Land Information New Zealand
Toitū te whenua

Mangatu Guidance
(Draft for Discussion)

Guidance on the Rating Valuation of Māori Freehold Land

Office of the Valuer-General

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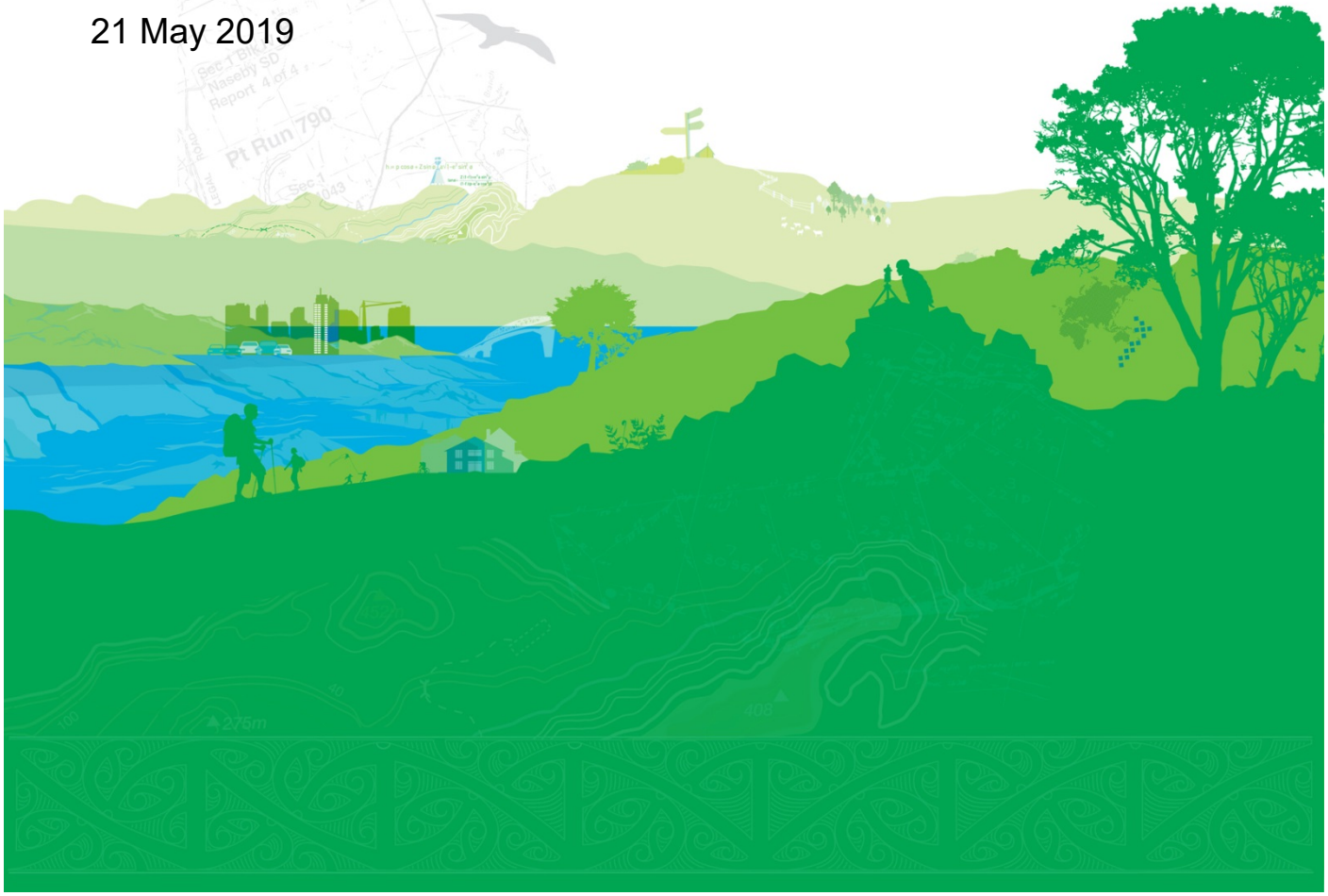

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Introduction

The Valuer-General (VG) is responsible for setting standards, monitoring, and auditing the provision of rating valuations in New Zealand under the Rating Valuations Act 1998. This includes a statutory duty to set minimum standards for a nationally consistent, impartial, independent, and equitable rating valuation system.

From time to time the VG also issues guidelines to assist valuers in undertaking rating valuations. This includes guidelines relating to the rating valuation of Māori Freehold Land (MFL). Guidelines are best practice recommendations - they do not have the effect of law and there is no compulsion dictating their use. However, there is a general expectation they will be used for rating valuation purposes unless there is a documented reason not to.

Mangatu Case Context

Court of Appeal case *Valuer-General v Mangatu Inc, 3 NZLR 1997*.

Background to the case:

The appellants owned rural land which is MFL under the Te Ture Whenua Māori Act 1993 (the 1993 Act). The land is predominantly East Coast hill-country farmland within the catchment basis of the Waipaoa River, extending south to the Wharerata Ranges, north to Tolaga Bay and west to the Ureweras. In addition, there are 300 hectares known as the Awapuni blocks, on the site of a lagoon on the coastal fringe of Poverty Bay and on the south-western outskirts of Gisborne City. This Awapuni land is used for both agricultural and horticultural purposes.

The 1993 Act imposed a number of restrictions on the sale of MFL, and includes a mechanism for potentially lifting the restrictions and converting the land to general land. Pursuant to the Valuation of Land Act 1951 (VLA), the VG (part of the Government Valuation Department at that time) valued the land for rating purposes on the standard applicable to non-MFL available for sale on the open market, without making any deduction for the effect of the 1993 Act. In other words it was valued as if it was general title land.

The VLA defined “Capital Value” and “Unimproved Value” for rating purposes as the sum of the owner's estate or interest in the land. The Land Valuation Tribunal at Gisborne disallowed the appellants' objections to the valuation, deciding that the constraints in the 1993 Act did not constitute a change in definition in the VLA and it could therefore be disregarded in settling the value of the land. It was of the view that where it was possible to sell land without restriction then existing constraints did not affect the value of the land, applying what it considered to be binding authority to that effect in *Thomas v Valuer-General* [1918] NZLR 164.

The appellants appealed against that decision. The essential question in the appeal was whether the 1993 Act diminished the normal valuation of the owner's estate or interest in the land under the VLA.

The Court of Appeal allowed the appeal and ruled that the restrictions on the ability to alienate MFL held under the 1993 Act should be reflected in rating valuations and sent the

objection back to the LVT for further consideration of the rating values in light of the judgment.

The subsequent LVT applied the Court of Appeal decision concerning the Mangatu blocks and took into account the statutory restrictions on the sale for MFL when determining its value.

The original objection had related to 290 properties and it was agreed to make an initial determination and application of the principles outlined in the Court of Appeal decision in relation to two representative properties.

One was Awapuni Moana, a place to which Māori had extensive links and which would in all likelihood never be sold because of its cultural and spiritual significance to the iwi. The other was Mangamaia, which had strong historical links for Te Aitanga-a-Māhaki and had historically been a land base for hundreds of people, and once had several marae on it. It had been leased to Pākehā for several decades and had been developed and returned in the 1940s.

The Tribunal found that it was required to make an assessment in a situation where an agreement to sell had been reached, that is, all substantial requirements for a quorum had been overcome and agreement had been reached either with a person within the preferred class of alienees (PCA), or Māori outside the preferred class, or non-Māori.

It found that the Court of Appeal decision required it to concentrate on the extra time and costs associated with the sales process for MFL when compared to other land (as opposed to any problems with obtaining a quorum to agree to a sale), including the need to notify the PCA and the need to obtain confirmation of the sale from the MLC,

The LVT found that MFL was being sold to some extent on the open market, despite the restrictions of the 1993 Act and on the evidence, the Tribunal concluded that, because of the extra time required and costs incurred around the offer back process for non-PCA sales, valuations of MFL should be discounted between 5 and 15%, depending on the particular circumstances of each block.

Subsequent LVT Decisions that apply the principles identified by the Court of Appeal

1. Farthing v Far North District Council [2003]

Adjustments: No change to original deductions

The objector is one of many owners of two pieces of land situated at Rangihamana Road just south Kaikohe. The land is zoned Rural 1 under the Far North District Plan (transitional) and General Rural under the Far North District Plan.

In its calculation of land value, Quotable Value has deducted from its initial assessment 15% because the land is Māori Land in multiple ownership.

The objector, representing all the owners, submitted that the land is of special significance to the owners. It has been in their possession for over a thousand years. It is their intention that it will remain so forever. In these circumstances to contemplate a "willing seller – willing buyer" is abhorrent. Such a concept strikes at the very heart of Māori tikanga or values. Further, the Treaty of Waitangi accorded the owners free and

undisputed enjoyment of their lands. The objectors consider that taxing the lands breaks that sacred covenant and undertaking.

Conclusion: [14] S 38 (2) Rating Valuations Act 1998 requires that an objector must prove that the valuation objected to is wrong. The objectors have not done this.

2. **Te Whaiti Nui A Toi Trust v Whakatane District Council [2007]**

   Adjustments: Owners 9%; Site of Significance 5%; Other 25%

   The property is owned by the Te Whaiti Nui A Toi Trust and is situated on State Highway 38, approximately 10 kilometres south of Murupara. The surrounding properties comprise mainly a mix of undeveloped land in native bush, National Park and exotic forestry.

   Centred around the effect of a Gazette Notice amounting to an additional limitation of alienability, noting as it does that the land is set apart "as a Māori reservation for the purpose of a landing place and scenic reserve for the common use and benefit of the owners of Te Whaiti Nui A Toi and their descendants."

   Conclusion: that it was not appropriate to apply a full deduction for Reserve in addition to the 5% deduction for sites of special significance. Reserves other than Māori land are often by their very nature set aside on account of particular historical interest.

3. **Ongare Trust Māori Land Block v WBoP DC [2008]**

   Adjustments: Owners and Site of Significance 20%; 50% in respect of 5.2 hectares of land

   The trustees of the Ongare Trust objected to the valuation in respect of a 40.4 hectare or 100 acre block of land at Ongare Point near Katikati. The land is an extremely attractive block close to the Bowentown entrance to Tauranga Harbour, and is a working orchard planted in kiwifruit and avocados.

   This land has some 227 owners, all of whom are known directly or indirectly to one or more of the trustees. The trustees sought to establish that it would be beyond the resources of any of the current owners to purchase a Māori freehold title in the land for a sum in excess of $1,000,000 as their resources were inadequate to do so.

   The decision noted that it must be remembered that the task of the Tribunal is to value the land by reference to a sale to a hypothetical purchaser fully informed as to the history and nature of the land over which the Māori freehold estate exists and also fully informed as to the restrictions inherent in Māori freehold title including restrictions on alienation, the requirement for MLC consent, and the relative paucity of resources that may exist within the preferred class of alienees recognised by the 1993 Act. It is also worth recalling that the onus of proof in rating valuation objections lies on the objector, who must prove the case for revaluation on the balance of probabilities.

   The history of the land was highly relevant. The occurrence of a battle in recent historical times is relatively unusual and highly significant. The land has enormous historical significance to the present owners, each and every one of whom is a direct lineal descendant of the original holder of the Crown grant. Looking at that issue in the context of this particular block of land, the Tribunal was satisfied that a special cultural and

historical significance attached most strongly to the 5.4 hectares of land running between the two identified pa sites along approximately half of the waterfrontage.

4. **Taheke Paengaroa Trust v WBoP DC and Landmass Technology Limited [2008]**

Adjustments: 15%

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

In 1989 Fletcher Challenge obtained the lease, and the Māori Trustee granted a forestry right for a term of 42 years in place of the lease, to provide for two rotations of Pinus Radiata forestry. The land was largely in Pinus Radiata forest, although significant areas remain in native vegetation generally too steep and inaccessible for commercial forestry purposes.

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

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

The major issue affecting the valuation was whether the land should be valued in accordance with the market for forestry land, that being the only commercial use to which this land has ever been put, or whether the land should be valued for its potential to be converted to pasture and use as a dairy support grazing unit. In rating appeals of this nature, it is for the objector to establish on the balance of probabilities that the territorial authority's assessment is wrong.

It was considered that the market evidence established on the balance of probability that the price for forestry land in the mid-North Island suitable for pastoral conversion was from 2003 being driven by the higher prices paid by pastoral farmers wishing to convert forestry land to pastoral farming, to the general exclusion of purchasers wishing to buy and hold such land for purely forestry purposes.

Greater discount applied reflecting additional delays and costs associated with obtaining Māori Land Court consent before any development work, such as conversion from forest to pasture, could begin.

Recent Sales of Māori Freehold Land

It is apparent from our research with registered valuers who work with MFL that few recent sales have occurred. Those that have been analysed indicate a discount in the sale price as the result of the restrictions of the 1993 Act was between the current 5% - 15%. However, the properties that have sold do not have the extent of sites of significance, or areas of

special significance, such as the circumstances prevalent in the LVT decisions outlined earlier in this document.

Valuers commented that the market is now more mature around its understanding of MFL and the fact that the titles are for a freehold interest which in their view has given greater confidence to non-PCA purchasers. The MLC also remains vigilant to ensure that MFL sale prices are reasonably in line with general title market values.

There was a view that non-PCA purchasers generally have quite specific criteria (adjoining other freehold land, productive qualities, scenic views, proximity to coastal or other amenity factors) about the extent of benefits required from MFL to support buying this tenure over general title land.

Proposed Adjustment Analysis

This Guidance Note is limited in scope to the Court of Appeal direction on rating valuation treatment of MFL.

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

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

The Mangatu decision requires the contemplation of a notional sale at general title market levels then make deductions for perceived time delays. This is because any non-Preferred class of alienee (PCA) has to offer the land back and deal with the MLC when they come to on-sell before a sale can be completed.

The final decision of the LVT that was applied following the Court of Appeal decision concerning the Mangatu blocks found that it was required to make an assessment in a situation where an agreement to sell had been reached, that is, all substantial requirements for a quorum etc had been overcome and agreement had been reached either with a person within the PCA, or Māori outside the preferred class, or non Māori.

The LVT further found that the Court of Appeal decision required it to concentrate on the extra costs associated with the sales process for MFL when compared to other land including the need to notify PCA and the need to obtain confirmation of the sale from the MLC.

Whilst MFL seldom actually sells, the Mangatu decision effectively requires the rating valuer to assume each separate MFL rating unit has already sold to a non-PCA and apply value deductions to recognise administrative issues and time delays that would occur if the non-PCA wanted to on sell the land again.

Māori Freehold Land Sales Process

Selling or gifting MFL to anyone outside the PCAor offer back sales from a non-PCA must be confirmed by the MLC and the MLC Rules 2011 set out how proceedings in the Court are dealt with, from making the initial application through to its conclusion.

Before transferring MFL to anyone outside the PCA, or for a non-PCA to on-sell MFL it must be shown that:

1. Sufficient notice has been given to anyone who is a member of the PCA.

2. Rule 11.5 of the Māori Land Court Rules deals with the procedure for notifying preferred classes of alienees as to right of first refusal:
    (1) Where a right of first refusal must be given under section Te Ture Whenua Māori Act 1993 (the Act), an application for confirmation of alienation under rule 11.3 must be referred to a Judge for directions as to—
        (a) a hearing date that will allow sufficient time for notice of the right of first refusal to be given to the preferred classes of alienees; and
        (b) any other matter that is relevant, including directions as to notice.
    (2) For determining whether any preferred alienees wish to exercise their right of first refusal, an applicant for confirmation of alienation under rule 11.3 must—
        (a) give public notice that complies with rule 11.5(3); and
        (b) following publication, without delay file a copy of the notice with the Registrar; and
        (c) comply with any directions that the Court has made in relation to notice.
    (3) The notice required under rule 11.5(2) must—
        (a) be in form 27; and
        (b) be published at least twice at intervals of not less than five working days in a newspaper approved by the Registrar and circulating in the district in which the land is situated; and
        (c) stipulate a date for filing and serving a notice of intention to exercise the right of first refusal that is not less than 15 working days after the date of publication of the second notice (b) any other matter that is relevant, including directions as to notice.
    (4) On receipt of the notice, the Registrar must—
        (a) arrange for the alienation to be notified in the next available Pānui; and
        (b) display a copy of the notice on a noticeboard in the public office of the Court for not less than three months, or until the application for confirmation is heard, if that occurs before three months.
    (5) A preferred alienee who wishes to exercise a right of first refusal must file in the Court and serve on the applicant, within the time fixed by the notice given under this rule, a notice in writing stating—
        (a) that he or she intends to exercise the right of first refusal; and
        (b) his or her full name and contact address.
    (6) The Registrar must give notice of the time, date, and place of the hearing of the application for confirmation to each person who files a notice of intention to exercise the right of first refusal.

3. Evidence that demonstrates that offers have been sought from members of the PCA which have been unsuccessful, any offers received have been declined (not reaching the required price) or no expressions of interest to negotiate a price have been received.

4. There is a conditional agreement to the sell the land from someone outside the PCA.

5. Rule 11.3(b)(iii) requires a special valuation of the land and any improvements on it or of the interest alienated (including, in the case of lease, the fair market rental), unless an application for an exemption from the requirement of a special valuation is made under rule 11.4, which states:

(1) An application for an exemption from the requirement under section 158 of the Act of providing a special valuation must be—
    (a) in form 26; and
    (b) accompanied by a current roll valuation in respect of the land or interest alienated or other evidence of the current value of the land or interest alienated that is acceptable to the Court.

6. Pay the prescribed application fee.

Discussions with Māori Freehold Land Owners, Valuers and Councils

Discussion with owners of MFL and valuers indicates that once there are more than 100 PCAs, the notification and approval for the process is similar for 100 PCAs as for 1000. Therefore, a common discount of 10% should apply for over 100 PCAs. The VG considers that this assessment is reasonable and on this basis the discount for multiple numbers of PCA should be altered to allow 10% on all properties with over 100 PCAs. As a result the discount adjustment thresholds where the numbers of PCAs is less than 100 would also be reconsidered and incremental steps of 2% are proposed from a starting point of 4% for less than 20, through 6% for less than 50 and 8% for less than 100 (see summary table on page nine).

There was also a view that there should be a standard administrative cost adjustment of between $5,000 to $10,000 for any parcel of MFL before consideration of additional discounts, due to the current allowances for number of PCA and sites of significance.

Variations in administration costs between different parcels of MFL are hard to quantify. In the interest of creating an easily applied factor for all MFL the VG proposes a new, initial $7,000 lump sum discount for all properties in addition to the existing percentage discounts. This lump sum is intended as a proxy for Māori Land Court charges, valuation and legal fees and is designed to allow for upfront administrative costs associated with any parcel of MFL. It is proposed this amount will be reviewed biennially.

The application of additional percentage factors for the number of PCA and sites of significance will increase the quantum of adjustments for larger, more valuable land with more PCAs where the costs and time delays could be more significant.

A recent survey of Councils with significant MFL rating units indicated general support for any new adjustments to increase the range and effect of the guideline discounts.

Summary of Proposed Adjustments

Prior to application of any MFL adjustments, the first requirement is for the land to be assessed as general land based on market evidence and reflecting relevant planning provisions as well as physical and locational aspects, both positive and negative. Allowances need to be made in the general land valuation for factors such as the impact of district plan designations (specific use restrictions which prevent part or all of the land being used in accordance with general zoning provisions), access difficulties especially for landlocked situations, contour challenges and subdivision restrictions arising from the 1993 Act.

The general land value becomes the basis on which the MFL adjustments are applied:

- A uniform, lump sum deduction for all MFL rating units of $7,000 to reflect a standard, base administrative cost incurred to comply with the MLC rules when fulfilling offer back obligations to the PCA

- Application of revised percentage discount adjustments as below - to take into account the number of people within the PCA and a further additional discount for sites of special significance; noting here that in many cases the existence of a site of special significance may have influenced the starting value as general land.

Initial discount for multiple numbers of PCA

Number of PCAs	Discount
Under 10	3.5%
Under 25	4.0%
Under 50	6.0%
Under 100	8.0%
Over 100	10.0%

Additional discount for special significance sites

Special significance of specific sites	Discount
Pā site	1.50%
Urupā	1.50%
Rūnanga sites	1.50%
Whawhai sites	1.50%
Indigenous Forest	1.50%
Kainga	.50%
Access trails	.50%
Garden sites	.50%
Kai Moana sites	.50%
Other Wāhi Tapu sites	.50%
Maximum	**5.00%**

Minimum Value Criteria

There will be some instances where application of the adjustment factors could result in a zero or negative value. This would run contrary to the view that all land has some value and for the purposes of this rating valuation guideline it is proposed that a minimum value criterion of $100 per rating unit is reasonable. If the initial general title value of the rating unit is less than $100 then this amount should be adopted.

Working example for proposed MFL Adjustment

Area	3.1717 hectares
Number of Owners	71
Site of Significance	Yes
Unadjusted Capital Value (CV)	$75,000
Unadjusted Land Value (LV)	$75,000

Current MFL guidance Adjustment		
Unadjusted CV		$75,000
Unadjusted LV		$75,000
Owners Adjustment	6.0%	
Sites of Significance	1.5%	
Adjusted CV		$69,000
Adjusted LV		$69,000

Proposed MFL guidance Adjustment		
Unadjusted CV		$75,000
Unadjusted LV		$75,000
Lump Sum Adjustment	$7,000	
Sub Total		$68,000
PCA Adjustment	8.0%	
Sites of Significance	1.5%	
Adjusted CV		$61,500
Adjusted LV		$61,500

The proposed guidance calculation deducts the lump sum from the unadjusted or "starting" capital and land value with the percentage adjustments being calculated on this subtotal. Improvement values may reduce to zero in some circumstances and a floor has been introduced into the guidance. For example:

Unadjusted Capital Value	$7,000
Unadjusted Land Value	$1,000
Unadjusted Improvements	$6,000
Less MFL Adjustments	*$7,500*
Adjusted Capital Value	$100
Adjusted Land Value	$100
Adjusted Improvements	0