IN THE DISTRICT COURT
AT ROTORUA

LVP 12/15 and 18-90/15
[2016] NZDC 7487

BETWEEN	NGATI WHAKAUE EDUCATION ENDOWMENT TRUST BOARD Objector
AND	ROTORUA DISTRICT LAKES COUNCIL Respondent

Hearing: 14 December 2015

Appearances: G Dennett for the Objector
P Cornegé for the Respondent

Judgment: 2 May 2016

RESERVED JUDGMENT OF THE LAND VALUATION TRIBUNAL

Background

[1] The objector, Ngati Whakaue Education Endowment Trust Board, is the owner of land in the Rotorua CBD comprising all the properties within the area bounded by Ranolf Street, Eruera Street and the lakefront. A total of 94 properties are involved in five discreet street blocks. Seen as a whole, they comprise a long rectangle with Eruera and Amahou Streets describing the long side of the rectangle and Ranolf Street and the lakefront describing the short ends to the rectangle. Rotorua's generally recognised main street, Tutanekai Street, bisects the rectangle slightly to left of centre. Those properties within the rectangle that are on Tutanekai Street or nearby in Amahou Street or Eruera Street are generally agreed to be in prime retail locations.

[2] The desirability of the properties is less towards the far extremities of the rectangle, although at the northern lakefront end, there is the well established and

popular Sudima Hotel. Other uses towards the extremities of the rectangle include office space, commercial services and other accommodation.

[3] The land has been general land since 1880. It is vested in the Trust Board by the Reserves and Other Lands Disposal Act 1995. When vested, the lands were subject to leases for renewable terms, generally described as perpetual leases.

[4] The Board has objected to the assessment of land value for each of the 94 properties, as assessed by the Rotorua District Council. Specifically, the objector says that the assessed land value for 2014 does not take into account the Reserves and Other Lands Disposal Act 1995.

[5] That Act allows the Board to continue with the present arrangement, that is to say with the Board as lessor continuing to lease the land to lessees under the perpetual leases but the Board has no power to sell or otherwise dispose of any of the land except in a limited manner not relevant to these proceedings. It is the objector's case that this restriction impacts adversely on the land value of the land.

[6] It has been agreed that the Tribunal will hear the objection in respect of valuation no. 6500/37901, being the land on the lakefront between Eruera and Amahou Streets, that is the Sudima Hotel property, but that the underlying issue is common to all.

The issue before the Tribunal

[7] Following the *Valuer-General v Mangatu Inc* [1997] 3 NZLR 641 decision in 1993, the Valuer-General issued guidance notes to assist local authorities to value Maori freehold land. Broadly speaking, those guidelines indicate that a discount of between 3.5 and 10 percent when compared with similar properties was appropriate in respect of Maori freehold land, depending on the number of owners. The Valuer-General's guidance notes suggests that where the number of owners was less than 10, a deduction of 3.5 percent is appropriate, with the deduction increasing as the number of owners increased to a maximum deduction of 10 percent where there

were 2000 or more owners. Additional adjustments are also appropriate where there were pa sites or urupa or other wahi tapu sites.

[8] The objector's lands were therefore subject to a 10 percent discount for the revaluations of 1999, 2002, 2005, 2008 and 2011. It would appear that the Valuer-General's attention was drawn to the fact that this land was general land and not Maori freehold land, sometime prior to the 2014 revaluation. As a result, the 10 percent discount was not applied.

The objection

[9] The Trust Board accordingly objects to the removal of the 10 percent deduction and says that the 10 percent deduction reflected the restriction on alienation imposed by the Reserves and Other Lands Disposal Act 1995.

History

[10] At the Tribunal's request, Mr Dennett has helpfully provided some of the history of the subject lands. The Endowment Land, as they are known, the subject of the objections, were included in the Fenton Agreement between the Crown and Ngati Whakaue came under Crown ownership by the Thermal-Springs Districts Act 1881.

[11] The Fenton Agreement included the Crown Agreement to endow the land at the behest of Ngati Whakaue to provide from the rents for secondary education in Rotorua.

[12] In 1905, an Order in Council provided that the rents from the land were reserved for secondary schools under the control of the Auckland Education Board.

[13] Doubt arose that the Order in Council was valid and by the Reserves and Other Lands Disposal Act 1926, the land was permanently reserved as an endowment and vested in Rotorua High School Board in trust for Rotorua High School. The preamble of s 12 of that Act recites:

> "Whereas the lands in the Borough of Rotorua hereinafter described were set aside as an endowment for a college and grammar school at Rotorua, and on the early plans of the town are shown accordingly: And whereas the said lands were later temporarily reserved as an endowment for a Rotorua College and Grammar School, but by an oversight were purported to be permanently reserved as an endowment for secondary education generally without any lawful authority: ... And whereas a secondary school fulfilling the purposes of the college and grammar school originally contemplated is shortly to be erected at Rotorua, and a Board of Governors of such school is to be constituted, and it is desired to make the arrangements hereinafter set out with respect to the said lands and past and future revenues therefrom: Be it therefore enacted as follows:—
>
> (1) The said lands are hereby declared to be permanently reserved as an endowment for a secondary school in the Borough of Rotorua.
>
> ...
>
> (3) On the constitution under the Education Act 1914, of the governing body of the secondary school to be established at Rotorua as aforesaid the Governor-General may, by Warrant under his hand, vest the said lands in the said governing body, to be held in trust as an endowment for the said secondary school, but subject to any leases then in existence in respect of the said lands."

[14] The terms of the endowment were changed two years later by s 8 Reserves and Other Lands Disposal Act 1928 following the Rotorua High School Board entering into an agreement with the Minister of Education:

> "As to the application of the net revenue from the said endowment, and it is desirable in order to give effect to such agreement that such revenue be applied in the manner hereinafter set out: And whereas it is desired to vest in the Board the site of the Rotorua High School, ... the net revenue ... received by the Board from the aforesaid endowment ... shall be applied as follows:
>
> (a) As to 55 percent of such revenue, towards the payment of the salaries of teachers employed at the Rotorua High School:
>
> (b) As to balance of such net revenue, for any of the purposes set out in the agreement between the Minister of Education and the Board dated the 16th day of December 1927 and upon the terms laid out therein."

[15] Under subs (4), the Governor-General was empowered by ordering counsel to vest the Rotorua High School land in the Board, being an area of 11 acres, two roods, 35 perches and also seven acres, two roods, 17 perches.

[16] The subject lands next feature in the Reserves and Other Lands Disposal Act 1960, s 12 of which notes:

> "And whereas the Minister of Education entered into an agreement with the Board as to the application of the net revenue from the said land for various purposes of the Rotorua High School, and the carrying out of the said agreement was authorised by section 8 of the Reserves and Other Lands Disposal Act 1928: And whereas there are now two secondary schools in Rotorua, and it is desirable that the net revenue from the said land should be available for expenditure for purposes connected with those schools and also with any other secondary school or schools that may hereafter come under the control of the Board: Be it therefore enacted as follows:-
>
> (1) Notwithstanding anything to the contrary in any Act or rule of law, the reservation of the said land as an endowment for a secondary school in the Borough of Rotorua is hereby cancelled and the said land is hereby declared to be vested in the Board in trust as an endowment for secondary schools under the control of the Board."

[17] Subsection (3) provides further that the net revenue received by the Board from the said land "shall be applied for purposes connected with secondary schools controlled by the Board in accordance with arrangements to be made from time to time in that behalf between the Minister of Education and the Board."

[18] Under the Reserves and Other Lands Disposal Act 1982, s 6 recited the existing arrangements of the Board and added:

> "And whereas it is desired to extend those provisions for the benefit of the McKillop and Edmund Rice Colleges in Rotorua that are not controlled by the Board."

[19] Section 7 Reserves and Other Lands Disposal Act 1989 deletes the references to McKillop and Edmund Rice Colleges and substitutes John Paul College, which was effectively the amalgamation of the two former colleges.

[20] That then takes us to the Reserves and Other Lands Disposal Act 1995 where under s 6 there is created the Ngati Whakaue Education Endowment Trust Board, being:

> "... a body corporate with perpetual succession and common seal and subject to s 7, has, both within and outside New Zealand,—
>
> (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
>
> (b) for the purposes of paragraph (a), full rights, powers, and privileges."

[21] Under s 6(3), the Trust Board is to consist of five members appointed by the trustees of Pukeroa-Oruawhata plus a member from each of the now six Rotorua secondary schools. The trustees of Pukeroa-Oruawhata are trustees of a commercial arm of the local iwi, Ngati Whakaue.

[22] Section 7 provides that the subject lands, which were vested in the Public Trustee, are now to be vested in the Ngati Whakaue Education Endowment Trust Board. Section 7(1)(b), as Mr Dennett says, empowers the Board to lease the land, "but shall not sell or otherwise dispose of any part of the land" except for the purpose of subdividing land to make it more suitable for leasing or for the purpose of providing access or any other purpose ancillary to a subdivision. Section 7(1)(d) provides that the net revenue received by the Board "shall be applied by the Board for the general purpose of education."

[23] Mr Dennett has also shown to the Tribunal two legal opinions obtained by the objector to the effect that it does not have power to buy back the lessee's interest.

[24] What this historical survey of the governance of the subject lands shows is that by public acts of Parliament, both the ownership and governance of the land has evolved, as has the purposes to which the net revenue from the land may be applied. The constants, however, have been that the revenue is to be applied for educational purposes and governance has always resided, at least in part, in Rotorua except perhaps during the time when the Public Trust was involved. Following the sweep of the legislation, one may conclude that the changes that have occurred have been responses to changing priorities in Rotorua as identified by the trustee owners of the time. Initially, the imperative was to provide for a college in Rotorua, then salaries for teachers, then generally to be available for expenditure for purposes connected with the schools in Rotorua and then finally "for the general purpose of education." One concludes from this historical survey that by and large the wishes of those who set aside this land and their descendants have been listened to by Parliament.

Glasgow leases

[25] The 94 sections owned by the objector are leased on a perpetually renewable basis, otherwise described as 'Glasgow leases'. The Supreme Court in *Mandic v The Cornwall Park Trust Board (Inc)* [2011] NZSC 135 helpfully described these leases in the following terms:

> "Long-term ground leases (usually of 14 or 21 years) renewable in perpetuity with rent calculated either by an assessment of fair or market rent (or some similar concept) or, as in this case, as a percentage of a sum established pursuant to stipulated valuation exercises, are referred to as Glasgow leases. They were mainly put in place in the 19th and early 20th centuries. A Glasgow lease is, in economic substance, a bond which is revalorised every 14 or 21 years and secured against the demised land. The income generated, while usually a modest return on the value of the land, is very secure and can be expected to increase over time, at each renewal date, as land increases in value. For these reasons, Glasgow leases were seen as providing secure endowment income for charities (such as schools) and public bodies (such as harbour boards). They also facilitated development, enabling those who wished to develop land (and were willing to take the associated risks) to do so without incurring the capital costs of land acquisition."

[26] The New Zealand landscape contains, and has in the past contained, many examples of Glasgow leases where the freehold land is owned by an entity set up for charitable purposes. Examples include the St John's College Trust Board, the Melanesian Trust, the Dilworth Trust to name but a few.

[27] Mr Dennett has diligently provided evidence to the Court regarding the Cornwall Park Trust Board. The Trust Board's solicitors have written, by letter of 13 October 2015, saying:

> "The trust deeds establishing the Cornwall Park Trust did not contain any power of sale. However, in 1979 the Trust Board obtained an order from the High Court empowering it to sell 'the endowment land' leasehold properties which provide income for the operation of the park."

[28] It is the Tribunal's understanding that other charitable entities who have in the past based their business model on being a "passive" owner of land that is leased perpetually on a Glasgow lease have also, in recent times, altered their governance documents or have applied to the High Court for similar effect, or have been able to have specific legislation enacted by way of either a public or private bill to loosen the strictures of the traditional Glasgow lease model and thereby empower their

governance body to sell part of the land to repurchase land elsewhere, or to apply the proceeds to a different business model in addition to their remaining in part the owner of land subject to the Glasgow lease model.

[29] Whether such changes and liberalisation for the charitable entities will be as successful as the Glasgow lease model has been over the last century or so, time will tell.

[30] However, as the model has endured and is still a reasonably popular one with such entities, there is likely to be and continue to be for the foreseeable future, a hypothetical willing buyer for such land.

[31] Consistent with the secure but modest return model of the Glasgow lease is the fact that the objector is not empowered under the Reserves and Other Lands Disposal Act to sell the land. Such a restriction is a further safeguard against, for example, the trustees at a particular time being wooed by less than scrupulous business entities of which our generation has seen its fair share.

The objector's submissions

[32] Mr Dennett refers to what Mr Justice Richardson said in the *Mangatu* decision at page 650:

> "While no one can be absolutely excluded as a possible purchaser of Maori freehold land, the 1993 Act imposes a significant barrier on alienation. Just as on an actual sale, the hypothetical seller and purchaser would have to obtain confirmation of the alienation from the Maori Land Court. ... The hypothetical purchaser would recognise that anyone not within the preferred classes of alienees would face serious legal restraints in obtaining that confirmation. Further, after confirmation the purchaser's interest will still be subject to the same constraints on alienation."

[33] Mr Dennett points to subsequent decisions of the Land Valuation Tribunal which support the requirement to allow a discount to reflect statutory difficulties in making a sale of Maori freehold land, namely *Ongare Trust Maori Land Block v Western Bay of Plenty District Council* [2008] LVP 1/2006 and *Taheke Paengaroa Trust v Western Bay of Plenty District Council* [2008] LVP 2/2005.

[34] Mr Dennett goes on to say that the statutory prohibition on the objector selling or otherwise disposing any part of the land, places it in a similar and arguably worse category than the Maori freehold land that the *Mangatu* decision dealt with, where there were restrictions on alienation but not a prohibition.

[35] Mr Dennett notes that in the decisions that have followed *Mangatu,* perhaps reflecting a hardening attitude of the Maori Land Court generally to applications for partition and approval of sales of Maori freehold land beyond the preferred classes, has resulted in some cases with a higher deduction being applied. In the *Ongare Trust* case, 50 percent was allowed in respect of part of the land and 15 percent in respect of the balance.

[36] Mr Dennett says:

> "These decisions relate to an owner who hypothetically has removed the obstacles, the restrictions to be able to offer the owner's estate or interest in the land for sale but must accept that the hypothetical purchaser faces difficulties in completing the sale process.
>
> The Board's hypothetical offer for sale of its interest in the land could only be to a purchaser who would be restricted to use the land for leases in perpetuity. In 2014, a discount of 10% below the equivalent land value for the Board's land would be conservative, too conservative."

[37] Mr Dennett contrasts the objector's position with that of the Cornwall Park Trust Board and he produced to the Tribunal confirmation from the Cornwall Park Trust Board's solicitors that that entity has no statutory or other restriction prohibiting it from selling land it holds.

[38] Mr Dennett refers to the evidence of the objector's valuer, Mr Gillespie, namely that the highest and best use for the properties is not leasing but that leasing is the only option for the objector. He notes that under the terms of the perpetual leases, the rental is not based on a percentage return on the land, but by comparison of rents which are being achieved on similar land, based on location and other factors. He points to the further disadvantage of perpetual leases with less opportunity for rent reviews.

[39] Mr Dennett refers to *Westpark Marina Ltd* v *Auckland Council* [2012] NZAR 619 and *Carter Holt Harvey Forests Ltd v Valuer-General* HC Christchurch AP7/98, 27 November 1998, another case where the restrictions created by the Crown Forest Assets Act 1989 meant the reduction in the value of the Crown's interest in the land was appropriate.

[40] Mr Dennett concludes that the Tribunal is not being asked to set a precedent. Rather, that in line with the *Mangatu* decision and those that follow, the valuers are expected to make their judgement comparing the subject land to comparable land that is without restrictions on alienability, and assess the discount in value.

The respondent's submissions

[41] For the respondent, Mr Cornegé submits that there is no material dispute between the expert valuers and that ultimately the only issue for decision is whether a discount should be applied to reflect the restriction on alienation. Mr Cornegé refers to s 7 Reserves and Other Lands Disposal Act 1995, the *Mangatu* decision and the *Westpark Marina Ltd* decision. He emphasises that the land valuation legislation assumes a sale, not the possibility of a sale. He notes that the High Court in *Mangatu* drew a distinction between the Te Ture Whenua Maori Act 1993, which was a statute with wide application throughout the country, and cases like *Gollan v Randwick Municipal Council* [1961] AC 82, where the restrictions were imposed under a private deed of trust.

[42] He also points out that whilst s 7 Reserves and Other Lands Disposal Act 1995 prohibits sale by the objector, there would be no prohibition on a financial institution exercising a mortgagee sale in the event of default by the objector under a mortgage. He also notes that the land is prime commercial property and is used for that purpose, and that the empowering Act facilitates this.

[43] He notes also that s 21(1)(a) Rating Valuations Act says that regard must be had to the desirability for ratings purposes of preserving uniformity with contemporaneous roll values of comparable parcels of land. He also says that there is no equitable basis (particularly where it is the leaseholder, not the objector, which

bears the rate burden) on which to value the objector's land any differently to other land within the CBD.

Discussion

[44] Following the *Mangatu* decision, as mentioned earlier, the Valuer-General issued guidance notes to assist local authorities to value Maori freehold land. The values were to be adjusted by deducting up to a maximum of 10 percent for the number of owners to a maximum of five percent for sites of significance. Under those guidance notes where the number of owners was under 10, the adjustment would be 3.5 percent and where the number of owners would be 2000 or more, the adjustment would be 10 percent. Other adjustments cumulatively up to five percent would accrue as a result of there being a pa site, urupa, runanga site, kaianga site, garden sites et cetera.

[45] The sliding scale of deduction that depends on the number of owners realistically supposes that the challenge of getting 2000 or more owners to agree to alienation will be more difficult than getting less than 10 to do the same. So, a prospective hypothetical buyer will discount the amount that he or she offers for the property to take account of the cost of securing the agreement of the owners. So Mr Dennett says at paragraph 13 of his submissions:

> "It is clear that the discount appropriate in the case of Maori freehold land is not because the land is Maori freehold land but because of the restrictions imposed by Statute."

[46] Mr Dennett argues at paragraph 15 and subsequent paragraphs that in the case of the subject land, the statutory restriction on the Board is clear and explicit that by s 7, the Board shall not sell or otherwise dispose any part of the land except in circumstances not relevant to the objection. He concludes that in giving a discount in the revaluations of 1999, 2002, 2005, 2008 and 2011, the council rightly took account of this statutory restriction.

[47] Down the years, the Courts have had to deal with challenges to valuations based on particular restrictions or prohibitions on land use, or alienation, whether

deriving from trusteeship, lease arrangements, zoning, or prescribed by statute. For example, *Thomas v Valuer-General* [1918] NZLR 164, *Re an Arbitration Between Auckland Hospital Board and Auckland Rugby League (Inc)* [1966] NZLR 413; *Valuer-General v Trustees of Christchurch Racecourse* HC Christchurch AP233/92, 13 September 1994, Holland J; *Wellington Rugby Union Inc v Valuer-General* HC Wellington M128/83, 25 May 1984, Jefferies J and MacLachlan J; *Valuer-General v Radford Co Ltd* [1993] 3 NZLR 721 and *Diffey v Valuer-General, Land Valuation Tribunal Wellington* LVP 4/94, 8 May 1996.

[48] In the wake of the last two cases, the legislature found it necessary to enact s 21 Rating Valuations Act:

> "**21 Value of land subject to lease**
>
> (1) For the purpose of determining under this Act the capital value or land value or annual value of a rating unit that is subject to a lease,—
>
> (a) regard is to be had to the desirability for rating purposes of preserving uniformity with contemporaneous roll values of comparable parcels of land; and
>
> (b) any lease provisions or circumstances particular to the property concerned that do not reflect the prevailing market conditions at the date of valuation are to be disregarded.
>
> (2) This section applies for the purposes of determining valuations for the purposes of this Act and the Local Government (Rating) Act 2002 only, and is not intended to alter the definitions of the terms capital value and land value in the case of valuations made other than for rating purposes under any other Act or document."

[49] It is notable that not only does the section require that lease provisions or circumstances particular to the property concerned that do not reflect the prevailing market conditions at the date of valuation, be disregarded, but that regard be had to the desirability for rating purposes of preserving uniformity with contemporaneous roll values of comparable parcels of land, something that has long been regarded by valuers and accepted by the Courts as important for rating valuation purposes.

[50] It seems clear that in so doing, the legislature was further underpinning perhaps the prime function and power of the Valuer-General set out in s 4(1)(b) to set minimum quality standards and specifications necessary for the maintenance and

upkeep of the district valuation rolls in the interests of ensuring a nationally consistent, impartial, independent, and equitable rating valuation system. That portion of s 4 echoes what the aim of a valuation of land system in this country has been since 1896, when by s 2 Government Valuation of Land Act 1896, the appointment of a Valuer-General was created, who would, pursuant to ss 4 to 7, have the statutory duty of preparing, maintaining, and revising periodically "to the best of his skill and judgment", a general valuation roll for the colony showing for each property three sets of values; capital value, unimproved value and valuation of improvements. According to s 9, the general valuation roll would be the standard roll on which the valuation rolls of all local authorities rating on the capital value or unimproved value were to be framed.

[51] With this long and consistent legislative backdrop, we must approach any case that arguably calls for variation to standard valuation methodology, with caution.

[52] Counsel have also referred to the decision in *Westpark Marina v Auckland Council* [2012] NZAR 619. There, the appellants were lessees of land that had been reclaimed from the harbour and used as a marina, and for associated purposes. The appellants contended that the ratings valuations should be discounted because the effects of the terms of the lease.

[53] For our purposes, the important conclusions of the case are summarised in paragraphs [3]-[5] of the headnote as follows:

> "Section 21 of the Rating Valuations Act 1998 does not preclude the valuation from taking into account the existence and terms of leases where their terms or existence: (a) make it particularly difficult for the lessor to use or sell the land; or (b) in some other way which constituted a meaningful restriction on the lessor's title.
>
> On the facts, as the highest and best use of the land involved the operation of a marina the leases here were facilitative of the highest and best use and did not prevent it.
>
> The Waitemata City Council (West Harbour Empowering Act) 1979 did impose a constraint on the land but it was one consistent with the highest and best use of the land. The Act did not have a material effect on the value in the absence of any tension between the highest and best use and the statutory constraints on use.

Thomas v Valuer General [1918] NZLR 164 (SC) applied."

[54] The Court considered the provenance of s 21 Ratings Valuation Act, concluding that s 21(1)(a) appeared to be directly responsive to *Valuer-General v Radford Co Ltd* [1993] 3 NZLR 721; and that s 21(i)(b) appeared to be directly responsive to *Diffey v Valuer-General, Land Valuation Tribunal Wellington* LVP 4/94, 8 May 1996.

[55] *Radford* involved a property in central Wellington that was leased on "relatively generous terms" for a considerable term. Despite the lessor being unable easily to evict the lessees and obtain vacant possession of the property for demolition, the parties agreed that the property should be valued as a development site (to its highest and best use). Greig J found himself unable to ignore that the lease over the property, and that the value of the property was to be reduced by the cost of obtaining vacant possession.

[56] *Diffey* involved land that was subject to a long term lease that secured rent well in excess of the market rates. The Tribunal applied the *Radford* decision, saying at page 7:

> "It seems to us artificial for any valuer to look at valuing a leased property on the basis of what it should be earning in rent rather than what it is receiving."

[57] So, s 21(1)(b) was later enacted to allow lease provisions to be ignored if they did not reflect prevailing market conditions.

[58] The Court, in *Westpark* at paragraph [63], mentioned that the "subtleties" of the decision in *Mangatu* could best be understood by considering similar arguments raised in cases before and after *Mangatu*. *Thomas v Valuer-General; Valuer-General v Trustees of the Christchurch Racecourse;* and *Carter Holt Harvey Forest Ltd v Valuer-General* are the cases the Court refers to.

[59] In the *Christchurch Racecourse* case, a reduction in land value was warranted because the requirement to use a significant portion of the land was inconsistent with the highest and best use.

[60] In the *Carter Holt Harvey* case, the strictures created by the Crown Forest Assets Act 1989 meant that some reduction in value of the Crown's interest in the land is appropriate. In *Thomas*, the restrictions on alienation were less stringent than *Mangatu* and that once alienation was authorised, a purchaser would obtain an ordinary freehold title.

[61] At the risk of over simplification, the ultimate question to be asked may be just how difficult are the obstacles in the way of the owner being able to treat the land as ordinary freehold land? In *Carter Holt; Christchurch Racecourse* and *Mangatu,* they are difficult. In *Thomas*, they are not difficult.

[62] We cannot finally say how that question would be answered in respect of the Ngati Whakaue Education Trust Board in this case. The historical analysis of the governance legislation of the Trust Board suggests that the legislature has been responsive to the changing needs of the Trust Board – as it appears to have been with other similar charitable entities. And unlike, for example, the situation that pertains in respect of the Christchurch Racecourse where use other than highest and best use is "locked in", as it were, the land the subject of this objection can be put to its highest and best use.

[63] The 94 properties comprise all the appropriate uses for the area of Rotorua that they occupy, as mentioned earlier from residential to retail to business uses and to hotel accommodation. In other words, uses entirely appropriate to the area. The uses also include a branch of a multinational fastfood outlet.

[64] Mr Dennett reminds us that the situation of his client is unique and we are not being asked to set a precedent. However, a deduction in rating value for a landowner of 94 sections in the CBD of Rotorua, or indeed elsewhere, is likely to have more than a minor effect on how the rating burden is shared in that local community. That being so, there are interests involved that would go well beyond the parties presently before the Tribunal.

[65] We record that we find the situation that has now pertained for five revaluations with discounts being applied to have been wholly regrettable and we

readily understand the dismay on the part of the objector when after 15 years the deduction was peremptorily withdrawn.

[66] However, for the foregoing reasons, we must decline the objection.

C J McGuire
Chairman

K E Parker
Member