BEFORE THE LAND VALUATION TRIBUNAL
AT ROTORUA

LVP 7/07

UNDER	s 208 of Te Ture Whenua Maori Act 1993
IN THE MATTER OF	an objection to valuation
BETWEEN	PETER DANIEL STAITE JEAN TANIRAU-CARSTON DEBORAH PAKAU LEONIE REI NICHOLLS BRUCE ANDERSON BAMBER PENENGARAU BILL DELANEY AS TRUSTEES OF THE WHAOA NO 1 LANDS TRUST First Objectors
AND	TUMUNUI LANDS TRUST Second Objector
AND	QUOTABLE VALUE LTD Respondent

Hearing: 19 September 2008

Appearances: JP Koning for the First Objectors
T R Kinder for the Second Objector

Judgment: 18 November 2008

RESERVED JUDGMENT OF THE ROTORUA LAND VALUATION TRIBUNAL

The application

[1] This is an objection by both lessor and lessee to a valuation for rent review purposes carried out by Quotable Value Ltd for the purpose of ascertaining rent payable by the second objector lessee to the first objectors for the further lease term of 10 years exercised by the lessee under Memorandum of Lease B211254, South Auckland Land Registry.

The status of the land

[2] By virtue of a trust order of the Maori Land Court dated 19 May 1982, the subject land, being Maori freehold land, was vested in the first objector trustees pursuant to s 438 of the Maori Affairs Act 1953.

[3] By virtue of s 354 of the Te Ture Whenua Maori Act 1993, such trusts continued to exist after the commencement of the latter Act as Ahu Whenua Trusts and the provisions of Part 12 of the latter Act applied accordingly.

Background

[4] The first objectors, the trustees of the Whaoa No 1 Lands Trust, are the registered proprietors of 370.9 hectares of Maori freehold land that borders State Highway 5 at Reporoa. By Memorandum of Lease B211254, South Auckland Land Registry, the objectors leased the land to the second objector, the Tumunui Trust, for a period of 10 years commencing on the 13th of December 1992. The lease contains three further rights of renewal for three further periods of 10 years, making a total lease period of 40 years including renewals. The second objector exercised its rights to renew the lease for a period of 10 years from 13 December 2002. Quotable Value Ltd were instructed to carry out a special valuation for that purpose in accordance with paragraph 26 of the lease which provides for the new rental to be:

> "… calculated on the basis of $5 per centum of the Capital Value of the said land … provided always that for the purposes of such valuation, there shall be deducted from the said Capital Value the value of all improvements made on or to the said land by the lessee or its predecessor since the 13th day of December 1961 and during the terms hereof by the lessee and subsisting at the date of valuation …"

Relevant legislation

[5] Part 11 of the Te Ture Whenua Maori Act 1993 governs leases of Maori freehold land.

[6] Section 201 provides:

> "**201 Valuations for revision of rent**
>
> (1) Where any lease of Maori freehold land … contains a provision for the revision of the rent during the term of the lease or for a right of renewal for a further period of years and the basis for the computation of the revised rent or the rent for the renewed period is expressed to be a special Government valuation of the land comprised in the lease, the provisions of this section shall apply to the making of any such valuation.
>
> (2) The Maori Trustee, the lessor, or a person acting on behalf of the lessor must, whether of their own motion or at the request of the lessee,—
>
> > (a) Nominate a registered valuer to conduct a valuation for the purposes of this section; and
> >
> > (b) Notify the lessee in writing of the name of the valuer."

[7] It is assumed that in this case, pursuant to s 201(2), the lessor, or a person acting on behalf of the lessor, nominated Quotable Value Ltd to conduct a valuation for the purposes of this section and notified the lessee as that subsection requires.

[8] Section 2A provides that the lessee has 14 days in which to object to the nominated valuer.

[9] In the absence of any information to the contrary in this case, it is assumed, for the purposes of s 201, that such process took place and that the lessee did not object to the nominated valuer at Quotable Value Ltd. Section 201 also requires certain information to be given to the registered valuer, and also provides for lessees' improvements to be shown separately in the valuation where the lease provides that improvements effected by the lessee during the term of the lease, shall not be taken into account for the purpose of revising the rent. Section 207 provides for what the valuer sets out in his valuation certificate. The same section also defines Capital Value, Value of Improvements; Improvements and Unimproved Value.

[10] Section 207(4) provides that:

> "…the expressions capital value and value of improvements … shall, for the purposes of valuations to be made under this section in respect of that lease, continue to have the meanings assigned to them by the Valuation of Land Act 1951 as at the commencement of the lease."

[11] As at the commencement of the lease, namely the 13th of December 1992, the Valuation of Land Act 1951 defined 'Capital Value' as follows:

> "**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."

[12] And likewise at the relevant time, the Valuation of Land Act 1951 defined the value of improvements as follows:

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

[13] Section 207(5) however substitutes the following definition of improvements:

> "Improvements means all work done or material used at any time on the land by the expenditure of capital or labour by any owner or occupier of the land so far as the effect of the work done or material used is to increase the value of the land, and the benefit thereof is unexhausted at the time of valuation: …"

[14] Section 207(6) provides:

> "For the purposes of any determination by [a registered valuer] under this section, the term unimproved value, in relation to any land, 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 offered for sale on such reasonable terms and conditions as a bone fide seller might be expected to impose, and if no improvements had been made on the land."

[15] The section also requires that the certificate given by the registered valuer, on its face or by attachment to it, gives a notice to the effect that the certificate is subject to objection in the manner prescribed by and within the time limit in accordance with s 208. Section 208 (as modified by s 201(5)) requires service of two copies of the

certificate on the lessor, who is then required to serve a copy of the certificate on the lessee:

> "… together … with a notice that objections to the valuation to which the certificate relates may be lodged in the manner and within the time specified in the notice."

[16] Section 208(3) provides for an objection period of not less than two months after the date of service. Section 208(4) provides that if the lessee or any owner objects to any of the values as appearing in the certificate, either may, within the time specified under subsection (2), file an objection to the valuation in the appropriate office of the District Court. Section 208(5) says:

> "(5) Every objection shall specify the several items to which the objection relates, and with respect to each item shall specify the grounds of the objection."

[17] Section 208(8) provides that objections are then heard and determined:

> "… in similar manner to objections made to valuations under the Rating Valuations Act 1998, and sections 34, 35, 36, and 38 of that Act (and any regulations made under that Act relating to reviews and objections), as far as they are applicable and with all necessary modifications, are to apply to the objection as if-
>
> (a) The registered valuer had been appointed by a territorial authority to review the objection; and
>
> (b) The review had been made under section 34 of that Act; and
>
> (c) The references to a territorial authority in sections 34(4), 35, and 36 of that Act were references to the registered valuer."

[18] Section 208 of the Act provides for objections to the valuation by both the lessee and the owner. In this case, both lessee and owner have objected. Subsection (8) then provides for the objection to be heard and determined in similar manner to objections made to valuations under the Rating Valuations Act 1998 and the provisions of that Act, with all necessary modifications, are to apply.

Chronology

[19] In our case, the chronology seems to be as follows. In November 2002, with the then lease term expiring on 12 December 2002, the owners nominated Quotable Value Ltd to conduct a special valuation and on 7 November 2002 they notified the lessee in writing as s 201(2) provides.

[20] The lessee did not object to the nomination of valuer within the 14 days provided for in s 201(2A).

[21] The special valuation was completed on 9 January 2004. No explanation is given for the delay.

[22] The valuation certificate was served on the lessor objectors on 17 February 2004. It is unclear when the valuation certificate was served on the lessee as s 208(2) requires. It is also unclear whether the valuation certificate was styled giving notice of a right to object as s 208(2) also requires.

[23] It would seem that the notice of objection by the lessor was filed in the District Court at Rotorua on 28 June 2007. This was somewhat outside the timeframe of two months specified in s 208(3).

[24] According to correspondence on the Court file, Quotable Value Ltd purported to "join" Tumunui Lands Trust as a party. The registrar was compliant in that request. The file notes receipt of an email of protest dated 7 September 2007 on behalf of the lessor.

[25] So, it is by no means clear just on what jurisdictional basis the second objector, Tumunui Trust, has been joined to these proceedings.

[26] The Tribunal has wide powers under the Commissions of Inquiry Act 1908 to have persons appear and be heard at the inquiry. (See s 4A). There is little doubt that the Tumunui Trust has a real interest in this matter and so it is proper that we hear what that party wishes to say. It is also appropriate that we hear evidence that

the registered valuer for Tumunui tenders. (See s 4C of the Commissions of Inquiries Act 1908).

[27] Also, s 37(1) Land Valuation Proceedings Act 1948 states that the Land Valuation Tribunal:

> "… shall, in every matter coming before it, have full power and jurisdiction to deal with and determine the matter … as it deems just and equitable in the circumstances of the case."

[28] So, while the Te Ture Whenua Maori Act 1993 prescribes a two month period for an objection to be raised, it appears from s 37 that the Land Valuation Tribunal has the jurisdiction and power to decide whether an objection out of time may proceed once the matter is before it. The Land Valuation Tribunal must be satisfied that to accept the late objection and determine it is just and equitable in the circumstances of the case. And we so find.

[29] The first objector then lodged its objection in the Court on or about the 26th of June 2007 and from then on the matter has been case managed through to a hearing. It would appear that the review process contemplated by s 34 of the Rating Valuations Act was not completed by the time the first objector lodged its objection in the Court, and the initial case management conferences, to a significant extent, focussed on that process being completed. Although the second objector appears not to have filed any formal notice of objection, they have been joined in case management conferences through their lawyer, Mr Kimber.

[30] In a case management conference on 24 June 2008, the parties advised that progress had stalled. The reason given was that Mr Wichman, the registered valuer from Quotable Value Ltd, advised that he had been directed by the National Operations Manager of his company to stop work on the case because there was an issue of who was to pay for the work carried out on the review of the valuation. The Tribunal issued a Minute in that regard on 1 July 2008.

> "… surprised that there should be some issue over who pays for Quotable Value Ltd's work in progressing this matter through a review and onto a Land Valuation Tribunal hearing. That aspect of things needs to be resolved urgently. If indeed there is some gap in the legislation, regulations or other

> arrangements that Quotable Value have for providing Government valuations and other valuation services for statutory purposes around the country, it needs to be correctly urgently. One of the purposes of issuing this Minute is that it may assist Quotable Value head office in this regard."

[31] That Minute has fallen on deaf ears. Quotable Value Ltd did not attend the hearing. Mr Wichman, the valuer from Quotable Value Ltd, did however extend the courtesy of a letter, dated 18 September, setting out how far he had got with his partial review of the valuation. The absence of Quotable Value Ltd at this hearing is completely unsatisfactory and for the future it invites capture of the valuation process by one or other interested party. It is a matter that needs to be resolved urgently if a coherent system of independent valuation of land throughout the country is deemed worthy of preserving.

[32] At the hearing on 19 September, each objector was represented by counsel and each called professional valuation evidence. It was agreed that Mr Wichman's letter of 18 September should be accepted by the Tribunal and given such weight as the Tribunal deemed fit. Counsel for the first objector also produced a bundle of documents and a range of historical documents relating to the land. Once again, the Tribunal will give such weight to those documents as it considers fit.

[33] Paragraph 26 of the lease provides that, on renewal, a yearly rental is to be:

> "… calculated on the basis of five dollars per centum of the Capital Value of the said land … provided always that for the purposes of such valuation there shall be deducted from the said Capital Value the value of all improvements made on or to the said land by the lessee or its predecessor since the 13th day of December 1961 and during the terms hereof by the lessee and subsisting at the date of valuation …"

[34] The Tribunal is advised that the original valuation certificate from Quotable Value Ltd provided as follow:

Capital Value	$3,700,000
Improvements to be deducted (lessees' improvements as per paragraph 26 of the lease)	$2,035,000
Rental valuation (residual Capital Value)	$1,665,000

[35] In his letter to the Court of 18 September, Mr Wichman, on the basis of a partially completed review, indicated different figures as follows:

Capital Value	$3,630,000
Improvements to be deducted	$1,842,000
Rental valuation	$1,788,000

[36] In Court, Mr John Middleton, valuer for the owners, valued the property as follows:

Capital Value	$3,700,000
Improvements to be deducted	$1,607,900
Rental valuation	$2,092,100

[37] In Court, Mr Martyn Craven, the lessee's valuer, valued the property as follows:

Capital Value	$3,067,000
Improvements to be deducted	$1,862,000
Rental valuation	$1,205,000

Legal issues

[38] Paragraph 26 of the lease speaks of:

> "Improvements made on or to the said land by the lessee or its predecessor since the 13th day of December 1961 and during the terms hereof."

[39] Mr Koning, on behalf of the first objector, argues that the word 'predecessor' in this case in fact means predecessor in title. He says that as the original 1961 lease was not assigned or transferred to the Tumunui Trust, Tumunui Trust can only claim the value of any improvements made by itself during the subsistence of the lease. Indeed, referring to the definition in s 207(5), Mr Koning would add the words "during the subsistence of the lease" after the words "at any time". He refers to the

decision of the *West Coast Settlement Reserves Lessees Association Inc v Valuation Appeal Committee for the West Coast Settlement Reserves* [1997] 1 NZLR 413 and also the decision of the Court of Appeal in *The Proprietors of Atihau-Wanganui v Malpas* [1979] 2 NZLR 545.

[40] In the former case, the Court of Appeal said, at p430:

> "The expression 'at any time' must be read in its historical context. The Valuation of Land Act definitions were adopted into the legislative leasing scheme in order to cure the mischiefs described by the Myers Commission."

[41] The matter at issue there were the "Maori clearings", that is to say clearings in the bush for cultivations by Maori prior to the West Coast Settlement Reserve lands leases came into existence. To have credited the lessees with the improvements, namely the clearings, would have been to credit to the lessees, improvements that had been carried out by the owners' predecessors. That is the "historical context" that the Court of Appeal was talking about.

[42] The situation between lessor and lessee in our case is different. This is not a case where the provisions of a general Act (the Valuation of Land Act 1951) give rise to unintended consequences. Here, the respective parties before this Tribunal negotiated this lease which provided that "the value of all improvements made on or to the said land by the lessee or its predecessor since the 13th of December 1961 be deducted from Capital Value." In the absence of anything compelling to the contrary, the Tribunal concludes that the words in the lease mean what they say.

Deductions on account of restricted alienation

[43] In reaching a Capital Value of $3,067,000, the second objector has deducted 15% of value from the Capital Value of the property on account of the Court of Appeal's decision in *Valuer-General v Mangatu Inc* [1997] 3 NZLR 641. The focus of that case was the restrictions on alienation of Maori freehold land. At p651 of the report, Richardson P, in the judgment of the Court, said this:

> "… the assessment of land value must be made 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 fund the purchase, the statutory role of the Maori 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."

[44] Since that decision, as Mr Craven has rightly mentioned, the Valuer-General has issued guidelines for valuers. These guidelines set out adjustments for multiple ownership and additional adjustments for sites of special significance. Under those guidelines, the maximum adjustment would be a deduction of 15% which presupposes over 2,000 owners and the fact that the site has all of the special significance factors. According to him, in this case these guidelines would account for an 8.5% discount; 7% due to the number of owners (154) and 1.5% for sites of special significance.

[45] Mr Craven referred us to a decision of the Waikato No 4 LVT in the case of *Taheke Paengaroa Trust v Western Bay of Plenty District Council*, LVP 2/2005 following a hearing of 26 February 2008. That decision, in adopting a 15% discount, noted the general hardening of attitude both in the interpretation of the Te Ture Whenua Maori Act 1993 and amongst Maori generally against alienation of Maori lands. Mr Craven also refers to discussions with the Secretary of the Tumunui Lands Trust indicating that the Trust had considerable difficulty in financing development of the dairy farm conversion with funding based on separate assets owned by the Trust. Without something more precise, it is difficult for us to place much weight on the latter proposition.

[46] The property has been leased under various leases since 1911. In 1922, an earlier lease was mortgaged to the Bank of New Zealand and in 1937, a lease of the property was mortgaged to the Public Trustee.

[47] The copy of the current lease produced to the Tribunal shows a registered mortgage in favour of the Bank of New Zealand from 27 July 1994.

[48] Furthermore, there are, in this case, a number of potential "preferred alienees" including the lessee, the Tumunui Lands Trust. In addition, there are the

Ngati Whakaue Tribal Lands Trust and the Kapenga Trust. All three are well known local Maori trusts involved in significant ownership and management of rural lands of a similar kind in the Rotorua region.

[49] Valuation law and practice has long had to take account of these sorts of issues. Discounting factors are applied to land in multiple ownership that is not in Maori land (see eg *Inland Revenue (Commissioner of) v Flaxbourne Trust* (1983) Land Valuation Cases 166) and valuers routinely have to apply discounting factors where there are restrictive designations or adverse zoning.

[50] In this case, a deduction of 7% would be in accordance with the Valuer-General's guidelines, given that we are told there are 154 owners. There is no evidence before us to suggest that the property has sites of special significance.

[51] Mr H H Reynolds, in his report of 30 July 2004, uses 5%. Mr J L Middleton makes no reference to the impact of Te Ture Whenua Act in his report and seems to have overlooked its impact.

[52] Quotable Value, in its letter of 18 September, makes mention of a deduction, but such a deduction is not referred to in any earlier reports or correspondence. Quotable Value contended in that letter that it and Mr Craven agreed on 5% reduction for Te Ture Whenua Act impact.

[53] Taking all of the above matters into account, we conclude that in this case only a modest deduction is justified. We adopt 5%.

Valuation discussion

[54] NB – All figures are exclusive of GST, if any.

[55] Quotable Value notice as at 13 December 2002 dated 9 January 2004:

Lessees improvements	$2,035,000		
Lessors improvements	$ 315,000	=	$2,350,000
Unimproved Value			$1,350,000
Capital Value			$3,700,000

QV	$1,350,000	
Lessors Improvements	$ 315,000	
Rent value	$1,665,000 x 5% =	$ 83,250

[56] Quotable Value did not appear. Its letter, dated 18 September 2008, alleged agreement as at 15 May 2008 between Quotable Value and Reid & Reynolds (Mr Craven) as follows:

Valuation structure improvements	$ 700,000
Land Value	$2,930,000
Valuation of lessees (sic) structure improvements	$ 63,000 (this should be lessors improvements)
Capital Value	$3,630,000
Original pasture area at 13 December 1961 – 97.2 ha	

[57] Quotable Value also adds that the above values were subject to 5% deduction "for the restrictions of the Te Ture Whenua Act."

[58] Quotable Value lists (page 3) details of agreed values, however these do not match the values presented in evidence by both Messrs Craven and Middleton, eg agreed UV $1,360,000 – Mr Craven in evidence $967,500.

[59] Reid & Reynolds' initial valuation by Mr H H Reynolds dated 30 July 2004 (refer bundle of documents):

Lessees improvements	$ 509,500		
Lessors improvements	$ 77,000	=	$ 586,500
UV and lessees development	$1,945,000		
UV and lessors development	$ 985,000	=	$2,930,000 (Land Value)
Capital Value			$3,516,500
Less for Te Ture Whenua Act 5%			175,825
			$3,340,675

cf Mr H H Reynolds quoted figure of $3,401,475

Lessors structural Improvements	$ 77,000 – 5% =		$ 73,150
Lessors Land Value	$ 985,000 – 5% =		$ 935,750
Rent value			$1,008,900 at 5%
Rent		=	$ 50,445

[60] The Reynolds' valuation does not appear to recognise the original pasture area of 97.2 ha.

[61] Mr Reynolds assessed Land Value not Unimproved Value but apportions lessees' clearing, grassing and consolidation ie development at $6,500/ha for the best land, cf Middleton at $6,025/ha - both prior to Te Ture Whenua Act deduction of 5%.

[62] Mr Craven of Reid & Reynolds reviewed Mr Reynolds' valuation on 18 December 2007 as follows:

Lessors improvements	$ 32,000		
Lessees improvements	$2,321,722	=	$2,353,722 (NB incl "development")
Unimproved Value			$1,016,275
Capital Value			$3,370,000

Unimproved Value	$1,016,278
Lessors improvements	$ 32,000
Rent value	$1,048,278 at 5%
Rent	$ 52,414

[63] We presume these figures include a deduction for Te Ture Whenua Act but no evidence is provided as to the quantum.

[64] Mr Craven, in evidence, states that agreement between the parties had been reached subsequent to his above valuation; that the total structural improvements had an agreed value of $700,000; and that as at 13 December 1961, there was an area of 97.2 ha of pasture land owed by the lessors.

[65] Mr Craven further reviewed his valuation in 2008 and presented in evidence his final values as:

Structure improvements	$ 700,000
Land Value	$2,908,000
Capital Value	$3,608,000
Less 15% Te Ture Whenua	$ 541,200
	$3,066,800
Say	$3,067,000

Lessors improvements	$ 450,200	
Lessees improvements	$2,190,600	$2,640,800
Unimproved Value		$ 967,500
Capital Value		$3,608,300
		$3,608,000
Less Te Ture Whenua 15%		$ 541,000
		$3,067,000
Lessors improvements	$ 450,200 – 15% =	$ 382,670
UV	$ 967,500 – 15% =	$ 822,375
Rent value		$1,205,045 x 5%
Rent	$ 60,252	

[66] Mr Middleton presented a valuation following his inspection in July 2008.

Buildings	$ 390,000 (amended in Court from $700,000)
Land without buildings	$3,340,000
Say	$3,310,000
Capital Value	$3,700,000

[67] This value was further broken down to:

Lessors land without building	$2,029,100
Lessors structural improvements	$ 63,000
Rent value	$2,092,100 x 5%
Rent	$ 104,605

[68] Therefore, rentals submitted were:

Present rent up to 11 December 2002	$ 45,250
QV rent	$ 83,250
Reynolds rent	$ 50,445
Cravens original rent	$ 52,414
Cravens amended rent	$ 60,252
Middletons rent	$ 104,605

Land classes

[69] As at 13 December 2002, the subject property owned by Whaoa No 1 Land Trust was and is farmed in conjunction with adjoining land owned by the lessee – Tumunui Lands Trust as a dairy farm.

[70] Evidence produced indicates that the combined property is an attractive, handily situated, fully developed and fully productive dairy farm.

[71] Total farmed area comprises:

Whaoa No 1 Land Trust	371 ha
Tumunui Lands Trust	70 ha
	441 ha

[72] Mr Craven examined a colour aerial photograph, utilised Quick map and concluded, after a physical inspection, that the Whaoa property land fell into the following categories:

Flat pasture	228 ha
Medium undulating	63.2 ha
Steeper hill	69.7 ha
Non-productive	10.0 ha
	370.9 ha

[73] Quotable Value, in the spreadsheet attached to their letter of 18 September 2008, contend (without explaining how arrived at) that the land classes are:

Easy undulating	222.5 ha
Undulated to easy hill	26 ha
Medium hill	70.4 ha
Steep hill	20 ha
Swamp-gullies	32 ha
	370.9 ha

[74] Mr Middleton measured land areas off an aerial photo and concluded:

Flat/easy undulating	236 ha
Easy hill	12 ha
Steep hill	113 ha
Bush, stream etc	10 ha
	371 ha

[75] Noted in a letter from Mr Middleton to Mr Bartlett, whom we assume is the farm manager or sharemilker, dated 30 July 2008, (attached to Mr Middleton's evidence) that:

> "It was a pretty rough day and we were not able to get access to the rear of the farm."

[76] The letter further went on stating that Mr Middleton wanted to get an idea of the land milked on within the steeper area and asked Mr Bartlett to mark on an aerial photo the land milked on.

[77] Mr Reynolds' report of 30 July 2004 lists:

Flat to easy – good pasture	235 ha
Creek and non-productive	3 ha
Easy and good pasture	63.2 ha
Steep hill – fair pasture	69.7 ha
	370.9 ha

[78] Mr Reynolds' involvement with the property dates back to 1982 and has had access to reports by the Crown in 1962, 1964, 1968 and Maori Trustee 1964 (three reports).

[79] After considering all the calculations; identifying any commonalties; noting Mr Middleton's inability due to weather to inspect all the property, we adopt the following land classes:

Flat to easy undulating	230 ha
Easy to medium hill	63 ha
Steep hill	63 ha
Swamp, gullies, non-productive	10 ha
	371 ha

Land use as at 13 December 1961

[80] A Valuation Department report prepared in 1960 refers to "mixed dairy and sheep."

[81] A letter from Douglas Seymour, solicitor for H C Lough Ltd, lessee dated 13 March 1961 refers to:

> "The head lease terminates in November at an exceedingly awkward period of the milking season –"

[82] Two Maori Affairs reports prepared in 1964 refer to "Type of Farming – Sheep and Cattle."

[83] In 1989, Reid & Reynolds describe the property as an "extensive sheep and cattle grazing property."

[84] And in 1990, Reid & Reynolds say the property "was converted to a self contained dairy unit."

[85] Historical records in the bundle of documents indicate that in 1961 the subject property was farmed in conjunction with adjoining land by H C Lough Ltd lessee and sub-lessee James Blackler, and it would appear that some dairying was carried out on the larger holding with part of the subject land being included in that operation.

[86] It is agreed by the parties that 97.2 ha was in pasture in 1961 but that the bulk of the property was undeveloped.

[87] We conclude that 97.2 ha was in average quality pasture not "drystock grasses" as contended by Mr Craven, that the 97.2 ha was in the ownership of the lessors in December 1961 and that this area of pasture has been significantly improved by the management, topdressing and weed control by the lessees since 1961 resulting in some added value accruing to the lessee.

Original cover

[88] Historical reports dating back to 1911 refer to the property front undulating to flat land as being variously:

> "low fern and scrub"
> "short scrub and fern below the bush line"
> "broom and scrub country"
> "short scrub and fern"
> "low scrub and scattered broom"

with milled over bush on the steep land outside the leased property.

[89] Mr Craven refers to (p14) "subject scrub, fern and bush" and (on p15, 14.11) "predominant cover was low scrub, fern and scattered indigenous bush."

[90] Mr Reynolds, in his report of 30 July 2004 (p3), refers to the property's condition in 1961 as:

> "… predominant cover of the flat to easy and contoured land was low scrub, broom plus limited rough grazing. Steeper lands adjacent to the western boundary were covered in low scrub, fern and scattered indigenous bush."

[91] Mr Reynolds considered 69.7 ha was ex bush. Mr Craven, the same.

[92] Mr Middleton refers to some bush on the 10 ha of "waste" land but makes no reference to original cover in his evidence.

[93] Quotable Value, in their letter dated 16 May 2008, seem to indicate that they consider the original cover to be scrub and fern.

[94] Aerial photo (p39) of Mr Craven's evidence, would tend to indicate that the land north west of the stream, ie steeper hill country, could have been in native bush.

[95] However, the old plan attached to Maori Affairs report of 20 November 1968 drawn in 1964 show the land in "low scrub and fern" and "fern hill burnt."

[96] We conclude that as at 13 December 1961, the only bush on the property was on the 10 ha of "waste land".

[97] In other words, lessees development from 1961 was from scrub, fern etc not bush.

Production

[98] Both Messrs Craven and Middleton referred to the farm's production at or around the date of the rent review, ie 13 December 2002.

[99] Mr Middleton was criticised for selective use of production figures by Mr Kinder.

[100] Production records were produced in writing from Don Peterson, Registered Farm Management Consultant and from Mr S Bartlett. These figures are as follows:

1999-2000 season	231,682 kg
2000-2001 season	223,707 kg
2001-2002 season	280,432 kg (new sharemilker)
2002-2003 season	303 342 kg

[101] Mr Bartlett, in August 2008, said production averaged 280,000 kgs to 312,000 kgs on 300 ha pasture which includes 70 ha of Tumunui land.

[102] Mr Craven did not include 2002-2003 figures in his analysis and arrived at a three season average of 245,000 kgs off 300 ha pasture.

Actual 3 year average	245,274 kg
Actual 4 year average	259,791 kg

Mr Craven's apportionment of production – Tumunui 72 ha – 67,200 kg = 933 kg/ha

Whaoa 228 ha – 212,800 kg = 933 kg/ha
Total production 280,000 kg

Mr Middleton's apportionment:

236 ha at 890 kg/ha = 210,000 kg
12 ha at 750 kg/ha = 9,000 kg
219,000 kg = 883 kg/ha

[103] For his valuation, Mr Middleton adopts:

236 ha at 850 kg = 201,000 kg (act 200,600)
12 ha at 750 kg = 9,000
210,000 = 854/kg av

[104] Mr Craven further states (p6):

> "Based on the average level of the last three years, production apportionment would provide 186, 200 kg to the leasehold area."

[105] We find this difficult to reconcile.

Actual 3 year average up to end of 2002 season is:

245,274 kg total (Mr Craven adopts 245,000)
less Tumunui share 67,200 kg
178,074 kg

[106] We note that Whaoa's production of 933 kg/ha average is 10% higher production than the average production of all the dairy farm sales presented in evidence, ie 846 kg/ha average.

Mr Craven's adopted production 212,800 kg
Mr Middleton's adopted production 210,000 kg

[107] We are at a loss to see basis for Mr Kinder's assertions.

Structural Improvements

[108] Quotable Value and Mr Craven agreed on $700,000 as did the "parties" (Mr Craven p2 – 2.8).

[109] Mr Middleton refers to that agreement and in his valuation (p5 and 7) adopts $700,000 in a split appraisal as follows:

Buildings	$390,000
Fences, water supply 371 ha x $800/ha	$296,800 = 686,800 (which he appears to round off to $700,000)

[110] Quotable Value and Mr Craven's agreed value of structural improvements include values for tracks/races/culverts, electric power reticulation and site layout.

[111] Mr Middleton does not schedule the value of any structural improvements as required under s 201 of the Te Ture Whenua Act. Quotable Value and Mr Craven included a schedule as required.

[112] Mr Middleton only provides "details" of the fences and water supply values as originally $500/ha (p4) and amended verbally to $800/ha (p7).

[113] We note that while Mr Middleton allows for fences and water supply in his value of "good dairy land" and "grazing land", he made no adjustment to the "value of improvements" of the easy hill – his value remained at $1,800/ha for improvements which included fences and water supply at $500/ha and he appears to have made no allowance for fencing on what he calls "Bushland".

[114] By way of comparison, Mr Craven's valuation includes fencing $269/ha and water supply $329/ha = total $598/ha average less 15% for Te Ture Whenua Act.

[115] We accept $700,000 as the value of structural improvements less 5% for Te Ture Whenua.

[116] These structural improvement values then have to be apportioned between lessor and lessee.

[117] Quotable Value, in a letter dated 18 September 2008, claims agreement reached between Quotable Value and Mr Craven at $63,000.

[118] However, Mr Craven (p21) uses $61,400 – 15% and also (on p26) with details of this figure in Table 9 (p20).

[119] Mr Middleton (p1) accepts Quotable Value's claim of agreement and uses (p8) $63,000.

[120] Quotable Value's details shown on p2 – 18 September 2008 relied upon Valuation Department historical records of rent reviews done in 1982 and 1992.

[121] Quotable Value's original certificate of 9 January 2004 shows $75,000 as value of lessors structural improvements out of a total structural improvements value of $800,000.

[122] Quotable Value's letter of 16 May 2008 reviewed their value of $800,000 down to $700,000 total and $63,000 as the lessor's share, as repeated in their letter of 18 September 2008.

[123] Both Quotable Value and Mr Craven had access to their own historical records and to Maori Affairs historical reports.

[124] Mr Craven (p2 - 2.8) notes "that the parties are accepting of a value of all improvements excluding land development of $700,000." He further goes on

referring to the discussions and "in light of new evidence" he has amended his valuation of structural improvements to $700,000.

[125] In spite of Quotable Value's claim of agreement over $63,000, they contradict that in the table (p3) 18 September 2008 by showing Mr Craven's lessors structure improvements at $61,400.

[126] We adopt $63,000 as the value of lessor's structural improvements.

Capital Value

[127] In summary, the various Capital Values as at 13 December 2002 **without** Te Ture Whenua deduction are:

Quotable Value	$3,700,000
Mr Middleton	$3,700,000
Mr Craven	$3,608,000
Mr Reynolds	$3,516,500
Messrs Craven/Reynolds	$3,370,000

[128] Mr Craven analysed sales of dairy farms in Rotorua District (p7) arriving at a per ha and a per kg ms figure for six sales over period 7/01 to 11/02.

[129] Sales analysis showed a land and building (ie nett sale price) sales price ranging from $18,497/ha to $9,363/ha with a median of $11,003/ha.

[130] This compares with Mr Craven's assessed Capital Value of $3,608,000 before Te Ture – 15% which analyses at $9,728.

[131] By way of further analysis, he assessed the value of improvements to arrive at an estimated Land Value Sale Price (LVSP) of each sale property which he further analyses to arrive at an average price paid per ha and per kg ms for the LVSP.

[132] This further analysis shows an LVSP ranging from $12,625/ha to $8,804/ha with a median of $9,099/ha or $11.91/kg ms to $10.98/kg ms with a median of $11.39/kg ms.

[133] This compares with Mr Craven's assessed Land Value of $12,754/ha average or $13.67/kg ms.

[134] We note that the milk solid production of the subject property is 10% greater than the median of the sale properties production and Mr Craven's assessed Land Value/kg ms is 20% greater than the median.

[135] Mr Middleton analysed sales of dairy farms in the Rotorua District and in Pyes Pa, in Western Bay of Plenty (Appendix 1) arriving at a per ha and per kg ms figure for 5 x 2,000 sales, 5 x 2001 sales, 4 x 2002 sale (NB five sales listed, one was a duplicate of another sale in the same year/schedule) and 4 x early 2003 sales.

[136] Mr Middleton's 2001 and 2002 sales, ie same period as Mr Craven, showed a nett sale price ranging from $17,667/ha to $12,081/ha with an average of $14,578/ha.

[137] This compares with Mr Middleton's Capital Value of $3,700,000 averaging $9,973/ha.

[138] By way of further analysis, Mr Middleton assessed the value of buildings to arrive at an estimated "Land Without Buildings" sale price.

[139] Unfortunately, these resulting figures cannot be compared directly with Mr Craven's Land Value analysis because the figures include the price paid for fences, water supply, electric power reticulation, farm races/tracks and other miscellaneous structural improvements.

[140] Quotable Value's "correspondence" presented to the LVT did not provide any sales evidence or analysis of sales to compare with Mr Craven and Mr Middleton.

[141] Quotable Value's "correspondence" advised that their Capital Value assessment was $3,700,000 but amended "by agreement" to $3,630,000.

[142] We accept Quotable Value's claim that Mr Craven and Quotable Value have agreed to set the Capital Value at $3,630,000.

Unimproved Value

[143] None of the valuers could agree over Unimproved Value.

[144] Quotable Value assessed Unimproved Value at $1,360,000 and $1,350,000. They appear to have reached this figure; after stating there were no Unimproved Land sales; by following "the normal Valuation Department method" which was to apply a percentage adjustment to the Land Value as shown in the table which is an appendix to Mr Craven's evidence – Quotable Value's letter to Reid & Reynolds, 16 May 2008.

[145] This table appears to adopt a cost of development per ha with adjustment for time and tax, and, in the case of Whaoa, advises that for a Land Value of $10,000/ha, the Unimproved Value constitutes 44% of that Land Value, ie $4,400/ha and the Development Value is $5,600/ha.

[146] Mr Middleton also advised that as there were no Unimproved Land sales, he adopted a "residuary" methodology to arrive at the Unimproved Value.

[147] He did this by taking a "lost opportunity cost" approach ie lost production and income over a five year period from initial clearing and development to a point where production reached 850 kg ms/ha.

[148] He adopted the cost of clearing and grassing as at 2002 of $3,200/ha, added an allowance for cost of fertiliser, and concluded the loss of income at $5,225/ha plus $800/ha for fences and water supply on the front easy undulating land (total $6,025/ha).

[149] He then deducted that amount from his "Land Without Buildings" value of $11,900 to arrive at an Unimproved Value of $5,875/ha for the front easy undulating land.

[150] He did a similar calculation to arrive at an Unimproved Value of the easy hill and the steep hill land of $4,475 and $1,700/ha respectively.

[151] These calculations resulted in a total Unimproved Value of $2,029,100. (This was the altered value presented/corrected in the hearing).

[152] Mr Craven arrived at an Unimproved Value of $967,500 = $2,608/ha average. He correctly searched for sales of Unimproved Land and scheduled (Table 4, p14, (14.3)) five sales of what he called "all known sales within Rotorua District of unimproved blocks "at analysed prices ranging from $1,009 to $1,927 for second generation bush and $4,162 for a block in eucalyptus. However, Mr Craven's Table 4 shows, in his analysis, the value of improvements included in each sale ranging from $1,000 to $90,000 so the properties were not totally unimproved.

[153] Sales 1-4 are in the Kaharoa and Mamaku areas north of the subject property and whilst very little detail is provided for any of these blocks, Mr Craven states that sales 1-4 would establish a lower level of value being predominantly second generation bush. He also contended that "Resource Management" issues could limit the potential for conversion to pasture.

[154] It is noted that all, bar sale 3, are of blocks less than 90ha eg 23ha, 83ha, 69ha. The exception being a block of 122ha out of Mamaku.

[155] Mr Craven used sale 5 as the basis for his Unimproved Value calculation.

[156] Sale 5 – 2261 Te Kopia Road – 133.36ha sold July 2002 for $580,000. This property is planted in eucalyptus and was bought for conversion back to pasture. The contour is inferior to Whaoa, being of steeper more broken contour, but appears to have rough grazing beneath the trees.

[157] Using this sale, which he analysed to have a Unimproved Value of $4,162/ha, Mr Craven then refers to the cost of converting pine forest and eucalyptus forest to pasture, making reference to a Ministry of Agriculture and Forestry case study and to a "Summary of Costings" produced by Perrin Ag Farm Consultants. This latter study provided costings for conversion of a 200ha pine forest to a dairy farm and a 172ha eucalyptus forest also to a dairy farm, both costings based on 2005/2006 figures with ex-pines costing $3,848/ha and ex-eucalyptus $1,362/ha.

[158] Mr Craven contends that sale 5 establishes the upper level of value and that it would have lower development costs compared to Whaoa's scrub and fern.

[159] In table 7 (p17), Mr Craven then compares sale 5 (Te Kopia Road) with Whaoa and uses $3,849/ha as the cost to convert that block from scrub and fern to cleared and in pasture, ie he uses the cost to convert Whaoa at the conversion of pine forest to pasture.

[160] Mr Craven contends Te Kopia sale was inflated because of an existing Foresty Right at a rental of 7.5% of Land Value which he claims is a "premium return" for rural properties.

[161] He also acknowledges that the initial conversion cost of Whaoa may be lower than the "pine" cost but the "ongoing consolidation expenses will be far greater."

[162] This seems to contrast with his statement (14.8) where he talks about "minimal residual soil fertility requiring ongoing regrassing/cropping programmes" and "pine forestry land are more akin to unimproved blocks."

[163] We accept that the costs of conversion of Whaoa from scrub and fern to productive dairy pasture is more akin to conversion from pine than from eucalyptus, however we feel he has taken an unduly pessimistic approach in his Whaoa valuation.

[164] He appears to be the only valuer who has endeavoured to follow the "accepted" approach by identifying sales of Unimproved Land and making, in his words (14.20-3), subjective adjustments to arrive at the Unimproved Value.

[165] However, his Unimproved Value of $2,608/ha average appears too low when compared with bush block sales with limited opportunity to convert at an average of $1,489/ha and the Te Kopia eucalyptus property of poorer, more broken contour at $4,162/ha.

[166] Whaoa containing 228ha of flat to easy undulating in scrub and fern very handily situated on the State Highway at Reporoa would attract a higher price than Mr Craven's assessment.

[167] We conclude that the Unimproved Value calculation should be:

Flat to easy undulated	230ha x $4,000	=	$ 920,000
Easy to medium hill	63ha x $2,000	=	$ 126,000
Steep hill	63ha x $1,400	=	$ 88,200
Swamp gullies non product	10ha x $ 500	=	$ 5,000
	371ha		$1,139,200
		Say	$1,140,000

[168] This shows an average of $3,070/ha compared with Mr Craven's of $2,608/ha and Quotable Value's $3,639/ha and Mr Middleton's average of $5,469/ha.

[169] Having established the Capital Value at $3,630,000 and the Unimproved Value at $1,140,000, the added value of the improvements are $2,490,000.

[170] If the agreed value of structural improvements at $700,000 is deducted, we arrive at a value for "Development" of $1,790,000.

[171] This compares with Mr Craven's "Development Improvements" of $1,940.800 (refer Table 11, p24), Quotable Value's of $1,550,000 and Mr Middleton's of $1,408,800.

[172] To arrive at a valuation for rental purposes, the total improvements have to be apportioned between lessor and lessee.

[173] Agreement has been reached over Structural Improvement Value as follows:

Total	Lessor	Lessee
$700,000	$63,000	$637,000

[174] It has been agreed that as at 13 December 1961, there was 97.2ha of land on Whaoa in "pasture" which this Tribunal decided (at 87) was in average quality

pasture and that the value of that pasture as at 13 December 1961 should be apportioned to the lessor.

[175] The increased value of that area of pasture since 1961 to 2002 is the result of good husbandry and topdressing and weed control, and that increased value should be apportioned to the lessee.

[176] Mr Craven spent some time analysing (Table 12, p24) the sales of dry stock properties to assist in his value of dry stock pasture which he alleges is the condition of the 97.2ha at 1961 and to apportion his "development" values between dairy pasture and dry stock pasture.

[177] He then compares Table 2 – "Comparable Dairy Farm Sales" with Table 12 Dry Stock Blocks to arrive at his values.

[178] His resultant analysis shows:

Lessees Development Improvements	97.2ha at $2,500/ha 130.8ha at $6,500/ha 63.2ha at $4,500/ha 69.7ha at $2,500/ha 10ha at 0/ha	Total $1,552,000
Lessors Development Improvements	97.2ha at $4,000/ha	Total $ 388,800
		$1,940,800

[179] This shows Mr Craven made an allowance of $2,500/ha for lessees management, topdressing, weed control et cetera of the original 97.2ha pasture to its fully productive state in 2002.

[180] Mr Middleton, by comparison, made an adjustment of $1,725/ha (page 8) as his assessment of the "cost of consolidation and additional fertilizer."

[181] His calculations were:

Lessors value	97.2ha x $9,875 138.8ha x $5,875 12ha x $4,475 113ha x $1,700 10ha x $800	$2,029,100

[182] Quotable Value shows development as:

Lessor	$1,310,000
Lessee	$ 240,000
	$1,550,000

$240,000 equates to $2,469/ha ie almost identical to Mr Craven's $2,500.

[183] We accept Mr Craven's assessment of Lessees Development Improvements to the 97.2ha at $243,000.

[184] Therefore, the apportionment of Development Improvements would be as follows:

Lessee	Flat to easy undulated 97.2ha x $2,500	=	$243,000	
	Flat to easy undulated 132.8ha x $6,000	=	$796,800	
	Easy medium hill 63ha x $4,000	=	$252,000	
	Steep hill 63ha x $2,000	=	$126,000	
	Swamp, gullies non productive 10ha x 0	=	-	
				say $1,417,800
				say $1,418,000
Lessor	Flat to easy undulated 97.2ha x $3,500	=	$340,200	say 340,000
				$1,758,000

which is rounded up to $1,790,000 as follows:

Lessee	$1,446,000
Lessor	$ 344,000
	$1,790,000

[185] The calculation of lessees and lessors values are therefore as follows:

Lessee	Structural improvements	$ 637,000	
	Development improvements	$1,446,000	= $2,083,000
Lessors	Structural improvements	$ 63,000	
	Development improvements	$ 344,000	= $ 407,000
	Total improvements		$2,490,000

Rental value

[186] We determine that the rental shall be:

Lessors improvements	$ 407,000
Unimproved Value	$1,140,000
	$1,547,000
Less Te Ture Whenua 5%	$ 77,350
	$1,469,650

$1,469,650 at 5% = $73,482.50 rent payable as at 13 December 2002.

[187] We determine that the final value shall be:

Valuation of structural			
Improvements lessor	$ 63,000		
lessee	$ 637,000	=	$700,000
Valuation of development			
Improvements lessor	$ 344,000		
lessee	$1,446,000	=	$1,790,000
Total improvements			$2,490,000
Unimproved Value			$1,140,000
Capital Value			$3,630,000
Less Te Ture Whenua			
Adjustment 5%			$ 181,500
Adjusted Capital Value			$3,448,500 as at 13 December 2002

C J McGuire
District Court Judge

Mr WA Cleghorn QSM, JP