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IN THE HIGH COURT OF NEW ZEALAND 23/9
CHRISTCHURCH REGISTRY No. AP343/92

[redacted] 1482

BETWEEN VALUER GENERAL

Appellant

A N D THE TRUSTEES OF THE CHRISTCHURCH RACECOURSE

Respondents

Hearing: 29 June 1994

Counsel: G.K. Panckhurst for Appellant
G.H. Gould for Respondents

Judgment: 13 SEPTEMBER 1994

RESERVED JUDGMENT OF HOLLAND, J. & MR I.W. LYALL

This appeal by the Valuer General is in respect of the valuation under the Valuation of Land Act 1951 of the Riccarton Racecourse and its environs. The valuation in question was made as at 1987. It has taken some while to get to this Court. It originally came before the North Canterbury Land Valuation Tribunal in March 1991 and the Tribunal had occasion to remark that it had "taken an unconscionable length of time to reach a hearing". Notwithstanding that remark, the Tribunal issued an interim judgment on 8 April 1992 requiring further evidence. The final judgment, which is the subject of this appeal, was delivered on 9 November 1992. It again appears to have taken an unconscionable length of time to have reached this Court. We are told that the appeal is of some importance as it involves

principles relating to the proper method of valuation of Reserves which have limitations both as to use and as to alienation.

The Valuer General valued the property for the revaluation as at 1 July 1987 at $7,600,000 of which $4,400,000 was attributed to improvements. There has never been any dispute over the valuation of the improvements. The respondents objected to the land valuation of $3,200,000. They negotiated with the Valuer General and he agreed to a reduction of the land value to $2,467,000. That was not acceptable to the respondents and the matter came before the Land Valuation Tribunal. The objectors contended before the Tribunal that the land value was just over $500,000. The Tribunal determined that the land value was $820,000. It is against that finding that the Valuer General appeals.

There are some unusual features of the decision of the Tribunal in that its interim decision rejected the method of valuation adopted by all the valuers called on each side.

The respondents are trustees of the land subject to the provisions of the Christchurch Racecourse Reserve Act 1878 and the Reserves Act 1977. The land is vested in, and held by, them, for the purposes of racing pursuant to s.2 of the 1878 Act. It is a reserve under the 1977 Act. The Trustees are required under the 1878 Act to set apart a sufficient portion of the land for the purposes of a racecourse. They are also empowered to lease the land or any part thereof for any term of years not exceeding seven years "on conditions not inconsistent with the purposes of the racecourse". Section 67 of the Reserves Act 1977 empowers the trustees with the prior consent of the Minister of Conservation to lease to any racing club for a term not exceeding 33 years with or without provision for renewal for one or

more further similar terms. Significantly the Trustees have no power of disposal of the freehold of the land.

The 1977 Act grants the public freedom of entry and access to the reserve, subject to the Trustees' power to make by-laws excluding the public from such parts of the reserve as may be necessary for planting or preservation of grass and when the reserve is used for racing purposes. The Trustees are empowered to grant the exclusive use and control of the reserve or of any part to any racing club when the reserve is used for racing purposes.

There are several matters that are common ground between the parties.

(1) The only matter requiring determination is the land value. Land value is defined in s.2 of the Valuation of Land Act 1951 as:-

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

(2) It is the marketable value of the owner's unencumbered estate or interest in the land which is to be valued, not the land itself. See In re Hutt Park and Racecourse Board [1907] 27 N.Z.L.R. 246 at 251.

(3) The interest of the respondents in the land in question is the interest earlier described imposed upon the trustees by the Christchurch Racecourse Reserve Act 1878 and the Reserves Act 1977 and limited by the provisions of those Acts.

(4) In order to determine the land value, an assumption of sale must be made notwithstanding that the actual owner has no power of sale of the land. Nevertheless the value must be on the basis that the fictional purchaser acquires the land subject to all restrictions as to use and disposal. See In re Hutt Park and Racecourse Board (supra) and Thomas v Attorney General [1918] N.Z.L.R. 164 at p174.

(5) The hypothetical purchaser might include the present owner - see Valuer General v Wellington City Corporation [1933] N.Z.L.R. 855.

(6) The zoning of the land is a factor to be considered in arriving at its value - McKee v Valuer General [1971] N.Z.L.R. 436.

(7) Any work, excluded from the definition of "improvements" in the Land Valuation Act which has improved the value of the land is to be taken into account in assessing the land value and not by way of "improvements". The second proviso to the definition of "improvements" in the Valuation of Land Act 1951 is as follows:-

> "Provided also that work done on or for the benefit of the land by any owner or occupier thereof in -
> (a) The draining, excavation, filling, or reclamation of the land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling, or reclamation; or
> (b) The grading or levelling of the land or the removal of rocks, stone, sand, or soil therefrom; or
> (c) The removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or
> (d) The alteration of soil fertility or of the structure of the soil; or
> (e) The arresting or elimination of erosion or flooding -
> shall not be deemed to be improvements on that land or on any other land."

The issue arising for determination on this appeal is the correct method of assessing land value of a reserve where the owner of

the land does not have an unrestricted right of sale or lease of the land and, in this case, the use of the land is essentially restricted to a specified purpose, and to the rights of public to use the land. Particular difficulties arise because the restrictions on the owner are far more than mere restrictions of use which may frequently arise under the Resource Management Act 1991 but are contained in separate statutes and cannot be removed at least in so far as acquiring a power of sale is concerned without an Act of Parliament.

At the first hearing before the Tribunal evidence was given by four valuers, two on each side. They all adopted the same method of valuation, although reached quite materially different results. The method adopted was an attempt to determine the land value of the land with its present restrictions, and to add a sum making allowance for the possibility of the removal of, or amendment to, those restrictions. All four valuers were of the opinion that the first step should be a valuation of the land as if it were rural land on the assumption that any hypothetical purchaser would be a person or organisation intending to operate a racecourse and would either buy this land or other rural land. Each agreed that the appropriate commencing figure was approximately $1,113,000, being 121 hectares at $9,200 a hectare. Although Mr Pegler, the second valuer called for the appellant, did not specifically value this piece of land, he gave evidence as to valuation principles and we assume from his evidence that he accepted the valuation of Mr Bunt, the other valuer called for the appellant.

The Tribunal was critical of the evidence of all the valuers. It decided that the method adopted by the valuers was wrong and it issued an interim judgment holding that to be the case. It directed that there be a further hearing at which the parties could call further

evidence. The Tribunal in its interim decision, after referring to the evidence called on both sides, said:-

> "Neither of these approaches are appropriate in the exercise of the valuation judgment the law requires in this case. In our view such methods should only be used for the limited purpose of a check of the restricted value. Neither valuer carried out a residential value which is an essential exercise in assessing a value of the 'chance of change'.
>
> We conclude this interim judgment by saying that we have no evidence before us upon which the value of the land can be established. We therefore give the parties the opportunity of calling further evidence as to value, such evidence to be based upon the factual findings we have made and in accordance with the principles of law we have enunciated. We add in a desire to be helpful in that process, that matters which could be considered in reaching a conclusion as to the restricted fee simple value are those which the mythical buyer would receive, ie the same rights as the Trustees now have. These appear to be:
>
> 1. The value of the tracks constructed for racing and for training purposes. The racing track is, it seems, being used presently 21 times per year and the training tracks daily. It may or may not be proper to assess an appropriate charge for either or both usages which might be a basis of an assessment of such value.
>
> 2. The right to designate particular days on which the land is exclusively available for horse racing. The present payment of, (it seems) $20 per race day, is in our view nothing more than a peppercorn rental and is not the true measure of the value of the designation of those days for racing clubs.
>
> 3. The provision of land (as distinct from the stables provided by the Canterbury Jockey Club) for use by resident trainers. This has a value which should be readily able to be assessed having regard to whatever payments are made to the Canterbury Jockey Club for use of both land and stables.

4. The provision of land for use by the Kennels Club and Bowling Club. This may or may not have a nominal value having regard to the land so occupied having a healthy recreational use.

5. The existence of land not immediately required for racecourse purposes which can be leased for farming purposes pursuant to the Reserves Act 1977. For the purposes of a 1987 value the subsequent (1992) need for additional parking need not be taken into account as a reduction to this area of land.

6. The provision of land for buildings necessary for raceday use, ie grandstands, raceday stabling, totalisator, catering, parking, administration, etc. By reason of the permanence of these structures the value of the land so used would perhaps have an annual value rather than a value confined to the 21 racing days. This value could also take into account as part of a notional ground rental the commercial uses to which some buildings are put outside racedays. We accept that land value is to be assessed void of buildings but land so occupied could be said to have a potential value for renting for such purposes.

7. The valuation will of course be of the 'land void of buildings but situated in the community with the amenities and facilities which have grown up round it' - Valuer-General v Addington Raceway (supra).

As against those matters there are possible detriments to a potential purchaser. Among them could be:

8. The inability to raise any mortgage on the land.

9. The daily right of public use of the land.

There may be other factors impinging on value which we have overlooked. Valuers should not be deterred from what we have said from taking others which may occur to them into account."

As counsel for the appellant pointed out, s.20(8) of the Valuation of Land Act 1951 places the onus of proof of an objection on the objector. It may well be that the Tribunal should have dismissed the objection on the grounds that they considered there was no proper evidence before them to consider the objection. No point of this nature was taken before the Tribunal and it is not taken before us. The appellant requires a ruling on the matter on the merits.

At the resumed hearing further evidence was tendered on behalf of the respondents by calling one of its valuers earlier called, Mr R.K.Baker, who gave evidence on behalf of himself and Mr Hallinan who had earlier given evidence. The appellant did not accept the opportunity of calling further evidence and maintained his stance that his original evidence was on the correct basis. Mr Baker endeavoured to give evidence to meet what was required by the Tribunal as to the income potential from the land, although still maintaining that the original method of assessment of both valuers called for the respondents was correct.

In his evidence at the second hearing Mr Baker adopted the respondents as being a potential buyer and obtained details and actual income. He also obtained details of income directly related to the usage of the land which the occupier, the Canterbury Jockey Club, received. These figures total $56,626 per annum. He capitalised this figure at 12%, reaching a value in accordance with income receipts of $472,000.

The Tribunal considered the actual income receipts of $56,626 per annum as being short of the potential income capacity from the land, increasing the potential rental figure to $63,129. This they capitalised at a figure of 8.9%, reaching a total of $720,000 and then added a figure of $100,000 to recognise what they considered as the very small chance of a change of some of the land to its underlying

zoning of residential. They accordingly reached a total of $820,000 and determined this to be the value of the land. The Tribunal then as a check considered the alternative evidence, the methodology of which it rejected in its interim decision. They thereby reached a figure of $1,000,000. The Tribunal, however, did not see fit to depart from its original and final assessment of $820,000.

We are satisfied that the Tribunal erred in failing to apply the method of valuation presented by the four valuers and substituting their own. The reasoning of the Tribunal is essentially contained in the interim judgment. The Tribunal said:-

> "We do not believe that the Trustees' interest in the land can be valued as a fee simple estate. Nor do we consider that its value can be established by reference to comparable true fee simple estates."

In this respect the Tribunal relied on the judgment of Cooper J. in In re The Hutt Park and Racecourse Board (supra). The relevant wording of the judgment at p253 was:-

> "The appellant's estate or interest in the lands referred to cannot in law be valued upon the basis of an unrestricted estate in fee simple, but must be valued upon the basis of the limited powers of dispensation which the appellants possess by law over this reserve."

The case was one on appeal which appeared to be by way of case stated merely asking a question. The judgment does not in any other respect set out the method by which this interest is to be valued. There is nothing contained in the judgment which supports a valuation based essentially on income earning potential.

The Tribunal in its judgment relied on a decision of Perry J. in Re an Arbitration between the Auckland Hospital Board and the

Auckland Rugby League (Incorporated) (1966) N.Z.L.R. 413 (known as the Carlaw Park case) in which it is stated that Perry J. specifically approved a passage from an Australian decision Rosehill Racecourse (1965), The Valuer, 406. The decision in the Rosehill Racecourse case was made available to the Tribunal. It is a decision of Else-Mitchell J. It does not appear to be reported other than in The Valuer. The Tribunal quoted a passage from the Rosehill Racecourse case. Else-Mitchell J. there rejected a valuation of lands subject to a restriction which first aimed to ascertain what value the land would have had if it had been free from restrictions. He then concluded:-

> "I think the proper course is to inquire first what was the value of the land on the footing that there was no possibility of its ever being turned to other than recreational purposes and then how much extra should be allowed for such chance as there was of securing permission for (some other) use at some future time."

With respect, a careful examination of the decision of Perry J. does not disclose a specific approval of this passage in his judgment, although in principle we do not wish to be seen as criticising the conclusion of Else-Mitchell J. Perry J. in the Carlaw Park case said in relation to the Rosehill Racecourse decision the following at p419:-

> "The valuers are not entitled to place a valuation upon the land upon the basis of its possible underlying zoning depreciated by an allowance for restricted designation: see Royal Sydney Golf Club case, 2nd Report (supra) 391 per Kitto J. and the Rosehill Racecourse decision. The importance of the Rosehill Racecourse decision is that the valuers were agreed that, as here, the appropriate industrial zoning would have been the logical zoning if the restrictions were removed. Next, the valuers must have regard to the effect of the town planning scheme and they

> did correctly address themselves to the purpose for which the land must be used.
>
> What has to be taken into account is the designated use, viz, private open space with the possibility of rezoning."

What both cases are authority for is that the initial step in valuation is not to consider the value of the land as if it had no restriction placed upon it. The Rosehill case was one of a racecourse surrounded by highly valuable industrial land. It could not be used as industrial land because of provisions of the relevant Local Government Act and the relevant town planning scheme. The valuer in that case had taken as his starting point a very high value of the land as if it were zoned industrial.

Perry J. was dealing with an arbitration determining a proper rental of a lease in respect of land zoned as a "private open space - playing fields". In the case before him the starting off point for the valuation had been to treat the land as if it were residential land capable of subdivision.

Although in the present case the underlying zoning of the land is residential, the valuers have taken as their starting point the land with its restrictions, namely to be used as a racecourse and reserve and have regarded the appropriate basis as being rural land. With respect to the Tribunal, we consider that that basis is in accord with the decisions in the Rosehill Racecourse case and the Carlaw Park case and those decisions do not support the conclusion of the Tribunal that the method adopted by the valuers was wrong. Indeed the approach of the valuers appears to be specifically approved by Perry J. in the later passage of his judgment where he says at p423:-

> "The approach adopted, as I see it, has been this. A sports body could as an alternative buy a similar block of land elsewhere. On the present state of development of metropolitan Auckland the alternative might well be or rather have to be land in the suburbs. That would normally be residential land, as industrial or commercial land almost usually bears an enhanced value and normally also, it would be a block of land not yet subdivided and perhaps presenting difficulties for subdivision. Such land would cost so much per acre. What would the same body be prepared to pay for land in an ideal situation but designated for the same purposes? That seems to me to be the approach of the umpire and the arbitrator whose valuation he adopted, and it seems to me to be a proper first approach to the valuation."

We are further persuaded that the method adopted by the Tribunal was in error in that it failed to have regard to the statutory requirement to value the land if offered for sale with no improvements on the land. The Tribunal directed the valuers to make their valuation taking this into account but in considering the income capable of being earned from the land both the valuers and the Tribunal have considered rentals with the buildings on that land and then deducted a proportion in respect of what they described as land value. Without the buildings on the land many of those operating the activities contemplated by the Tribunal would not have been interested in leasing the land at all.

In so far as the Tribunal has conducted a check method of valuation and considered the original evidence of the valuers, we note that the end result figure of $1,003,150 failed to persuade it to increase its earlier assessment of $820,000. The Tribunal accepted the starting figure of all valuers of rural valuation at $9,200 per hectare but reaching a total of $1,115,000 after allowing for the area actually being 121.4046 hectares. They added 25% for urban benefits of location and amenities and a further $111,500 for the additional value of land

preparations. They deducted 40% from this valuation for limited powers of disposition but added $100,000 for the potentiality of change resulting in $1,003,150.

This check valuation was not adopted by the Tribunal. Had the Tribunal done so we would have had difficulty in being persuaded that the decision was based on wrong methodology. The Tribunal in carrying out its check valuation expressed dissatisfaction with the conclusion expressing their concern as to what they considered to be the lack of relevant evidence as to the value of the chance of change and as to the value to be added because of the benefit of location and amenities. It was no more than a check valuation and, with respect does not appear to have been fully considered.

For the foregoing reasons, we are satisfied that the appeal must be allowed and the decision of the Tribunal quashed. It falls to us to consider now what was the proper land value on the evidence presented before the Tribunal.

As earlier stated, there was much more similarity of approach than difference between all four valuers called to give evidence before the Tribunal. Considerable difficulties existed because of the restrictions of use contained in the Christchurch Racecourse Reserve Act 1878 and the Reserves Act 1977. There are no comparable sales to be used as a starting point. The land is zoned Residential One but with a specific identification as being required for the "Riccarton Racecourse, horse training, racing and associated activities". Because the land is a Reserve there is no power of sale vested in the owners and the use of the land and powers to lease are substantially restricted.

Mr Bunt, the District Valuer who was called for the appellant, valued the land as if it were zoned residential, without the

restriction as to use, at approximately $6,000,000. Obviously this is not the appropriate method of valuation for this owner's interest in the land, nor did Mr Bunt suggest it was. Nevertheless it emphasises the underlying value of the land if it were unrestricted fee simple.

What must be valued is the owner's estate or interest with the limited powers of use and restrictions on disposal applicable thereto. A prospective purchaser is accordingly likely to be limited to one who is either going to conduct a racecourse or lease the land for that and ancillary purposes. The prospect of a speculator as purchaser intending to dispossess the Racing Club and develop the whole land was so remote in 1987 as to be totally discounted. The fictional prospective purchaser would consider other available land which would undoubtedly be rural land.

It was agreed by all valuers that the base valuation should be to value the land as rural land and that the appropriate measure was $9,200 per hectare. Each of the valuers added to the total a percentage to make allowance for the advantage of the location and amenities of this site being only some 11 kilometres or so to the west of the city centre and being surrounded by land zoned residential and developed for that purpose. Mr Bunt allowed 40% in this regard. Mr Pegler, the Assistant Valuer General, did not specifically deal with amounts or percentages. Mr Baker for the Objector allowed 20%. Mr Hallinan also for the Objector allowed 10%.

We are of the view that a prospective purchaser of this property for a racecourse would recognise the additions of this land over other available rural land to the extent of paying a premium of 25% over the rural land value to achieve this particular site. There are obvious advantages to any organisation intending to conduct a racecourse to have this land in this location so close to the city centre but in these

days of practically universal private motor ownership, position may not be so material as it once was.

Mr Bunt added to his value a further sum of $111,500 representing the additional value of the land for racing purposes as a result of track formation, levelling, contouring, grading, drainage and grassing. Neither Mr Baker, nor Mr Hallinan, made any allowance in this regard. We have earlier set out the provisions of the second proviso to the definition of "improvements" in the Valuation of Land Act 1951. Such work is excluded from the definition and it follows that if there is any added value because of the work then it must be added to the land value. We accordingly agree with Mr Bunt that in respect of the 37 hectares of land improved in this regard for a racecourse an allowance of $3,000 per hectare is appropriate though would not disturb the slightly greater figure of $111,500 adopted by him.

Mr Bunt added to his total land valuation of $1,670,000 a further $797,000 representing what he considered to be the premium a prospective purchaser would pay to the base rural valuation in addition to the earlier sum added for the chance of changing the restrictions in use on the property in the future. He thus reached his total of a land value of $2,467,000.

Mr Baker on the other hand, after adding 20% to the rural value for location and amenities, deducted 50% for the limited powers of disposition. He considered that such a deduction was justified and required by a number of earlier valuation cases. On this basis he achieved a land value for the property of $665,000. Mr Hallinan adopted a similar reduction of 50%. He had added on only a 10% increase in respect of location and had made a reduction because of the inability to subdivide of 20%. The application of the 50% reduction

because of the inability to sell and limited power to lease resulted in a figure of $500,000.

Neither Mr Baker nor Mr Hallinan added anything for the chance of change or for the added land value because of work done to the land.

We consider that Mr Bunt is correct in his approach that a prospective purchaser would add some premium to the purchase price beyond the rural value to allow for the chances of a change to enable residential development and sale of the property or part of the property. Nevertheless full regard must be paid to the fact that the land is a Reserve. The land was provided by the Crown. Although the title to the land is in the name of the respondents they hold the land as trustees under the terms of the relevant statutes. It is quite different from land absolutely owned where the only changes required would be those capable of being obtained under the Resource Management Act 1991 or the Town and Country Planning Act 1977. The probability is that if the provision for a reserve were revoked it would be on terms that the land returned to the Crown. The possibility of the respondents or their successors obtaining an unqualified right to dispose of the land and retain all or any of the proceeds of sale is not great.

The prospect of change in respect of part of the land may, however, not be so far fetched. The Christchurch Racecourse Reserve Act 1878 requires the Board of Trustees "to set apart a sufficient portion of the said parcel of land as and for the purposes of a racecourse ...". The Board is empowered to lease the whole or any part of the land for any term not exceeding seven years "and on conditions not inconsistent with the purposes of the racecourse". No other powers or restrictions on the land are contained under the specific legislation but clearly the provisions of the Reserves Act 1977 apply. The 1878 Act

does, however, provide that all moneys received by the Board for "the rents, issues, and profits on account of the said land" shall be applied in and towards the cultivation and improvement of the land and in rendering any part thereof set apart as a racecourse suitable for that purpose and in and towards providing prizes for races to be run on the racecourse and generally in and towards the encouragement of the breeding of horses.

There was no argument before us as to the interpretation of the Act in this regard. It is in our view by no means clear that in construing this Act standing alone, the Board might not be permitted to sell land obviously not required to be used for the racecourse. It certainly appears able to lease such land without any restrictions as to use provided that the use is not inconsistent with the purposes of the racecourse. It is obvious, however, that before a power of sale could be exercised by the trustees of any part of the land an Act of Parliament would be required because of the provisions of the Reserves Act 1977.

Mr Bunt in his evidence in relation to the possibility of removal of some or all of the restrictions relating to the use and disposal of the land considered that it is appropriate to divide the 121 hectares in two. According to his evidence the 70 hectares in general terms presently appropriated towards the racecourse as such is more than a generous provision. He says that the areas of relevant metropolitan racecourses are as follows:-

Ellerslie (Auckland) - 59 hectares

Avondale (Auckland) - 49 hectares

Te Rapa (Hamilton) - 51 hectares

Wingatui (Dunedin) - 55 hectares

Trentham (Wellington) - 45 hectares.

In his opinion it was appropriate to allow 71.4 hectares of the total 121.4 hectares as being essentially for racing while the additional 50 hectares were not. While some change of zoning would be required in respect of these 50 hectares the prospect of the owners being permitted to lease the land for residential or related purposes must, even in 1987, have been regarded as quite reasonable. There may be greater difficulties in obtaining an Act of Parliament to obtain a power of sale but such a prospect is not impossible. Mr Bunt considered that the difference in value between the rural zoning of this 50 hectares and residential unrestricted zoning and title would be $3,888,000. He considered that a hypothetical purchaser would consider he had a 20% chance of obtaining this result. He accordingly added $797,000 to his earlier valuation.

We agree that the land should be divided for this purpose and with Mr Bunt's evidence that of this 50 hectares, 45 hectares might be expected to realise $98,425 per hectare and that the remaining 5 hectares, which has lesser potential, might receive $20,600, producing a total of $4,532,000. From that there should be deducted the base value of $11,500 per hectare being $9,200 plus the 25% earlier added on for location totalling $575,000, making a difference of $3,957,000. Bearing in mind all the difficulties in the path of a prospective purchaser achieving changes to enable the value of this part of the land to increase to this figure we consider that an allowance of an additional 15% of $3,957,000 amounting to $593,550 should be provided for. We have given consideration as to whether any addition should be made for the possibility of change in respect of the remainder of the land. We regard that possibility as negligible. We likewise reject the view of Mr Hallinan that a deduction should be made to the rural valuation because of what he described as the inability to subdivide

There can be no exact formula for the value of chances of change in respect of both parts of the land. We consider it appropriate to allow a total sum of $600,000 to the total figure to allow for the chances of change in respect of all of the land.

A real question arises as to whether a deduction should be made from the total figure because of the actual restrictions on the use of the land, and if so, how much. Both valuers for the respondent reduced their valuation by 50% on this account. Mr Bunt made no allowance.

It is true that deductions because of limited use have been made by way of a percentage in a number of the reported cases. They appear to have originated with the decision of the Wanganui Land Valuation Tribunal in Wanganui Racecourse Trustees and Wanganui Jockey Club Vol. 25 The New Zealand Valuer 292, a decision described by the Tribunal in this case as being in this respect "an intuitive one in the sense that no argument is put forward to justify it". We do not doubt that such decisions were appropriate in those cases where a percentage deduction was allowed, but in the number of artificialities to be considered in this exercise we consider it very material to have regard to the substantial reduction in the initial base figure from the residential underlying zoning to rural zoning. That decision made huge reductions because of the restrictions on the use and disposal of the land in rejecting residential zoning as a starting point. Nevertheless the rural zoning which was regarded as appropriate as the alternative available to a fictitious purchaser would result in an unrestricted freehold title. Some further reduction on this account is appropriate. We consider that the appellant and his valuers were in error in not making a reduction on this account.

The requirements of the Valuation of Land Act and the definition of land value obliged the Tribunal and us to determine a value achieved from a notional sale ignoring the fact that in its present state the land could not be sold. We therefore must assume the hypothetical purchaser to be a person able to acquire title to the land but with the restrictions existing on it including the inability to sell. Such a purchaser will almost certainly be a person or body intending to carry on a racecourse. The alternative available to that purchaser is purchasing rural land. We do not consider that as the fictional purchaser is likely to be a person intending to carry on a racecourse the restrictions requiring the purchaser to do so and the other restrictions on disposition and the restricted rights of access of the public would warrant a deduction of as much as 50%. We do, however, consider that some such deduction is appropriate and we consider it appropriate to allow a deduction of 35% from the figure reached which of course is already a substantial reduction from the underlying zoning and obvious alternative use of the land of residential if it were not to be used as a racecourse. We accordingly determine the land value to be made up as follows:-

Base value of 121.406 hectares (a) 9,200 per hectare	1,116,925
Add for urban benefits of location and amenities 25%	279,225
	1,396,150
Add for additional value of land preparation	111,500
	1,507,650
Deduct for limited powers of disposition 35%	527,650
	980,000
Add for chance of change	600,000
	1,580,000

The decision of the Court is accordingly that the appeal is allowed and the order of the Tribunal determining the land value of the property to be $820,000 is varied by increasing that figure to $1,580,000.

The history of the litigation is unfortunate and the parties have been put to considerable expense. The initial land value assessed by the Valuer General was $3,200,000. Following negotiations, and prior to a formal objection being considered by the Valuation Tribunal, the Valuer General agreed to reduce that value to $2,467,000. Following two lengthy hearings before the Tribunal, an order was made that the appropriate figure was $820,000. It has now been increased by us to $1,580,000. No order was made by the Tribunal as to costs of the hearing before it. The Valuer General has been successful in his appeal against the decision of the Tribunal but we do not consider it appropriate to award costs to the Valuer General. This appeal has been primarily brought about because of what we consider to be the error of the Valuation Tribunal in its assessment in declining to make an assessment on the evidence presented by the respondent and the appellant and substituting its own method of valuing the property. In the circumstances we consider it appropriate to make no order as to costs of this appeal.

C D. Holland J J Hughes

Solicitors:

Raymond Donnelly & Co, Christchurch, for Appellants
Meares Williams, Christchurch, for Respondents