NZVJ July 1997

LEGAL DECISION

IN THE OTAGO LAND VALUATION TRIBUNAL

HELD AT THE DUNEDIN DISTRICT COURT

IN THE MATTER OF

THE VALUATION OF LAND ACT 1951

AND SUBSEQUENT AMENDMENTS

AND AN OBJECTION TO VALUATION ON GENERAL REVALUATION OF QUEENSTOWN LAKES DISTRICT

BETWEEN MOUNT COOK GROUP LTD

(Objector)

AND THE VALUER GENERAL

(Respondent)

Coram: Judge T.H. Everitt, Mr I. McN Douglas, Mr W.O Harrington

Hearing: 12th & 13th November 1996

Counsel: G.H.Gould - for Objector

M.T.Parker- for Respondent

Valuation of Land Act (1951) – Ski field – Lessees objection to roll revision – Land value – Value of Improvements – Land development expenditure – Ski field analysis – Comparable sales – Cross checks – Willing buyer/ willing seller – Cost not necessarily value – Reserves land disposal – Onus with objector.

JUDGMENT OF THE TRIBUNAL

Introduction

The Mount Cook Group Limited is lessee and operator of the Coronet Peak Ski Field. The company objects to the values determined by the Valuer-General in the Queenstown Lakes Revision of 1st September 1993. The principal matter at issue being the Land Value of $900,000 and more particularly that of assessment 29073 03000 B which had been apportioned at $888,000.

The objector leases the land from the Department of Conservation. The lease is issued under Section 54 (1) (d) of the Reserves Act 1977. The area of lease involved comprises 312.1447 hectares of Crown Land which is part of a 596.1447 hectare portion of the Coronet Peak slopes gazetted as Recreation Reserve in 1955.

The underlying zoning is Recreation S (ski field). The operation of the ski field is a conditional or discretionary use.

The lease permits and limits the lessee to using the land for a recreation ground site for ski tows, winter sports ground and uses ancillary thereto, including the sale of refreshments , (clause 2). There are restrictions of the right to transfer, sublease, mortgage or otherwise dispose of the lessees interest without the consent of the lessor. (clause 3)

The term of the lease, at the date of valuation, was for a period of 10 years from 1st January 1985. There is provision for renewal for a further 10 year term. The yearly rental for the ensuing term to be fixed at 7.5% (reducible to 6.5%) of the value as defined in subsection (4) of Section 131 of the Land Act 1948. The values are to be ascertained not earlier than two years and not later than one year before the expiration of the lease term.

A lessee, of course, has a right to object to the district revision and we do not question the companys' decision to challenge the Valuer-Generals existing roll values. However it become clear during proceedings that the objector was also concerned at the effect the roll values might have on the pending rental review.

So far as this Tribunal is concerned the question at issue in these proceedings is one of confirmation or otherwise of the values determined by the Valuer-General under the Valuation of Land Act. In spite of there being some similarities as to the period of valuation and to the rights of appeal we are not satisfied that it is this Tribunal's responsibility to rule on an issue formulated under different legislation and for which a formal appeal, to the best of our knowledge, has yet to be lodged. It is to the boundaries of the Valuation of Land Act that this Tribunal shall confine its deliberations.

Background

The land at issue is situated some 15 km east of the popular interna-

tional tourist resort of Queenstown.

The Mt Cook and Southern Lakes Tourist Company established a rope ski tow on the southern slopes of Coronet Peak in 1947. The ski area along with surrounding tussock country, was at the time utilised for high country grazing by the farming lessees of Coronet Peak Station. In 1955 Coronet Peak was gazetted a Recreation Reserve and the following year a 10 year lease over an area of approximately 2.8 ha was issued to the company by the Tourist and Publicity Department which controlled that particular area. Over the next two years roading and a carpark were surveyed and construction was carried out by the Lakes County Council with funds supplied by the National Roads Board and the Tourist & Publicity Department.

During the ensuing 40 years a large restaurant and kitchen facilities were installed along with a number of chair-lifts; car parking was expanded, a community sewerage system and snow making facilities were provided and the area of lease was enlarged to the present 312 ha. In 1992 a draft Conservation Management Plan was prepared for the Coronet Peak Recreation Reserve. From that document it is clear that the limitation on existing facilities is 2,054 skiers per day, this being the capacity of the lifts.

In November 1993 the Mount Cook Group Ltd announced plans for a further $6 million development of the ski-field including enlargement of the base building and upgrading and additions to the lifts and other facilities.

Modifications to contour have been undertaken since 1947 through the levelling of building sites and the formation of vehicle accessways, carparking and ski-trails.

Ski-field access is now by means of a tarsealed public road which extends to the southern boundary of the property. In this it is unique amongst South Island ski-fields.

The land use on the surrounding land is still extensive tussock grazing and the owners of the adjoining Coronet Peak Station have a licence to summer graze the subject area although the company does take tourists to the peak in the double chair- lift over this period

Legislative Background:

In view of the main issues involved we feel it is useful to review the appropriate legislation.

Section 2 of the Valuation of Land Act provides the following definitions upon which the valuer must rely when assessing value.

"Capital value" of land means the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to require.

"Improvements", in relation to any land, means all work done or material used at any time on or for the benefit of the land by the expenditure of capital or labour by any owner or occupier thereof insofar as the effect of the work done or material used is to increase the value of the land the benefit thereof is unexhausted at the time of valuation; but except in the case of land owned by the Crown or by a statutory public body , does not include work done or material used on or for the benefit of the land by the Crown or by any statutory public body, except so far as the same has been paid by way of direct contribution:

Provided that work done or material used on or for the benefit of the land by the expenditure of capital or labour by any owner or occupier thereof in the provision of roads or streets, or in the provision of water, drainage, or other amenities in connection with the subdivision of the land for building purposes shall not be deemed to be improvements on that or any other land:

Provided also that work done on or for the benefit of the land by the owner or occupier thereof in-

(a) The draining, excavation, filling,or reclamation of the land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling, or reclamation; or

(b) The grading or levelling of the land or the removal of rocks, stone, sand or soil therefrom; or

(c) The removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or

(d) The alteration of soil fertility or of the structure of the soil; or

(e) The arresting or elimination of erosion or flooding -

shall not be deemed to be improvements on that land or any other land:

"Land" means all land, tenements and hereditaments, whether corporeal or incorporeal, in New Zealand, and all chattel or other interests therein and all trees growing or standing thereon:

"Land Value" in relation to any land, means the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realise at the time of valuation offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose, and if no improvements (as herinbefore defined) had been made on the said land.

"Value of Improvements" means the added value which at the date of valuation the improvements give to the land.

Valuations submitted:

The statutory objection filed with this Court relates to the amounts apportioned to the Mount Cook Group Ltd for rating purposes. A summary of the valuations submitted in evidence is as follows:

		CAPITAL VALUE	LAND	VALUE OF IMPTS
For Valuer General	(Mr A.B.Passmore)	$3,788,000	$888,000	$2,900,000
For Objector	(Mr M.R.Cummings)	$3,800,000	$500,000	$3,300,000
	(Mr A.P.Laing) - freehold equiv	$4,800,000	$1,160,000	$3,640,000
	" - adjusted for lease	$4,280,000	$640,000	$3,640,000

The Respondents Approach:

In his evidence Mr Passmore, who is Managing District Valuer of Valuation New Zealand in Alexandra and a Registered Valuer of some considerable experience. stated that in assessing Land Value the land is to be viewed as being without improvements (as defined in the Act) but with an awareness of its potential use in respect of its physical attributes and its zoning. All surrounding land must be regarded as being in its present state with existing improvements and with existing services available. In this respect he considered that the subject land could be treated and assessed as:

(1) tussock mountain land with physical attributes suited to ski-field use,

(2) land situated close to a busy tourist town and therefore a large potential client base,

(3) having sealed road access to the boundary thereby saving large capital outlay and maintenance costs,

(4) having potential for some off season use,

(5) being designated as Recreation Reserve with an underlying Ski-field Recreation zone. A ski-field operation also being permitted under the district scheme as a conditional use.

He cited Case Law arising from *Waiorau Holdings Ltd v The Valuer General* LVP 296/91 and *Southern Pacific Hotels v The Valuer General* LVP 15/92 and said there are several approaches that can be taken in a valuation of this property.

He then outlined each of the three approaches he had taken.

(1) Comparable Sales:

The witness told the court that sales of ski-fields are rare occur-

rences and details of transactions are often obscure. However evidence for this assessment was available from the sale of the 602 ha freehold Cardrona Ski-field in 1990. Cardrona patronage averaged approx 94,000 skier days per annum. For the purposes of this assessment he told the court he had analysed the Cardrona sale as follows:

Purchase price as a going concern	$10,000,000
less goodwill	2,800,000
less plant & stock	2,600,000
Residual Price for Land & Buildings	$ 4,600,000
less improvements inclusive of land formation work	$ 3,800,000
Residual Price for Unimproved Land	$ 800,000

Also in 1990 there was the sale of the majority shareholding of Mount Hutt Ski-field .He said that he did not have precise details of this transaction but it was known that United States interests had purchased a majority shareholding in the Mt Hutt Ski & Alpine Tourist Company Ltd for a price believed to be in the range of $16m to $18m but there was included $7m to be spent on development. Mr Passmore said that with lack of some commercial information precise analysis was not possible. However Mount Hutt had recently been the subject of a valuation for rental review and that information gave some measure of the worth of the business which had a 135,000 skier days per annum turnover.

He had analysed the sales as follows:

	Skier days pa	Total Value	Total Value/ Skier day	Unimproved Land	UV per Skier day
Cardrona	94,000	$4,600,000	$48.94	$800,000	$8.54
Mt Hutt	135,000	$7,210,000	$53.41	$840,000	$6.22

His considered opinion was that, by comparison with Coronet Peak these ski-fields possess the following relative advantages:

They both have a more reliable natural snowfall, larger skiable area, more slopes for beginner and novice class skiers and higher total annual patronage than Coronet Peak. Cardrona has less visual impact and therefore less conservation issues and restrictions are apparent. Mt Hutt is handy to a major metropolitan centre (Christchurch).

On the other hand, he believed Coronet Peak has the advantages of better location, access, off season use and greater potential for snow making. In these respects Coronet Peak is superior to all other South Island Ski-fields.

Mr Passmore reasoned that by comparison with these two fields the Capital Value of Coronet Peak would be fairly assessed at $63.00 per skier day and the Unimproved Land Value at $12.50 per skier day. On the expectation of an annual average patronage of 60,000 skier-days the total Capital Value calculated to $3,780,000 and the Unimproved Land Value to $750,000. When land formation work of $150,000 (which is included in Land Value- under the Valuation of Land Act) is added to the Unimproved Land Value this equates to a Land Value of $900,000.

Mr Passmore explained that he had based his original patronage on figures which had been available until 1990. In spite of a number of requests the objectors refused to supply post 1990 figures for Coronet Peak so he had assessed, what he believed to be, a reasonably sustainable average figure of 60,000 skier-days. Later evidence, produced and verified by Mr Laing showed that Mr Passmores estimates had indeed been light. This evidence disclosed a three year cumulative figure averaging close to 135,000 skier-days per annum. Mr Passmore told the Court that had he been aware of the true figures he would have set correspondingly higher values.

(2) Built Up Basis:

The witness told the court this method is a valid approach to assessment of Land Value. While

it does not accord with the definitions to arrive at Improvements or Capital Value it is a means to that end because it provides a cross check on Land value. It is a summation approach giving regard to each component of the Land Value assessment.

He started his summation with a base rural farmland figure for tussock land (with conservation values) of $100/ha.(i.e.say $ 30,000 for the 312 ha). To this he added estimated resource consent costs of $720,000 and land formation work (grading, levelling, filling) of $150,000 indicating a total sum of $900,000 for Land Value. Mr Passmore explained to the Tribunal that the nearby Remarkable Ski-field was developed in the mid 1980's and it had cost the developers close to $1m to obtain the necessary resource consents.

(3) Comparable Rentals:

The witness pointed out that there are no known rentals for total ski-field holdings but a number of ground rentals are known which are of assistance in the assessment of Land Value.

He explained that as most of these rentals are based on a percentage of turnover he had capitalised the rentals at 7.5% in order to arrive at a common (unimproved) rental value for comparison with Coronet Peak (7.5% being the prescribed gross rental rate on the Coronet Peak lease). From this he derived a Rental Value per Skier-day for each of the five ski-fields analysed. They ranged from $6.22 (Mt Hutt) to $14.71. (Remarkables).

On the basis of this approach he reasoned that $12.50 was a fair assessment of equivalent rental value for Coronet Peak. At 60,000 skier-days this equated to $750,000 to which must be added an allowance for land formation costs of $150,000 giving a total estimated Land Value of $900,000.

Concluding his examination Mr Passmore explained that he felt he had been constrained by the objectors' negative attitude to his requests for financial and performance figures. This meant he was not able to conduct an economic analysis approach as a check on his other figures. He said it was something of a surprise to find the information he had asked for and had been told was irrelevant, was later included in evidence presented by other witnesses.

The Objector's Case:

The Objector's case focused on the determination of the Land Value and contended that because the land at issue is part of a Recreation Reserve and it is also the subject of a Resource Management plan then it is not saleable in the ordinary sense, so the Land Value must be discounted.

In other words an allowance must be made for the inferior state of tenure compared to a fee simple state. Three cases were cited in support. These being *Valuer General v Christchurch Racecourse Trustees* (AP 343/92), *The Hutt Park v Racecourse Board* [1907] 27 NZLR 246 and *Wanganui Racecourse Trustees and Wanganui Jockey Club v Valuer General* [1981]

The principal valuer witness was Mr A.P.Laing.

Mr Laing stated he accepted that the "highest and best use" for this land is as a commercial ski-field. His approach has been to assess the value of the entire property on a "freehold equivalent" basis which includes Improvements on the land. He said that he valued the improvements on the basis of existing use to reflect the use for the operation of the ski-field. and his assessment of the Land Value included the value of grading and levelling the land and other excavation undertaken to improve the capacity of the commercial ski-field. He then considered the effect of the lease and the effect that the restraint on sale imposed by the Reserve status would have on the owner's (Crown's) estate or interest in the land and he adjusted his "freehold equivalent" values accordingly. He cited *Valuer General v Radford & Co Ltd.* [1993] 3 NZLR 721 and *Valuer General v The Trustees of the Christchurch Racecourse* as authorities for his final adjustment.

Mr Laing told the tribunal that his first step was to value the Coronet Peak Ski-field as a going concern. He maintained that a ski-field would be bought and sold as a going concern business and therefore it must be valued with due regard to the commercial influences involved He said this was the usual approach used by those

involved in the recreation business.

Mr Laing illustrated this step as follows:

Maintainable Future Profit (pre tax)	$1,500,000	
Add back rent	32,500	
	$1,532,500	
Capitalised at 20% (based on Cardrona Sale analysis) =		(say) $7,600,000

Mr Laing next calculated a "notional rent" for the undeveloped land based on 2.5% of an expected annual gross turnover of $6,000,000. This came to $150,000 pa which he capitalised at 15% to produce a sum of $1,000,000. He called this his Land Value figure.

In his written evidence Mr Laing said that the Land Value figure comprised two elements: the value of the land in its undeveloped state, and the improvements falling within the second proviso to the definition of improvements in the Valuation of Land Act, (which, he went on to say, would be deducted in the event of an assessment under the Land Act).

Mr Laing then explained his hypothesis that the apportionment of values was based on the concept that the value of the business sets the upper limit of values and the individual assets have to be allocated within that framework. He said this approach complies with the definition of improvements "in so far as the effect of the work done or material used is to increase the value of the land". From his valuation exercise he concluded that the cost of improvements exceeds the value they give to the business.

Mr Laing felt that any further adjustment to the Land Value to reflect the effect of the lease in terms of the principles defined in the **Radford** case was not required since this apportionment covers that point and any further adjustment would be double counting. Mr Laing then went on to make an adjustment for what he claimed was "restraint on sale". He cited the *Christchurch Racecourse* case and he applied a 45% discount to his assessed Land Value thus reducing it to $640,000. He made a corresponding adjustment to his Capital Value.

It seems to us that Mr Laing is trying to find a common mathematical formula to determine both Land Value (as defined in the Valuation of Land Act) and the value of Land exclusive of Improvements (as defined in the Land Act).

The fallacy of his case is that cost is not necessarily value. Overcapitalisation, which is not uncommon in business, will immediately distort the formula. An accountant will view cost in rela-

Apportionment of Values:

	1993 Cost	Value Apport.	Land Content
Notional Undeveloped Land Value	1,000,000	587,899	587,899
Improvements to the Land	961,611	570,033	570,033
Land Value:			1,157,932
Buildings	4,758,873	2,797,736	2,797,736
Lift/Snowmaking Equipmnt	3,977,630	2,338,444	841,840
Hire equipment	567,149	333,426	
Vehicles	1,028,824	604,845	
Restaurant Equipmnt	309,023	181,674	
Plant	316,282	185,943	
	$12,927,392		
Value in the Field ACG		$7,600,000	
Capital Value of the Land			$4,797,508 ($4,800,000)

Finally he apportioned (and rounded) his Capital Value as follows:

Capital Value	$4,800,000
Land Value	$1,160,000
Improvements	$3,640,000

tionship to cash flow and depreciation advantages. It seems that land, which cannot be depreciated for taxation purposes will, under Mr Laing's methodology tend to take a subservient role to the items of higher deductibility, such as plant & machinery. We predict that if such an approach were to be adopted universally then the value of land will amount to nothing more than what is left over after the "deductibles" have been wrung. The integrity of any valuation relies on the valuer's capability to cross check his/her valuation approaches. It is difficult to envisage how the standard checks and balances historically employed by valuers could have any place in such a methodology. As Mr Parker pointed out in his summing up -

"It is inherent in the definitions in the Valuation of Land Act that there is no scope for a residual value approach, and no need to value ski-field business as a going concern and then allocate land value within that cap".

Unlike Mr Passmore, Mr Laing cited no actual sales analysis in support of these figures. He did refer to both the Cardrona and the Mt Hutt sales but only to extract perceived capitalisation rates. It seems to us that his whole approach was based on a very narrow perception and some very subjective factors.

However we have enough regard for Mr Laing's experience and judgement to accept that, irrespective of by what means he arrived at the figures, his so called "freehold equivalent" values are probably not too wide of the mark. It is clear that had Mr Passmore had the same information supplied to him as Mr Laing did then there would probably now be no dispute between these two capable valuers.

Mr Passmore's more pragmatic approach is favoured by the Tribunal. He adopted three clear, methodical and analytical approaches each of which confirmed the conclusion of the other two. He remained objective throughout. Had he been supplied at the outset the information that he tried to obtain then we have no doubts that he would have struck higher figures on the roll revision.

Mr Laing, as we know, continually seeks to test the system and we have no problems at all with such probing. It is thanks to highly skilled and experienced professionals like Mr Laing that the frontiers of knowledge progress. However in this case we were not sufficiently convinced as to the infallibility of his methodology for establishing values as prescribed by the Valuation of Land Act. His methodology may well meet the needs of a specific corporate decision making process but the gap between the complexity of a corporate board room strategy and the minds of a willing seller/willing buyer of 300 hectares of South Island tussock country is too great for this tribunal to accept his formula as being totally conclusive.

What has to be determined, in the end, is the expected market value of the land (as defined) without any of its present improvements (

as defined) but with all of its natural features and present supporting infrastructure. We prefer the more straight forward approaches of Mr Passmore but we cannot overlook the final judgement of a valuer of such experience as Mr Laing, particularly when he was privy to information that Mr Passmore did not have at the time of making his valuation.

There can be no dispute that if a sizeable parcel of largely undeveloped land, favoured by a history of winter snows, proven by skiers, possessing outstanding vistas and having sealed public access from an international resort only 30 or so minutes away were to be placed on the open market then it would attract wide international attention. It is inconceivable that a vendor of such a block, in the post 1992 market would have offered it for less than one million dollars. We have no doubts, as would both a vendor and a purchaser that the consents required for transfer and for security purposes would be forthcoming to at least a section of the bench of the willing buyers. After all Pastoral Leases and the likes have similar limiting clauses and lessees have not been unreasonably restricted as to transfer or borrowing.

With regard to the deduction claims made on the basis of the *Christchurch Racecourse* case we agree with the comments made by Mr Parker in his summing up that the highest and best use of the Riccarton Racecourse land was for residential development, not for a racecourse. All witnesses agreed that the highest and best use of the land here is for a ski-field. The restrictions with which the High Court was concerned were created under the Christchurch Reserves Act 1878 not the Reserves Act 1977. Section 24 of the Reserves Act provides the procedure for revocation of the classification; the land then becomes Crown land available for disposal under the Land Act. (s. 25). The Christchurch Racecourse could only be sold if the legislation was amended.

There is no evidence from the Objector that either the District scheme or the Management Plan has impinged on its ski-field operations and development. In fact the Company elected to embark on a $6m development programme soon after the release of the draft plan. We find no scope to apply the principles established in *Radford* because in this instance Crown land is involved and no separate Roll entries are required.

Decision:

The onus lies with the Objector to show that the respondents' values were wrong. That was not proved to us nor was it proved there were grounds for a deduction for reserve or for lease estates.

Accordingly we uphold the following values for the purposes of 1993 roll revision:

Capital:	$3,788,000
Land Value:	$ 888,000
Value of Improvements:	$2,900,000