the frontage is a creek bed that will require a culvert with road access to any building platform. The east and north sectors of the site have, in general, an easier sloping contour mainly to the east

with the south and west, steeper contour. The site will enjoy an elevated position in the proposed new rural lifestyle subdivision. On the lower sector it will obtain panoramic views. The subject site is vacant, with the land predominantly covered in pasture, and has some earlier post and wire fences that we understand are not on the site boundaries.

in his sales evidence Valuer 2 referred to 9 sales on the east side of the local river including two older sales in the subject subdivision. He noted a sale for \$355,566 in late 2006 (in cross examination it was agreed that this was \$400,000 inclusive of GST) and another for \$350,000 in 2005. He also referred to three sales nearby that ranged in sale price from \$230,000 - \$309,375 albeit for smaller sites. He did however regard these sections to be superior. He further referred to a sale for \$300,000 which took place in 2006 for a 15-hectare block. He referred to two sales of two sites each at \$235,000 in 2005.

Valuer 2 referred to six sales in nearby but different areas noting a range in values between \$275,000 and \$585,000. He noted that these sites were in proximity to the nearest state highway, have great vistas and are closer to local towns, although many are of a steeper contour. On balance (due to location) he considered them to be superior to the subject subdivision.

While he quoted four developed lots, he does not appear to have used these in his valuation. As with Valuer 1 there is some confusion as to the GST status of the sales in Valuer 2's valuation.

In his written brief Valuer 2 believed that land suitable for viticulture would have a value of \$30,000-\$40,000 per hectare plus the value of a building platform. He noted however that where viticulture development was not possible the value would be reduced to \$10,000 per hectare which did not fully align with his analysis of sales. Valuer 2 noted that a building platform of say 4,000 square meters in the subject location would have a value in the range of \$150,000-\$170,000 depending on site attributes. Valuer 2 proceeded to complete his valuation on the basis of a building site at \$215,000 and a value of \$7,500 per hectare for the remaining area. It is noted that the value for the building platform lies significantly above the range previously referred to and that the value per hectare is somewhat less than the identified value for non-viticulture land in this locality.

Mr Lovelock in cross examination questioned Valuer 2 about the relevance of using a building site as part of his assessment when no building platform had been identified for the property. Valuer 2's response was that it is not necessary to identify a building platform and observed that the district plan did not require it, but that recognizing a building platform was inherent in valuing lifestyle blocks. Valuer 2 was further questioned on this aspect by The Board and was asked to identify his best sales and the breakdown of the building platform and land component of these.

In summary Valuer 2's valuation included:

1. A building platform of 0.4 hectares at \$215,000
2. Balance of land 7.613 hectares at \$7,500 per hectare \$57,097
3. Total land area 8.055 hectares \$272,097 say \$275,000

In arriving at this The Board noted a discrepancy in the total land area which is one of addition rather than of fact. Valuer 2 did not suggest any alternate approach to assessing the value.

Similar comments relate to Valuer 2's evidence in relation to GST as were previously applied to Valuer 1. However, if Mr Lovelock's approach is adopted and GST is added to this valuation, Valuer 2's valuation on a comparable basis to Valuer S would be \$309,375 making Valuer S' valuation 29% higher.

The Defence Case

Mr Lovelock called Valuer S as the sole defence witness. He did not call any other supporting evidence.

Valuer S

In his opening submission Mr Lovelock advised that Valuer S lived and worked in the area and that they knew the area and its market intimately. The Board would question this advice given that Valuer S had only arrived in the district the previous year. The Board is of the view that Valuer S was operating in a difficult market with limited knowledge of that market.

Valuer S provided a valuation dated 11 September 2007 with an inspection and valuation date of 9 September 2007. This report contained numerous typographical errors including the contradictory statements in the valuation summary where they refer to the valuation as being inclusive of GST if any, whereas in their summary of valuation at the end of their report they refer to the valuation as being exclusive of GST. In their initial response to the complaint they advised that the latter was an error. As noted previously The Board is somewhat concerned by the confusion amongst valuers as to the treatment of GST. The Board suspects that this relates to the cross over between residential valuation, which is generally inclusive of GST, if any whereas the rural practice adopts the approach that the valuations are plus GST if any. Lifestyle blocks depending on size and nature plus the opportunity for alternate land uses may treat a lifestyle sized block as a rural property and therefore different to the residential approach. In this case acknowledgement should also be made of the ability to assess dwelling and curtilage as being exempt from GST.

Valuer S valued the property at \$400,000 and made a mortgage recommendation of 60% of this. Valuer S described the site as a rectangular shaped block with a road frontage of circa 300 meters onto the new access road, with shape and dimensions as shown on the appended proposed subdivision plan, total area 8.01 hectares. They advised that the contour is undulating with a dry stream between the property and the road, with views afforded across. Drive on access was yet to be formed. Valuer S further advised that the subdivision once development work was completed would be superior to most others in the area; with sealed roads, underground electricity and telephone services and reticulated domestic water. They also advised that house sites can be sited within reason with the best advantage to enjoy the view available. They advised that the block has panoramic views.

In consideration of the market Valuer S referred largely to the residential market statistics and noted in particular that lifestyle properties here have been slow and flat for some time with a greater supply and therefore choice.

In their later summary they described the subject area as an attractive farming locality that has its own special appeal. They noted its proximity to services. In their summary they did note that lifestyle and block sales have been slow recently reflecting a lack of confidence, in particular in the viticulture industry.

Valuer S utilized a number of sales in their report from locations on either side of the local river. In particular they considered three sales within a price range of \$250,000-\$350,000. They considered five sales a fully serviced subdivision within a price range of \$265,000 to \$325,000. They then considered three sales in another subdivision which is a flat subdivision in the price range \$354,375 to \$400,000. They considered two sales prices of \$230,000 and \$270,000. They referred to a single sale for two blocks with a total sale price of \$800,000 but noted that this was for viticulture purposes. They finally considered six other sales ranging in price from \$325,000-\$480,000. They

did observe at the conclusion of their sales evidence that sales had slowed within the recent timeframe.

The Board was interested to note that in their valuation report Valuer S did not refer to two sales in the subject subdivision. These are referred to in their brief of evidence as being sold for \$400,000 in 2006 and in 2005 for \$350,000. While in their brief to The Board they considered these sales important, it is noted that they did not refer to them in their valuation report. In fact, their evidence was contradicted as in cross examination they said that they had noted the 2004 sales within the subject subdivision and then no further sales until 2008. In response to a question in this regard they noted that the earlier sales had been made due to the need to raise capital to complete the subdivision.

It was Valuer S's view that the subject area is no more isolated than subdivisions nearby. This statement was not challenged by counsel although some areas are on the main highway whereas the subject area was perceived by the other valuers as somewhat isolated. In response to cross examination Valuer S felt that some properties were well located relative to the services available in local towns. Little evidence was provided to The Board in relation to the services available nearby, but it is understood that these are in fact a primary school and general store plus tourist related facilities.

As noted previously none of the valuers provided adequate evidence to suggest whether or not there were significant differences between the alternate localities. Observing the data presented to The Board it is however noted that the only sale close to that adopted in the valuation by Valuer S is the one sale in the subject subdivision that Valuer S did not identify or refer to in their valuation report. All other valuations within that price range are located on the western side of the local river, with few in excess of \$350,000.

The second significant point of difference between the valuers related to the methodology for analysing and subsequently valuing a lifestyle property. Whereas Valuer 1 and Valuer 2 maintained the appropriate methodology was to identify a portion of the property as being a nominal house site which attracted a particular value and the balance of the land being assessed on a per hectare rate at a lower value, Valuer S adamantly rejected this methodology. They considered that such an approach would only be appropriate where a building platform had been identified as part of subdivision consent within a council area. They considered that where there were a large number of similar sized lots to the subject area an analysis of these blocks was adequate to sustain their outcome. This did not explain some of the variation in that they used some larger and smaller blocks as part of their sales evidence. The Board is of the view that while there is no standard requiring an assessment of lifestyle blocks on the basis of a building platform and residual area approach, this is in fact common practice and does assist with the interpretation of limited market evidence.

Summary of Evidence

The Board has been faced with conflicting evidence in relation to the relevance of sales information, the methodology to be applied to analysing and valuing lifestyle blocks and differing views in relation to GST. Regards the latter, The Board has adopted the approach used by Mr Lovelock in his closing submission whereby all the information is adjusted to a GST inclusive basis for comparison purposes. The Board recognizes that there are some flaws in this however for comparability in this case it becomes important.

The closing submissions by counsel for either party do little to resolve the degree of conflict that was evident, with both counsel clearly reflecting the evidence given by their witnesses. Cross examination during the hearing did little to resolve this conflict.

Mr Lovelock went to considerable effort in his closing statements in an attempt to discredit the evidence supplied by Valuer 1. As previously noted, The Board has accepted the evidence of Valuer 1 as being adequately prepared and presented.

While the evidence produced purported to either, sustain equality in value perception between different subdivisions from which sales evidence was produced, or, conversely that the subdivisions to the west of the local river were superior, this was inadequately proven to The Board's satisfaction. The Board did however note that the subdivisions west of the river and the other sales referred to on the east of the river· all lie in close proximity to the major highways. Conversely the subject area is an isolated loop from either highway and the access to the subject site is via a steep side road. The evidence produced by Valuer 1 indicates a general trend towards higher sale prices within the subdivisions to the west.

The methodology as to analysing the lifestyle sales and or valuing lifestyle blocks relying on a building platform and balance land approach would seem to be the common methodology, The Board is not convinced that in this case it made a significant difference to the outcome. The Board was concerned that Valuer 2 was unable to sustain the numbers that arose from his analysis in this approach. Valuer 2's adopted value was not within the range he suggested. The Board is of the view that this may have caused Valuer 2 to undervalue the subject property.

As to the sales evidence, The Board is not convinced by the evidence produced by any of the valuers. Valuer 2 would appear to have provided the most reliable and relevant evidence, however his method of analysing the sales was not sustained during cross examination.

In their brief of evidence Valuer S refers to two sales in the subject subdivision that occurred in 2006 and 2005 as being the most relevant sales. The Board would tend to agree with this view. It is however noted that Valuer S did not refer to either of these sales in the relevant valuation. The Board is therefore at a loss to understand how they interpreted these. Conversely Valuer 1 listed them as two sales within the subject area but then largely disregards them in his valuation report by saying, "apart from the sale of 2005 for \$350,000 no further sales were reported prior to the September 2007 date of valuation". Valuer 2 noted and used both sales in his valuation noting that in his view they were superior sites. The 2006 sale being the most relevant was considered a better site as it is largely flat land and this compensated for the fact that transmission lines traversed it.

Valuer 2 relied largely on sales on the western bank of the local river, and while conflicting evidence was produced, The Board has formed the opinion that the sales noted in nearby subdivisions were superior to the subject.

Even in consideration of the sales west of the river and the 2005 sale within the subject subdivision, The Board also notes Valuer S' comments in their report that the market had softened. In this light there is little evidence to sustain Valuer S' valuation of \$400,000.

Conversely the valuation by Valuer 2 at \$275,000 appears to ignore certain critical evidence thereby placing a low valuation on the subject property. Valuer 1 has identified some of the difficulties in the market and went as far as to suggest that the value could fall within a range of values but on the balance of evidence adopted the lowest value of \$275,000. If, however Valuer 1's valuation had been at the top of his range and GST were included, a valuation of \$325,000 could have reasonably been assessed.

Valuer S raised the matter of a valuation prepared by Valuer 3 for another matter considered by The Board. Mr Lovelock made the case that this was a relevant valuation to consider in the context of the current complaint. While this valuation was incorporated in evidence provided by Valuer S, The Board did not have the opportunity to cross examine Valuer 3 on his valuation nor to seek his

views as to the relevance of this valuation to the subject property. The Board has therefore placed no weight on this report in considering this matter.

Based on the evidence before it The Board considers that a valuation in the range of \$309,375 to \$325,125 would be appropriate at the date of valuation. These values are essentially those provided by Valuer 1 and are inclusive of GST. Valuer S has provided their valuation at \$400,000 based on evidence that The Board finds does not support that value level. While Valuer S has made considerable effort in their evidence to sustain that the subject property is a superior site, it is not borne out by the difficulties of access to the site nor the contour of the site relevant to the higher sales recorded from other subdivisions which are essentially flat land. Valuer S did not use the two sales from the subject subdivision in their valuation although they referred to them as critical in their brief of evidence. They have not provided sufficient relevant information on these sales for The Board to take a view from their evidence. The Board has therefore turned to Valuer 2 who provided some description of the sale properties and identified them relative to the subject. Valuer S' valuation at \$400,000 is 23% above the range identified as being reasonable by The Board and is not sustained by the evidence produced by Valuer S when considered in the wider context.

Summary of issues:

Onus and standard of proof:

The prosecution has a burden of proof. This standard of proof is that established by the decision of the Supreme Court NZ in *Z v The Complaints Assessment Committee* [2009] NZLR 1. At paragraph 118, McGrath J for the court stated:

"... We are of the view that in this country there is no good reason for creating an exception covering disciplinary tribunals. A flexibly applied civil standard of proof should be adopted in proceedings under the Act and other similarly constituted disciplinary proceedings in New Zealand unless there is a governing statute or other rule requiring a different standard"

This Standard, commonly referred to as "*proof on the balance of probabilities*", is to be flexibly applied. The more serious the allegation, the natural tendency will be to require stronger evidence to satisfy the balance of probabilities standard.

The Board of Appeal decision in *King v. Valuer General* (17 December 2009, DC Wellington CIV-2009 085-32) confirmed that the decision in *Z* applies to disciplinary proceedings under the Valuers Act 1948.

The charge against Valuer S is a serious charge of gross over-valuation. The proof required on the balance of probabilities is a relatively high standard as the potential sanctions that can be applied if Valuer S were to be found guilty are serious.

In this case the Board is mindful that the geographic relevance of the evidence produced is particularly significant to the valuation outcome. While Valuer S is adamant that the geography in the subject area makes little difference in that they compare certain sales as being directly comparable to the properties on the western bank of the local river. The Board tends to accept the evidence of Valuer 1 and Valuer 2, that there is a significant difference. This appears to be borne out by the quantum of the sale prices provided by the valuers. The Board accepts that the local area is, at least in perception more isolated. The Board could have benefited from more evidence in relation to this factor.

The Board recognizes that an accepted approach to valuing lifestyle units comprises the representation of a building site (albeit not physically identified on the ground) with a lower value associated with the balance land. In this case Valuer S had a large number of similar sized blocks

to utilize so therefore not adopting the common approach would not have adversely affected their valuation. They did however refer to sales outside this range as part of this evidence. Conversely Valuer 2 applied this approach with some rigor however in their valuation they adopted values that differed from the range indicated and under cross examination could not sustain any consistency within their use of this approach.

The inconsistency in relation to GST is of concern. In order to compare like valuations, the Board has considered the representations by Mr Lovelock and added GST to the valuations provided by Valuer 2 and Valuer 1. This has the effect of placing Valuer 2's valuation at \$309,375 and Valuer 1's assessment in the range of \$309,375-\$325,125. This leaves the value assessed by Valuer S some 23% above the highest possible value assessed by the other valuers.

An allegation of a gross over-valuation is a serious charge with potentially serious consequences. It must be said that the threshold is reasonably high where there is uncertainty relating to market evidence as there is in this case.

In the matter of "*Pillai v Messiter* (No. 2)(1989)16 NSWLR 197": it was said that:

"... the statutory test [of professional misconduct] is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes deliberate departure from accepted standards or such serious negligence, as although not deliberate, to portray in difference and an abuse of privilege which accompanies the registration ..."

This has given rise to what is described in *King* as the two-step process as follows:

1. *Whether the matters alleged in the disciplinary charge has been established the point that there has been a departure from acceptable standards; and then, quite separately-*
2. *whether that departure has been significant enough to warrant disciplinary sanction for the purpose of discipline".*

In the Board's view, Valuer S's valuation was a gross over valuation. On the evidence contained in their valuation report there is no justification for a value level at \$400,000. Based on the evidence provided by Valuer 2 and Valuer 1, The Board is of the view that the valuation was probably somewhere nearer \$325,000 at the date of valuation.

It is the view of the Board that Valuer S could have made better use of the two sales in the subject subdivision, but it appears through their statements such as "there were no sales between 2004 2008" would suggest that they were unaware of these sales at the date of valuation. Proper analysis of these sales would have seemed fundamental, as Valuer S, confirmed at the hearing, by including them subsequently in their brief of evidence.

The Board has also noted that Valuer S' 2007 report was not properly edited and contained a number of typographic errors.

Decision

Valuer S' valuation was a gross over valuation.

The Board has considered the evidence of both Valuer 1 and Valuer 2 in this regard and notwithstanding criticism from prosecution regards Valuer 1's competence, The Board has placed weight on this evidence.

Both retrospective valuers came to a very similar view of the market value of the subject property. Valuer 1 allowed for a range of values, but even if the upper end of this range is adopted it is still well below the valuation of Valuer S. To further give Valuer S the benefit of probabilities by allowing them the full benefit of the confusion over GST, a "correct" value of \$325,000 could be feasible. Valuer S with a valuation of \$400,000 is still 23% above this.

While the Board does not adopt a set level when considering a variance in the valuations, in this case 23% is significant. All the valuer's including Valuer S regarded the market as weakening, therefore adopting a value beyond the market evidence is at best inappropriate.

Therefore, the charge has been proven to the required standard.

In considering whether a sanction is justified The Board has had regard to the decision in Pillai. This valuation has been to the significant detriment of Valuer S' client and reflects a degree of negligence and an abuse of privilege that accompanies registration. This was also reflected in the quality of reporting. The Board therefore considers a sanction to be appropriate.

CHARGE RELATING TO UNDER-VALUATION AS AT 10 AUGUST 2009:

Background

At the time of the second valuation the property had its own title. The title was subject to a mortgage, consent notices in relation to the Resource Management Act (being the subdivision), land covenant and easement instruments, and an encumbrance to. The property now had a building site with a building on it consisting of a Total Span style barn which had been partitioned to provide some temporary living area plus storage capacity. Access to the site had been developed.

A significant factor in the second valuation related to the interpretation of a proposed plan change to the local authority's district plan in relation to building sites within sensitive landscape areas.

Summary of Values

The valuations considered in the investigation report and before The Board are outlined below:

Valuer	Date	Market Value	Remarks	% Variation
Valuer S (07.08.09)	10.08.09 <i>Land Value Improvements</i>	\$250,000 \$150,000 \$100,000	As completed and code compliant inclusive of GST, mort rec 50%	

Valuer 1 (30.03.10)	10.08.09 <i>Land Value</i> <i>Improvements</i>	\$375,000 \$225,000 \$150,000 (\$421, 875)	Assumed complete and code compliant. Plus GST if any, mort rec 50% (if GST incl)	33% 41%
Valuer 2 (16.07.10)	10.08.09 <i>Land Value</i> <i>Improvements</i>	\$325,000 \$200,000 \$125,000 (\$365, 625)	Assumed complete and code compliant. Plus GST if any, mort rec 50% (if GST incl)	23% 32%

Notes:

All of the percentage variations are to the gross assessment of value with the percentage Valuer S is below the other valuers.

In making the adjustment for GST The Board has accepted the closing statements made by Mr Lovelock on behalf of Valuer S.

Evidence for the Prosecution

The prosecution called two witnesses, both of whom are registered valuers who had undertaken retrospective assessments between 5-11 months after Valuer S' valuation in 2009. The prosecution valuer witnesses were instructed to take into account only evidence that would have been known to a valuer doing a valuation as at 10 August 2009.

Valuer 1

Again, the Board notes the reservations of Mr Lovelock in relation to Valuer 1's appropriateness as an expert witness in this matter. Having reviewed this in relation to the first valuation The Board does not wish to elaborate further on this matter other than note that it has accepted Valuer 1's evidence in this matter.

Valuer 1 again summarizes the property however noted that by 10 August 2009 valuation improvements included a recently built Total Span barn, access driveway, power and water supply. Valuer 1 valued the property at \$375,000 comprising land of \$225,000 and improvements of \$150,000. Valuer 1 also provided comment on Resource Management Act and Building Act compliance in his report (page 89 of the bundle). This statement could have been expanded to assist The Board e.g.

1. Compliance or otherwise with the Building Act of the Total Span barn particularly in relation to its use as a temporary residence.
2. Reference to plan change 5 of the district plans which had been notified in 2008.

Both of these omissions are significant in relation to events that unfolded in the course of the hearing.

The Valuer General therefore requested further information from Valuer 1 in relation to any effects that the plan change would have had on his valuation. In response Valuer 1 advised that as the likely building sites on the subject area lay within the significant sensitivity area as opposed to the extreme sensitivity area he perceived that the plan change would have little effect on the valuation. He did observe that a future dwelling and the barn would need to comply with the plan change, in particular in relation to colour schemes.

In response to cross examination Valuer 1 advised that when questioned about plan change 5 he had obtained guidance from the local authority and based his assumptions on that guidance.

Valuer 1 again investigated the rural lifestyle market throughout the subject area noting on this occasion a relatively small number of sales. He observed that there were two residential properties sold during 2008. A basic 50 square meter roughcast cottage and outbuildings on a near level site. The second sale was a partly renovated 90 square meter roughcast 1950s bungalow with detached single garage on slightly undulating site.

Valuer 1 noted three further improved sales of sites of prices ranging from \$430,000 to \$525,000. The locations ranged around nearby localities. The highest priced sale having previously sold in 2008 for \$525,000. Valuer 1 also noted three vacant land sales in the subject subdivision sale prices of \$225,000-\$393,750. Valuer 1 included a number of less relevant sales in a schedule attached to his valuation.

Valuer 1 again provided a very useful sales summary of the properties in the subject subdivision. He noted initial sales in 2004 at prices from \$195,500-\$225,000. He also noted subsequent sales in 2006 and 2008 at prices of \$355,556 to \$393,750.

He finally observed that there was a sell off of the remaining sites in the subject development in 2009 at prices ranging from \$62,500 to \$125,100. Under cross examination he observed that these were essentially mortgagee sales and therefore did not form part of his valid market evidence in relation to the subject property.

Under cross examination Valuer 1 was asked whether certain sales were in fact relevant to the 2009 valuation or should this have been used to support the 2007 valuation. Valuer 1 responded by advising that the sale was out of time for 2007, however he did agree that caution should be exercised when using this sale in his 2009 valuation. Valuer 1 was also cross examined in relation to other sales that were used by Valuer S, however Valuer 1 advised that these did not appear on the database that he used to accumulate his sales evidence. In response to a question by Mr Curnow in relation to interpreting sales was it easier or more difficult in 2009, Valuer 1 responded by saying that interpreting sales was difficult in 2007 and was worse in 2009. He advised that he expected a greater variance between valuers in 2009.

In his concluding comments Valuer 1 stated that it was his opinion that a prudent purchaser would not pay prices comparable to local areas in this location.

In his valuation calculation sheet and confirmed in his brief of evidence, Valuer 1 adopted two approaches to the assessment of the land value. In his first approach he identified 5.4 hectares which he assessed at \$40,000 per hectare giving a value of \$216,000 and steeper country of 2.6 hectares at \$5,000 per hectare giving \$13,000 or a total of \$229,000.

In his alternative approach he adopted a site value of 4,500 square metres of \$150,000 and assessed the balance area of 7,6 hectares at \$10,000 per hectare giving \$75,500. This gave a total of \$225,500 and he adopted a value of \$225,000. The Board notes that the basis for these two approaches was not clearly identified in Valuer 1's analysis of the sales.

A further point explored during cross examination related to the added value of the Total Span building on the property. Valuer 1 adopted a value of \$110,000 in relation to this building with other improvements of \$40,000 relating to roading and fencing etc. Under cross examination from Mr Gamby, Valuer 1 advised that the added value of the "barn" was greater as it was currently the only building on site. He advised that the building would have lesser value once a new dwelling was completed. Valuer 1 was again also cross examined on whether or not the building had code compliance and advised that he had assumed that consents had been granted. Mr Lovelock advised that the building was unconsented, however Valuer 1 did not alter his view of the value as a result.

Once again, the Board notes the confusion in relation to the application of GST. This is of concern as it implies variability in the interpretation of sales evidence and translation of this to a subject property. The Board observes that it is appropriate practice for the valuation of residential and lifestyle properties to be valued on the basis of inclusive of GST if any. If the approach that Mr Lovelock suggested in his closing statements is accepted, then Valuer 1's valuation in this case would actually be \$421,875 thus widening the gap between his advice and the valuation of Valuer S. In fact, Valuer S' valuation would be some 41% below that of Valuer 1. Valuer 1 further advised that this valuation could fall within a range of \$356,000 to \$394,000. If Mr Lovelock's approach is adopted and GST is added to these values the range would be \$400,500 to \$443,250 giving a best-case scenario for the variation between Valuer 1 and Valuer S where Valuer S' valuation is between 38% and 44% below that of Valuer 1.

To summarize, Valuer 1 provided the Valuer General with a valuation the subject property as at 10 August 2009 at \$375,000. Depending on how Valuer 1's range of valuation is assessed this could be as low as \$356,000 or as high as \$394,000. Again, depending on the treatment of GST the lowest possible value for Valuer 1's range is \$400,500. Arriving at these values Valuer 1 has noted a paucity of sales but again regards sales east of the local river as being most relevant. He has included a range of sales being both improved and unimproved sales.

Valuer 2

Valuer 2 provided a retrospective valuation on 16-July 2010.

Valuer 2 again briefly described the property noting on this occasion that the property had well-formed access over a culvert and gravel surfaced road of some 250 meters then a grass surfaced track to where the existing building is located. He noted that this site was predominantly covered in pasture and had recently been fenced on the road front and north boundaries and part of the east.

In the second report under the heading of "Zoning" Valuer 2 advised that the local authority in 2008 gave public notice of what is known as Plan Change 5 (5A-5W). This primarily was to address rural development issues in the district, particularly relating to subdivision and building and the resultant effects on the environment.

He advised that he had discussed the matter with the planning division but indicated that it would make land use more challenging with more landscape issues, and effectively would tighten the rules. He noted that the plan change would put a "check" in the planning process and would appear to have no effect on existing subdivisions other than for design criteria for any new buildings to be erected therein. Under cross examination in relation to this matter Valuer 2 was asked to identify the site of the proposed dwelling which he did, and this information became relevant in later discussion on the applicable zoning of the area. Valuer 2 was asked if the prolonged process of consenting would be costly. His response was that the intent was to manage not restrict. He noted that the proposal was different to the plans of other nearby local authorities.

In his sales evidence Valuer 2 noted a number of sales including the mortgagee sales within the subject subdivision. Valuer 2 also included six vacant lifestyle block sales on the west side of the local river ranging in price from \$200,000 to \$305,000. All these sales occurred during 2008. To complete his analysis Valuer 2 included four small improved lifestyle block sales at prices ranging from \$250,000 (for a 1960s cottage) to \$590,000 on the outskirts of a nearby town.

In his valuation conclusion Valuer 2 advises that it is difficult not to recognize the "forced sales" within the subject subdivision as undoubtedly they influence value. He advised that looking at the wider, albeit limited evidence of other lifestyle sales, and being aware at the time of the forced sales that there were concerns among lot purchasers of problems with the potable water supply in the subject subdivision. He advised that he turned to the definition of market value as defined in

Section 1 of his report and adopted a compromised level of value. He advised that in doing so he had also been conscious of the proposed local authority plan change but was satisfied that due to the number of rural lifestyle sites available for sale and that as effectively the plan change only adds a further "check" in development process, no adjustment to the market value is adopted in this report as required. As in his 2007 valuation, Valuer 2 adopted a value of a hypothetical building platform in this case at \$142,193 with a balance area of 7.613-hectares valued at \$7,500. The sum of these indicated a value for the total land area of \$199,290 which he rounded to \$200,000.

In relation to the improvements Valuer 2 advised that he had completed an analysis of cottage. and small dwelling sales in the proximity and considered that they indicated building values of about \$580-\$1,000 per square metre. He adopted a value of \$670 per square metre across the Total Span barn as a whole. He noted the total cost of the building to the owners was \$120,000 and the total cost of all improvements had been about \$150,000 including GST. In his assessment however he allowed only \$125,000 for improvements.

Again, it is noted that Valuer 2's valuation was plus GST if any. If Mr Lovelock's approach is adopted and GST is added to his valuation, Valuer 2's valuation on a comparable basis to Valuer S would be \$365,625. Valuer S' valuation is 32% below this.

THE DEFENCE CASE:

Mr Lovelock called Valuer S as the sole defence witness. He did not call any other supporting evidence.

Valuer S

Valuer S provided a valuation dated 7 August 2009 with an inspection and valuation date of 10 August 2009. This point in itself is of concern as the report predates the inspection and valuation date. Valuer S valued the property at \$250,000 inclusive of chattels and GST if any. They made a mortgage recommendation of up to 50% of the assessed market value.

Valuer S once again referred to the situation and locality of the property noting the proximity in particular to the amenities available nearby.

Central to Valuer S' 2009 valuation was their assessment contained in the section entitled 'resource management'. Valuer S included reference to proposed district plan changes dated 11 October 2008. They noted that Lot 10 lay within the areas of extreme and significant landscape sensitivity as advised by the local authority. They noted that house building which had previously been a controlled activity in the rural resource area was now either a discretionary or discretionary restrictive activity. In their view a significant effect of the change was the opportunity for public comment and appeal. In this regard they noted that experience in surrounding areas suggested that the proposed changes have the potential to lead to extensive and protracted rural resource consent applications. They further advised that resource consent was in place for the current farm and living facilities.

Valuer S provided an extended market commentary noting that the national overview was that the country was in the worst financial crisis since the great depression and cited various indicators in relation to this. In particular they noted that the rural property market for farms and in particular lifestyle blocks has shown a reduction in sales volume. Included in their commentary was a graph that indicated that the median sale price for vacant lifestyle blocks had fallen from \$325,500 in 2007 to \$235,000 in 2009, indicating a 28% drop.

Valuer S then quoted as sales evidence the eight mortgagee sales within the subject subdivision plus other sales in 2008 for \$225,000 and \$295,000. In addition they quoted a sale which was an improved block in 2003 for \$600,000. Their other sales were located on the western side of the

local river including a sale of \$385,000 which they analysed at a block value of \$225,000 plus a Total Span home. They added a note saying that they had been advised that two 8 hectare blocks with alpine views in this same subdivision were being offered for between \$149,000 and \$199,000 with limited interest.

They then quoted four sales during 2008 at prices ranging from \$180,000 to \$315,000. A further five sales occurring through 2008 and into 2009 for smaller blocks were quoted at between \$130,000 and \$420,000.

In their further analysis they noted that throughout the district there were few lifestyle sales and residential sections were reselling on the secondary market at levels below their original purchase prices, sometimes only a few months earlier.

They also made further comment on the sale of the eight lifestyle blocks nearby noting that they believed the local authority's extreme and significant sensitivity landscape designations appeared to have affected the market. They also noted that the large offering by mortgagee sale had exacerbated the situation causing the sale prices to collapse. They did not believe the sales represented market value.

In their conclusion they noted the market at this time continued to remain uncertain. Their view was that until there is sales evidence available indicating the market is recovering, any assessment now needs to be conservative.

In a concluding statement they referred to the local rating assessment with a capital value of \$300,000 as at 1 September 2007. This, the Board assumes was in error as it is understood the subject property lies within a different district from the one Valuer S quoted.

Without further dialogue Valuer S valued the property with a land value of \$150,000 with the added value of improvements being \$90,000 for the Total Span barn and \$10,000 for other improvements, giving a total market value of \$250,000. The assessment of the barn was broken down into two components being 138.4 square meters enclosed at \$570 per square meter and a carport of 40.8 square meters at \$285 per square meter. Their valuation was based on construction being completed and a Code of Compliance Certificate issued.

In their brief of evidence Valuer S summarized the above information but clarified the lots that were available for sale in a nearby subdivision. In particular they noted a 2.1-hectare block at \$145,000 which was unsold, a 12.1-hectare block marketed at \$189,000 which subsequently sold for \$180,000 in 2009 and an 8-hectare block that was marketed at \$199,000 that subsequently sold in 2010 for \$187,500. From the attachments in Valuer S' evidence, it is noted that the three lots marketed above are at the low end of a much larger range of sites being offered in nearby. Prices for other lots range up to \$395,000 for a 6.6-hectare lot.

Counsel for Valuer S also introduced a number of exhibit items when cross examining Valuer 2. Of particular value to the Board in this regard was a plan of the property whereby the valuers identified the likely boundary between the extreme and significant landscape areas and likely building sites on the property, a photograph showing the property from a vantage point and the planning maps relating to the local authority plan change. These assisted the Board in enabling the plan change to be put in context. Also of value to the Board was a locality plan showing the location of the various sites of the sales referred to in evidence.

Summary of Evidence

The Board has been faced with conflicting evidence in relation to the relevance of sales information, the methodology to be applied to analysing and valuing lifestyle blocks and differing views in relation to GST. Regards the latter, The Board has adopted the approach used by Mr Lovelock in his closing submission whereby all the information is adjusted to a GST inclusive basis

for comparison purposes. The Board recognizes that there are some flaws in this however for comparability in this case it becomes important.

The closing submissions by counsel for either party do little to resolve the degree of conflict that was evident with both counsel clearly reflecting the evidence given by their witnesses. Cross examination during the hearing did little to resolve this conflict.

Mr Lovelock went to considerable effort in his closing statements in an effort to discredit the evidence supplied by Valuer 1. As previously noted, the Board has accepted the evidence of Valuer 1 as being adequately prepared and presented.

While the evidence produced purported to either sustain equality in value perception between different subdivisions from which sales evidence was produced or conversely that the subdivisions to the west of the local river were superior, this was not proven to the Board's satisfaction. The Board did however note that the subdivisions west of the river and the other sales referred to on the east of the river all lie in close proximity to the major highways. Conversely the subject area is an isolated loop from either highway and the access to the subject site is via a steep side road. From the evidence produced by Valuer 1, there seems to be a general trend towards higher sale prices within the subdivisions to the west.

The methodology as to analysing the lifestyle sales and or valuing lifestyle blocks relying on a building platform and balance land approach would seem to be the common methodology. The Board is not convinced that in this case it made a significant difference to the outcome. The Board was concerned that Valuer 2 was unable to sustain the numbers that arose from his analysis in this approach. Valuer 2's adopted value was not within the range he suggested. The Board is of the view that this may have caused Valuer 2 to undervalue the subject property.

As to the sales evidence, The Board has noted that there was limited evidence available relevant to the valuation date. With the exception of the eight mortgagee sales in 2009 the valuers have only come up with six sales during 2009 and this was by casting a wide net. Three of the six sales related to improved sites and three to unimproved sites. The Board questions the inclusion of a purely residential section. On this basis the land value sales quoted by the three valuers range from \$180,000 to \$393,000. Both the lowest and highest of these values are quoted by Valuer S. To further assist the Board, Valuer S indicated that using the mortgagee sales they would adjust the highest of these sales by some 23 24% as being a common indicator of the detriment of a mortgagee sale. This would lift the market value of Lot 19 to \$155,000.

Based on the evidence before The Board, based purely on sales, the land value for the subject site would appear to lie in the range of \$200,000-\$225,000. If Valuer 1's valuation and Valuer 2's valuation were not adjusted for GST (as suggested by Mr Lovelock) then their values would lie at each extent of this range.

The second matter of significance to this valuation is the added value of the improvements. This matter was explored during cross examination particularly in trying to create relevance between the Total Span barn on the subject property and a Total Span home and other established residential type buildings within the sales information. While considerable play was made during the hearing as to the code compliance of the subject building all three valuers assumed in their valuation that a compliance certificate would be issued if it had not already. Having heard the evidence The Board considers that Valuer 1 erred towards a residential type building in his assessment of this "barn". Conversely Valuer S appears to have ignored any potential added value from the facilities incorporated in the "barn". Valuer 1 appears to have taken into account the cost to the occupiers of obtaining the building and creating the necessary site development. This totalled in the vicinity of \$150,000 which is the figure Valuer 1 has adopted. Valuer 2 conversely has allowed \$125,000 for both the building and site improvements. In his valuation he

acknowledged the cost to the occupiers, however, did not regard this as the added value. Valuer S allowed \$90,000 for the building plus \$10,000 for site improvements.

In this matter The Board considers Valuer 2's view the more reliable, that the added value of improvements was \$125,000.

The third matter impacting on this valuation is the introduction of plan change 5 by the local authority in 2008. Valuer S correctly observed that this would place some nervousness in the marketplace, particularly for undeveloped or partially developed sites. Based on experience they had elsewhere, they considered that obtaining future consents may be a costly and litigious process. Valuer 2 had investigated the proposed plan change and given it full consideration in his valuation report. His view was that given the site characteristics of the subject property the plan change would have minimal impact. While some design features may be required it was unlikely that consent for a dwelling would be denied or delayed.

Valuer 1 did not initially address the plan change in his report. When requested by the Valuer General, he had investigated the plan change and discussed the impact with the District Council employees. Having undertaken this research Valuer 1 was of the view that the plan change would have little or no impact on the valuation.

Mr McCarthy in closing submissions identified what he believed were a number of errors in Valuer S' approach to the plan change. In particular he refers to the landscape classification noting that building sites existed within the significant landscape area as opposed to the extreme landscape area. Secondly Mr McCarthy referred to the applicable rules again with reference to the likely site of the building platform. Thirdly he noted that an application for building consent in the significant landscape area does not of necessity require public notification or open the request to the appeal process. Mr Lovelock rebutted these matters in his closing submissions leaving the Board with a view that it is largely a matter of opinion as to the extent of this impact, principally because there is a lack of sales evidence between the notification of the plan change and the date of valuation for a market interpretation of the effect of the change to be undertaken. It is however noted that some of the sales referred to by the valuers lie within a different district where similar planning provisions already exist. The Board therefore concludes that the plan change may have had an impact on the lifestyle market in the subject district but on the evidence in front of it this may not be as severe as interpreted by Valuer S.

In conclusion Valuer S appears to have relied most heavily on the mortgagee sales within the subject subdivision. While they adjusted the highest of these sales in order to reflect the negative impact of a mortgagee sale, the level of evidence for this adjustment is lacking. The other valuers have placed greater reliance on the overall marketplace but have not ignored the mortgagee sales as being a low-level indicator.

Based on the evidence before it The Board considers that a valuation in the vicinity of \$325,000 (inclusive of GST if any) would have been appropriate at the date of valuation. This is below both of the retrospective valuations (Valuer 2's if GST is added to his valuation) but above that of Valuer S. In assuming the valuation of \$325,000 is probable, then Valuer S valuation at \$250,000 is 23% below this level.

Summary of Issues

Onus and standard of proof:

The prosecution has a burden of proof. This standard of proof is that established by the decision of the Supreme Court NZ in *Z vs. The Complaints Assessment Committee* [2009] NZLR 1. At paragraph 118, McGrath J for the court stated:

"... we are of the view that in this country there is no good reason for creating an except upon covering disciplinary tribunals. A flexibly applied civil standard of proof should be adopted in proceedings under the Act and other similarly constituted disciplinary proceedings in New Zealand unless there is a governing statute or other rule requiring a different standard".

This Standard, commonly referred to as "*proof on the balance of probabilities*", is to be flexibly applied. The more serious the allegation, the natural tendency will be to require stronger evidence to satisfy the balance of probabilities standard.

The Board of Appeal decision in *King v. Valuer General* (17 December 2009, DC Wellington CIV-2009-085-32) confirmed that the decision in *Z* applies to disciplinary proceedings under the Valuers Act 1948.

The charge against Valuer S is a serious charge of gross under valuation. The proof required on the balance of probabilities is a relatively high standard as the potential sanctions that can be applied if Valuer S were they to be found guilty are serious.

In this case little evidence was placed before the Board as to the distinction between the eastern and western sides of the local river as affecting value in 2009. The three key issues raised during the investigation and hearing related to the relevance of the eight mortgagee sales in the subject subdivision, the relevance of the plan change in 2008, and the added value of the improvements.

It would appear that in completing their valuation Valuer S has been very cautious in light of the mortgagee sales within the subject subdivision and based on their experience in other areas has taken a cautious view to the impact of the plan change. The Board has considered the previous evidence in relation to the locality factors and in this case believes that Valuer S in spite of previously denying this influence has erred towards accepting it.

Again, the inconsistency in relation to GST is of concern, however the Board has considered on the basis of the evidence that Valuer 2's valuation would have been close to the "probable" value, had GST not been added. Having considered all factors The Board still believes that the value assessed by Valuer S is some 23% below the likely valuation that could apply, noting that this value is below that assessed by either of the check valuers.

An allegation of gross under valuation is a serious charge with potentially serious consequences. It must be said that the threshold is reasonably high where there is uncertainty relating to market evidence as there is in this case.

This has given rise to what is described in *King* as the two-step process as follows:

1. *Whether the matters alleged in the disciplinary charge has been established to the point that there has been a departure from acceptable standards; and then, quite separately-*
- 2.
3. *Whether that departure has been significant enough to warrant disciplinary sanction for the purpose of discipline".*

In the Board's view, Valuer S' valuation was an under valuation. On the evidence contained in their valuation report there is little evidence for a value level at \$250,000 and this is not sustained by the overall market. Conversely, the Board is not satisfied that Valuer 2 or Valuer 1 totally appreciated the influences on the subject market at the date of valuation. On the evidence presented to it, the Board believes the valuation should probably have been somewhere nearer \$325,000 at the date of valuation.

Decision

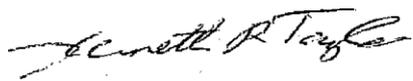
Valuer S' valuation was an under valuation. The Board has given some weight to the evidence of both Valuer 1 and Valuer 2 in this regard however in this case errs towards the weight of evidence presented by Valuer 2.

The Board however recognizes that this was a difficult market to value in. The market was in a state of rapid decline, there were limited sales, properties in the same subdivision had been subject to mortgagee sales and there was uncertainty relating to district plan changes.

While the Board is of the view that Valuer S undervalued the property, it does not consider that a charge of gross under valuation has been proven to the required standard.

Penalty and Costs

In relation to having found Valuer S guilty of the first charge relating to gross over valuation and identifying that a sanction is appropriate The Board seeks representations from counsel as to penalty and costs.



KR Taylor
Inquiry Chairman

1 August 2012