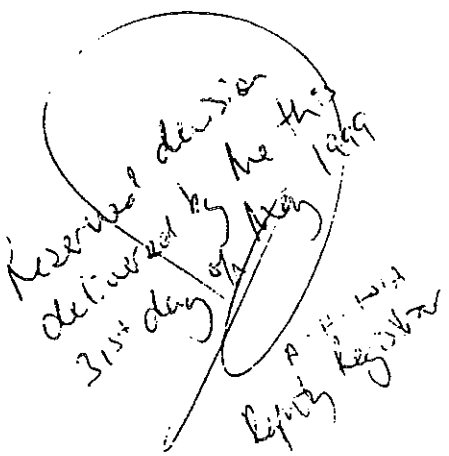
BEFORE THE LAND VALUATION TRIBUNAL
HELD AT GISBORNE

LVP 27/96

BETWEEN	**HOUPOTO TE PUA FOREST**	
	(Objector)	
AND	**THE VALUER GENERAL**	
	(First Respondent)	
AND	**HOUPOTO TE PUA TRUSTEES**	
	(Second Respondent)	



DATE OF HEARING:	22, 23, 24 July 1998
SUBMISSIONS BY:	7 August 1998
COUNSEL:	Brian J Joyce for the Objector – Clendon Feeney, Solicitors, Auckland M T Parker for the Valuer General – Crown Law Office, Wellington A W Johnson for Second Respondent – Martelli McKegg Wells & Cormack, Solicitors, Auckland
TRIBUNAL:	Judge A N MacLean (Chairman) Mr E C Bowis Mr M G Cotterill
DATE OF DECISION:	31 May 1999

RESERVED JUDGMENT OF THE TRIBUNAL

This issue for determination is to establish the capital value of the subject land for the purposes of fixing the appropriate rent expressed as a percentage of the "Lessors capital value," as that term is defined in the

applicable lease. In that lease, which is a 99 year lease running from 22 July 1985, the "Lessors capital value" is defined as "*the capital value of the land in the state of development existing on the 1st day of April 1976, such capital value to be determined by periodic valuations made by the Valuer General*".

The applicable date for the purposes of this decision is 1 April 1996.

The leased land comprises an overall area of 5254.0788 hectares in three separate titles.

It is located in the Eastern Bay of Plenty area on State Highway 35 beside the south bank of the Motu River, 45 kilometres north of Opotiki, and approximately 115 kilometres from the nearest timber processing facilities at Kawerau.

The information before the Court describes it as one of several large coastal properties, which were developed out of native bush before the First World War. Other similar properties include Ohotu, Haparapara, Waikawa, Tawaroa, Mangaroa, and Orete.

The evidence was that the properties were all farmed sporadically for 70 or so years with varying degrees of success, but the combination of high reversion, warm climate, lack of finance, labour and fertiliser, defeated most efforts except on Tawaroa, which was apparently on easier country.

The area generally is zoned rural C under the Opotiki District Council Operative District Scheme. The present permitted use of exotic forestry is protected under s.10 Resource Management Act 1991.

The Houpoto Incorporation farmed the land on its own account from 1962 to 1971, and following a recommendation of the Department of Maori Affairs that afforestation be considered, due to the increased economic difficulties of farming the area, negotiations were entered into with Caxton Paper Mills Limited in 1975 for a 99 year profit sharing afforestation lease, a provision of which is the subject of this hearing.

The first planting of 128.8 hectares of pinus radiata was completed in 1977. In 1993, the Maori Land Court made an order under s.438 of the Maori Affairs Act 1953, vesting the leased land in the name of the trustees of the Houpoto Te Pua Trust.

It is clear from the very comprehensive background historical information furnished by the Lessee drawn substantially on resources and information provided by the Maori Lessor, as freehold owners, that the whole area itself is of great historical importance to the people of Houpoto, and in particular the Iwi grouping, known as Te Whanau Apanui, which involves approximately 4 to 5 hapu and up to about 800 whanau, with a long and deep emotional, spiritual and occupational link with the land.

THE SPECIFIC ISSUES FOR DETERMINATION

Two issues arise, following the Lessee's objection to the Valuer General's 1 April 1996 Lessor's capital valuation of $1,015,000. It should be noted that the revaluation represented an over 400% increase on the revaluation exercise carried out on 1 April 1991 of $270,000, and should be contrasted with a similar valuation in 1986 of $491,400.

The first issue was, as to that starting point, the gross Lessor's capital value. As will be explained in more detail later, Mr Cowper, the valuer for the Valuer General, calculated that at $1,015,000, Mr Morice, a Registered Valuer, instructed by the Lessee disagreed and said that $812,500 was the correct figure. Mr Foster, a Registered Valuer, engaged by the Lessor freehold owners concluded the correct figure was $1,211,900.

The second issue related to the application to that starting point figure of an appropriate deduction, in accordance with the principles outlined by the Court of Appeal in its decision The Valuer General v Mangatu Incorporation 1997 3NZLR 641.

Mr Morice, on behalf of the Lessee, supported the proposition of a 40% deduction from his starting figure. The Valuer General, consistent with the approach adopted by him in the Mangatu re-hearing before this Tribunal suggested 5% (or even no discount), and Mr Foster, on behalf of the Lessor,

suggested initially 7½% and in closing was suggesting nil or minimal adjustment (page 18 15.0 of brief of evidence).

The end result of the differing approaches of the three different valuers thus, meant that the appropriate Lessor's capital valuation after adjustment suggested by each of the three parties was:-

1. Lessee: $812,500 less 40% viz $487,500
2. Valuation New Zealand $1,015,000 less 5% viz $964,250
3. Lessor $1,211,900 with at best no deduction or at worst 7½% viz $1,121,000

This decision will accordingly be divided into two parts. The first part relates to establishing the correct Lessor's capital value without taking into account *Mangatu* principles, and the second part, the application of *Mangatu* principles to the established Lessor's capital value. From the outset, it is appreciated that the parties will by now, be aware, as a result of the earlier release of the Tribunal's decision on the re-hearing of certain aspects of the Mangatu valuation objection that this Tribunal generally regarded the appropriate parameters for the various types of land involved may be between 15% and a 5% deduction. The Tribunal sees the same general parameters as having indicative application here, but these will be explained in more detail later in the decision.

GENERAL VALUATION PRINCIPLES

All three valuers in comprehensive and helpful written and oral evidence explained to the Tribunal their respective approaches.

Whilst there were minor differences of opinion as to the actual break out of the various classifications of land on the subject property, the major areas of difference arose in the following areas:

a) Categorisation of land contour profile.

b) Appropriate reduction for fertility.

c) Possible effect of East Coast forestry grants to comparable sales information. This influence was later excluded by Mr Morice (Lessee valuer) and had not been a factor for the two other valuers.

d) Relevance of sales comparisons with particular reference to the appropriate conclusions to be drawn from the sale of "Pakira" Station.

e) Appropriate land values to be used for the various types of land classification. Mr Morice helpfully summarised the differing approach, page 15 of his supplementary brief as follows.

Valuer	Easy Hills & Pastures	Easy Hills & Scrub and Fern	Medium Steep Hills & Scrub
Morice	$1,350	$1,250	$800 but in "AA" $1,000
Cowper	$1,500	$1,500	$1,100
Foster	$1,500	$1,500	$1,500

SALES COMPARISONS

Mr Cowper's Views

Dealing with each of those factors, Mr Cowper (for the Valuer General) and Mr Foster who through counsel said that he "relied on Pakira" both saw this sale as having some relevance. That sale was in fact one of what Mr Cowper described as "four key sales".

He described Pakira as a better property than Houpoto, and noted that it had involved a sale in March 1994 of 4,076 hectares and after making adjustments for timber value, removal of buildings, the appropriate time adjustments, distance adjustment, and improvements reached an analysed land sale price of $2,939,000 less bush and waste at 1,665 hectares @ $75/ha, leaving a plantable 2,411 hectares @ $1,219/ha.

He also referred to a 1995 sale of 4,004 hectares of a property 60 kilometres from Gisborne, Waipaoa to Evergreen and after the appropriate similar adjustments, concluded that it represented after time adjustment etc a plantable 3,803 hectares @ $1,150/ha.

Also a sale Ihungia to Earnslaw in April 1996, involving 5,407 hectares – 120 kilometres from Gisborne after analysis and adjustment, a plantable 4,360 hectares @ $1,032/ha.

He saw all those three properties as "better" properties than Houpoto.

For completeness, he also looked at a sale in April 1996, Tasman to Langbein with an adjusted plantable 156 hectares @ $571/ha, noting that it was a "poorer property" than Houpoto.

Also Hermanson to Swayridge in August 1995, a property of 1,435 hectares, a distance of 118 kilometres from Gisborne, noting it to be a similar property but with poor access, and reached a conclusion of a plantable 704 hectares @ $632/ha.

He noted that the average of those five sales worked out as a total of 2,287 hectares @ $1,080/plantable hectare, and concluded that the appropriate figure for the subject property was 2,341 hectares at $905.00/plantable hectare. He carried out similar analysis's of bush sales and concluded those averaged 942 hectares at $77/hectare and so concluded that for the subject property, involving 2,913 hectares, the appropriate figure was $75 per hectare.

He appended to his evidence detailed calculations, as to how he reached the conclusions that he did.

Mr Foster's Views

Mr Foster adopted a not dissimilar approach to Mr Cowper. He noted generally the following comments:-

1. Vexala (Hermanson) – Swayridge – he understood this to be a sale of seven separate properties, totalling 1,435 hectares for a total price of $960,000, and concluded that after taking into account 646 hectares of non productive land valued at $100 per hectare, the residual area of 749 hectares averaged $982 per hectare.

He noted also the Hoia Station sale at Hicks Bay, which Mr Cowper had not thought was appropriate to take into account, (sold in 1997) and he noted an estimated value of the grazeable area there at $650 per hectare. He commented on Pakira Station, noting that it was "arguably the most isolated property in New Zealand, in that it lies 170 kilometres from Opotiki and 238 kilometres from Gisborne." He noted that it was of similar size to Houpoto, with a similar area developed and had increased substantially in value (i.e. approximately $1,000,000) between 1986 and 1996. After appropriate adjustments, he analysed the productive area of the subject property at $1,000 per plantable hectare. He agreed that the fertility was higher than Houpoto, but that "increased cartage costs would in my opinion negate any productive advantages enjoyed by Pakira."

He commented with respect to the Ihungia Station, that it sold in 1995 for approximately $1,000 per hectare for the productive area, but noted that the sale prices "are possibly influenced by the possibility of obtaining funds to develop forestry under the East Coast Forestry Grant Scheme."

Mr Morice's Views

Mr Morice considered that Pakira was of little relevance. He described it as "some what of an enigma on the East Coast. It was exceptionally well run by the Hindmarsh Family, and at the time of sale was supporting some 17,600 stock units." He noted in an interesting aside that Jock Hindmarsh, who had been one of the owner's of Pakira Station had written a recent book entitled "Come be a Pioneer", which had discussed generally the history of the East Cape and "describes the lease land in somewhat derogatory terms."

He noted that "Pakira Station sold in 1994, when the purchase of land for afforestation was virtually at a peak. In the year ended June 1994, there were more sales for afforestation than any comparative period between 1991-1996, except for the June 1996 year."

He noted that despite the apparently favourable characteristics of the property, forestry interests did not get involved, and he considered the distance factor had put off potential buyers for afforestation.

By comparison with Houpoto, he noted that this was a pastoral to pastoral sale, and was not sought after for afforestation, and accordingly said "in my opinion, this sale is not comparable to the lease land, due to the date of sale, the distance factor and the type of property involved." He noted also that the sale date was some two years prior to the applicable valuation dated in this case.

By contrast with the subject property, which he saw as "a relatively hard forestry block" he went on to suggest that "even if the sale was to be considered, then the price would need to be amended to reflect the relative strength of the pastoral market compared to the forestry market at the time."

Generally, therefore, Mr Morice considered that Mr Foster and Mr Cowper had paid undue emphasis on the Pakira sale. In particular, he was critical of a graph, which Mr Foster had produced and pointed out that the increase in value between 1991-1996 for Pakira was 262%, whereas the starting point figure for the lease land of $1,211,900 (page 9 of his brief) represented a 449% increase. By comparison, he noted that his suggested starting point gross Lessor's capital valuation (before Mangatu principles applied) amounted to a 278% increase since 1991.

He also set out in some detail of pages 10 through 12 of his supplementary brief criticisms of other comparative data from the Hermanson and Ihungia sales.

SUMMARY OF DIFFERING VALUER'S APPROACHES

For ease of comparison we have attempted to summarise the differing approach of the three valuers respectively to sales comparisons, conclusions as to plantable areas and bush related sales together with sales analysis adjustments and factors such as fertility, size etcetera.

Pakira Land Co Ltd to Pakira Station Ltd:

The plantable area adopted by Messrs Cowper and Foster was 2,411 ha. @ $1,219/ha. and 2,131 ha. @ $1,000/ha. respectively. Mr Morice did not consider this sale as it was a pastoral to pastoral sale.

Hermanson to Swayridge:

The plantable area adopted by Messrs Cowper and Foster was 714 ha. @ $632/ha. and 749 ha. @ $982/ha. respectively while Mr Morice used 1,000 ha. (provided by the vendor), the nett effect of this resulting in a lower value per plantable ha. (using the same criteria) but Mr Morice included time and land preparation adjustments in arriving at $1,117/ha.

Ihungia to Earnslaw One:

The areas and values adopted by Messrs Cowper, Foster and Morice were 4,360 ha. @ $1,032/ha.; 4,832 ha. @ $1,129/ha.; 4,812 ha. @ $1,112/ha. respectively. The Tribunal considers 93% of the total property being plantable as adopted by Messrs Foster and Morice being very optimistic when the factors outlined by Mr Cowper are considered.

Waipaoa to Evergreen:

Messrs Cowper and Morice analysed areas and values at 3,803 ha. @ $1,150/ha. and 3,643 ha. @ $1,704/ha. respectively (Mr Morice including time and land preparation factors). Mr Foster did not consider this sale.

OTHER SALES RELATING TO "PLANTABLE AREAS":

Mr Cowper:

Tasman to Langbein – sale date 4/96: 156 ha. @ $580 per plantable ha.

Mr Foster:

Hoia Station, part Matahiia Station, Ruangarehu Station, Cresswell, Rouse, and Parihaka Station properties were discussed but were all after the 4/96 leased land valuation date.

Mr Morice:

Fisher to Longbow – sale date 5/96 being after the 4/96 leased land valuation date, although he did qualify the use of this sale.

BUSH RELATED SALES:

Mr Cowper and Mr Foster:

Swayridge – 637 ha. @ $75/ha.; 645 ha. non productive @ $100/ha. respectively.

Mr Cowper:

Pakira 1,605 ha. steep hill and bush @ $75/ha.; 60 ha. of waste @ $50/ha.

Waipaoa 201 ha. bush and waste @ $75/ha.

Ihungia 850 ha. bush riperian strips and slips @ $75/ha. (16.3% of total property)

Tasman 30 ha. very steep gullies @ $50/ha.

Griffin to Larsen – sale date 11/94 - 523 ha. steep hill and bush @ $85/ha. (excluding timber)

Mr Morice did not analyse any sales for bush values, instead stating "I have attributed a value of $50/ha. to the non productive areas involved – primarily steep hill and manuka together with protected forest and bush. This is consistent with the approach adopted in the 1986 and 1991 VNZ Valuation.

SALES ANALYSIS ADJUSTMENTS:

Time:

Both Messrs Cowper and Morice used the published VNZ Grazing Farmland Price Index while Mr Foster made no time adjustments.

Mr Cowper on Swayridge plus 2.5%, Pakira plus 34.8% and Waipaoa plus 5%. Mr Morice adopted 0.87% compounding per month from the December 1994 to June 1996 sales period.

Distance:

Mr Cowper from analysis of *forestry sales* calculated a distance factor of 5% per 30 kms. above the base of the first 100 kms. from the port and handling facilities and then applied this on a relative basis to Houpoto. Swayridge (including access) minus 5.17%; Pakira plus 4.99%, Waipaoa minus 20%, Ihungia minus 10%; Tasman minus 4.86%.

Mr Foster used *forest cartage costs* to establish a distance factor relative to Houpoto (being a distance of 115 kms. to Kawerau Mill (although he quoted 89 kms.); Pakira 0.625; Ihungia 0.8; Swayridge 0.7; Hoia 0.65.

Mr Morice on a *forest cartage cost* basis calculated $14.07 per tonne for 100 kms.; $19.67 per tonne for 150 kms.; $25.27 per tonne for 200 kms.

Fertility:

Mr Cowper:

In his Supplementary Brief, from the Hermanson sale as it related to Houpoto plantable areas adopted a 10% reduction for "easier farmed" and 5% reduction for "steeper country".

Mr Foster:

Adopted the following basis – Pakira and Ihungia = 1.0; Houpoto and Swayridge = 0.7.

Mr Morice:

As per his chart "U" –

Steep hauler: Swayridge 10%; Waipaoa 15.75%; Ihungia and Fisher 20% reduction.

Medium and easy skidder: Swayridge and Fisher 20% reduction.

Mr Morice brought the Tribunal's attention to the Fletcher Challenge Forests Ltd. v Valuer General (Tahorakuri) case relating to FRI fertility growth trials where the Tribunal adopted a 20% reduction, the measurement being between highly productive fat lamb pastoral property and virgin land, i.e. not previously farmed. Mr Morice adopted this basis for his analysis relating to fertility adjustments.

Mr Willis, a forestry consultant, presented evidence indicating that higher fertility may not give the highest percentage yield return, i.e. lower fertility often produces better quality trees and considered this to be the case between Ihungia and Houpoto.

Size:

Mr Cowper indicated a 6.8% reduction for the Tasman to Langbein sale.

Mr Morice, from an analysis of 36 pastoral to afforestation sales on the East Coast during 1995-96 adopted a 10% reduction for the Addison, Lockwood and Fisher sales as these were below 600 ha. (land values tended to level out above 600 ha.).

COMPARISON OF VALUES ADOPTED FOR HOUPOTO:

1/4/1996 Values in 1976 Condition:

Mr Cowper:

Total planted area 2,341 ha. at an average land value of $920.37/ha. and a total average of $452.03/ha. Lessor's Improvements average $339.58/plantable ha. and $75.48/non plantable ha.

Mr Foster:

Total planted area 2,357 ha. at an average land value of $1,023.52/ha. and a total average of $499.98/ha. Lessor's Improvements average $423.19/plantable ha. and $88.90/non plantable ha.

Mr Morice:

Total planted area 2,341 ha. at an average land value of $716.83/ha. and a total average of $353.97/ha. Lessor's Improvements average $279.59/plantable ha. and $50/non plantable ha.

SUMMARY OF 1996 VALUES:

	Mr Cowper	*Mr Foster*	*Mr Morice*
Lessee's Improvements:	1,405,000	642,000	642,000
Lessee's "land development":	1,360,000	1,415,000	1,047,000
Total Lessee's Interest:	2,765,000	2,057,000	1,689,000
Lessor's Capital Value:	**1,015,000**	**1,211,900**	**812,500**
Current Market Value (excluding trees & timber)	3,780,000	3,268,900	2,501,500

THE TRIBUNAL'S CONCLUSIONS:

Generally speaking the Tribunal concludes that the overall approach of Mr Cowper is preferred. In particular we agree with his conclusions with regard to comparison with the Pakira sale and whilst acknowledging that it was a pastoral to pastoral sale and agree it is possible that the sale price could have gone even higher had forestry interests been interested although in fact on the evidence there was no such interest, it seems reasonable to us to suppose that

the predominant reason for that lack of interest by forestry developers was the distance factor. That sale close in time and located on the Bay of Plenty side of the Cape for a comparable size property does have some relevance although we agree that from a fertility point of view the Pakira land is much better generally than the subject land.

REDUCTION TO ACCOUNT FOR RESTRICTIONS ON ALIENABILITY IMPOSED BY THE TE TURE WHENUA MAORI ACT 1993 – APPLICATION OF MANGATU PRINCIPLES:

As indicated earlier Mr Cowper and Mr Foster adopted a similar approach but Mr Morice proceeded on the basis of a much higher deduction.

Mr Cowper:

In his original Brief he indicated a 5% discount which reduced the Lessor's capital value to **$964,000**. In the Closing Submissions of the Valuer General a discount of 5% was restated but it was also indicated that there was perhaps no need for any discount.

Mr Foster:

In his original Brief indicated a 7.50% discount which reduced the Lessor's capital value to **$1,120,000**. In his Supplementary Brief he suggested "at or near freehold values" and in the Closing Submissions for the Lessor "no adjustment or minimal adjustment" required.

Mr Morice:

In his original Brief indicated a 40% discount which reduced the Lessor's capital value to **$450,000** (based on a Lessor's capital value of $750,000). In the Closing Submissions for the Lessee the figure was amended, based on 40% discount to **$487,500** (based on a Lessor's capital value of $812,500).

THE TRIBUNAL'S DECISION:

The Tribunal does not intend to go over all the very detailed summary of Maori Land Court decisions over the last few years, which were canvassed extensively in our decision on the Mangatu rehearing (LVT Decision 29.12.98). Mr Cowper produced for this hearing the same helpful analysis of sale of Maori freehold land he had produced in the Mangatu rehearing. That is set out below.

Sale of Maori Freehold Land to Non-Preferred Alienee

	Block Name	Price	Valuation	Alienee in Preferred Class
1	Kawaha 3E	$200,000	Various	Not clear, Status Changed
2	Te Kaha 50A	$117,500	$116,000/$90,000	Yes
3	Utuhina 3K1	$82,000	$82,000 (GV) $89,000 (RV)	Yes

4	Oakura F2A Lot 25	$55,000, but increased by Court to $55,800	$55,800	No
5	Poroporo A16	$20,000	$17,999.67	No/Objection
6	Waima 1	$11,000	$11,000	No/Status changed
7	Waimana 266A2	$160,000	$130,000	Not stated
8	Waipahihi C49	$85,000	$78,000	No

Suffice to say that this Tribunal is satisfied, for the same reasons as were explained in our Mangatu decision, that the evidence exists that sales are still being permitted by the Maori Land Court, and some status changes are occurring.

As we indicated in our Mangatu rehearing decision, we were very conscious, as we were dealing with both that matter and this matter that similar considerations had application, albeit that for the Maori interests involved, they were in opposing directions.

It seems to us important that we try to maintain some consistency, on the basis that a valuation exercise should be done as objectively as possible, and not be influenced by factors of sympathy for the practical ramifications of the extended discount, if any, allowed.

We are, it has to be said however, very conscious of the fact that the Maori interests involved under the general umbrella of the Lessor's trustee holding, expressed both through evidence and submissions considerable concern about the implications of what was being argued against them by the Lessee's, utilising the precious historical information that they substantially had furnished from their own resources. Mr Foster put it most pungently in his evidence when he said "I do not believe that Parliament would pass an Act protecting the status of Maori land, in the knowledge that the legislation could be used as a club to beat the owners with."

He noted that in his view, "anyone contemplating the purchase of Houpoto would do so in the certain knowledge that they were only purchasing a cash flow for the next 79 years. They could not receive Turangawaewae until after the expiry of the lease." He went on to say "the status of the land would be of little importance to them. The prime consideration would be the guaranteed rental, reviewed regularly, being a return approximately four times that which could be obtained from pastoral farming, plus the prospect of capital gain."

The Tribunal of course, at the end of the day, while it needs to and must have regard to the implications of any valuation methodology, simply notes that whatever the deemed intention of Parliament may have been, our task is to try and consistently apply the principles of the Mangatu decision as we understand them to be defined by the Court of Appeal.

As was the case, particularly with the Awapuni land in the Mangatu decision, it was clear from the evidence before us that this particular piece of land, the subject of this objection has such deep and historical spiritual ties and other ties with the people of Houpoto, that the presumption of sale implicit in the legislation is substantially a legal fiction.

We are very conscious of the provisions of the preamble to Te Turi Whenua Maori Act pointed out by the Court of Appeal as requiring recognition namely "that land is a Taonga Tuku Iho of special significance to Maori people and for that reason to promote the retention of that land in the hands of its owners, their Whanau and their Hapu... ." We are also conscious that according to te kanga Maori, relationships between land and people are regarded in an entirely different way from any concept of land being a disposable commodity and that the world view of Maori as E T Durie in his article "custom law" in the Victoria University Wellington Law Review Volume 24 said "in this world view, Maori were the land. It was part of them by direct consent of the earth mother. Land or Whenua is represented in the Whenua or placenta of women. Maori are born out of the Whenua." And further "the right to the land in an area is accordingly based on that understanding." From what was said to the Tribunal by representatives of the Maori owners we accept that it is hard for them to imagine how they could ever get to the situation of permanently alienating the land by way of a transfer out from their ownership of their present freehold interest.

However the Tribunal accepts the general proposition advanced on behalf of the Valuer General that the following process needs to be carried out:

a) Assume an agreement i.e. vendor, purchaser, and agreed price and then;

b) Assuming confirmation, then it is a matter of considering what factors would influence the Maori Land Court to see whether they would effect price then;

c) Factors such as the policy of keeping Maori land in Maori hands, adequacy of consideration and the interests of the preferred class will obviously be taken into account. It follows that the purchaser would probably have to recognise that a person not in the preferred class could face serious legal restraints in obtaining confirmation for a future onward confirmation for disposition, so that after confirmation the purchaser's interest could be subject to the same constraints, so that any such hypothetical purchaser would face difficulties with relation to an application for change of status, particularly if the purchaser was from outside the preferred class.

However, we accept that it is not a question of whether or not the hypothetical sale would or would not be confirmed, but what, if any, factors having a bearing in a Maori Land Court decision on such a hypothetical transaction would be reflected in the price likely to be negotiated.

As we said in the Mangatu re-hearing, the evidence before us does not suggest that a discount is a likely outcome, except in a close family type transaction. In this regard, we see (as we said in Mangatu) the Ngatarawa sale as having considerable relevance, and agree that it is good evidence as an example of a public company with an obligation to shareholders being prepared to pay open market value to secure Maori freehold land.

For the same reasons as we explained in the Mangatu re-hearing, we do not see the Christchurch racecourse case (where sale was impossible) or the Wanganui racecourse case (sale possible only with a consent of the Minister, but only for racecourse purposes) as having direct relevance. However, we agree with the Valuer General that some discount is appropriate, to take into account that approval would have to be obtained from the Maori Land Court, and that might reflect a reduction of price because of possible on-selling difficulties. The Valuer General, as in Mangatu, suggests 5%. We consider that figure a little on the high side in this particular case.

There are two significant factors that in our view have application in this case that differentiate it further from the deduction we indicated we thought was appropriate for the Mangamaia Block in our Mangatu decision. These relate to:-

1. Differing ownership structure; and
2. The commercial history of the land in question.

Save to indicate that combined with the other factors already mentioned those matters call for a further 1½% reduction (from Mangamaia) to 3½% we are unwilling to go any further and allocate specific fractions to each factor.

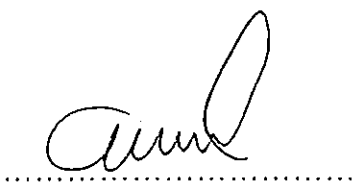
1. DIFFERING OWNERSHIP STRUCTURE:

Having already indicated that we accept the two step process advanced on behalf of the Valuer General, so that there is firstly an assumption of an agreement regardless of theoretical or actual quorum difficulties and then move to consider what factors would influence the Maori Land Court to the extent that they would effect price, we also accept that a potential factor that the assumed willing buyer would take into account would be the potential problem of getting approval to a further on sale at some future time. It is at this point that we consider comparison of the decision making ability and processes of the ownership entity has some relevance. In that regard, we compare the still relatively cumbersome voting structure for Mangatu (with relation to the Mangamaia Block) with the trust entity ownership of Houpoto Te Pua which simply requires not less than 50 beneficial owners present in person at a general meeting to constitute a quorum ie. voting is not according to shareholding. Put another way, the trustees of Houpoto when dealing with the Maori Land Court generally seek both its guidance and endorsement of the management of its affairs and are accountable, but this should be contrasted with the Mangatu situation which is an incorporation subject to a specific Act of Parliament and requires a 75% shareholding vote.

2. COMMERCIAL HISTORY:

The practical reality is that for perfectly sound commercial reasons the owners of Houpoto have already agreed on a commercial basis to practically distance themselves from the land for a very lengthy period of time in terms of general utilisation rights. Whilst the lease does provide for obligations on the Lessee regarding employment protection of historical sites etcetera, the substantial exclusive use of the land for a long period of time is for growing exotic trees. Few of the people alive at the time of the commencement of the lease will be alive at the time of its determination. The practical reality would seem to be that in light of the obligations to maintain the land, if only to ensure effective replanting, probably over three growing cycles on the land, and leave it fit for further replanting at the end of the lease recognises a commitment to a substantial commercial enterprise with a non-Maori party, hopefully to the mutual benefit of both. Therefore, despite the undeniable longstanding deep-seated spiritual and historical ties of the Houpoto people with the land in question and the unlikelihood that they would ever divest themselves of the freehold permanently, nevertheless commercial considerations have predominated. For those reasons but primarily because this land already has a substantial commercial flavour and the lease reflects an income stream

commercial proposition, we consider that the appropriate discount is 3½% off the Valuation New Zealand figure of $1,015,000 viz $979,475.



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For the Tribunal

A N MacLean

(District Court Judge)