Decision of disputes panel

Name of applicants in dispute: **Joseph William Knight** and **Christina Ethel Knight**
Name of each respondent in dispute: **Simon Perry, Tiffiney Perry, Marlene Julian** and **Barry Coombs,** trustees of the **Perry Foundation**
Date of dispute notice: 3 February 2009

The disputes panel appointed under the Retirement Villages Act 2003 to resolve the dispute between the applicant and each respondent has decided on the dispute as follows:

Matters in dispute

Refer Determination of Panel dated 26 June 2009

Findings on material issues of fact

Refer Determination of Panel dated 26 June 2009

Panel's decision
The disputes panel—

finds in favour of the respondent and dismisses the dispute.

Reasons for decision

Refer Determination of Panel dated 26 June 2009

.....
Chair of disputes panel

26 June 2009
Date of decision

Note to parties
You have the right to appeal against the decision of the disputes panel (or of the District Court sitting as a disputes panel) under section 75 of the Retirement Villages Act 2003. An appeal must be filed in the appropriate court within 20 working days of the panel's decision.

Any costs and expenses awarded by the disputes panel must be paid within 28 days.

UNDER the Retirement Villages Act 2003

In the Matter of a dispute

BETWEEN **Joseph William Knight** and **Christina Ethel Knight**

Applicants

AND **Simon Perry, Tiffiney Perry, Marlene Julian** and **Barry Coombs**, trustees of the **Perry Foundation**

Village Operator

DETERMINATION OF PANEL

Appointment

1. The village operator of the retirement village at Te Kowhai Drive, Te Kowhai, Hamilton, is named "the Perry Foundation" and the trustees of that Foundation are named above namely, Simon Perry, Tiffiney Perry, Marlene Julian and Barry Coombs. The village operator is collectively referred to in this determination as "**The Perry Foundation**" and the village as "**Perrinpark**".

2. The applicants, Joseph William Knight and Christina Ethel Knight were residents of the village at Unit 11 Pukeko Place, Perrinpark pursuant to a site agreement between them and the Perry Foundation. They are both referred to in this determination as "**the Knights**" and Mr. Knight as "**Mr. Knight**". They were represented at all stages by their son, Ian Knight, who is referred to as "**Mr. Ian Knight**".

3. The Knights gave a notice of dispute dated 3 February, 2009 pursuant to the provisions of the Retirement Villages Act 2003 ("**the RVAct**") and the Perry Foundation gave reply dated 2 March, 2009.

4. As it was required to do as village operator, the Perry Foundation appointed a disputes panel to resolve the dispute. Because the dispute concerned the alleged breach of the Knights' rights in respect of disposal of their residential unit in the retirement village formerly occupied by them the provisions of s. 53(3) of the RV Act applied and S60(4)(a) of the RV Act required the Perry Foundation to appoint at least three members to the panel.

5. The Perry Foundation accordingly appointed as disputes panel:

5.1. David Carden, Disputes Panel Chair

5.2. Nigel Dunlop, Disputes Panel Member

5.3. Claudia Elliott, Disputes Panel Member

The hearing

6. A pre-hearing conference was convened attended by the three panellists, Mr. Knight with his son, Mr. Ian Knight, and Mr. Tony McLauchlan on behalf of the Perry Foundation.

7. Various issues were discussed at that conference and directions given. Those were complied with by the parties.

8. A hearing was then convened on 9 June, 2009 at the village, Perrinpark, attended by:

8.1. The three disputes panellists.

8.2. Mr. Knight and his son, Mr. Ian Knight.

8.3. Mr. Tony McLauchlan on behalf of the Perry Foundation.

9. Witnesses were called and evidence given by both parties namely:

9.1. For the claimant submissions from Mr. Ian Knight and evidence from Mr. Knight; evidence from Mr. Lester Finch, the son of another former resident at the Perrinpark Village; and the submission without objection of a statement from Simon Karsten, also a former resident of the Perrinpark Village.

9.2. For the Perry Foundation submissions and some statements from Mr. McLauchlan; evidence from Jenny Baldwin, a solicitor engaged by the Perry Foundation, and the submission of a statement by Mr. Terry Valentine dated 12 May, 2009. We were told (without detail) that Mr. Valentine was unable for health reasons to attend to give that evidence or be examined on it. Mr. Knight accepted that Mr. Valentine could not attend and agreed to his statement being read but did challenge some of its content.

10. Also present at the hearing was Ms Penny Cooper of the Covenant Trustee Company, the statutory supervisor of the village.

The claim

11. The Dispute Notice dated 3 February 2009 referred to attempts to sell the unit formerly occupied by the Knights at 11 Pukeko Place, Perrinpark having taken almost two years "with still no sign of selling". It referred to the Knights' desire to sell the unit in March 2007 and the valuation obtained on 2 April, 2007; and to advices given to them then by Mr. Valentine that units could not be marketed because of changes brought about by the RV Act. The dispute notice referred to a change of ownership structure and claimed that there had been delaying in implementing the requirements of the RVAct and in marketing the unit for sale such that the Knights had been

disadvantaged and have lost opportunities for sale and also that the value of the property had meanwhile gone down. They claimed that in early 2007 the property could have sold for the advertised price of $247,000.00 had it been marketed. The dispute notice claimed that the Perry Foundation should buy the unit as provided in the applicable site agreement.

12. The claim was refined at the hearing. Mr. Ian Knight made it quite plain that there was no criticism of marketing attempts made since November 2007, the date when the various legal matters to implement the requirements of the RVAct had been achieved as mentioned below, but that it was only the period from March 2007 to November 2007 that was at issue and in respect of which the Knights were claiming there had been a breach of their rights and a breach of the obligations by the Perry Foundation. The claim as it was presented at the hearing focused on that period of time, March to November 2007, and the reasons which did in fact exist or which were said by the Perry Foundation to exist which prevented the sale then.

13. It seemed to be common ground that the market had compressed since November 2007 such that values were no longer as great as they were during the March to November 2007 period. It was claimed that the Knights had therefore lost the opportunity for sale at the peak of the market and that this loss was occasioned by the procrastination and delays by the Perry Foundation and its failure to make whatever changes it wished or were necessary because of the provisions of the RVAct in a timely manner so that the sale could have proceeded.

The Response

14. In its response dated 2 March, 2009 the Perry Foundation referred to the provisions of s. 53(3) of the RVAct which refers to "the operator's breach" of certain rights for disposal of a residential unit. It referred to the statutory changes brought about by the RVAct and the necessity to implement

those; and the restrictions that those imposed on the Perry Foundation as the village operator.

15. It effectively claimed that it was prevented from marketing residential units until 12 November, 2007 when it had implemented the changes required by the RVAct and registered Perrinpark as a retirement village.

16. The response did refer to certain marketing efforts made since then but, as mentioned above, this was expressly stated by Mr. Ian Knight on behalf of the Knights not to be a matter of contention that we need address.

17. The response referred to the fact that there was no waiting list for units.

18. The response referred to the Perry Foundation's understanding of an argument that the occupation licence structure could hamper the sale process; but referred to the express provision in the site agreement allowing a change to an occupation licensed structure and the fact that this structure is the most commonly used in retirement villages.

19. It disagreed that the unit could have sold for $247,000 which was $17,000 over the early 2007 valuation.

20. It referred to the provisions of the RVAct concerning costs that could be awarded by a disputes panel.

Background

21. The Knights entered the village by signing a site agreement dated 18 March, 1994 with the Perry Foundation.

22. That agreement provided for a site fee of $7,000.00 inclusive of GST paid to the Foundation in return for a lifetime grant of use of the site. There was no express reference to ownership of any dwelling or unit on the site and

we understand that there was a dwelling which the Knights purchased direct from the previous occupants for about $100,000.00.

23. There has been reference in the material we were provided with had to the legal questions that arise as to ownership of an improvement to land such as this and it was the advice of solicitors for the Perry Foundation that it could be argued that the Foundation owned this permanent improvement fixture. That was not contentious in this dispute and it seems that the practice was for the individual occupants pursuant to a site agreement to sell the dwelling direct to the next proposed occupant with the price for sale being fixed and agreed between vendor and purchaser and there being no involvement monetarily by the Perry Foundation nor any return to it from that sale. The purchaser then "owned" the dwellinghouse and occupied the site pursuant to the site agreement.

24. We were told that there had been renewals of site agreements from time to time and the last site agreement recorded a fee paid by the Knights of $12,500.00.

25. The site agreement had various other provisions but included clause 6 which provided for termination of the agreement by either party on one month's notice or by the Perry Foundation if there were certain express breaches of the provisions of the agreement. Clause 6(c) provided:

> "(c) If the term of this Agreement is ended under either paragraph (a) or paragraph (b) of this clause the [Knights]:
>
> (i) [Remain] liable for any service fees accruing up to the end of the term.
>
> (ii) [Are] to pay to the [Perry] Foundation service fees for a period not exceeding one year after the end of the term until the commencement of the term of the Agreement made with the next succeeding grantee (as referred to in clause 7)".

26. Clause 7 of the site agreement provided:

"7.a) AT the end of the term of this Agreement the [Perry] Foundation alone is entitled to dispose of the unit and as regards the interest of the [Knights] is the attorney of the [Knights] for that purpose.

(b) The [Knights acknowledge] that in relation to disposal of the unit:

(i) The [Perry] Foundation may itself at any time acquire the interest of the [Knights] in the unit at the fair value of the unit as fixed by agreement or failing agreement by registered valuers one appointed by the [Perry] Foundation and one by the [Knights] or in the event of the failure of the valuers to agree here then by a third valuer to be named by them before they make their valuations.

(ii) The [Perry] Foundation will take all reasonable steps to dispose of the unit on behalf of the [Knights].

(iii) The [Perry] Foundation and its agents and servants and prospective purchasers are entitled to access into the unit at all reasonable times.

(iv) The [Perry] Foundation is entitled to charge and retain a fresh site fee from the new grantee and to require the new grantee to enter into a licence to occupy in such form as the [Perry] Foundation sees fit."

(c) The [Perry] Foundation shall pay to the [Knights] or the personal representatives of the [Knights] the proceeds of the disposal of the unit after deducting:

(i) Any charge made by the [Perry] Foundation or expense incurred by it in preparing the unit so that in the opinion of the [Perry] Foundation it is in a proper state for disposal.

(ii) Any direct expense incurred by the [Perry] Foundation in selling or purchasing the unit including valuation and legal fees.

(iii) A charge of 7.5 per cent of the proceeds of disposal. This deduction is to be retained by the [Perry] Foundation and applied for its own charitable purposes.

(iv) Any sum due to the [Perry] Foundation under paragraph (c) of clause 6 or paragraph (i) of clause 3 or otherwise owing by the [Knights] to the [Perry] Foundation on any account whatsoever".

27. The Knights moved into unit 11 in March 1994 and stayed there in the succeeding years. This was apparently without any incident that we were told of.

28. They say they decided to sell in early 2007 to move into "supported accommodation". There was some uncertainty about the exact date of that decision and of the formal advice to Mr. Valentine or otherwise on behalf of the Perry Foundation of that intention and the proposal for sale. It seems that there was nothing in writing as is required by clause 6 of the site agreement referred to above.

29. There were apparently several conversations between Mr. Knight and Mr. Valentine on the subject without any formal written notice.

30. Matters reached a sufficient head that there was obtained a valuation of the unit by one P. A. Curnow in writing dated 2 April 2007 addressed to the Perry Foundation. Mr Curnow fixed the value at $230,000.00 inclusive of the site fee (which was apparently at that time $12,500.00).

31. It seems common ground that what occurred then was that the Knights were told they could not sell the unit because of the changes that were required to be made to the legal structure of the retirement village consequent upon the RVAct. Mr. Knight said that he and his wife "accepted Mr. Valentine's word [that the units could not be sold because of that legislation] and put [their] plans to move on hold."

32. In fact they moved out on 24 October, 2007, having made appropriate arrangements for fulltime residential care at Atawhai Assisi Home in Hamilton.

33. The marketing of the unit for sale was initiated in November 2007. The marketing price was set at $247,000.00 being the amount fixed by the Mr Curnow's valuation, $230,000.00, plus the amount that would have been payable under clause 7(c)(iii) namely 7.5 per cent totalling $17,250.00 to bring the total marketing price to $247,000.00. Mr. Knight said that this practice "was reinforced by other units being marketed after the delay prior to registration, being in a similar price range".

34. Although we can understand the desire to recoup costs and be left with a net amount equivalent to the value of the residence, it does seem to us to be inappropriate that the asking price should be fixed by that criterion. Clearly overpricing a unit for sale is not going to achieve the sale and indeed may be counter-productive in dissuading potential purchasers. There may need to be some negotiation factor written into the asking price but it does seem to us to be risky simply to take the charitable charges percentage and then market the unit on the basis of an inflated figure.

35. At all events this is not something that we need to consider because the way the dispute has been put to us does not affect the marketing process but rather the issue mentioned below, whether the delay occasioned by steps taken by the Perry Foundation qualifies the Knights for some relief.

36. Accordingly also it is not necessary for us to traverse what has occurred subsequently to November 2007 which includes the obtaining of a further by valuation from Mr. Curnow dated 23 December, 2008 when he fixed the value at $210,000.00 inclusive of the site fee; because all of this is non-contentious and does not form part of the issues raised with us.

37. The fact remains that the unit is still unsold. We understand that the necessary occupation licence for a purchaser, when one has been found, is in place and ready to be used but the reality is there has been no purchaser found. This may be attributable to the asking price; it may be

attributable to the economy; it may be attributable to the location of the unit; it may be attributable to any number of other marketing and sales factors. We simply do not know and do not need to make a finding on the point.

The Issue

38. The issue that has been raised by the Knights with us concerns the period between March 2007 when they were wanting to sell and move and November 2007 when the necessary formalities and documentation had been completed as was required by the RVAct.

39. We had very clear and comprehensive evidence from Ms Baldwin about the work that had to be done to achieve compliance by the Perry Foundation with the requirements of the RVAct. She gave us a letter describing the steps that were required to be taken and advice that Burke Melrose, solicitors, had given the Perry Foundation about the requirements of the RVAct and the changes that were required to be made on the one hand and were advisable on the other.

40. She produced a letter from Burke Melrose dated 27 March, 2007 on these matters addressed to the Perry Foundation; a further letter dated 8 November, 2007 to the Perry Foundation concerning the timing of registration and a further letter dated 28 May, 2008 to Ellice Tanner, the regular solicitors for the Perry Foundation as to the matters that they advised would need to be done to achieve compliance. Ms Baldwin gave evidence to the hearing and explained these matters.

41. It is claimed by the Knights that the legislation was clear in its requirements a long time before March 2007 and that the Perry Foundation had more than enough time to get the formalities completed so that these would be done and documents in place at the time that Act came into force.

42. They claim that the Perry Foundation has left that process for so long that, when they were ready to market the unit in March 2007, those formalities were not completed and they were disadvantaged until the formalities were completed, which was when registration occurred in November 2007.

43. To support the contention they called Mr. Lester Finch as a witness. His evidence was that his mother, May Russell, had asked to sell her home at the village at 31 Kingfisher Way in May 2007 but was told that it could not be marketed because the Foundation was in the process of changing ownership to a limited liability company.

44. Mr. Finch expressed the view that, if the Perry Foundation had started marketing his mother's property in May 2007, "it would most probably have sold in the subsequent three months, as demand was high then."

45. Mr. Finch did acknowledge at the hearing, however, that the uncertainties of title and of the legal changes that the Foundation were making and having to make as a consequence of the RVAct could well have put off buyers. These uncertainties related to the change from a site agreement to an occupation licence and the prospect of incorporation of a limited liability company as owner. He acknowledged that those factors may well have been a significant discouragement to potential purchasers had there been marketing during that period.

46. He expressed the view too that a move to a licence to occupy from a site agreement was definitely perceived as a downgrade. However, he gave no real basis for that view.

The Statutory Framework

47. It is necessary that we comment briefly on certain relevant portions of the RVAct.

48. The Retirement Villages Act 2003 was enacted on 30 October, 2003. Certain sections of the Act came into force on 1 February, 2004 but a major part awaited an Order in Council.

49. Part 2 of the Act finally came into force on 1 May, 2007 (the Retirement Villages Act Commencement Order (No. 2) 2006). That Part required retirement villages to be registered and, in the case of an existing village with one or more residents, an application for registration within 6 months of that Part coming into force, that is by 1 November, 2007. It imposed requirements for under s. 27 and Schedule 3 for any occupation right agreement offered and its provisions; and a Code of Residents Rights under s. 32.

50. There also came into force on 1 May, 2007 the Retirement Villages (General) Regulations 2006. Those regulations had as Sub Part 1 of Part 4 requirements for provisions in any occupation right agreement additional to those in Schedule 3 to the RVAct; details of matters required to be included in disclosure statements in Sub Part 2; and in Sub Part 3 provisions as to advertisements. Part 5 contained provisions relating to statutory supervisors.

51. Those Regulations, (the Retirement Villages Act Commencement Order (No. 2) 2006 and 2007 the Retirement Villages (General) Regulations 2006 were made on 25 September 2006

52. Part 4 of the Act, which dealt with dispute resolution, enforcement and penalties came into force on 1 October, 2006 (Retirement Villages Act Commencement Order 2006) as did the Regulations for Disputes Panels, the Dispute Retirement Villages (Disputes Panel) Regulations 2006.

53. Section 89 of the RVAct required the preparation and publication of a Code of Practice and further provisions dealt with the establishment of that Code and its status. Those sections came into force on 1 February, 2004.

54. A Code of Practice 2008 apparently made under those provisions has not yet come into force and does not do so until 2 October, 2009 (clause 3.3), that date being, under s. 90 (1)(a)(i) of the Act, one year after its approval by the relevant Minister.

55. Evidence from Ms Jenny Baldwin confirmed provisions in those legislative and regulatory enactments. From 1 May, 2007 a retirement village operator could not make an offer of occupation or accept an offer from a prospective resident, unless the offer was in accordance with an occupation right agreement which complied with the provisions of the Act and its Regulations.

56. From that date before an occupation right agreement could be entered into, any intending resident had to be provided (amongst other things) with a disclosure statement that complied with the provisions of the Act and its Regulations. All retirement villages had to be registered by 1 November, 2007; and an unregistered retirement village could not make an offer of occupation or enter into occupation right agreements after that date.

57. Prior to registration a retirement village operator had to appoint a statutory supervisor for the village pursuant to a deed of supervision which complied with the Act and Regulations.

58. Her evidence confirmed the process that the Perry Foundation had followed to comply with the requirements of the Act and Regulations. She referred to the essential advices given.

59. The first of these was the letter dated 27 March, 2007 from Burke Melrose, solicitors specialising in retirement village advice and advising the Perry Foundation in respect of the village, referring to a meeting on 9 March, 2007 and analysing in detail the current structure and the proposal for occupation licence structure and the implications of that.

60. There was the further advice dated 8 November, 2007 from those solicitors to the referring to a question which had apparently been raised by certain residents suggesting that the village need not be registered until six months after 1 November, 2007; and disagreeing with that, giving reasons.

61. Finally, she referred to the letter dated 28 May, 2008 to the regular solicitors for the Foundation referring to the licence to occupy structure that had been adopted by the Perry Foundation for this village.

62. Ms Baldwin referred in her evidence to registration of the Perrinpark Retirement Village on 12 November, 2007 communicated by a letter received on 23 November, 2007. The previous statutory supervisor had been replaced.

63. Ms Baldwin expressed the view that the timeframe for the RVAct coming into force, the change of statutory supervisor and the Perry Foundation's desire to consult with residents all led to the outcome that (in her view) the timing of the Perrinpark Retirement Village's compliance with the Act was not unreasonable.

64. It was the primary criticism of the Knights that that process had taken unduly long or had been inappropriately timed so that the opportunity for them to sell when they were motivated to do so in March 2007 was lost until November 2007 and in that time the market had dropped and the opportunities for sale had been lost.

Our Decision

65. We have formed the view on the evidence given and our understanding of the Act and its requirements that compliance with the Act was compulsory and required detailed and significant advice and documentation.

66. The site agreement arrangement was criticised by Burke Melrose as being inadequate to cover the full legal position because it did not provide properly for ownership of the dwellinghouse residents constructed on the site which was the subject of the site agreement; and that advice seems sound.

67. The proposal, not obligatory but nevertheless envisaged by the Act, to convert and move to an occupation right agreement structure was proposed and in our view it was open to the Perry Foundation to follow that course. Certainly there is nothing we can criticise about the advice that was given or the decisions reached in that regard.

68. The intervention of the legislative requirements for registration and for the obligatory content of occupation rights agreements, laudable as these may be from the point of view of protecting residents, had the unfortunate effect that the Perry Foundation was in straitened circumstances so far as any proposal by a resident, such as the Knights, to move and for new occupants to take their place.

69. We are of the view that there was nothing significant that the Perry Foundation could do during the period in question, March to November 2007, which could have facilitated a sale or change of occupant. The reality was that there were requirements to be attended to and these took time.

70. There may have been other options open to the Perry Foundation which may have sped up the process but first we were given no evidence of what these were, secondly, there was no evidence that this would have taken shorter time, and thirdly, this was a judgement decision which the Perry Foundation was entitled to make and we cannot criticise or find legal responsibility for the course it chose to follow.

71. The criticism from the Knights was that the Act was in place some years earlier and that the Perry Foundation should have readied itself to change to the requirements of the Act once appropriate Regulations came into force.

72. Certainly there was significant time lapse between the enactment and the making of the relevant regulations, but our view is that it was not inappropriate for the Perry Foundation or any other village operator to await the express terms of the Regulations to be made before taking steps to ensure compliance with the Act.

73. The fact that it took so long to establish Regulations under the Act is suggestive that there were complex issues at stake which required careful consideration by the Executive before the Regulations were made. The time that it took to establish a lawful Code of Practice only serves to confirm the complexities that were faced by this village operator and probably all others.

74. We accept the submission made by the Perry Foundation that for there to be a valid dispute notice on which we could give valid relief under s. 53(3) of the RVAct and for it to have any liability to the Knights there needs to be a proven breach of rights and obligations in disposal of the residential unit.

75. We do not find there to have been any breach of the obligations. The obligation under clause 7(b)(ii) of the site agreement with the Knights was for the Perry Foundation to "take all reasonable steps to dispose of the unit on behalf of [the Knights]". Under clause 7(a) the Foundation alone was entitled to dispose of the unit.

76. We do not find it to have been any breach of the terms of the site agreement, and in particular the obligation to take reasonable steps to dispose of the unit.

77. It was the intervention of the statutory changes that really occasioned any delay.

78. Another factor, of course, which has disadvantaged the Knights is that the market has dropped in the intervening period and they cannot expect the same return from any disposal of the unit or indeed cannot expect that the unit will sell as quickly as it might have done in a more buoyant market. That is disappointing for the Knights but we do not see that the Perry Foundation must take the responsibility for that.

79. One factor that must be significantly taken into account is that, even if the Perry Foundation had been able to dispose of the unit and had sought to do so aggressively, any prospective purchaser properly advised would have been significantly cautious about entering into any arrangement while the site agreement provisions were in place with all their attendant difficulties and the requirements of the RVAct.

80. We record that in their reaching a decision we have taken into account, as we are required to do, the matters referred to in s. 68 of the RVAct, namely the relevant real estate market, the age and condition of the retirement village, and the effect of a decision on other residents of the village and the financial stability of the village. These are not matters which, as the dispute has been presented to us, have direct relevance but we have taken them into account.

Result

81. We accordingly find that the dispute is not upheld and we decline to exercise any of the powers in sections 69 and 70 of the RVAct and specifically decline to order, as the dispute notice claims, that the Perry Foundation should purchase the unit of the applicants or any of the loss of opportunity costs referred to in the dispute notice.

Costs

82. Under s. 74 of the RVAct the Perry Foundation as operator of the retirement village is primarily responsible for meeting all the costs incurred by the disputes panel in conducting this dispute resolution.

83. We have power to award of costs under s. 74(2) and, in respect of the Perry Foundation as village operator this would be under s. 74(2)(c) which reads:

> "Whether or not there is a hearing, the disputes panel may ... award any other person costs and expenses if the disputes panel makes a dispute resolution decision fully or substantially in favour of that person".

84. The Perry Foundation in the response addressed to Mr Ian Knight alluded to the panel's ability to award costs but did not refer to these at all at the hearing.

85. The award of costs in favour of a village operator and indeed at all under s. 74 here is discretionary to the disputes panel.

86. We do not consider this to be a case where costs should be ordered against the applicants. They have done their best to move on in life and it is primarily the intervention of the statutory enactment and requirements for the critical period that has frustrated their attempts to do so. We do not think that they are to blame for that nor do we see that their bringing this dispute can in any way be said to be without merit.

87. The fact remains that we have declined to order the relief they seek. The facts also remains, however, that they are wanting to sell and move on, that the occupation right agreement structure is in place for them to do so, that there is marketing taking place to dispose of the unit, that it is in the best interests of all parties that that happen as quickly as it can in the

current market and in the context of the outcome of marketing approaches and sale price figures sought, and we think that an award of costs could only be counter-productive to that process.

88. We think it important that the parties work together to achieve now the outcome of sale and disposal and the applicants can move on as they wish to do.

Dated at Auckland this 26th day of June 2009.

David M Carden
Disputes Panel Chair