BEFORE THE NORTH AUCKLAND
LAND VALUATION TRIBUNAL LVP 10/98

IN THE MATTER of Sections 201 to 209 of Te Ture Whenua Maori Act 1993

AND IN THE MATTER of a Special Valuation under Section 207 of the said Act in respect of the land known as

MAREIKURA E SITUATED IN BLOCK 111 MANGARU SURVEY DISTRICT

For the purpose of ascertaining the amount of compensation payable under the lease of the land

Of which **KEITH LITTLE** and **ROBYN LITTLE** of Tangiteroria, Northland are the lessees

TRIBUNAL

Chair: **His Honour Judge J D Hole**

Members: **D A Lowe, Esq**
J F Hudson, Esq

Date of Hearing: **7 & 8 May 2002**

Date of Decision: **13 May 2002**

DECISION OF THE TRIBUNAL

Introduction

[1] On 11 February 1958 the Maori Trustee, as agent for the owners, entered into a lease of Mareikura E bock being all the land comprised and described in Certificate of Title Volume 71 Folio 3 (Auckland Registry). The lease was for a term of 21 years from and including 1 January 1957. The first lessee was Henare Kawe Tito who was also one of the owners of the land. On 16 January 1978 the lease was extended for a further period of 21 years from and including 1 January 1978. During the term of the lease including its extension the lease was assigned to various lessees. Ultimately, in July 1994 it was assigned to Keith Wallace Little and Robyn Patricia May Little.

[2] The lease expired on 31 December 1998. As a result a special valuation of the property was undertaken pursuant to s207 of the Te Ture Whenua Maori Act 1993. This valuation, undertaken by Mr L G Fraser, recorded a total value of $86,000.00 being: unimproved value $45,000.00, and improvements, $41,000.00. On 16 December 1998 Quotable Values valuer confirmed that the value of improvements of $41,000.00 was justifiable.

[3] The owners objected to the valuation assessment as to the value of improvements and asserted that no compensation for improvements was properly payable.

The property

[4] The property is known as Mareikura E. It has an area of 8.0937 hectares (20 acres). It comes within the Maori purposes category of the Kaipara District Council's operative scheme. The zone recognises that Maori people have a special relationship with their land and one of the permitted uses is that of farming.

[5] The property was inspected by members of the Tribunal. It is of relatively compact shape and at the western extreme bounds a portion of the Northern Wairoa

River. From the Pukehuia Road frontage the land rises across undulating contour to an area of flat to very easy tableland. It then falls down a sidling to a substantial area of river flats running to the western apex. These rear flats are subject to occasional flooding.

[6] The property is currently used for grazing cattle. It is farmed by the lessee in conjunction with freehold land which they own and which adjoins the property.

[7] There are no buildings on the land. There is a water supply provided from a spring source immediately across the northern boundary of the subject property on the freehold land owned by the lessee. The water is reticulated to eight troughs on the property. There is an earth dam within the boundaries of the property, which provides an alternative water supply to the spring. A clay road provides access from the Pukehuia Road frontage to the rear boundary of the land. This road rises across the initial undulating contour and then falls diagonally across the sidling leading to the rear land. Adequate post and wire fencing mark the road and internal boundaries of the property. Permanent electric fencing subdivides the property into seven paddocks. The fencing is regarded as adequate for normal stock control. It is not in pristine condition.

The lease

[8] The Tribunal is charged with the task of ascertaining the amount of compensation for improvements to which the lessee is entitled upon the termination of the lease. The relevant clauses of the lease are as follows:

> "21. That the lessee, having performed and observed the covenants and conditions on his part herein contained or implied, shall be entitled on the termination by effluxtion of time of the term hereby created (unless a renewed term be created as hereinafter appears and in such case he shall be entitled on the termination by effluxion of time by such renewed term) to such sum by way of compensation as shall be equal to seventy-five pounds per centum of the value as determined in the manner hereinafter provided of all improvements of the kind more particularly set out in the Schedule hereto in existence on the said land at the expiration of the said term or at the expiration of such renewed term provided however that in respect of buildings no compensation shall be payable unless the Maori Trustee has

previously to the erection thereof approved of the plans and specifications therefor.

22. That for the purposes of ascertaining the amount of the compensation to which the Lessee is so entitled under the foregoing clause 21 hereof the value of the said improvements shall be determined by a special valuation to be made by the Valuer-General in accordance with the provisions of section 351 of the Maori Affairs Act 1953 and the fee for such valuation shall be borne by the Lessee".

[9] Clause 31 of the lease was deleted. It read:

"No compensation shall be payable to the Lessee in respect of any improvements effected by him of the said land during the term of the within lease".

[10] The Schedule reads:

"Clearing, cultivation, fencing, planting of trees and live hedges, fencing, draining, buildings (as approved) instalation of water supply facilities and electricity".

The Statute

[11] From clause 22 of the lease it will be observed that the special valuation to determine the value of improvements is to have been made by the Valuer-General in accordance with the provision of section 351 of the Maori Affairs Act 1953.

[12] The Te Ture Whenua Maori Land Act 1993 has substituted sections 206-208 for those sections of the Maori Affairs Act 1953 which were previously applicable. The only portion of those sections which apply to the assessment of compensation in this case is section 207(5) of the Act. The relevant portion of section 207(5) reads:

"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".

Issues

[13] Four issues arise:

[a] What improvements is the lessee entitled to receive compensation for?

[b] How are those improvements to be valued?

[c] What is the effect of the ***Mangatu*** decision on the valuation?

[d] What is the compensation payable?

What improvements is the lessee entitled to receive compensation for?

[14] Clause 21 of the lease provides that the lessee, at the termination of the lease, is entitled to compensation, which is equal to 75% of the value of all improvements on the land. The improvements must be of the kind as set out in the schedule.

[15] "Improvements" is defined in section 207(5). There are a number of ingredients contained in the definition. It includes 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. If the definition stops here, then the lessee would be entitled to all improvements regardless as to whether they were undertaken by an owner or other occupier. However, the definition is then qualified so that the effect of the work done or material used must increase the value of the land and the benefit of such value must be unexhausted at the time of valuation. Whilst the expression "at any time" is used in the definition, this means that "at any time during the subsistence of the lease". Should there be any doubt about this, see ***West Coast Settlement Reserves v Valuation Appeal Committee*** [1]. Regardless of that ruling, however, the fact that the effect of the work must be to increase the value of the land involves a period of time during which any increase is to occur. There has to be a

[1] [1997] 1NZLR 413 at page 430 (line 36 it seq)

starting point and the obvious starting point is the commencement of the term of the lease.

[16] The Judgment of Cooke J and McMullin J in ***Atihau-Wanganui v Malpas***[2] set out the principle succinctly:

> "But any work done or material used will only be an improvement if its effect is to increase the value of the land at the valuation date. There must be a continuing benefit at that date. It is not the historical effect of the work or material that matters, but its present effect".

[17] Accordingly, those improvements for which the lessee is entitled to receive compensation are those which have been effected to the land since the commencement of the lease and which had the effect at the termination of the lease of increasing the value of the land.

How are those improvements to be valued?

[18] This is a difficult task. It seems that the Maori Trustee retained no written records as to the state of the land and improvements at commencement of the lease. The only record is the lease itself. In this regard, the evidence is that the original lessee paid nothing for improvements on the land at the time he entered into the lease. One of the reasons for this is that he was one of the owners. In the Tribunal's opinion, however, that cannot have been the only reason. The Maori Trustee was acting as agent for all the owners. Only one owner was to be the lessee. The Maori Trustee had a duty to consider the interests of all the owners. If the improvements on the land at the time of the commencement of the lease were of significant value then one would have expected the Maori Trustee to have insisted that the lessee make some payment in respect thereof. The Tribunal concludes, therefore, that the value of improvements on the land at the commencement of the lease was of a relatively insignificant value.

[19] This view is confirmed by the evidence of Mr Te Ihi Tito. He was a boy aged about 15 at the time the lease was originally entered into. When he was aged

[2] [1979] 2 NZLR 545, at 552 (line 24)

about nine or 10 he had to drive stock on to the land and recalls that it was in reasonable pasture. He says that he remembers that the block was at least half grassed, fenced, and had open drains. He also remembers, however, that during the holidays of 1961/62 there was concern about the worsening regrowth on the land. As a result, working bees were organised with Manuka suitable for firewood felled. Ultimately, during the Labour Weekend of October 1962 it was resolved that a bulldozer was required to undertake the clearing of the land. This was done. All of this indicates that when Mr Tito was about nine or 10 the land was at least half grassed but that from then on the land started to revert to the extent that by 1962 comprehensive works were required to clear the regrowth.

[20] The impression the Tribunal gained from Mr Tito's evidence is the boundary fences were in place at the time the lease was entered into. However, shortly after the lease started one of the boundary fences needed to be completely renewed. There is no indication that any subdivisional fences were in place. Mr Tito remembers that there were drains on the land and the inference is that they are the same drains as currently exist. There is no evidence that the land was supplied with anything but natural water supply.

[21] In order to assess the value of improvements for which compensation is payable, the Tribunal has ascertained the value of improvements currently on the land and has deducted from that figure its assessment of the value (in present day terms) of improvements as at the date of commencement of the lease. The difference between the two figures is the figure for which compensation is payable.

What is the effect of the *Mangatu* decision on the valuation?

[22] The owners contend that the value of improvements should be reduced by an amount to allow for difficulties of alienation in accordance with the Judgment of the Court of Appeal in ***Valuer-General v Mangatu Inc.***[3].

[3] [1997] 3 NZLR 641

[23] The ***Mangatu*** case related to the assessment of "land value" as defined in s2 of the Valuation of Land Act 1951. It did not address the valuation of improvements. The effect of the decision was that when assessing the land value the valuation is of "the owners' estate or interest" in the land. The 1993 Act imposes constraints on the sale of Maori freehold land and accordingly, in determining land value recognition must be given to those constraints.

[24] Significantly, s207(5)'s definition of improvements does not require a valuation of the estate or interest of the owner. The statutory constraints on alienability are peculiar to the land itself. There is nothing in the Act which indicates that they apply to improvements on the land.

[25] The Tribunal accepts that improvements on the land are not easily severed from the land itself. However, the Tribunal is bound by the statutory definitions and when valuing improvements is not obliged to assess the owner's interest in them. In these circumstances it seems to the Tribunal that the ***Mangatu*** deduction applies to the assessment of land value only. Of course, any deduction to the land value flows through to the assessment of capital value.

[26] There is another reason that the ***Mangatu*** deduction should not apply to improvements. One of the purposes of establishing a value for improvements is to assess compensation in certain circumstances. This is so here. Compensation involves *"rendering something equal to what has been lost. It is the provision of recompence"* ***Drower v Minister of Works***[4]. In ***Commissioner of Succession Duties v Executors Trustee and Agency Co of South Australia Limited***[5] Dixon J pointed out *"The purpose is to ensure that the person to be compensated is given a full money equivalent of his loss"*. If a ***Mangatu*** deduction is to affect the valuation of improvements, then this effect will flow through to the assessment of compensation. If that happens the amount of the compensation award will not be a full money equivalent of the loss. The purpose for which compensation comes payable will not have been achieved.

[4] [1984] 1 NZLR 26 at page 29
[5] (1947) CLR 358 at page 373

[27] Mr Bell, for the lessee, suggested that it is a pity that deductions are described in terms of percentages and that a more realistic way of dealing with them would be to ascribe a monetary value to them. The Tribunal accepts that Mr Bell's contention is an attractive one. However, the Court of Appeal in ***Mangatu*** used percentages and the Tribunal considers that it would be confusing if it adopted a different approach. Accordingly, the deduction in percentage terms applies to the land value: it does not apply to the value of improvements: the deduction assessed in respect of land value flows through to the assessment of capital value.

[28] No evidence was adduced to address a ***Mangatu*** calculation. Both the High Court and the Court of Appeal held the assessment of land value must be made on a case by case basis. The effect of restricted alienablility is affected by such factors as the nature and size of the property, historical connection of the owners with the land, membership of the preferred classes of alienees and resources available to fund the purchase. Other matters are mentioned. Of them, the only matter upon which the Court heard evidence was as to the size and nature of the property. In these circumstances, it is difficult for the Tribunal to assess any deduction to land value.

[29] In practical terms, however, it does not matter. The accepted method of calculating the value of improvements is to deduct from the capital value the land value. The difference is the value of improvements. Whether or not any deduction is applied to capital value and land value, the difference is unaffected. Thus, there is no necessity for the Tribunal to take into account the ***Mangatu*** decision in reaching its assessment of compensation.

What is the compensation payable?

[30] The first step is to establish a capital value and unimproved value for the land. This involves an analysis of the various sales evidence adduced by both valuers. Very little analytical evidence was adduced. Many of the sales referred to by Mr Thomas occurred after the assessment date. Further, many of the sales related to properties some distance from the subject property. Mr Burgess' sales evidence suffered, to some extent, from the fact that the areas involved were dissimilar to that of the subject property.

[31] Nonetheless, the most pertinent sale was that referred to by Mr Thomas as No.8. It relates to a property at Avoca North Road which was sold in 1998 for $188,000.00. This property is relatively close to the subject property and is of a similar area. Whilst it contained a dwelling, Mr Thomas indicated that it had a land sales price of about $75,000.00. If one applies the ratios for clearing and grassing which were adopted by both valuers, then the Tribunal considers that the unimproved value of the subject property amounts to $44,000.00. This view is supported by the sales evidence of Mr Burgess and in this regard the Tribunal refers particularly to his sales numbered (iii) and (vii). When analysed his (iii) sale for a property containing 3.69 hectares worked out at $60,000.00 and his land sale price for (vii) being a property of 7.3 hectares amounted to $75,000.00. If one adopts the same ratios for clearing and grassing the Tribunal's figure for unimproved value for the subject property is confirmed. The same sales evidence can be used to assess capital value. The three sales have land sale prices of $75,000.00, $60,000.00 and $75,000.00 respectively. To those values must be added fencing and water supply to achieve a capital value. When this is undertaken it is clear that the capital value of the subject property is closer to, but does not reach, the value assessed by Mr Burgess. This is especially so when an allowance is made for the fact that the water supply is no longer sourced. The Tribunal contends that the evidence establishes that the capital value for the subject property is in the sum of $80,000.00.

[32] The total value of improvements at the end of the lease amounts to $36,000.00. This sum is determined by deducting from the capital value of $80,000.00 the unimproved value of $44,000.00 as previously determined. Mr Burgess' valuation provided a breakdown of improvements in the values he allocated for each. The Tribunal adopts his breakdown and attributes values (at termination of the lease) as follows:

Clearing and grassing	$26,500.00
Drainage	$ 1,500.00
Water supply (excluding pump and energy supply)	$ 2,500.00
Roading	$ 500.00
Fencing	$ 5,000.00
Total	$36,000.00

[33] It is now necessary to determine the value of improvements at the commencement of the lease. The method of assessing the value of these improvements has already been addressed. In the Tribunal's opinion, the improvements subsisting at the commencement of the lease were:

Clearing and grassing		$5,000.00
Drainage		$1,000.00
Water supply		NIL
Fencing		$1,000.00
	Total	$7,000.00

[34] The Tribunal concludes that the improvements undertaken to the land since the commencement of the lease have increased the value of the land by $29,000.00 and that that benefit is unexhausted at the time of expiration. Accordingly, it assesses the value of improvements for which compensation becomes payable in the sum of $29,000.00.

Judge J D Hole (Chairman)