

Valuer U (hearing) [2012] NZVRB 6

**VALUERS REGISTRATION BOARD**

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

**AND**

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

**AND**

**A DECISION OF** the Board of Inquiry of  
the Valuers Registration-Board

**BOARD OF INQUIRY:**

H J Puketapu (Inquiry Chairperson)  
K Taylor  
P Curnow

**COUNSEL:**

J Burns for the Valuer General  
Valuer U did not appear

**DATE OF HEARING:**

12/13 December 2011

**COMPLAINT**

On 3 July 2009, the complainant wrote to the Valuers Registration Board making a formal complaint against Valuer U in respect of two valuations on a property. The complainant provided mortgage finance in reliance of the two valuations prepared by Valuer U.

The property is a rural block. Valuer U provided two reports for the land held in their respective computer freehold registers ("the reports").

The reports are both dated 24 March 2008 with an effective valuation date of 17 March 2008.

The complainant advises that Valuer U valued the property "up at" (sic) \$3,535,000. Copies of the reports submitted to the Board indicate current market values of:

Part A -	\$1,735,000
Part B-	\$1,800,000
<b>Total -</b>	<b>\$3,535,000 (excl. GST)</b>

The complainant also provides copies of two separate valuation assessments of the property, undertaken by Valuer 1 and Valuer 2. The valuations are assessed as though the property is a single entity as follows:

Valuer 1 - \$585,000 plus GST if any (as at 17 March 2008)

Valuer 2 - \$600,000 plus GST if any (as at 21 October)

While there is a 7-month time difference between Valuer U's reports and that from Valuer 2, the complainant does not believe that the property could have dropped in value by such an amount over this period.

Further documentation forming part of the complaint includes a valuation critique prepared by Valuer 3 dated 29 January 2009 comparing Valuer U's reports with that of Valuer 2, and a letter from the complainant's solicitors to Valuer U.

That letter states in part that the complainant had "provided mortgage finance in reliance on Valuer U's valuation. It has recently discovered information that leads it to believe that your report contains serious mistakes and grossly overstated the value of the property."

In a letter dated 25 March 2009 to the complainant, Valuer 1 commented on the sales utilised by Valuer U, concluding in essence that the sales evidence either does not exist or is incorrectly analysed.

The complainant has tried to contact Valuer U direct to discuss this matter, however Valuer U has not responded to the complainant or its solicitors.

The complaint was referred to the Valuers Registration Board ("the Board") for investigation by the Valuer General in terms of Section 32 of the Valuers Act 1948.

## **INVESTIGATION**

The Valuer General wrote to Valuer U on 26 August 2009 advising them that he would be investigating a complaint from the complainants in respect of a rural property. A copy of the complaint was provided to them.

In their letter of response to the Valuer General on 16 September 2009, Valuer U deflects any wrongdoing on their part. They say that "*our company was instructed to provide a valuation on an "As Is" basis with due regard for future subdivision.*"

They state that *"there was a strong subdivisional drive in the area...which had been the subject of aggressive conversion of large pastoral farms/blocks to rural/residential lifestyle developments... "*.

Valuer U also says that the previous owners allegedly purchased the two adjoining blocks for subdivision. They commissioned local surveyors to review the property in terms of future subdivision capability and that they had a letter on file indicating the surveyor's findings supported the same. Valuer U stated that the property was then sold on a willing buyer willing seller basis with full disclosure as to its subdivisional potential. To their knowledge the purchaser was intending to make an application for Resource Consent.

Valuer U comments that the fault lies with the complainants for not conducting a more thorough due diligence into the borrower's true financial position.

The Valuer General wrote again to Valuer U on 23 September 2009 requesting a copy of the letter from local surveyors and invited them to make any further comment or provide any more information to support their valuation. On 8 October 2009, Valuer U emailed a suite of documentation including a copy of a letter from the surveyors pertaining to the subject property. This letter confirmed that 10 house sites could be developed but would be a restricted discretionary activity. Other documentation included letters from the surveyors supporting the subdivision of properties elsewhere, and valuation reports for the same. A copy of another valuation report was also submitted.

Valuer U stated that the documents "reflect a subdivision drive around the subject area".

A series of photographs of the property were also forwarded to the Valuer General.

The Valuer General wrote to Valuer U on 13 May 2010 requesting more specific information in support of the five (5) comparative sales detailed in the reports. Two further follow up letters were forwarded on 27 May 2010 and 7 July 2010 requesting a response. Valuer U finally provided an email response on 18 August 2010 outlining the background to four (4) of the five sales. They indicated that a further sale had been incorrectly transposed and did not belong in the reports.

## **RETROSPECTIVE VALUATIONS**

The Valuer General sought two retrospective valuations.

Valuer 2 was instructed on 4 November 2009 to complete a retrospective market valuation and mortgage recommendation having regard to market conditions prevailing as at 17 March 2008 using such sales and rental evidence as would have been available through normal avenues to a valuer in practice at that time. Valuer 2 had provided an earlier report for the complainants as at 21 October 2008. A descriptive extract from Valuer U's valuation report was provided to assist in the determination of the condition (of the property) as at the [operative date].

Valuer 2 assessed a current market value of \$600,000 plus GST (if any) with a mortgage recommendation of \$300,000.

On 16 June 2011, the Valuer General provided Valuer 2 with the correspondence submitted by Valuer U relating to the subdivision potential for 10 house sites and costs to subdivide the property. Valuer 2 remarked that he was aware of possible subdivision, but he also added that "At the time of valuation such a proposal would not have influenced my valuation".

On 3 June 2010, Valuer 4 was also instructed to complete a retrospective valuation. His report is contained in the Valuer General's supplementary report dated 1 December 2010. Similar instructions and a descriptive extract were provided along with the proposed subdivision reports from the local surveyors

Valuer 4 assessed a current market value of \$670,000 (excl. GST) with a mortgage recommendation of \$445,000.

It was against this background that two charges were made out.

Notice in writing was forwarded to Valuer U on 12 August 2011 of the intention of the Board to hold an inquiry, and of the time and place of the hearing, and the nature of the charges.

## **THE CHARGES**

Valuer U faces two charges under s31(1)(c) of the Valuers Act:

1) Section 31(l)(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 24 March 2008 with respect to a property, you grossly over-valued the said property.

2) 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 24 March 2008 with respect to a property, you grossly over-valued the said property.

The hearing was set down on 3 October 2011, however this date was vacated following advice from The Registrar of the Valuers Registration Board that Valuer U's current whereabouts was unknown. A new hearing date of 12 December 2011 was confirmed.

Counsel for the Valuer General in this matter forwarded a copy of the following by way of service to Valuer U's last known residential address and to their last known email address:

- Brief of Evidence of Valuer 2
- Brief of Evidence of Valuer 4
- Opening submissions for the Valuer General

## **THE HEARING AND FINDINGS**

Neither Valuer U (nor any representative) appeared. The Board heard from the Counsel for the prosecution and witnesses.

At the opening of the hearing, the charges were read.

## **VALUER GENERAL**

The Valuer General appeared and gave evidence as to his involvement, as Valuer General, in the matter before the Board. The Valuer General affirmed his investigation of this complaint and outlined the steps he took in serving Valuer U with the opening submissions and briefs of evidence relied upon by him in this Inquiry. Three Affidavits of Service were produced dated 6 December 2011, 7 December 2011 and 8 December 2011 respectively.

The Board confirms that the Valuer General has taken reasonable steps in trying to locate Valuer U.

The Valuer General confirmed the status of Valuer U's registration as resigned. Valuer U's registration status was tabled and confirmed.

## **PROSECUTION**

In opening for the prosecution, Mr Burns set out the background to the complaint, referring predominantly to the reports of the investigation by the Valuer General.

Following the Board's decision to hold this Inquiry, and for the purposes of preparing for this Inquiry, the Valuer General further instructed Valuer 2 and Valuer 4 to prepare separate market valuations as at 17 March 2008 of the subject land described as Part A and Part B. Valuer 2 and Valuer 4's respective assessments are as follows (Valuer U's assessment is added for comparison):

### **Part A** (current market value as at 17 March 2008)

Valuer 2	\$340,000 (plus GST), mortgage recommendation - \$200,000
Valuer 4	430,000 (excluding GST), mortgage recommendation- \$280,000

Valuer U        \$1,800,000 (excluding GST)

**Part B** (current market value as at 17 March 2008)

Valuer 2        \$260,000 (plus GST), mortgage recommendation - \$130,000

Valuer 4        \$207,000 (excluding GST), he was unable to make a mortgage recommendation until legal access can be obtained.

Valuer U        \$1,735,000 (excluding GST)

Evidence was called from Valuer 2 and Valuer 4.

**VALUER 2**

Valuer 2 read a prepared brief of evidence describing the property, commenting on potential for subdivision and outlining his valuation methodology and analysis. He concludes his evidence by providing his review of Valuer U's reports in relation to the properties.

He describes the nearest township as being an old established seaside village in the district and that from a farming perspective, this is a difficult area. He also says there is little employment opportunity, and unemployment is high. Valuer 2 describes the subject properties as being relatively isolated, lying at the end of the subject road, and as at March 2008, would have below average saleability for region.

**Part A**

Valuer 2 discusses the property being a large lifestyle block of wheel tractor contour and clay soil. The pastures are typical kikuyu dominant, and the soil type prone to erosion. Valuer 2 alluded to a serious slump at the property concluding this erosion was in existence as at March 2008. This matter is also mentioned in Valuer 2's earlier report dated October 2008 to the complainants.

He confirms an area of 12.8366 hectares for the property.

Valuer 2 says he considered this property's potential for subdivision indicating there was no evidence available to him that subdivision was legally permissible as at 17 March 2008. He did not discount though that an application to the local authority under discretionary rules was possible, but to presume a successful subdivision, would be speculative. Any anticipation of associated conditions was also speculative.

When asked by Mr Curnow whether the use of "Discretionary Rules" was evident in the locality, Valuer 2 replied "not so much in this area."

Valuer 2 concluded that subdivision was not financially feasible after considering factors such as property location, depressed state of the market at the date of valuation, low lot values and unknown development cost contingencies. He also reported that an intensive subdivision of this title would have been uneconomic as at March 2008.

Valuer 2 notes improvements on the property include a Lockwood style dwelling, a large 4-bay implement shed and a small 2-bay barn (also mentioning the subsidence at the rear of the barn).

Valuer 2 reported that he used a market comparison approach in valuing the property. He noted that the property and the adjoining property (Part B) had sold together as a single property sale in 2007, for \$590,000, commenting also that there had been no movement in values from 2007 to 2008. When cross-

examined by Mr Curnow about this, Valuer 2 indicated that it was "extremely difficult to value in the area bereft of any decent evidence".

Notwithstanding this remark, Valuer 2 discusses a prime comparable sale to the north of the property comprising 67.2 hectares which sold in 2007 for \$500,000. Valuer 2 provided no other detail as to physical address or legal description but was able to identify this sale on an aerial photograph. Access to this sale is via a right of way from the end of the subject road. The property is larger, and after allowing \$80,000 for a 1920's weatherboard home and other improvements, Valuer 2 analyses a per hectare value of \$6,250. He describes the property as superior due to greater size and aspect/views.

The second of Valuer 2's "pertinent" sales sold in 2007 for \$1,280,000. Valuer 2 analysed a per hectare rate of \$8,475 after allowing \$185,000 for buildings and improvements. He comments this property is better located than the subject property, larger, multi-titled and has considerable road frontage.

Other sales reported upon by Valuer 2:

- Sale 3 sold 2007 for \$226,500.
- Sale 4 sold 2007 for \$185,625.
- Sale 5 sold 2007 for \$140,000.

When asked in cross-examination as to what were his two key sales, Valuer 2 acknowledged the subject property sale in 2007, for \$590,000, and Sale 2, which set the upper limit for his assessment.

Valuer 2 discusses a number of other sales in the region concluding his overall per hectare values for pasture at \$12,500 and non-productive land at \$2,500.

Valuer 2 adopted an added value of the dwelling at \$144,000 using a net rate of \$950 per square metre. There is no analysis for this net rate in Valuer 2's report.

Valuer 2's current market value for Part A is assessed as follows:

Land

Pasture	11.6ha@	\$12,500/ha	=\$145,000
Non-Productive	1.2ha @	\$2,500/ha	=\$ 3,000
Total land			\$148,000

### Improvements

Dwelling -added value	=	\$144,000
Barn	=	\$20,000
Half Round Barn	=	\$ 6,000
Other Improvements	=	\$22,000
		<u>\$192,000</u>

Total Value **\$340 000**

### **Part B**

This property is landlocked and obtains physical access over a metaled track through the adjoining property (Part A). Valuer 2 comments that subsidence is of concern potentially jeopardizing vehicle access into this property.

Valuer 2 commentary is largely the same as for Part B, albeit this property is vacant and comprises approximately 25 hectares. He describes the property as a large grazing/lifestyle block.

By way of commentary on his sales data, Valuer 2 gives the sale of the 70 hectare block and the Sale 2 as his two relevant sales in this instance, and has adopted a rate of \$11,000 per hectare for the pasture, and \$2,000 per hectare for non-productive land.

His assessment of current market value is set out as follows:

#### Land

Pasture	25.0ha.	@	\$11,000/ha	=	\$275,000
Non-Productive	0.9ha	@	\$2,000/ha	=	\$ 1,800
Total land, with legal access				=	\$276,800
Less allowance to provide access and power				=	<u>\$ 16,800</u>
<b>Total Value</b>				=	<b><u>\$260,000</u></b>

## **VALUER 4**

Valuer 4 read a prepared brief of evidence referring to the two property reports he prepared as instructed by the Valuer General, and outlining similarly to Valuer 4, his valuation methodology and analysis, market comment and sales evidence. He concludes his evidence by providing his review of Valuer U's reports in relation to the properties.

Valuer 4 carried out a physical inspection of the properties on 1 July 2010, however he was only able to carry out a limited inspection without the occupier present.

### **Part A**

Valuer 4 describes this property as being a large lifestyle block lying at the end of the subject road. He notes the adjoining land as landlocked with no legal access.

The property is zoned Rural Production. Valuer 4 comments that the minimum lot size required in order for subdivision to be permitted as a Controlled Activity, is 20 hectares. While the letters from the local surveyors said that 10 lots could be developed as a Restricted Discretionary Activity, Valuer 4 remarks that this conclusion appears to be based on a walkover inspection, and no reference was made to any geological investigation. Valuer 4 concludes that the land is "stability sensitive, there is a paucity of suitable building platforms.... ". He opines appropriate geotechnical investigation and engineering advice would be necessary to determine whether potential for subdivision exists. He goes on to say that "In the absence of sufficient evidential foundation a registered valuer could not properly conclude that a subdivision requiring approval as a discretionary activity was legally permissible".

When asked in cross-examination whether the letters from the local surveyors had any impact on his assessment, Valuer 4 responded that it made him deliberate on the potential for subdivision. It was not unusual in a "bull market" to assess potential but

this was a discretionary activity and there were increased risks. He was not aware of any subdivisions in the area.

He concludes the highest and best use of the land is as a grazing/lifestyle block, adding that there was inadequate evidence to substantiate potential for subdivision.

With reference to the improvements, Valuer 4 confirms there being a dwelling and other improvements upon the land, relying mainly on local authority records and an external inspection. He describes the property as having a pleasant outlook across farmland and the local river. Whilst the property sits adjacent the river, river access is compromised by mud and mangroves - "the river provides a modest advantage".

In carrying out his assessment of current market value of this property, Valuer 4 noted the sale of the subject property in 2007 for \$580,000 plus \$10,000 chattels, and he also confirms the \$500,000 sale in 2007 of a nearby 67.2 hectare property at the end of the subject road (as also described by Valuer 2).

Valuer 4 analyses his sales as follows:

Sale Property	Sale Price	Sale date	Size (hectares)	C:urtilage/site value	Balance Land/hectare	Comments
Sale 6	\$ 500,000.00	2007	70	\$ 40,000.00	\$ 3,000.00	medium to steep pasture land
Subject property	\$ 590,000.00	2007	40	\$ 65,000.00	\$ 7,000.00	Medium hill
Sale 7	\$ 500,000.00	2007	14	\$ 162,000.00	\$ 22,000.00-	Undulating to medium hill
Sale 8	\$ 300,000.00	2008	30	\$45,000and \$35000	\$ 6,800.00	medium hill in two titles
Sale 9	\$ 85,000.00	2008	4	\$ 45,000.00	\$ 12,188.00	undeveloped lifestyle block

<b>Sale 10</b>	\$ 310,000.00	2008	8	\$ 200,000.00	\$ 14,085.00	undeveloped lifestyle block
<b>Sale 11</b>	\$ 140,000.00	2008	4	\$ 40,000.00	\$ 10,270.00	grazing block

Valuer 4's interpretation of the market is that values continued to rise after the sale date of the subject property through 2007, before reaching a plateau toward the end of 2007.

He describes his classes of land as curtilage (0.4ha), with the balance being medium hill contour in fair to poor kikuyu dominant pasture and bush.

In analysing his sales, Valuer 4 comments that curtilage values in the area range from difficult inland sites at around \$40,000 to attractive sites with coastal attributes up to \$200,000. He suggests that an undulating to easy building site situated in a relatively isolated rural area with modest water views is in the range \$70,000 to \$90,000.

In addition, Valuer 4 applies a rate of \$9,000 per hectare to the balance land, comparing this in particular to the sale of the subject property in 2007 and the adjoining 67.2 hectares of steeper land at the subject road.

Valuer 4 sets out his assessment of value for Part A as follows:

#### Value of Buildings

Dwelling	162,000	
Other (summarised)	\$80,000	
Say		\$240,000

#### Land

Medium Hill clay to poor Kikuyu

Dominant pasture	10.4ha @ \$9,000/ha	\$93,600
Bush and waste	2.0ha @ \$5,500/ha	\$11,000
Curtilage/site value	0.4ha	<u>\$80,000</u>
Land Value	Say	\$185,000
Market Value (excluding chattels)		\$425,000

Chattels	\$ 5,000
<b>Market Value (including chattels)</b>	<b><u>\$430,000</u></b>

Valuer 4 compares this with Valuer U's assessment:

Land Value	\$1,520,000
Value of improvements	<u>\$ 215,000</u>
Current Market Value .	<b><u>\$1,735,000</u></b>

In summary, Valuer 4 comments that demand for coastal and lifestyle property in the subject area slowed towards the end of 2007. Global financial difficulties were apparent as at the date of 17 March 2008 and there was reduced demand for coastal properties and lifestyle blocks. Coupled with very little comparable sales evidence, values had declined significantly.

### **Part B**

Valuer 4 describes this property as being landlocked pastureland with no legal access except from the river adjacent to the western boundary. Physical access is by way of a metal drive across the land in Part A. The commentary from Valuer 4 is almost duplicated in his report for the adjoining property above.

Valuer 4 concludes also that the highest and best use of the land is grazing/lifestyle, except that a negative adjustment is required for the lack of access. He also opines that potential for subdivision has not been substantiated taking into consideration the provisions of the District Plan, market demand, physical features, location and the river frontage. Similar to his view of the adjoining property Valuer 4 also states that in considering an application for subdivision as a Restricted Discretionary activity, the physical attributes of the land are considered.

On this matter of potential for subdivision, Valuer 4 indicated that while the owner of the land could apply for local authority approval for subdivision as a discretionary activity, that does not establish (to any extent) that the subdivision applied for is legally permissible. He added that "In the absence of sufficient evidential foundation a registered valuer could not properly conclude that a subdivision requiring approval as a discretionary activity was legally permissible".

Importantly, he concludes that even if any particular subdivision was legally permissible and physically possible, the costs involved, the characteristics of the property (including size,

nature and condition, location) and the nature of the market (in particular low demand for such land) as at the operative date mean that any such subdivision would not be reasonably probable.

Valuer 4 describes the topography as broken and hummocky in nature. He comments that as at the valuation date the risk of instability would have been reflected by heavy clay soil type, sloping contour, hummocky nature of the land, land use classification and existing slip evidence.

In carrying out his assessment of current market value for this property, Valuer 4 classified the land into a curtilage area of 0.4 hectares, and the balance land is assessed as one class - medium hill contour in fair to poor kikuyu dominant pasture. His approach is similar to that adopted for Part A except that an adjustment is required for the lack of legal access.

Valuer 4's instructions from the Valuer General, was that Part A and Part B were to be valued independently as separate titles. To be able to secure legal access to Part B, Valuer 4 considered the options available included a private treaty negotiation across Part A or pursuit through the Courts in accordance with Sections 326 - 327 Property Law Act relating to landlocked land. Valuer 4 makes the following adjustment to reflect the lack of legal access:

Survey Cost	\$5,000
Legal Cost	\$10,000
Contribution to drive construction	\$10,000
Purchase of easement light	\$25,000
Inconvenience and risk	<u>\$25,000</u>
Total adjustment (deduction)	<b>\$75,000</b>

He uses a similar methodology in assessing the value of this property as he did for the adjoining land. However, from the same sales basis, he assesses a curtilage value of \$40,000. The lower value is attributable to inferior contour, geotechnical risk and additional servicing.

Similarly, he applies a rate of \$8,500 per hectare to the balance land reflecting the smaller property.

Valuer 4 sets out his assessment of value for Part A as follows:

Value of Improvements - fencing, water supply, tracks		\$25,000
Land Value:		
Medium Hill clay to poor Kikuyu-		
Dominant pasture	25.5ha@\$8,500/ha	\$216,750
Curtilage/site value	0.4ha	<u>\$ 40,000</u>
		\$256,750
Less - adjustments for legal access		<u>\$ 75,000</u>
		\$181,750
	Say	<u>\$182,000</u>
	Market Value excluding Chattels	<b><u>\$207,000</u></b>

There are no chattels included.

Valuer 4 compares this with Valuer U's assessment:

Land Value	\$1,750,000
Value of improvements	\$50,000
Current Market Value	<b><u>\$1,800,000</u></b>

In summary, Valuer 4 repeats his comments as for Part B.

## **VALUER U REPORT**

The check valuers (Valuer 2 and Valuer 4) undertook a review of Valuer U's report in accordance with the provisions of international Valuation Guidance Note 11.

Both valuers are critical of Valuer U's reports on a number of matters.

### **The Land contained in Part A:**

- Valuer 2 makes a note that there is no statement as to when Valuer U inspected this property. He comments that the photographs on the header page of the subject property are misleading in that three of the six photographs appear to be from the adjoining title. Photographs of the environment could well mislead a reader of Valuer U's report to believe that these views are from the property.
- Valuer 2 contends that neither the local harbor nor other coastline can be seen from the property.
- Valuer U states two zones in their report - Rural Production and General Coastal. This is incorrect, both valuers concur the land is zoned Rural Production. It is misleading to note the land as General Coastal, as this zone has a different planning requirement to Rural Production. When questioned by Mr Curnow as to whether there is a General Coastal zone, Valuer 2 replied "Yes, there is a General Coastal zone - 20 kilometers away".
- Under Statutory Valuation in their report Valuer U notes that the Statutory Value of the parent title is \$330,000 (Capital Value) as at 1 July 2006. Valuer 2 comments that the Capital Value is in fact \$600,000 effective 1 September 2007. Both Valuer 2 and Valuer 4 note the correct Capital Value in their report.
- Valuer U discusses five sales in their report under comparable market evidence. The sales are summarized as follows.

<b>Sale Property</b>	<b>Sale Price</b>	<b>Sale Date</b>	<b>Size (hectares)</b>
<b>Sale 12</b>	\$ 1,050,000	2006	6
<b>Sale 13</b>	\$ 1,012,500	2005	0.4
<b>Sale 14</b>	\$ 4,800,000	2007	65
<b>Sale 15</b>	\$ 3,450,000	N/A	45
<b>Sale 16</b>	\$ 2,865,000	N/A	40

Valuer 2 and Valuer 4 comment:

- Sale 12 (sold 2006 for \$1,050,000) does not exist. In an email dated 18 August 2010 to the Valuer General, Valuer U states that they recorded the incorrect address. Some doubt is cast by Valuer 2 as to whether Valuer U inspected the property. Both Valuer 2 and Valuer 4 have identified the land area indicated in Valuer U's report, is incorrect.
- However, their respective areas do not concur with each other. Both valuers agree that this sale is superior. Valuer 4 says that at the time of sale, the land was zoned Coastal Living. This sale property virtually adjoins the local harbour being far better located than the subject property.
- Sale 13 (sold 2005 for \$1,012,500) This sale property is in a township, some 38 kilometres distant from the subject properties. In their email dated 18 August 2010, Valuer U acknowledges that this sale was incorrectly transposed and did not belong in their report. Valuer 4 questions the competency of Valuer U as a valuer when this sale is completely unrelated to the property. Valuer 4 confirms this sale is not comparable and goes on to say that Valuer U appears to have used the sale without reviewing and considering its relevance.
- Sale 14 (sold 2007 for \$4,800,000) In Valuer U's email to the Valuer General dated 18 August 2010, they included a Terralink printout indicating this property sold in 2006. Some doubt is cast as to where Valuer U derived their 2007 sale date. Both Valuer 2 and Valuer 4 highlight that this sale is also recorded on the Terralink printout as being non bona-fide and note that particular attention should be made to investigating these types of sales. This property is a pastoral farm with distant water-views. Valuer 4 notes that this property had a Rating Valuation of \$245,000 (at the time of sale), however this is contrary to the Terralink printout which noted a Rating assessment of \$750,000. The property sold in 2005 for \$2,300,000. The \$4,800,000 sale in 2007 represents an increase of some \$2,500,000 over a 14-month period. Valuer 2 provides some background to the analysis of this sale by Valuer U purporting that the property sold for the gross realisation of five individual valuations prepared by Valuer U for another client. In doing so Valuer 2 tabled a valuation report carried out by Valuer U dated 15 January 2007, of one of those valuations. Valuer 2 goes on to discuss the sales used by Valuer U in this report. Valuer 2 summarises that "I consider that, when Valuer U prepared the valuation, they must have known (or certainly ought to have known) that

the recorded sale price for the property (\$4.8m as at 2006) was grossly above the market value". Valuer 4 stated in his evidence that "I believe that this sale is not a bone-fide market transaction, and that it should be disregarded".

- Sale 15 (sold 2007 for \$3,450,000) and Sale 16 (sold 2007 for \$2,865,000). Valuer U has listed these sales as being separate evidence. Valuer 2 and Valuer 4 concur that this is a single transaction being part of an exchange deal. Valuer U confirms this being the case in their 18 August 2010 email to the Valuer General. Valuer U supports this further in discussing at some length a "breakdown" of Sale 15 and Sale 16. A Terralink sale printout provided by Valuer U refers to a sale of the properties at \$921,875. As highlighted by Valuer U this is a net resultant cash component of the exchange. Valuer 2 comments that "This is not a valid sale". Valuer 4 is equally critical of Valuer U's use of these sales, concluding (in part) that "Valuer U accepted this high sale as bona fide market evidence. An inadequate analysis of the sale price has been adopted by Valuer U as the basis on which to make a direct relative comparison. In my opinion this has contributed to a gross over valuation of the subject property".

### **The Land contained in Part B**

- The statements above by Valuer 2 and Valuer 4 are by and large repeated in their comments for this adjoining property. A number of additional comments are recorded.
- Valuer 3 comments that the photographs on the header page of the subject property are misleading in that three of the six photographs appear to be from the adjoining title.
- Both Valuer 2 and Valuer 4 concur that the four bay implement shed is situated on the adjoining title.
- Valuer 4 correctly points out that Valuer U's current market value for Part A is subject to "an easement of ROW across the adjoining site". His instruction from the Valuer General was to value Part A and Part B independently. This being the case, Valuer 4 adjusts his current market value by \$75,000 accordingly to \$282,000.

### **Summary of Evidence – Part B**

## **Valuer 2**

Valuer 2 considers Valuer U's valuation of \$1,735,000 (excluding any GST) is grossly excessive above his at \$340,000. He opines the valuation is erroneous in numerous aspects and is based on sales which are not comparable and are irrelevant, including non-market and non-bona fide sales.

## **Valuer 4**

Valuer 4 contends that the principal cause of the variance between his assessment of \$430,000 and Valuer U at \$1,735,000 relates to Valuer U accepting unreliable high value coastal sales as bona-fide evidence, then completing a simplistic analysis of sales that failed to quantify development potential, resulting in incomparable benchmark levels being used as the basis to assess site values and land value per hectare for the subject property.

## **Summary of Evidence – Part A**

### **Valuer 2**

Valuer 2 considers Valuer U's valuation of \$1,800,000 (excluding any GST) is grossly excessive above his at \$260,000. He opines the valuation is erroneous in numerous aspects and is based on sales which are not comparable and are irrelevant, including non-market and non-bona fide sales.

### **Valuer 4**

Notwithstanding the amendments Valuer 4 outlines between his report and that of Valuer U's to address legal access (\$75,000) and the implement shed (\$50,000), Valuer 4 contends that the principal cause of the variance between his assessment of \$207,000 and Valuer U at \$1,800,000 relates to Valuer U accepting unreliable high value coastal sales as bona-fide evidence, then completing a simplistic analysis of sales that failed to quantify development potential, resulting in incomparable benchmark levels being used as the basis to assess site values and land value per hectare for the subject property.

## **ONUS AND STANDARD OF PROOF**

The prosecution has the burden to prove the charge laid against Valuer U. In this hearing, neither Valuer U nor any Counsel to represent Valuer U appeared. This Board is therefore committed to determining whether the two charges against Valuer U:

- 1) Involves a departure from acceptable standards, and if so:
- 2) Whether that departure is significant enough to warrant disciplinary sanction.

Prior to doing so, the Board has had before it a comprehensive bundle of documents and it has had the opportunity of receiving evidence from:

- 1) The Valuer General
- 2) Valuer 2
- 3) Valuer 4.

At the commencement of this hearing, the Valuer General gave evidence as to the steps taken to serve Valuer U with the opening submissions and briefs of evidence relied on by the Valuer General in this Inquiry. The documents produced into evidence include:

- 1) Valuer U record of registration as a Valuer.
- 2) The Valuer Generals report to the Board dated 22 December 2009 including documents in appendix A to that report.
- 3) The Valuer Generals report to the Board dated 1 December 2010, including documents in Appendix AI to that report.
- 4) Affidavit as to service dated 8 December 2011.
- 5) Affidavit as to service dated 7 December 2011.
- 6) Affidavit as to service dated 6 December 2011.

The Board confirms its earlier record that the Valuer General has taken reasonable steps in trying to locate Valuer U.

The charge against Valuer U 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 U were to be found guilty are substantial and serious.

This Board agrees with Counsel for the Prosecution that the starting point in this Inquiry is the relevant law. As has been established by the decision of the Supreme Court in *Z v The Complaints Assessment Committee* [2009] 1 NZLR 1 (para 128):

*The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.*

In *Dentice v The Valuers Registration Board* [1990] 1 NZLR 720 (HC), it was noted "...The Valuers Registration Board is not a Court of Law, but a domestic forum charged with the duty of making due inquiry into the conduct of a registered valuer with a view to deciding whether he has been guilty of misconduct in a professional respect. The exercise by the Board of its powers is not by way of punishment, but rather to enforce a high standard of proprietary and professional conduct".

As to the standard of proof, this has been established by the decision of the Supreme Court in *Z v The Complaints Assessment Committee* [2009] 1 NZLR 1. At para 118, McGrath J said,

*"We are of the view 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 ruling requiring a different standard"*

This civil standard is commonly referred to as "proof on the balance of probabilities". This standard 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.

(Held at Para 130)

*"...there is an important difference between determinations that the Tribunal must make and those made in the criminal context. While the District Court jury was required to decide if all elements of the criminal charges were proved beyond reasonable doubt, the Tribunal must simply determine if it is satisfied that the practitioner is guilty of conduct detrimental to patient welfare or professional misconduct."*

The required approach to disciplinary proceedings under the Valuers Act has been stated by the Board of Appeal in *King v Valuer General* (17 December 2009, DC Wellington CN 2009-085-32). The burden of proof is the civil standard.

This has given rise to what was described in King as the 2-step process:

- 1) "Whether the matters alleged in the disciplinary charge have been established to 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".

The Board is required to consider if the evidence established meets the necessary threshold.

In this deliberation, the Board is guided by the following observations in *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197. In that case, Kirby P said "...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 indifference and an abuse of privilege which accompany registration...".

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 good market evidence as there was in this case.

## **FINDINGS**

Valuer U faces two charges, each being a charge of gross overvaluation under s31(1)(c) of the Valuers Act 1948.

In *King v Valuer-General*, the Board of Appeal said:

*"We accept the view of the Board that a valuation which deviates by more than 10-15% from an objectively correct valuation is likely to be judged unacceptable and incompetently prepared. But of course, it is up to the Valuer-General to establish what*

*the correct valuation is. In this sense, correct may mean no more than that a valuation which is in the middle of a range indicated by properly applying accepted principles.”*

#### Part A

The Board agrees with Counsel for the Prosecution that the range of values provided by Valuer 2 and Valuer 4 (\$340,000 and \$430,000 respectively) establishes an objectively correct value for the property of \$385,000. Valuer U's assessment at \$1,735,000 is significantly above this figure. Notwithstanding the adjustments for legal access and the four-bay shed preferred by Valuer 4, the difference is serious.

#### Part B

The Board agrees with Counsel for the Prosecution that the range of values provided by Valuer 2 and Valuer 4 (\$260,000 and \$207,000 respectively) establishes an objectively correct value for the property of \$233,500. Valuer U's assessment at \$1,800,000 is significantly above this figure. Notwithstanding the adjustments for legal access preferred by Valuer 4, the difference is serious.

Furthermore, Valuer 4 does not make mention at all in their reporting of the sale of the subject properties having sold in 2007 for \$590,000.

#### **Departure from Acceptable Standards**

Valuer U has made numerous statements that brings into question their professional conduct and departure from acceptable standards.

#### **Sales information**

Valuer U relied on five sales. After investigation by the Valuer General, Valuer U confirmed in their email of 18 August 2010, that they had incorrectly transposed sales. Given the nature of this market value assessment, to simply suggest that the remaining four sales supports the valuation assessments brings into question the relevance of this sale in the first instance.

Valuer U also confirms in their email of 18 August 2010 that, Sale 15 and Sale 16, were part of an exchange deal, and they relied on these two sales as two separate transactions. The sales data provided by Valuer U questions the relevance (if any) of these sales, which is expressed as a "net resultant cash component". The Board finds this highly irregular.

Further doubt is cast upon Valuer U's remaining two sales, firstly at Sale 12 (which by their admittance should be recorded as a different address). Both Valuer 2 and Valuer 4 concur this property is not comparable. It is the Board's view in this respect that given the difficult nature of this value assessment, it may be relevant to make an appropriate adjustment for the attributes that set it apart.

Secondly, Sale 12 is denoted as Non-market Level - Non-Bona fide (taken from Valuer U's printout record attached to their email of 18 August 2010). Valuer 2 provided the Board with a partial background of this sale, being in their view a gross realisation of five individual valuations. They provides some explanation of one of the valuations (a breakdown from Valuer U's report) however there is no explanation for the other four.

Valuer U has failed to mention the sale of the subject property in 2007 for \$590,000 or identify the existence of the sale of a 70h property off the end of the subject road as recorded by both Valuer 2 and Valuer 4. Had Valuer U done so, this may have led them to a different outcome.

Valuer 2 and Valuer 4 have presented in their evidence to this Board a number of misrepresentations made by Valuer U - in brief:

- Misleading photographs on the cover of their reports
- Misleading statements regarding Statutory Valuation
- Misleading statements regarding zoning
- Misleading comments as to views the respective properties do not possess.
- Incorrect inclusion of the four-bay barn on Part B
- The relativity of the five sales they adopted.

## DECISION

The evidence presented to the Board is compelling. Valuer U's conduct in compiling the relevant reports involves numerous fundamental departures from acceptable professional standards.

Valuer U's valuation was a gross over-valuation in that they departed from acceptable professional standards at the time.

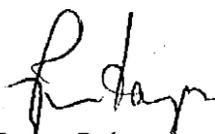
The Board has undertaken a sanction assessment to determine if the departure from standards has been significant enough to warrant disciplinary sanction for the purpose of discipline. The Board is satisfied that the departure was deliberate and sufficiently serious to portray indifference and an abuse of privilege which accompanies registration as a valuer, the deliberate departure was that in compiling two separate reports Valuer U offered no proper foundation in assessing the values they stated. In making a number of misleading and incorrect statements in their reports, Valuer U did not maintain the highest standards expected of a valuer.

The Board has determined that a disciplinary sanction is appropriate.

" A penalty of deregistration is the most extreme penalty a valuer faces and is only warranted by circumstances such as a deliberate departure from professional methods and a continual departure from professional methods and a continual disregard of the rules"

The Board advises that while Valuer U deliberately departed from professional methods, it cannot propose the same for a continual departure from professional methods nor a continual disregard of the rules.

The Board has determined that a disciplinary sanction is appropriate and, in determining the appropriate sanction, the Board invites submissions on penalty and costs by 25 January 2013 from the Valuer General and 8 February from Valuer U.



James Puketapu

Inquiry Chairperson