

# BELL GULLY

**By email**

**Confidential**

**Mya Nguyen**

New Zealand Commerce Commission  
Wellington

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DATE 14 September 2015

Dear Mya

**CWH/NZWSI: Response to Chapman Tripp submission & additional material tabled at conference**

We refer to the submission lodged by Chapman Tripp (on behalf of Godfrey Hirst) with the Commission on the eve of the reconvened conference (the **Submission**) [REDACTED]

The main thrust of this response relates to the comments in the Submission regarding [REDACTED]

However, at the outset we wish to briefly record that we reject the various complaints Chapman Tripp have made in relation to the Commission's process. The very nature of counsel-only information means that counsel receiving information on that basis cannot share it with their client, whereas where the information is confidential to another party then that party's counsel will be able to take instructions in relation to it. But that is always the case, and so it is misconceived to try and characterise it as giving rise to some impropriety or asymmetry of information which the Commission must address.

The Submission traverses a range of areas. We respond below to those that could be relevant to the Commission's assessment.

- 1. [REDACTED]
- 1.1 [REDACTED]
- 2. [REDACTED]
- 2.1 [REDACTED]

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<sup>1</sup> Submission at 33.1.

- [REDACTED]
- [REDACTED]
- 2.2 [REDACTED]
- [REDACTED]
- [REDACTED]
- 2.3 [REDACTED]
- [REDACTED]
- [REDACTED]
3. [REDACTED]
- 3.1 [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
4. [REDACTED]
- 4.1 [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 4.2 [REDACTED]
- [REDACTED]
5. [REDACTED]
- 5.1 [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 5.2 [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 5.3 It is worth noting while on the [REDACTED]
- [REDACTED]

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<sup>2</sup> Compare Submission at 33.3.  
<sup>3</sup> Compare Submission at 34-36.  
<sup>4</sup> Submission at 37-41.

[Redacted]

6. [Redacted]

6.1 [Redacted]

6.2 [Redacted]

6.3 [Redacted]

6.4 But in any event, [Redacted]  
[Redacted]  
[Redacted] The Commission is invited  
to confirm [Redacted]

7. [Redacted]

7.1 The Submission [Redacted]  
[Redacted]

7.2 As noted in the Submission, [Redacted]  
[Redacted]  
[Redacted]

7.3 [Redacted]  
[Redacted]  
[Redacted]

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<sup>5</sup> Submission at 49 – 55.  
<sup>6</sup> Submission at 56 - 62.



7.4 [Redacted text block]

7.5 [Redacted text block]

7.6 [Redacted text block]

7.7 [Redacted text block]

7.8 [Redacted text block]

7.9 [Redacted text block]

7.10 [Redacted text block]

**8. Counterfactual**

8.1 The Submission asserts that the sale of Kaputone and Clive without the CWH/NZWSI acquisition is a “highly plausible” alternative to the status quo counterfactual.

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<sup>7</sup> More information can be found at [Redacted]  
<sup>8</sup> Submission at 63.

8.2 For the reasons provided in an email to the Commission by Bell Gully on CWH's behalf on 9 September, the prospect of Clive being closed in the counterfactual is not correct. Similarly, the prospect of Kaputone closing independently of the merger is also not realistic as set out in an email to the Commission by Bell Gully on Lempriere's behalf on 8 September. Accordingly, the Commission should disregard the speculative alternative counterfactuals suggested in the Submission.

9. **Valuations – general matters**

9.1 The Submission asserts that the Commission should adopt the findings of its own independent valuers unless there is evidence of a lack of reasonable care or bad faith – which it asserts is not the case. In making this assertion, the Submission appears to suggest that the other registered valuers who provided valuations on the three sites – namely Telfer Young and Logan Stone – should be discredited. In addition, the assertion is also at odds with the valuation of

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

9.2 As noted in the 23 June Telfer Young letter, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

9.3 There is no basis to dismiss the valuations of Telfer Young or Logan Stone, all three of which were undertaken by registered valuers and for purposes other than the authorisation application. As the Submission acknowledges, the Commission does not have the requisite expertise or experience in property valuation. Equally, the Commission does not have the capacity to determine that the valuations obtained by the parties are wrong. The independent valuations were obtained by the Commission merely to test the information as provided by the parties, as it does with all other information provided to it, rather than to completely adopt and reject the parties' own valuations. The valuations merely represent a different view; this is not to say that Telfer Young and Logan Stone are incorrect or that there is any lack of reasonable care of bad faith on their behalf. The valuations conducted by Telfer Young and Logan Stone accord fully with the valuation process as required. Similarly, all three valuers have demonstrably employed best practice.

9.4 Notably, Telfer Young and Logan Stone have assessed the values for Clive and Whakatu independently, and although these assessments relate to different properties, the rental rates adopted and the valuation conclusions reached are consistent. [REDACTED]

[REDACTED]  
[REDACTED]  
the [REDACTED]  
[REDACTED]  
[REDACTED]

9.5 Any assertion that the valuations of Knight Frank and Turley & Co must be preferred and the others dismissed is also difficult to accept in light of the following factors.



*Kaputone*

9.6 [REDACTED]

9.7 [REDACTED] d.

9.8 Finally, we note:

(a) the Rating Valuation completed by Quotable Value assessed the value of the property at \$6,950,000 as at November 2013. Although this is not conclusive, it supports the contention that Knight Frank's valuation is conservative; and

(b) [REDACTED]

*Hawkes Bay properties* - [REDACTED]

9.9 [REDACTED]

9.10 [REDACTED]

*Whakatu* - [REDACTED]

9.11 [REDACTED]

9.12 [REDACTED]

(a) given the rationalisation inherent in the industry, it is not at all clear that there would be an alternate scourer demanding the site; and

(b) [REDACTED]

10. **Additional material tabled at the conference**

10.1 [Redacted]

10.2 [Redacted]

10.3 [Redacted]

10.4 For the Commission's purposes, it is useful to actually sight the relevant areas as opposed to considering the various rental rates in the abstract. While we acknowledge there are inevitably differences between properties, [Redacted]

10.5 [Redacted]

10.6 As previously submitted by Telfer Young (23 June 2015) [Redacted]

10.7 [Redacted]

10.8 [Redacted]

10.9 [Redacted]



[REDACTED]

10.10 Finally, we also note the Rating Valuation completed by Quotable Value assessed the value of Clive at \$3,210,000 as at September 2013.

**11. Conclusion**

11.1 The Submission makes a number of assertions in respect of a wide range of matters. However, these assertions are not substantiated and the Submission contains no new evidence that is relevant to the Commission's consideration of the matters at hand. In respect of [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] Moreover,  
[REDACTED]  
[REDACTED]  
[REDACTED]

11.2 In respect of the counterfactual, again the assertions in the Submission are unfounded. The Commission has assessed the factual basis for the applicant's counterfactual position and the Submission contains no material or evidence which changes the underlying factual basis for that conclusion. Accordingly, the counterfactual position set out in the Draft Determination remains accurate.

11.3 In respect of the valuations [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] the parties consider that the valuations provided by their valuers are robust and reflect an appropriate value for the purposes of the Commission's analysis.