RUSSELL McVEAGH

18 September 2003

John Benn
Manager, Forest & Land
Carter Holt Harvey Forests Limited
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Manukau City
AUCKLAND

Dear John

CHHF ROLL OBJECTIONS - RIVERHEAD LVT DECISION

1. I enclose a copy of the Land Valuation Tribunal's reserved decision relating to Riverhead. I have set out my preliminary observations regarding the decision below.

2. The Tribunal assessed Riverhead's land value to be $9,570,000. The Tribunal's figure is approximately $2.5 million less than that contended for by the Crown, and approximately $1 million less than that contended for by the Rodney District Council. In that sense, it is a victory for CHHF. However, the Tribunal's figure is significantly more than the $4,238,335 contended by CHHF.

3. Regrettably, the potentially damaging effect of the Whitford sales evidence we discussed has become a reality. In comparing "like with like", the Tribunal regarded the Whitford sale as strong primary evidence and gave little or no weight to the Kaipara Hills sales relied upon by CHHF. The Tribunal also comments adversely (paragraph 29) on the fact that, despite being the vendor in the Whitford sale, CHHF did not address the sale in its evidence in chief, nor did its valuers take account of the sale in their land value assessments. As you know, neither we, nor CHHF's valuers, were aware of the Whitford sale until the Crown filed its evidence in chief.

4. Although disappointing in relation to Riverhead, there are significant positives in the decision for CHHF's CFL estate as a whole. The Crown's attack on the established precedents in *Tahorakuri* and *Eyrewell* failed. Not only was the approach in *Eyrewell* endorsed but a 20% deduction (rather than the 15% in *Eyrewell*) was applied. The Crown's arguments regarding Treaty claimants as hypothetical purchasers of the land and the effect of section 21 of the RVA were also unsuccessful.

5. Ultimately, however, the prime driver of the Tribunal's assessment was the Whitford sale, with the Watercare sale serving as post-date confirmatory evidence.

BEFORE THE AUCKLAND LAND VALUATION TRIBUNAL

LVP No. 003/01

IN THE MATTER OF	The Rating Valuations Act 1998
AND	
IN THE MATTER OF	An Objection to Rating Valuation Assessment 30900/18302
BETWEEN	**CARTER HOLT HARVEY FORESTS LIMITED**
	Objector
A N D	**RODNEY DISTRICT COUNCIL**
	First Respondent
AND	**LAND INFORMATION NEW ZEALAND**
	Second Respondent

Before the Auckland Land Valuation Tribunal:

Chair:	His Honour Judge J D Hole
Members:	P J Mahoney Esq J W Charters Esq
Dates of Hearing:	12, 13, 14 and 15 May 2003 21 and 22 July 2003
Counsel:	Mr G P Curry & Mr S L Cogan for the Objector Mr C Mitchell for the First Respondent Mr M T Parker for the Second Respondent
Date of Decision:	18 September 2003

RESERVED DECISION OF THE TRIBUNAL

INTRODUCTION

[1] This objection relates to the Riverhead Forest land, which is located to the northwest of Auckland City near Kumeu. It consists of two blocks and has an area of 3809 hectares. The terrain is rolling with some steep gullies. Small lifestyle blocks surround the forest and from higher points there are distant views of the Waitemata Harbour and Auckland City including the Sky Tower. Between the two blocks is land owned by Watercare Services Ltd which was acquired in 2000 for a future dam.

[2] The land is subject to the Crown Forest Assets Act 1989 (the "CFA") and Carter Holt Harvey Forests Limited ("Carters") have a licence to occupy the land pursuant to a Crown Forestry Licence (the "CFL") issued under that Act.

[3] This proceeding arises from an objection to a land value assessment in a rating valuation as at 1 September 1998 under Section 9 of the Rating Valuations Act 1998 (the "RVA"). The Rodney District Council ("the Council") carried out the valuation through its agent Quotable Value New Zealand. Land Information New Zealand ("LINZ")'s interest in the proceeding arises as it is the agent of the Crown which is the owner of the fee simple of the land and the licensor under the CFL.

[4] The assessments of land value by the various parties are as follows:

Carters:	$4,238,235
Council:	$10,440,000
Crown:	$11,963,500

[5] Although the case for both respondents was conducted by LINZ, which did not object to the valuation, the contest is between the Council's valuation of $10,440,000 and Carter's assessment of $4,238,235.

RATING VALUATIONS ACT 1998

[6] The relevant provisions of the RVA are:

"Land" is defined in section 2 as:

""Land" means all land, tenements, and hereditaments, whether corporeal or incorporeal, in New Zealand, and all chattels or other interests in the land, and all trees growing or standing on the land;"

"Land value" is defined in section 2 as:

""Land value", in relation to any land, and subject to sections 20 and 21, means the sum that the owner's estate or interest in the land, if unencumbered by any mortgage or other charge, might be expected to realise at the time of valuation if-

(a) Offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose; and

(b) No improvements had been made on the land;"

Section 20 provides:

"Value of trees and minerals

(1) The value of any trees is not to be included in any valuation under this Act unless the trees are fruit trees, nut trees, vines, berry fruit bushes, or live hedges.

(2) The value of any fruit trees, nut trees, vines, berry fruit bushes, or live hedges is not to be taken into account in assessing the land value of any rating unit under this Act".

Section 21 provides:

"Value of land subject to lease

(1) For the purpose of determining under this Act the capital value or land value or annual value of a rating unit that is subject to a lease;-

(a) Regard is to be had to the desirability for rating purposes of preserving uniformity with contemporaneous roll values of comparable parcels of land; and

(b) Any lease provisions or circumstances particular to the property concerned that do not reflect the prevailing market conditions at the date of valuation are to be disregarded.

(2) This section applies for the purposes of determining valuations for the purposes of this Act and the Local Government (Rating) Act 2002 only, and is not intended to alter the definitions of the terms "capital value" and "land value" in the case of valuations made other than for rating purposes under any other Act or document".

RELEVANT CASES

[7] Part of the long title to the RVA states that the RVA was intended to repeal the Valuation of Land Act 1951 and generally to restate the law relating to valuation of land for rating purposes. The most important decisions relevant to this objection are:

> ***CHHF v Valuer General*** (LVT North Canterbury) LVP 373/95 & 378/95, 11 February 1998 (***Eyrewell and Mount Thomas***).
>
> ***CHHF v Valuer General*** (HC) 7/98, 27 November 1998 (***Eyrewell and Mount Thomas***)
>
> ***Valuer General v Mangatu Inc*** [1997] 3 NZLR 641 (***Mangatu***).
>
> ***Valuer General v Fletcher Challenge Forests Limited*** (LVT Rotorua) V2/94, 7 June 1996 (***Tahorakuri***)
>
> ***Fletcher Challenge Forests Limited v Valuer General*** (1997) 3 NZ ConC 192,490 (***Tahorakuri***)
>
> ***Fletcher Challenge Forests Limited v Valuer General*** (CA) CA119/79, 17 September 1997 (***Tahorakuri***)
>
> ***Fletcher Challenge Forests Limited v Valuer General*** (HC No 2) AP 35/96, 25 August 1998 (***Tahorakuri***)

[8] All of these decisions were under the Valuation of Land Act 1951. However, the principles they establish remain relevant under the RVA.

PRINCIPLES ARISING

[9] Some principles arise from a consideration of those cases which are relevant here.

(a) It is the owner's estate or interest in the land, not the fee simple, which is being valued (***Mangatu*** at page 649).

(b) In order of preference and reliability, like should be compared with like. For example, if it is forestry land that is being valued then sales of forestry land should first be considered; followed by sales of pastoral land to be used for forestry; followed by pastoral to pastoral sales (*Tahorakuri*, CA, page 2).

(c) As the definition of "land" includes "all trees growing or standing on the land", yet the value of trees is excluded in any valuation pursuant to s 20(1) RVA, the valuation must exclude the value of any trees growing on the land but their presence must not be ignored (*Tahorakuri*, CA, page 2). Mr Armstrong, the valuer for LINZ, argues that the cost of preplanting and other rotational costs were reflected in the value of the trees and not land value. The Tribunal considers that if the presence of the trees is relevant, then the impact (if any) they may have on land value must be taken into account. Whilst preplant costs may be reflected in the value of trees growing on land, those costs may also be relevant in determining what a prudent buyer would pay for the land. In *Eyrewell and Mount Thomas* the High Court commented:

> *"Since we are of the view that the land must be valued for forestry purposes, we think it inescapable that forestry-specific risk factors must be reflected in the valuation. This is because it is what a forester would pay for the land that fixes its maximum value for present purposes. Forestry-specific risk factors such as fire and wind-throw will, in the long run, affect the return from the forest. The forester's analysis of the likely returns will be reflected in the licence fee or rental which the forester is prepared to pay the land owner or alternatively in the price at which the forester will be prepared to buy the land. The value of the land to the Crown is to be assessed in terms of its forestry use and the market return which the Crown can expect to derive throughout the term of the CFL must be affected by the income which can be derived from the land for forestry purposes. What is perceived as being likely to impact on the forester will impact on the revenue which the Crown can derive.*

(d) "The valuation is made on the statutory premise that the owner will sell its estate or interest in the land. The definition envisages a notional sale by a willing but not anxious seller to the hypothetically willing but not anxious buyer. It explicitly assumes a "bone fide" seller". (Mangatu page 649).

(e) The value is what a willing but not anxious seller would sell for and what a willing but not anxious buyer would be prepared to pay for the property. As in most valuation matters, "it must be assumed that the hypothetical purchaser is a person of reasonable prudence, properly informed as to all relevant facts".

(**Mangatu** page 649). Thus, contrary to Carters' submissions, the valuation is not determined merely by what the hypothetical prudent purchaser will pay: it also takes into account the attitude of the willing but not anxious seller. It endeavours to determine the nature of the agreement both parties will reach. Because this involves an element of entering into the minds of both hypothetical parties, valuation of land under the RVA is not solely an exact or mathematical discipline. It is for this reason, for example, that the Tribunal places little or no weight on the Land Expectation Value (the "LEV") evidence adduced by Mr Liley for Carters. That evidence was predicated by the requirements of the prudent forester purchaser. It had no regard to the attitude of the willing but not anxious seller. Whilst the LEV evidence provided a useful economic tool, by definition it excluded the vendor. As Mr Liley said at paragraph 2.2 of his brief: "The standards "(viz NZ Institute of Forestry Forest Valuation Standards (1999))" go on to say "in common language, LEV is the maximum that can be paid for land to achieve a given rate of project return"". (Furthermore, the LEV evidence was not supported by reference to specific market land sales evidence).

(f) While no one can ever be excluded as a possible purchaser, an inquiry under the RVA assumes a sale and not the possibility of a sale. It follows that it is legitimate to consider who the hypothetical purchaser might be (**Mangatu** page 650). However, because no one can be excluded, the valuation should not proceed merely on the basis of one likely hypothetical purchaser (as suggested by Carters).

(g) Land must be valued for its highest and best use (**Eyrewell and Mount Thomas** page 14). Carters claim that the highest and best use of the land is forestry. This is because the land is already in forest and that it is subject to the CFA and a CFL which, in practical terms, restricts its use. LINZ points out, however, that if one disregards the CFA and CFL, the highest and best use of the land is forestry coupled with some subdivisional potential for lifestyle purposes. Carters did not contest this.

(h) In using sales of pastoral land to ascertain the value of forestry land, it may be appropriate to make adjustments to reflect such matters as preplant costs, differing lot sizes, market conditions, fertility, land contour classification and such like. In ***Tahorakuri,*** the Court of Appeal remitted that case back to the High Court for such adjustments to be made. The Court of Appeal was careful to state at page 2 that it had heard no argument as to whether the valuation method used was appropriate or not. In those circumstances it neither cast doubt on the method nor endorsed it. LINZ argued that ***Tahorakuri*** was only relevant when there are no forestry land sales available as market evidence. It is normal in all valuations involving the comparison of one sale to another to make adjustments to account for relevant variables. Both parties in Tahorakuri accepted this. There seems to be no reason that the usual principle should not apply in all land valuations. Whether or not there is an adjustment or the extent of any adjustment will depend on the evidence adduced in each case. Whilst, for example, in ***Tahorakuri*** it was held that the evidence overwhelmingly supported the proposition that in respect of forest land it is not appropriate to provide a discounted per-hectare rate for an area of land the size of the Tahorakuri Forest, this was a conclusion based on the evidence adduced. The proposition stated by the High Court at page 15 that the discount that would apply in the pastoral market would not apply in the forestry market can be displaced if there is evidence disclosing changing market conditions.

VALUATION METHODOLOGY

[10] The Tribunal agrees with the approach taken by the High Court in ***Eyrewell and Mount Thomas.*** First, the valuer must assess the freehold equivalent value ("the FEV") of the land. In doing so, it must ascertain if there is sales evidence comparing like with like. If so, then this evidence must be treated as the primary sales evidence. The valuer is only entitled to take into account sales which occurred on or before the valuation date of 1 September 1998 as primary sales evidence. However, it is entitled to use subsequent sales for confirmation if appropriate. If necessary, the valuer may then consider sales evidence of more disparate land but the more the land sales evidence relates to land less like the subject

land, then the greater the need for adjustments will become. Every adjustment that is required has the tendency of creating greater uncertainty in the ultimate FEV reached.

[11] Having ascertained the FEV, the valuer should make such deductions as are appropriate which may be occasioned by the CFA/CFL regime.

THE FEV

[12] At paragraph 5.2 of his closing submissions, counsel for Carters stated:

> *"There is a hierarchy of comparable evidence, which was confirmed by the Court of Appeal in* **Taharakuri**. *Forestry-forestry sales are the best evidence, followed by pastoral-forestry sales and, lastly, pastoral-pastoral sales (***Taharakuri** *CA, page 2). Due to the paucity of comparable forestry-forestry sales, CHHF has relied upon the best available evidence, namely sales of pastoral land for forestry purposes.*
>
> *5.3 Comparability of evidence, and comparing "like with like", is a basic principle of valuation methodology"*.

[13] Carters argued that LINZ had not compared like with like (viz. forestry sales with forestry sales) and that it had considered non-comparable evidence including non-forestry and pastoral-pastoral sales. The problem with this argument is that, if one considers the highest and best use of the Riverhead land disregarding the CFA/CFL regime, forestry is not its sole highest and best use. Its highest and best use is forestry with some lifestyle subdivisional potential. The CFA/CFL regime must be disregarded to obtain an FEV. As soon as the regime is ignored, the similarities between the Whitford land and the Riverhead land become obvious.

[14] LINZ referred to the Whitford Forest sale and analysed this as its basis for comparison with Riverhead. It is known that the purchaser acquired the Whitford property partly because of its subdivisional potential. It was not immediately subdivideable but it undoubtedly had the potential.

[15] It was claimed on behalf of Carters that the purchaser of the Whitford Forest was not a forester. The Tribunal has already commented that it is inappropriate in cases of this nature to restrict the prudent hypothetical purchaser to a specific type. In the Tribunal's opinion, it matters not that the purchaser was not a forester: indeed, the purchaser acquired the land with a view to holding it for a period of time to realise its full potential and entered into a forestry

agreement with the vendor, Carters. The Tribunal considers that the Riverhead Forest land would also attract a similar type of purchaser.

[16] The Whitford Forest land is very similar to the Riverhead Forest land. Both are close to Auckland City. Both properties have similar lifestyle subdivisional potential. The bulk of each property is in established forest. Both properties are of substantial size. In these circumstances, the Whitford Forest land sale becomes the primary sale to which the Tribunal must have regard.

[17] The next most relevant sale is that of Watercare. However, this sale can only be used for confirmatory purposes as it postdates the revaluation date. Nevertheless, it is situated between the two blocks of the Riverhead Forest and possesses many of the same characteristics. The Watercare land was acquired by a LATE as a potential dam site. No evidence was called by either party as to the circumstances pertaining to its purchase. The only information which the Tribunal has received as to its purchase is a letter dated 6 August 2002 addressed to Mr Reynolds, the valuer for Carters, and which is Appendix A to his rebuttal brief. This letter comprises hearsay evidence and must be treated accordingly. However, as both parties referred to it and accepted its veracity, the Tribunal records it. It states that the Watercare land was purchased as a strategic asset as Watercare wanted the land as a potential dam site. Watercare commissioned a number of valuations of the property prior to its purchase in September 2000 (after negotiations lasting over a period of two to three years).

[18] The Watercare land was valued on the basis that forestry was not necessarily its highest and best use and that, notwithstanding the crop already on the land, the value of the timber was excluded. It recognised the property's subdivisional potential, its proximity to Auckland metropolitan area and that there was an established road network. Significantly, all of these factors also apply to the adjoining Riverhead land except that the issue of its strategic importance does not arise.

[19] There is no evidence before the Tribunal that the price paid for the Watercare land was inflated because of its potential as a dam site. Significantly, the sale price of the Watercare land bears a close relationship to the price which was paid for the Whitford

property on a dollar-per-hectare basis. In these circumstances it is legitimate to regard the Watercare sale as confirmatory evidence of the validity of the Whitford sale.

WHITFORD FOREST SALE

[20] The only analysis of this sale was undertaken by Mr Armstrong for LINZ. Obviously Carters did not consider it a relevant sale as its valuer gave no evidence on it. This is surprising as this was the only truly comparable sale of forestry land on the fringe of the Auckland metropolitan area known at the valuation date. The Tribunal has considered the points raised in relatively minimal cross-examination on behalf of Carters but notes that the analysis itself was not disputed.

[21] Mr Armstrong confirmed that the Whitford Forest land was offered for sale by tender by Carters in 1997. The property comprised a total of 1688.89 hectares in a total of 13 titles, some of which were landlocked, and a subdivisional potential for seven lifestyle blocks. The property was purchased by Kiwi Income Trust in September 1997 at a total price of $8,250,000, which included a value of $1,600,000 for the trees, leaving a price paid for land and improvements of $6,650,000. Mr Armstrong, in his analysis, deducted the value of improvements and seven sites available for immediate (i.e. eight months) sale to provide an indicated net sale price for the forest land totalling 1408 hectares at $4,123,366.

[22] Mr Armstrong further analysed this forestry land component to reflect:
393 hectares of easy contour ground based land at $3,421 per hectare; and
1015hectares of steeper hill country (hauler) at $2,737 per hectare.

WATERCARE SALE

[23] This property (which is between the two Riverhead Forest blocks and comprised 1050.9351 hectares) was sold to Watercare Services Limited in September 2000 for $4,575,000. At the time of sale, there was a potential to subdivide 10 rural residential lots from the land. After deducting the value of improvements and analysing the costs of subdividing out 10 lots, Mr Armstrong determined that the cost of the forestry land was $2,812,222. He then estimated the ground-based:hauler proportions of this sale to be 60:40.

The ground-based area was 573 hectares, which equals $3,201 per hectare. The hauler area was 382 hectares, which equals $2,651 per hectare.

[24] The only other valuer to analyse the Watercare sale was Mr Scholefield (who also appeared on behalf of LINZ). He analysed the indicated net sale price (after deducting improvements) of $4,300,000 to represent an average of $4,091 per hectares or, alternatively, $4,433 per hectare for the potential plantable area.

[25] Mr Scholefield confirmed that his analysis of the Watercare property included the potential for subdivision of up to 10 lifestyle blocks. Accordingly, his analysis of the land sale on an overall basis is at a higher rate than that assessed by Mr Armstrong.

COMPARISON OF KEY SALES TO RIVERHEAD

[26] Adopting the sales analysis applied by Mr Armstrong and Mr Scholefield, a summary of the two key sales and his Riverhead valuation is as follows:

	Whitford	Watercare	Riverhead
Title area	1688.89 hectares	1050.9351 hectares	3809 hectares
Forested land	1408 hectares	955 hectares	3661 hectares
Sale price/valuation	$6.650 m. ex trees	$4.30 m. ex imprs	$11,963,500*
Sale price/area	$3937 p/h (inc 7 lots)	$4091 p/h (inc 10 lots)	$3140 p/h (inc 10 lots)
Analysis of forest land			
(Ground based)	393 hectares - $3421 p/h	573 hectares - $3201 p/h	2343 hectares - $3200 p/h
(Hauler)	1015 hectares - $2737	382 hectares - $2651	1318 hectares - $2560 p/h

*The Riverhead valuation at $11,963,500 includes both the estimated value of the forestry land plus the added value for subdivision potential for 10 lifestyle blocks.

[27] As Mr Armstrong's analysis (except as to its being subject to the CFA/CFL regime) of the subdivisional potential for Riverhead was uncontested, his figures have been accepted for the above analysis.

OTHER SALES EVIDENCE

[28] Carters adduced sales evidence which primarily related to sales of pastoral land for forestry purposes situated in the Kaipara Hills area. In accepting Carter's essential submission that it is necessary to compare like with like, the Tribunal considers that the Kaipara Hills sales evidence adduced by Carters fails to comply with their own acknowledged criteria. When compared with the sales evidence adduced by LINZ, the disparities are significant. First, the Kaipara Hills sales were mainly of pastoral land for forestry purposes, whereas the key LINZ sales consisted of sales of land with identical uses. Furthermore, the Kaipara Hills sales all involved significantly smaller parcels of land, whereas the key LINZ sales involved substantial land holdings. The subdivisional potential of the key LINZ sales was of very much greater economic value to the overall sales price than the subdivisional potential of the Kaipara sales. Finally, the Kaipara Hills sales were in a more remote part of the Auckland region, whereas the key LINZ sales were all relatively close to Auckland City and thus more directly comparable with the subject property.

[29] The Tribunal noted that the valuers for Carters had (understandably) undertaken initial valuation assessments for preliminary negotiation purposes with Quotable Value in response to the notified statutory rating valuation. Significantly, these assessments were not updated to take into account subsequent sales evidence which came to light and which was used and relied upon by Carters for the purposes of the hearing. It was particularly noteworthy that Carters failed to adduce any evidence concerning the Whitford sale notwithstanding that Carters were the vendor and were obviously aware of it.

[30] Given the very strong primary sales evidence adduced by LINZ and which complied with the accepted criterion of comparison of like with like, it is unhelpful for the Tribunal to consider the other sales evidence in detail. To do so would involve making significant adjustments to compensate for the disparities. As a result the end valuation is likely to become distorted and would only serve to confuse a valuation reliant on strong primary evidence which was confirmed by a subsequent sale of comparable land.

[31] As the prime sales evidence comes from the Whitford and Watercare forests, it is unnecessary for the Tribunal to record in detail the interesting and informative specialist

evidence of such witnesses as Dr Beets, Mr Elliot, Mr Wallace, Mr Marran, and Mr Dyne. This evidence related to such matters as soil fertility, planting costs, and other forestry-related matters. These factors were relevant to the comparison of pastoral sales with forestry land but became irrelevant once the Tribunal had accepted that the primary sales evidence was that derived from the Whitford Forest and Watercare sales. Had the Tribunal not reached this conclusion, then this evidence would have become relevant and would have been considered in some detail in this decision.

CONCLUSION ON FEV

[32] The Tribunal concludes, based on the evidence adduced, that the FEV for the Riverhead land effective as at September 1998 is $11,963,500.

CROWN FORESTRY LICENCES AND THE CROWN FOREST ASSETS ACT 1989

[33] The CFA was enacted in 1989 to preserve state forestry assets for potential Treaty of Waitangi claims. To ring-fence this preservation, the CFA (and the CFLs under it) placed restrictions on the land which are expressed in the CFL itself and in the CFA.

[34] These include:

(a) **Restriction on sale**: The Crown cannot:

(i) sell, or otherwise dispose of, the land under a CFL; or

(ii) sell, assign, or otherwise dispose of, or deal with, any rights or interest in the CFL unless the Waitangi Tribunal has made a recommendation that the land not be returned to Treaty claimants (sections 8 and 35 CFA);

(b) **Restriction on use**: Although other uses are permitted, effectively the licensee is restricted to using the land for forestry use only (CFL 16.6; section 17(4)(c) CFA);

(c) **Return to Maori**: The CFA subjects the owner of the land to the risk that the land will be returned to Treaty claimants following a binding recommendation by the Waitangi Tribunal (section 36 CFA);

(d) **Payment of compensation**: The First Schedule to the CFA requires the owner to pay compensation to Treaty claimants upon the issue of a binding recommendation of the Waitangi Tribunal (section 36(1)(b) CFA);

(e) **CFLs binding on successors**: CFLs have a statutory force and bind any successor in title to the Crown (section 15 CFA);

(f) **Public access easements**: The CFLs are required to acknowledge and protect public access rights (section 24 CFA);

(g) **CFLs do not create an estate or interest in land**: The grant of a CFL does not transfer to, or confer upon, the licensee an estate or interest in land (section 16 CFA).

IMPACT OF CFA/CFL REGIME

[35] ***Eyrewell and Mount Thomas*** is the only case to date where the effects of the CFA/CFL regime on land value have been discussed. The case involved two forests in Canterbury. Carters occupied both forests pursuant to a CFL. The terms of the CFLs were very similar to those of the Riverhead CFL. In that case, the methodology adopted by the parties and the Land Valuation Tribunal was to establish, first for each forest, its freehold equivalent value, and then to determine whether, and to what extent, that should be discounted to reflect the peculiarities of the CFL tenure restrictions. Whilst it was conceded that in the case of the Eyrewell Forest, forestry was not its highest and best use, the costs of converting to another use were uneconomic. Accordingly, in the case of both forests, forestry had to be regarded the highest and best use.

[36] At page 26 of the judgment, the High Court described its general approach to valuations of land subject to the CFA/CFL regime as follows:

> *"What is to be valued is the owner's estate or interest in the land. This focus on the owner's estate or interest distinguishes the exercise required under our statute from that required by the New South Wales statute considered by the Privy Council in Gollan v Randwick Municipal Council [1961] AC 82, where it was held that what was required to be valued was a "pure fee simple interest", see Valuer General v Mangatu Inc [1997] 3 NZLR 641 at 649 per Richardson P". So any detriment to the value of the land arising out of the statutory regime to which it is subject must be factored into the land value assessment. This is what happened in* Mangatu *and in the decision of this Court in* Valuer General v Trustees of Christchurch Racecourse *(1995) NZ Valuers Journal 53".*
>
> *"...Obviously when the CFA Act was passed, there was no intention on the part of the Crown (or Parliament) to diminish the value of the Crown's forestry land. But to satisfy the requirements of the Maori interests with whom the Crown had been in negotiation before the CFA Act was passed, it was necessary for the Crown to accept some limitations on the way in which Crown forestry assets should be held and managed. To the extent that these restrictions adversely affect the value of the owner's estate or interest in the land in issue in this case, they must be recognised in the valuation".*

[37] The judgment then considered the significance of the possibility of return of the land to Maori and concluded that this did not need to be reflected in the valuation save to a very limited extent.

> *"This very limited extent arises because land earmarked for expropriation for which market value will be paid is likely, by this fact alone, to be less desirable than land which is not so earmarked. Here this factor is of limited significance because the likelihood of the land being returned to Maori appears to be remote".* (This is the case here).

[38] The next adjustments to be taken into account were the CFL tenure restrictions (other than restraint on disposition). The Court concluded that from the viewpoint of the Crown, forestry land identical in all other respects to *Eyrewell and Mount Thomas* would be more desirable if it were not subject to CFL tenure restriction. The Court deducted five percent from the FEV figure to recognise the restraints and restrictions imposed by the regime.

[39] In the present case, LINZ argued, through Mr Armstrong, that if a deduction were to be made for these restraints and restrictions, uniformity with prevailing market conditions in the Rodney District would be adversely affected. It was claimed that CFLs were akin to leases and, accordingly, s 21 RVA should apply. The Tribunal disagrees. Section 21 applies only to land subject to lease. A CFL is not a lease as it does not confer an estate or interest in the land upon the licensee. If it were intended that s 21 RVA was to include licences, then the Tribunal considers that this would have been reflected in the statute.

[40] The restraints and restrictions imposed by the CFL in respect of the Riverhead Forest are almost identical to those in the CFLs pertaining to the *Eyrewell and Mount Thomas* forests. (Their effects were described in some detail by Mr Benn for Carters). In these circumstances, there is no reason to depart from the principle of deduction confirmed by the High Court in *Eyrewell and Mount Thomas*. If, however, the market evidence indicated that such restraints and restrictions were likely to have a different effect, then this might have to be revisited in the appropriate case.

[41] In *Eyrewell and Mount Thomas*, a further deduction was made to reflect that the CFA/CFL regime imposes a restraint on the sale of land. As the High Court stated at page 31:

> *"We agree that the restraint on sale makes forestry land less attractive than otherwise identical land not subject to such a restraint. We also agree that the possibility of a return to Maori, albeit at market value, has a similar effect. So we agree that some discount was appropriate".*

[42] Mr Armstrong, in his evidence, argued that since *Eyrewell and Mount Thomas* there have been a number of transfers of land subject to the regime to Maori claimants. In each case the purchase price has been at market value and it has not been assumed that forestry would be the highest and best use. In these circumstances, he argued, there is no need for a deduction to recognise the effect of restraint on sale. The Tribunal disagrees. It cannot be assumed that such a transfer of the land comprising the Riverhead Forest is imminent or that Maori claimants are the only hypothetical purchasers. There is no evidence before the Tribunal indicating whether or not a transfer is imminent. In these circumstances, a wider class of hypothetical purchaser must be considered.

[43] This case is different from *Eyrewell v Mount Thomas* because the Riverhead FEV contains a component representing the lifestyle subdivisional potential. Because of the restraints on disposition imposed by the CFA/CFL regime, this subdivisional potential cannot be realised in the foreseeable future. This factor has the effect of significantly limiting the possibility of any subdivisional sales and, accordingly, inhibits the land's marketability. This has the effect of reducing its realisable value.

[44] Whilst the Tribunal accepts the principle of deductibility as endorsed by *Eyrewell and Mount Thomas*, it considers that the categorisation of the tenure restrictions into restraints on

disposition and other non-disposition factors can create an artificial differentiation which would not be recognised by the market. Furthermore, the categories tend to merge. For example, it is difficult to differentiate as to which part of the tenure restrictions relates to loss of subdivisional potential. Plainly, the restraints on disposition restrictions do; but so also do the other non-disposition restrictions as these include land use. For these reasons the Tribunal considers that the hypothetical vendor and purchaser would be inclined to deduct an overall global percentage to take into account all aspects of tenure restrictions. The Tribunal does not construe ***Eyrewell and Mount Thomas*** as requiring such categorisation. Rather, the case requires valuers to have regard to the effects on value imposed by the regime and to make deductions to recognise these if and when appropriate. What deductions, if any, must be dictated by the evidence in any given case.

CONCLUSION

[45] In this case, the Tribunal has had regard to the deductions in ***Eyrewell and Mount Thomas*** plus the assessment undertaken by Mr Armstrong. It concludes that in this particular case 20 percent should be deducted from the FEV. This results in a land value of $9,570,000 effective as at September 1998.

COSTS

[46] Costs are reserved. LINZ may file and serve an appropriate memorandum within 14 days; Carters may then respond within 14 days thereafter; the Council should then file and serve its memorandum within 14 days thereafter; LINZ' reply should be filed and served within 14 days thereafter.

Judge J D Hole
(Chairman)