IN THE WAIKATO NO. 4
LAND VALUATION TRIBUNAL
AT TAURANGA

LVP 2/2005

IN THE MATTER OF	the Rating Valuations Act 1998 and an objection to Rating Valuation Assessment 06920-474-00
BETWEEN	TAHEKE PAENGAROA TRUST Objector
AND	THE WESTERN BAY OF PLENTY DISTRICT COUNCIL First Respondent
AND	LANDMASS TECHNOLOGY LTD Second Respondent

Hearing: 26 February 2008

Appearances: McKechnie and Dennett for Objector
Crombie and Ms Waikato for First Respondent

Judgment:

JUDGMENT OF WAIKATO No 4 LAND VALUATION TRIBUNAL

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[1] The trustees of the Taheke Paengaroa Trust own some 1276.3939 hectares located on both sides of State Highway 33 between Maketu and Rotorua. The Western Bay of Plenty District Council assessed the land value of that land as at the 1st July 2005 at $4,930,000.00. The trustees object to that valuation and contend the land value of their estate as Mäori freehold owners as $2,800,000.000.

[2] The major issue affecting the valuation is whether the land should be valued in accordance with the market for forestry land, that being the only commercial use to which this land has ever been put, or whether the land should be valued for its potential to be converted to pasture and use as a dairy support grazing unit. In rating

appeals of this nature it is for the objector to establish on the balance of probabilities that the territorial authority's assessment is wrong.(see *Valuer-General v Littlewood*, unreported 13/3/98 Hammond J HC Auckland 15-18/97)

Background

[3] The land has a long history of occupation by Mäori, having originally been settled by the Tuhoe Arangi people, being adjacent to the Kaituna River, with good defensive occupational sites and forest cover for food and medicine. A battle in approximately 1650 resulted in the Tuhoe Arangi being driven from the land by Ngati Pikiau. The present owners are all Ngati Pikiau descendants of the conquering Chief Te Takinga.

[4] The land has a substantial historical value to the present owners, as there are battle sites, graveyards, caves, housing, skeletons and human remains. The land has areas of waahi tapu and kaimoana sites as well as pa sites, battle sites, graveyards and burial grounds.

[5] The land within this block was vested by the Mäori Land Court in Mäori ownership in 1904. Unsuccessful attempts were made on several occasions during the 20th century to develop the land for pastoral farming, and in 1968 the Taheke Paengaroa block was consolidated into its present size. The land was vested in the Mäori Trustee, and leased to timber interests for 99 years for the development of a Pinus Radiata forest. In 1989 Fletcher Challenge obtained the lease, and the Mäori Trustee granted a forestry right for a term of 42 years in place of the lease, to provide for two rotations of Pinus Radiata forestry. The first rotation was felled between 1999 and 2002 and the second rotation was then planted. Trustees were appointed in 1990 to replace the Mäori Trustee.

[6] The forestry right provided for a reassessment of the annual rental in 1999, and in April 2004 the appointed arbitrator Sir Ian Barker QC set the land value at $1,581,000.00. In August of that year Fletcher Challenge offered the trustees forestry right, and the trustees purchased it. The land is presently largely in Pinus

Radiata forest, although significant areas remain in native vegetation generally too steep and inaccessible for commercial forestry purposes.

[7] The owners' estate is one in Māori freehold land and the assets of the trust are such that the trust cannot and will not for the foreseeable future be able to develop the land for pastoral farming because of the likely cost of physical development of around $4,000.00 to $4,500.00 per hectare. Additional Kyoto Protocol costs of $13,000 per hectare would now apply for pastoral development. The native forest on the land is protected from development by the Western Bay of Plenty District Council District Scheme.

[8] There are more than 2,000 owners presently recorded as having shares in the land, but of those contact details are held for only 875 owners. A number of the presently listed owners are likely deceased and it would be a very substantial and expensive task for the ownership records of the block to be brought up to date.

Valuation Evidence

[9] Mr Hugh Reynolds gave evidence on behalf of the trustees and after a careful analysis of the land and sales which he considered to be comparable he reached the conclusion that the tenure constraints imposed by the provisions of the Te Ture Whenua Māori Act on Māori freehold land, the history, the location and contour of the block, all collectively constrain the land use for this block to ongoing forestry. Mr Reynolds found that some 567 hectares could effectively be logged by methods involving a skidder and he determined that land to be worth $3,500.00 per hectare. He considers that some 384 hectares are suitable for hauler extraction, and he values that land at $2,800.00 per hectare, and he considers there is 316 hectares of non-productive land worth $50.00 per hectare, a total of $3,107,000.00.

Respondents' valuation evidence

[10] Mr Grinlinton is the principal of Landmass Technology Ltd, the second respondent. His firm is in the business of carrying out valuation assessments for rating purposes, and does so for the Western Bay of Plenty District Council and a

number of other territorial authorities. It is Mr Grinlinton's view that the block has a highest and best use as a pastoral farm used for dairy support. There is some 17 hectares of flats, which he would value at $7,500.00 per hectare. He considers there are 559 hectares of easy to medium hill, which he values at $5,000.00 per hectare, and that is land on which he says log recovery by skidder is feasible in a forestry use. He identified 384.1 hectares of medium to steep hill for which hauler recovery would be required for forestry usage, which he values at $4,000.00 a hectare, land which he says is suitable for conversion to pasture. So he found a total of 943.1 hectares of land which he considers to be useable for pastoral purposes valued at an average figure of $4,592.00. He considers there is a residual area of some 316.4 hectares, which he values at $700.00 per hectare, that is steep hill that would require to be retained in bush. Including a basic site of 0.2 hectares which he values at $130,000.00, he values the land as having a freehold equivalent value of $4,810,400.00. This is to be compared with Mr Reynolds' figure of $3,107,000.00.

[11] Mr D R Smyth also gave evidence for the respondent, and he agreed with Mr Grinlinton's view that the block has a highest and best use as a pastoral farm used for dairy support. He identified 575 hectares of medium hill suitable for hauler recovery of logs which he valued at $4,750.00 per hectare, being in his view land suitable for pasture. He considered there were 385 hectares of steeper hill suitable for hauler recovery of logs, but not pasture, which he valued at $3,800.00 per hectare, and he identifies 316 hectares of bush country not suitable for pasture which he valued at $750.00 per hectare.

The highest and best use of the land

[12] There was a disagreement between Mr Reynolds on the one hand and Messrs Grinlinton and Smyth on the other as to the highest and best use of the land. It was Mr Reynolds view that the difficulties attendant upon the purchase of Māori land, when considered in combination, would be sufficient to discourage any purchaser from considering a purchase for the purposes of conversion of the land to pastoral farming. Mr Reynolds' evidence was that there was no known interest in the land from any pastoral farmers, and the combination of the restrictions against alienation of Māori freehold title, the generally impecunious state of the preferred class of

alienees, the large number of owners, the difficulties of getting consent from the Mäori Land Court for any sale, and the difficulty of obtaining mortgage finance secured over Mäori freehold land, collectively mean that as at 1st July 2005 this land would not have been of any interest to a pastoral farmer as a development proposition, and would only have been the subject of purchasing interest by foresters, and probably only a consortium made up of current owners. It was accordingly his professional opinion that a valuation based upon continued forestry use of the land is the only proper assessment of the owners' interest in the land.

[13] Both Messrs Grinlinton and Smyth, on the other hand, were of the opinion that a block of this size and contour and location would have been of very considerable interest to large scale dairy farmers or a consortium of dairy farmers who would be interested in this block as a dairy grazing support unit for existing dairy farms. It was their evidence that such farmers or consortia could readily finance such a purchase and development without resort to mortgaging the land. At a nominal cost of $4,500,000.00 for the land and a further $4,500,000.00 of development costs, it was demonstrated by Mr Smyth that a gross return in the order of 10% per annum can be generated, a far cry from the one or two or three per cent returns common within the dairy industry. Messrs Grinlinton and Smyth took the view that the market for blocks of this size and contour and location was fundamentally altered in 2003 and 2004 by changes in the economics of dairy farming generally, which created a market which had not hitherto existed for large dairy support blocks, even for blocks several hundred kilometres from the home farm. There was considerable evidence given by all valuers of sales of blocks of forestry land for conversion to pastoral farming.

[14] The fundamental issue in this case is whether we accept the evidence of Mr Grinlinton and Mr Smyth that the dairy farming support market existed on the relevant valuation date of the 1st July 2005, and that the Taheke Paengaroa block would have been attractive to purchasers in that market. In order to make that assessment, we viewed the property.

[15] Mr Reynolds accepted in evidence that if we found that this block of land would have attracted interest from purchasers of dairy support blocks for conversion

from forestry to pastoral farming, its highest and best use would be pastoral farming. He argued however that because this land is held under Mäori freehold title the considerations which would be taken into account by a fully informed purchaser, willing but not anxious to make a purchase, would be such that the hypothetical purchaser would only pay a sum equivalent to a forestry valuation and would not pay a valuation based on conversion to pastoral farming. His reasons for reaching that conclusion are intimately bound up with the law applicable under the Rating Valuation Act.

The Law

Sections 2 of the Rating Valuations Act 1998 defines the meaning of the term land value. It provides;-

> "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:

[16] It is clear law that a hypothetical purchaser would be fully informed of the nature and quality of the title being purchased, the nature and history of its use and all matters relevant to the further disposition of the land, including the restrictions imposed on its further alienation by the Te Ture Whenua Mäori Land Act 1993.

[17] The issues relating to valuation of Mäori freehold land were closely examined in a series of judgments known collectively as the "Mangatu judgments". Those judgments consist of the original Land Valuation Tribunal judgment, the High Court judgment on appeal, the Court of Appeal's decision on appeal from the High Court, and the subsequent judgment of the Land Valuation Tribunal applying the principles identified by the Court of Appeal.

[18] Following the decision in the Court of Appeal, the Valuer General prepared a set of guidelines now widely known amongst the valuation community as the

"Mangatu guidelines". The Mangatu guidelines have been considered and applied in quite a number of cases, a great many of which were cited to us in this hearing.

[19] Put shortly, the Court of Appeal's decision in the *Mangatu* case established that each case must be considered in its own factual matrix. Within that matrix, it is the "owners' estate or interest" which is to be valued, and in the case of Mäori freehold land that is not a valuation of the fee simple. The legislation requires the Court to accept a statutory premise that the owner will sell that estate or interest in the land as a bona fide seller, willing but not anxious to sell to a fully informed, willing but not anxious buyer.

[20] A sale to a hypothetical purchaser is thus statutorily presumed, and the difficulties inherent in obtaining agreement from a widespread ownership, quorum difficulties, or difficulties in getting Mäori Land Court approval for sale cannot be taken into account at that stage of the process.

[21] A common error is to assume that with such a statutory presumption the restrictions on alienability imposed by the Te Turi Whenua Mäori Act 1993 have no further relevance. That assumption would be erroneous, because those restrictions would continue to apply to the estate sold, which would remain Mäori freehold land, so the land must be offered to a statutorily preferred class of alienees, and Mäori Land Court approval would be required for any on-sale. The Court of Appeal made it clear in *Valuer General v Mangatu Inc.*[1997] 3 NZLR 641 that:

> "... the assessment of land value must remain on a case by case basis. The effect of restricted alienability will be affected by such factors as the nature and size of the property, the historical connection of the owners with the land, membership of the preferred classes of alienees and the resources available to farm the purchase, the statutory role of the Mäori Land Court in relation to the property and the prospect of obtaining confirmation of an outside sale from the Court. In the absence of further guidance in the legislation valuers will have to weigh the considerations in a sensible and practical way to arrive at what may well be a robust and imprecise judgment."

[22] In *Mangatu Inc v Valuer General* [1996] 2 NZLR 683 the High Court dealt with a suitable methodology for valuation. The Court held that:

> "In practical terms this will very likely mean starting with a valuation as if the land could be bought on the open market and then allowing a deduction for the alienation restrictions. The deduction will vary in amount depending on the extent of the restrictions, the likelihood of Māori Land Court approval for the sale, and the nature of the property."

[23] On the basis of those remarks, approved as they were in the Court of Appeal, the valuation community has adopted a two step approach to valuation in these circumstances. The first step amounts to an assessment of the land value of the land upon the open market as if it were a sale of a freehold estate of general land. This is normally done by determining the highest and best use of the property and applying comparable sales data, to obtain the freehold equivalent value of the land. The second step is to determine on a case by case basis a percentage deduction for the restrictions that Mäori freehold status imposes upon the owners' estate as compared with the freehold equivalent, and that requires an assessment of the factors relevant to the piece of land, including those specified by the Court of Appeal, and any other relevant factors.

Mr Reynolds' view

[24] It was Mr Reynolds' opinion that given the large number of owners of the property, in excess of 2,200 owners, and the broad definition of preferred class of alienees specified in s.4 of the Te Ture Whenua Mäori Act 1993, any prudent purchaser would recognise the connection between the owners and the land, the number of owners, the history of Mäori occupation of the block, its status as a battle site, with pa and urupa sites, its proximity to the aptly named Kaituna river, and when those factors are coupled with the generally restrictive approach taken by Mäori owners and the Mäori Land Court in particular to alienation of Mäori lands, in this case a sale beyond the preferred class of alienees by the hypothetical purchaser would for practical purposes be impossible.

[25] Mr Reynolds accordingly drew the conclusion that a sale within the preferred class of alienees would be the only practicable option, greatly restricting the class of potential purchasers, and valuation must accordingly proceed on the basis that the hypothetical fully informed purchaser from the preferred class of alienees would face little competition, as the members of that class are relatively impecunious. It was his

view that the preferred class of alienees could not be expected to pay more than the maximum economic value that was consistent with forestry use of the land.

[26] There was some criticism by the respondent Council that there was no reliable evidence put before the Tribunal of the financial resources of the owners or the preferred class of alienees. That criticism may be technically correct, but in this context it is more illustrative of the artificiality of the statutory valuation procedure than a genuine impediment to resolution of the core issues between the parties. With well over 2,000 owners, the majority of whom have no known address, it is a practical impossibility for realistic evidence of the financial resources of the owners or the preferred class of alienees to be obtained, let alone be presented in evidence. The prospect of the owners appearing to present evidence of their financial position in such numbers as would be required here is patently absurd. The cost of doing so would likely exceed the value of the land. None of the owners are known by the present trustees to be able to afford to purchase this land, although a group of them might be able to, and we have no reason to doubt that.

[27] Mr Reynolds also drew attention to the impact of the Kyoto Accord upon forestry prices, and it was his opinion that as at July 2005 it was widely understood by investors that by 2008 the Kyoto Protocols for change of use from low greenhouse gas emitting uses to high greenhouse gas emitting uses for land would have a substantial price attached. This view may have been reached with the benefit of hindsight, as the protocols recently promulgated establish that a change of use of this land would attract payment of something in the order of $13,000.00 per hectare, effectively preventing any future change of use of this block of land from forestry to pastoral farming, which is a much higher greenhouse gas emitting use of land than forestry. It is however a valid point that this issue would have had some impact on a purchaser's offer for this land as far back as 2005 in view of its size the relative difficulty of development associated with its contour, and the prospect of unavoidable delays associated with Māori Land Court approval.

The opposing view

[28] Mr Grinlinton and Mr Smyth both consider that the market evidence establishes clearly that such considerations would not have restricted a hypothetical purchaser from outside the preferred class of alienees, and that if the land had been offered for sale as at the 1st July 2005 such considerations would not have prevented a sale for conversion to pasture for dairy support, but would instead have justified a reduction in the price offered, of either 5%, as initially contended for by Mr Smyth, or 10% as contended for by Mr Grinlinton, and later agreed by Mr Smyth.

[29] Both Mr Grinlinton and Mr Smyth pointed to the several large areas of forestry land and young trees which were purchased over the period from 2003 to 2006 by pastoral farmers for conversion to pastoral farming, usually by sacrificing an existing crop of young trees and development into pasture. Those areas were predominantly in the South Waikato, some from the Eastern Bay of Plenty; significantly, none of the sales evidence came from any comparably large block of Māori freehold land.

Forestry v Pastoral conclusion

[30] The sales evidence relied upon by Mr Reynolds on the one hand, and Mr Grinlinton and Mr Smyth on the other hand, covered a substantial range of properties. On the basis of that sales evidence, we accept the fundamental proposition advanced by both Mr Grinlinton and Mr Smyth, which is that purchasers of land suitable for both forestry and pastoral conversion were having to pay the pastoral conversion price from 2003 onwards, a price higher than foresters had been paying. We accept that the pastoral conversion market had effectively excluded foresters from competition with pastoral farmers for such dual-purpose lands by that time. Put shortly, we consider that the market evidence establishes on the balance of probability that the price for forestry land in the mid-North Island suitable for pastoral conversion was from 2003 being driven by the higher prices paid by pastoral farmers wishing to convert forestry land to pastoral farming, to the general exclusion of purchasers wishing to buy and hold such land for purely forestry purposes.

[31] On the evidence available, we have come to accept Mr Smyth's view that the highest and best use of these lands would have been pastoral farming as to some 575 hectares, with the balance being retained in forestry and native bush. We accept Mr Smyth's assessment of the area likely to be converted, and prefer his assessment to that of Mr Grinlinton. We do not accept Mr Reynolds' contention that the Te Ture Whenua Mäori Act 1993 implications for Mäori freehold title and the difficulties associated with purchasing this block would have precluded purchase of this land by a bona fide purchaser from outside the preferred class of alienees. We consider that there would have been such purchasers intending to sacrifice the crop of young trees and convert the 575 hectares of pastoral contour to pasture, retaining the balance in forestry and bush. We have come to the conclusion that from 2003 to 2006 the conversion of forestry lands to pastoral farming was widespread, and competition for suitable conversion properties was substantial. We accept that the market would have driven the price of the land up to the freehold equivalent value identified by Mr Smyth, at $4,431,250. We prefer Mr Smyth's evidence as to land values over that of Mr Grinlinton and Mr Reynolds.

Transferable development rights

[32] Some considerable time at the hearing was spent dealing with the prospect of transferable development rights being available under the respondent's District Scheme in relation to the 316 hectares of steep bush country. Such development rights are a creature of the Bay of Plenty District Council's District Scheme, and we are informed that they do not exist in any other district within New Zealand.

[33] Transferable development rights can be created by land owners who have land in native vegetation which meet specific criteria for designation and preservation in a natural state. If appropriately fenced off and appropriately designated, five hectares of tall native bush and 10 hectares of cut-over re-growth can entitle the owner to obtain a transferable development right which can be used to subdivide certain lands which might not otherwise be subdivisible as of right under the District Scheme. Such a development right has significant value, being sold in 2005 for some $20,000.00 per transferable development right, or more latterly some $25,000.00.

[34] The market in these rights has only recently grown up, and it has been recognised by enterprising owners, including Mäori owners, of lands which are generally unsuitable for other development, that these rights are a way to realise a portion of the value of their lands without selling or otherwise alienating their freehold or Mäori freehold title to the land. We acquired a brief transcript of certain Mäori Land Court proceedings where approval appears to have been given to the sale of such transferable development rights.

[35] While it is entirely the business of the Mäori Land Court to deal with such sales in relation to Mäori land, a carefully considered decision analysing the impact of the Te Ture Whenua Mäori Act 1993 upon such rights does not appear to have been delivered by that Court. Certainly no such decision has been produced for the consideration of this Tribunal. It is arguable that no estate or interest is being alienated on the sale of such rights, as they are purely a creature of the Resource Management Act 1991, and as a consent they are not an estate or interest in the land. Conversely, once sold, the alienation of such rights will clearly have the effect of restricting the subdivision of the lands over which the rights have been granted, and such a restriction may well be inimical to the objects and purposes which lie at the heart of the Te Ture Whenua Mäori Act 1993. Those are matters for the Mäori Land Court to decide, and as none of the valuers giving evidence before us specifically included a value for such rights in their valuation of the Taheke Paengaroa block, it is not strictly necessary for us to determine any issue relating to them.

Not a consent

[36] One issue does however deserve mention as it will inevitably arise in future. In the course of his evidence Mr Reynolds expressed the opinion that because such rights are predicated upon the existence of tree cover, valuing such rights amounted to a valuation of the trees, and the value of any tree crop is statutorily excluded from the definition of land value contained in the Rating Valuations Act 1998. We do not accept his premise. The law is clear that the fact that trees are upon the land must be taken into account in assessing the land value, but the value of those trees must be excluded from the valuation of the land. In the case of transferable development rights, we consider that the assessed value of such rights includes the fact that the trees are attached to the land, and that far from being an assessment of the value of the trees, which could never be milled or sold under the terms of such rights, the

assessed value of the transferable development right includes an assessment of the value of the fact that the trees are attached to the land, without assessing any value of the trees themselves.

[37] There was no evidence before us that there were any sales of such rights over Mäori freehold land before the valuation date of 1 July 2005. In our view the valuers' collective reluctance to assign a value to such rights in this case was proper in the absence of such evidence. Subsequent sales of such rights over Mäori freehold land have occurred, and in future rating valuations may need to reflect the existence of this market, bearing in mind the need for caution until the Mäori Land Court has fully considered the issues arising from such sales.

The Mangatu Considerations

[38] Although we have rejected Mr Reynold's core conclusion that pastoral conversion of this land was in 2005 effectively prevented by the restrictions inherent in Maori freehold title, the issue of the proper application of a discount according to the *Mangatu* principles requires to be considered. The *Mangatu* decision delivered by the Court of Appeal identified five relevant factors; the nature and size of the property, the historical connection between the owners and the land, the membership of the preferred class of alienees and their financial resources, the statutory role of the Mäori Land Court, and the prospects of obtaining an that court's approval for a sale beyond the preferred class of alienees.

[39] That decision lead to the Valuer-General preparing of a set of valuation guidelines, covering discounts for multiple ownership and additional adjustments for sites of special significance, specifying a maximum limit of 15% discount to freehold equivalent value for those matters. It is not necessary to reproduce those guidelines in full. They are expressed to be flexible, and are to be applied on a case by case basis as a guide. The guidelines have no force of law, but they have generally been embraced by the valuation profession as being clear and certain in an area of valuation where clarity and certainty are rare and prized.

[40] Concerns about the comprehensiveness and continued validity of the assumptions underlying the guidelines lead us to raise the issue with the valuers giving evidence. All the valuers who gave evidence were asked to address the question of whether a figure greater than 15% might be now be considered an appropriate discount for this land in light of the changes in market conditions affecting Māori freehold land since the Valuer General's guidelines were promulgated.

[41] In oral evidence, after much prompting, Mr Reynolds somewhat reluctantly indicated that a discount of 35% to freehold equivalent value could be an appropriate assessment according to the *Mangatu* principles, if the Tribunal found pastoral farming to be the highest and best use of a significant portion of this land instead of forestry. Messrs Grinlinton and Smyth adhered to a deduction of 10%, strictly applying the Valuer General's guidelines, as Mr Reynolds had done in his brief of evidence.

[42] The Valuer-General's guidelines explicitly do not have the force of law, and they are to be interpreted in light of the observations in the Court of Appeal in the *Mangatu* judgment that "... valuers will have to weigh the considerations in a sensible and practical way to arrive at what may well be a robust and imprecise judgment ...".

[43] The *Mangatu* case itself was remitted to the Land Valuation Tribunal for further consideration, and there a discount of 15 % was allowed for one block of land, representing one end of the spectrum, and 5.34 % on a different block at the other end. A maximum limit of 15% discount as contemplated by the guidelines has an attractive utility, but is without the force of law. It is clear that each case must be approached on its own facts, and a robust judgment made after consideration of the guidelines and the individual characteristics of the particular case.

Conclusion

[44] In our view a more robust approach than that adopted by all three valuers is required here in applying the *Mangatu* principles. It is our view that the Valuer-

General's guidelines have been interpreted too literally, and too conservatively applied by all three valuers who gave evidence before us.

[45] For any prospective purchaser of this land there would be substantial problems associated with locating the more than 2,000 owners, updating the Māori Land Court records, obtaining a quorum, and consent, and Māori Land Court approval. Such problems would be diminished for an on-sale, but they would likely still be significant, and become more significant as time passed. There is also the inevitability of additional delays and cost associated with obtaining the resource consents necessary for the physical development of an awkward site, the associated practical difficulties of development, all coupled with the urgency (in 2005) of beating the Kyoto protocols deadline.

[46] In our view the accumulation of those difficulties, costs and delays upon those inherent in the process of obtaining Māori Land Court consent before any development work could be commenced, would be of real significance. The effect of those factors upon the price likely to be offered by a prospective purchaser cannot be precisely calculated, and a robust and pragmatic approach must be adopted. We consider that these factors have not been fully accounted for in any of the valuations presented in evidence. In our view these factors collectively would have caused a fully informed purchaser to offer and agree a price up to 20%, and not less than 15% below equivalent freehold value for this land in July 2005. We adopt the more conservative figure.

[47] Applying that discount to Mr Smyth's valuation, we accordingly fix the land value at $4,431,250, as set out above, less 15% ($664,687) for the *Mangatu* considerations, producing a final figure of $3,766,563; say $3,766,500.

[48] The objection is accordingly upheld.

The future of the Mangatu Considerations

[49] There is room for the view that a reappraisal by the Valuer General of the *Mangatu* guidelines is now overdue. There have been a number of developments

affecting the alienation of Mäori land since the decision of the Court of Appeal and the promulgation of the Valuer-General's guidelines. In particular there has been a general hardening of attitude both in the interpretation of the Te Ture Whenua Mäori Act 1993 and amongst Mäori generally against the alienation of Mäori lands. It is not possible to state with any precision exactly what that change in attitude has wrought, but it is notable that in this case there was an absence of comparable sales evidence involving any large block of Mäori freehold land in the Bay of Plenty.

[50] It would seem that that absence of evidence is in fact evidence that sales of large blocks of Maori freehold land are now rare and perhaps, given the current attitudes of Maori owners generally, coupled with the provisions of the Te Ture Whenua Mäori Act 1993, a thing of the past. Whilst an absence of evidence is not necessarily evidence of absence, none of the three experienced valuers who gave evidence could point to a single local sale of a comparable block of Mäori land within any relevant timeframe. Mr Grinlinton, whose firm does the rating valuations for the Western Bay of Plenty District Council and the Rotorua District Council, despite enquiry of the Mäori Land Court Registry and his firm's extensive valuation database and broad current knowledge of local sales and valuation generally, could point to no sale of any reasonably comparable block of Mäori freehold land in the preceding 5 years. In our view, that is at least some evidence of the absence of sales. Such was not the case at the time of the Mangatu decision a decade ago, as in that case substantial evidence was lead as to many sales recently approved by the Mäori Land Court.

[51] A further factor that needs to be considered is the difficulty associated with financing sales or development of Mäori freehold land. The difficulties experienced by those financing the Matauri X Corporation are now well known and recorded in the law reports. The difficulties in obtaining finance using Mäori freehold land as security appear to have increased over the period since the *Mangatu* decision was given, possibly because the availability of cost effective and practical enforcement mechanisms for mortgage lenders has not notably improved in the last decade, while the price of general land has gone up significantly. Such difficulties must restrict the number of available purchasers by largely excluding those who would need to borrow to fund the purchase, thereby limiting price competition for Mäori freehold

land. In the intervening period Mäori protest action in relation to dealings with Mäori land has also grown substantially.

[52] In 1998 the prospect of greenhouse gas restrictions, the emissions trading regime, and the Kyoto protocols were simply unthought of. They are now relevant considerations for rating valuation, at least for future rural rating valuations. There is also room for the view that the relativities adopted by the Valuer-General for various relevant factors are no longer an accurate reflection of Mäori landowners' perception of their rights and responsibilities in relation to Mäori land generally.

[53] We are accordingly of the view that the Valuer-General's guidelines could usefully be the subject of a re-examination by the Valuer-General. Whilst we appreciate that they do not have the force of law, they appear to have been wholeheartedly adopted by the valuation profession in a generally unquestioning fashion. We consider that this case provides a very good example of why those guidelines are, at best, only guidelines, to be flexibly applied in light of conditions now existing, and why some updating would now be worthwhile.

[54] This property has at all material times been in forestry use or native vegetation. The land has never actually been sold, and under the terms of the Kyoto protocols it is unlikely ever to be developed for pastoral farming because of the $13,000 per hectare levy imposed under the Kyoto protocols plus the $3-5,000 cost of physical conversion from a greenhouse gas friendly use (forestry) to a use which is said to produce higher greenhouse gas emissions (pastoral farming). Fully developed pasture land of the best contour on this block would only be worth at most $12,000 per hectare on Mr Grinlinton's evidence, and there would be very little of it. Economic development of pastureland on this block is clearly impossible for the foreseeable future on the basis of those constraints.

[55] By application of the present law, the owners are required to bear a rates burden calculated by reference to a land use which has never been adopted over any portion of the block at any time during its known history, and which for obvious financial reasons could not conceivably be commenced at any reasonably foreseeable future time. Whilst our statutory duty is clear, and we must reach our valuation on

the specified statutory basis, the injustice of imposing a rates burden on an entirely hypothetical basis which bears no relation to the known reality must be remarked upon.

[56] The issue of rating Mäori land has received recent attention by the Local Government Rates Inquiry, which reported in August 2007. At paragraphs 13.6 and 13.7 of that report, the panel concluded that the Valuer General's guidelines do not recognise the full range of issues involved with the valuation of Mäori land, and the panel further concluded that a 'market value' approach to rating is inappropriate for Mäori land. We respectfully agree. In our view it is desirable for the legislature to give careful consideration to that report, and we would urge prompt legislative attention to the recommendations made. In this case the owners of a large block of Mäori land are now effectively locked by the Kyoto protocols into a single use of their land, and yet they are to be rated on that land from July 2005 to July 2008 as if the land was to be used for another purpose. A more suitable case for legislative intervention and interim rates relief is difficult to imagine.

TR Ingram
Chairman

L Green
Tribunal

D Vane
Tribunal

Solicitors:

Lance Lawson (Rotorua) for Objector

Cooney Lees and Morgan (Tauranga) for First Respondent