

VALUERS REGISTRATION BOARD**Valuer T I20101 NZVRB 7****IN THE MATTER OF**An Inquiry under Section 32(2) of the
Valuers Act 1948**AND****IN THE MATTER OF**A Charge under Section 31(1)(c) of the
Valuers Act 1948 against Valuer T,
registered valuer.**BOARD OF INQUIRY:**PA Curnow (Inquiry Chairperson)
MEL Gamby
HJ Puketapu**COUNSEL:**J A L Oliver for the Valuer General
M E Parker for Valuer T**DATE OF HEARING:**

8 June 2009

DATE OF DECISION:

8 June 2009

WRITTEN DECISION:

27 May 2010

THE COMPLAINT

On the 14 March 2007 the complainant wrote to the Registrar of the Valuers Registration Board with two concerns in regard to a valuation by Valuer T. The first of the matters raised by the complainant was in regard to valuation fees. The second concern was in connection with the report carried out in August 2006 of \$3,800,000. The complainant said this valuation is apparently \$500,000 less than the original valuation although a date for this valuation report was not advised. A subsequent report dated 9 March 2007 valued the property at \$3,350,000.

This was at a time the complainant stated, when Quotable Value was saying that there was growth of 5.7% in property values.

THE PROPERTY

A mixed grazing and cropping farm in five titles. There is a homestead, full range of farm buildings, associated other improvements such as water supply, stock and subdivision fencing. The land has mixed contour from flat to easy sloping and some steep hill land.

INVESTIGATION

Although the original complaint raised concern about the drop in values between Valuer T's reports of August 2006 at \$3,800,000 and March 2007 of \$3,350,000, the investigation proceeded only in respect of the August 2006 figure.

The Valuer General obtained two retrospective valuations as at the 17 August 2006. Each valuer was instructed to use only such sales and rental evidence as would be available through normal avenues to a valuer in practise at that time. A description extract from Valuer T's valuation report was provided to each valuer to assist with determination of condition of the property at 17 August 2006. The first valuation provided was by Valuer 1. Valuer 1 was instructed to provide a valuation for financial reporting purposes with mortgage recommendation. Valuer 1 valued the property as follows:

Value of Improvements	\$650,000
Land Value	\$2,300,000
Capital Value	\$2,950,000 Plus GST (if any)

Valuer 1 made a mortgage recommendation under the provisions of the Trustee Amendment Act 1988 and Securities Act 1988 Regulations for a first mortgage advance of \$1,770,000, being 60% of his capital value. Valuer 1 made further comment that he assumed that the mortgagee is satisfied as to the applicants ability to service the quantum of the loan certified.

The second retrospective valuation obtained by the Valuer General was from Valuer 2, who was instructed on the same basis as Valuer 1.

Valuer 2 valued the property as follows;

Value of Improvements	\$ 430,000
Land Value	\$ 2,560,000
Chattels	\$10,000
Capital Value	\$3,000,000

GST should be added (if applicable).

Valuer 2 made a mortgage recommendation in two parts. He stated that the property would not be self-supporting unless off farm income was available to support any significant levels of debt. As no

budgets were requested, Valuer 2 had not provided one. Unless other income were to be available, Valuer 2 would not recommend any loans in excess of \$1,000,000. Valuer 2 further stated in his report that as standard practice he advises that the property is suitable for a first mortgage advance of up to \$1,995,000, being two thirds of the value excluding chattels under the provision of the Trustee Amendment Act 1988, and Securities Act 1988 Regulations.

The two retrospective valuations were compared to that of Valuer T and the following variations in total value were noted:

Valuer	Valuation	Comparisons
Valuer T	\$3,800,000	28.81% above Valuer 1 26.66% above Valuer 2
Valuer 1	\$2,950,000	22.37% below Valuer T
Valuer 2	\$3,000,000	21.05% below Valuer T

With these differences in value between the retrospective valuations and Valuer T's August 2006 report, the complaint was referred to an inquiry.

THE CHARGE

"Section (1)(c) of the Valuers Act 1948:

That you have been guilty of such incompetent conduct in the performance of your duties as a valuer as renders you liable to a penalty provided by the Valuers Act 1948 in that in compiling a valuation report dated 29 August 2006, you grossly over-valued the said property. "

THE HEARING

The hearing was originally set down for 6 April 2009. Valuer T upon being advised of the inquiry board members stated an objection to Mr Kenneth Taylor sitting. The inquiry board was altered to accommodate Valuer T and the hearing took place in Wellington on the 8 June 2009.

Valuer T denied the charge of gross overvaluation.

Evidence was tendered of Valuer T being a registered valuer and having an Annual Practising Certificate at the time of the August 2006 valuation.

Mr Oliver, Counsel for the prosecution, called two witnesses. These being the two valuers, Valuer 1 and Valuer 2

First Witness – Valuer 1

Valuer 1 stated that the majority of his working life, 26 years, he has been valuing in the local area, that he had considerable experience in the valuation of a wide range of property types and has appeared as a witness before the Land Valuation Tribunal and has acted as an Umpire in arbitrations.

Valuer 1 stated that he valued the subject property together with an adjoining property in January 2007. He provided a valuation report in response to instructions from Company 1. This company has the same postal address as the complainant.

Subsequently, in March 2007, Valuer 1 was asked to provide a current market value of just the subject property. The effective date of this valuation being the date of the original inspection, 9 January 2007.

This valuation of \$3,250,000 allocated as follows:

Value of Buildings	\$325,000
Value of other improvements & fencing	\$325,000
Value of Land	\$2,600,000
Capital Value	\$3,250,000

Valuer 1, in considering the property, had regard both to the value as a single holding and with five separate titles. It is useful to outline both his approaches as there is relevance when comparing with the valuation report instructed by the Valuer General.

As a large single holding in the March 2007 report Valuer 1 had the following land assessment:

Fully irrigated paddock land	25 hectares @ \$20,000 per ha	\$500,000
Dry and part irrigated paddocks	93 hectares @ \$13,5000 per ha	\$1,255,000
Total = 118 hectares		

Light terrace and sideling	47 hectares @ \$10,000	\$470,000
Steep hill	46 hectares @ \$3,750	\$172,000
Area occupied by dam & races	10 hectares @ \$2,000	\$20,000
Total value \$2,417,00		

On the basis of individual titles but with "no assurance of obtaining Resource Consent for a building platform or construction of a dwelling", Valuer 1 had the following valuation:

Area	Value	Rate
Title A	\$200,000	\$12,200 per hectare
Title B	\$1,400,000	\$20,600 per hectare
Title C	\$250,000	\$53,700 per hectare
Title D	\$1,600,000	\$12,400 per hectare
Title E	\$25,000	\$7,600 per hectare
Less allowance for bulk holding - 20%	\$3,325,000 \$665,000	
Indicated total land value	\$2,660,000	

Valuer 1 went on to further state "*From the above two approaches and acknowledging a premium of some 10% for the separate titles we conclude that the land value of the property is appropriately assessed at \$2,600,000*"

Although not exposed under cross examination, Valuer 1 has made an arithmetic error. The total before allowing bulk holding is actually \$3,475,000. A 20% bulk holding allowance would reduce this figure to \$2,780,000.

Valuer 1's retrospective valuation of the land component as at 17 August 2006 was as follows;

1. As a single large holding

Area	Rate	Value
Fully irrigated paddock land	21 hectares@ \$20,000 per ha	\$420,000
Lucerne	11 hectares@ \$14,000 per ha	\$154,000
Dry and part irrigated paddocks	80 hectares @ \$12,500 per ha	\$1,000,000
Light terrace and sideling	30 hectares @ \$30,000 per ha	\$240,000
Steep hill	67 hectares @ \$40,000 per ha	\$268,000
Are occupied by dams and races	12 hectares@ \$1,000 per ha	\$12,000
Indicated Total Land Value		\$2,094,000

2. As separately saleable titles but again "no assurance of obtaining a Resource Consent for a building platform for a dwelling", the value of the individual titles are as follows;

Area	Value	Rate
Title A	\$200,000	\$12,200 per hectare
Title B	\$1,200,000	\$17,650 per hectare
Title C	\$150,000	\$32,200 per hectare
Title D	\$1,350,000	\$10,500 per hectare
Title E	\$10,000	\$4,550 per hectare
Total	\$2,910,000	
Less allowance for bulk holding - 20%	\$580,000	
Indicated total land value	\$2,332,000	

Valuer 1 went on to state "*from the above two approaches and acknowledging a premium of some 10% for the separate title I conclude that the land value of the property is appropriately assessed at \$2,300,000 or average of \$10,407 per hectare*"

In comparing Valuer 1's two reports, Mr Parker, Counsel for the defence, raised a notable point. This being the area difference between the different classes of land in the two reports. These area differences including Valuer T's land classification are shown in the following table.

Land description	Valuation as at 9/1/07	Retrospective Valuation 17/8/06	Valuer T report
Fully irrigated paddock land	25ha	21ha	21.1ha
Dry & part irrigated paddocks	93ha	80ha	100.9ha
Light terrace and sideling	41ha	30ha	
Steep hill	46ha	67ha	67.4ha
Area occupied by dam and races	10ha	12ha	12.4ha
Lucerne		11ha	11.3ha
Lanes, Yards and Shelter Belts			8ha
Total	221hs	221ha	221.1ha

Valuer 1's response was:

"I reviewed my assessment of the individual areas. I had been supplied with Valuer T's figures of areas. I had regard to Valuer T's opinion of area, I respect their opinion"

Valuer 1 went on to state that it did not suggest that his previous report was unacceptable as was suggested by Mr Parker.

"You will find different judgement on valuers opinions" said Valuer 1.

Mr Parker went on to state that from a lay person perspective you have made substantial changes. In response to whether the land changed, Valuer 1 said *"No it did not change"* Valuer 1 had not attempted to quantify the 11 hectares of Lucerne in the earlier report. *"11 hectares is a small part of the property"* Valuer 1 commented.

Valuer 1 was questioned with respect to the calculation of a number of the area assessments and Valuer 1 stated it was *"difficult to be precise with these areas"*

Valuer 1 was closely cross-examined by Mr Parker on almost all aspects of his report.

Valuer 1 had included in his retrospective report the rating valuation as at July 2005

This was split up as follows:

Improvements Value	\$400,000
Land Value	\$4,100,000

Capital Value	\$4,500,000
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Valuer 1 said that these valuations did not always involve an inspection of the property. Mr Parker stated that someone did actively inspect the property for the rating valuation and that it was signed off by a registered valuer. Valuer 1 was unable to provide any opinion to the contrary.

In answer to Mr Parker's question on the market between 2005 and 2007, Valuer 1 stated that in 2005 the market had been through a period of tremendous buoyancy. Prices were not levelling off and had not done so until mid-2006. Then prices started to increase until late 2007. The market then plateaued but without a falloff in values. *"Prices had not gone down"* Valuer 1 said.

Mr Parker pointed out that Valuer 1's 2007 valuation was a 38% drop against the July 2005 rating valuation of \$4,500,000 whilst his August 2006 valuation was a 52.5% drop against the rating valuation. This being against the market trend that Valuer 1 had described.

"I cannot answer for the values a different person put on a property" responded Valuer 1.

Valuer 1 went on to say, *"I don't accept that the other valuation makes the August 2006 valuation low' It sold late 2005 for \$2.8 million"*

To put Mr Parker's percentages into perspective we provide the following calculation;

Rating Valuation	\$4,500,000
Valuer 1 2007	\$3,250,000
Difference	\$1,250,000

This equates to the Valuer 1 valuation being 27.77% below the rating valuation.

Likewise, the Valuer 1 2006 report at \$2,950,000 is \$1,550,000 below the rating valuation, this being a difference to the rating valuation of 34.44%.

The percentages differ when either the rating valuation or Valuer 1's valuations are taken as the base line and the variation in values compared.

Valuer 1 provided in his retrospective report a number of sales. These were broken up into various categories comprising;

- Larger rural blocks
- Lifestyle sections - up to 20 hectares
- Rural residential lots - 4,000m² to 2 hectares
- Older sales of rural land in the wider area.

Upon questioning of why the smaller land sales were included, Valuer 1 advised that he had utilised these when trying to address the value the individual titles might have.

Valuer 1 was questioned by Mr Parker on the sale of an adjacent property, being referred to as the "A" property that sold in July 2006. Valuer 1 had not included this sale as it was not a confirmed sale.

Upon questioning Valuer 1 was not able to give details of the "B" sale in October 2004 for as he did not know the areas. Valuer 1 said this did affect his ability to analyse this sale.

With respect to the “C” sale of April 2005, Valuer 1 said that you would need to remove some pine trees to plant grapes and the cost to remove the trees could be quite substantial. However, Valuer 1 did not factor this in but said the trees could be a plus or minus factor.

When Valuer 1 was questioned on why the sales evidence appeared to fit within the range of \$27,000 per hectare to \$36,000 per hectare and his valuation was at a much lesser level, Valuer 1 said that per hectare rates diminish as the land holding size increases.

When asked why Valuer 1’s best land was at \$20,000 per hectare and not closer to the sales, he replied *“because it is a large block. It has a certain capability. I split up that land between the different classes”*.

When asked where the 20% bulk holding allowance came from Valuer 1 replied, *“It is my judgement as to the discount for someone buying them as a total”* When asked which sales he could point to provide that discount, Valuer 1 replied *“I cannot”*.

Valuer 1 said it takes into account what profit someone would take out of it, which is ordinarily 25% - 35% but there was no practice note or guidance from his Institute.

Valuer 1 said that it was based on his experience, not evidence.

Valuer 1 was asked whether his retrospective valuation in 2006 has to line up with his 2007 valuation. Valuer 1 replied *“yes, however it is my 2007 report I have to defend as it turns out”*

Valuer 1 answered questions from the Board members regarding the sales and also the carrying capacity of the property utilising the measure of stock units.

Upon questions of what the stock units mean for the subject property, Valuer 1 was of the view that no rural property sells for what is an economic value and that the stock units don't really mean much for this particular property.

Valuer 1 had analysed his value based on 2,000 stock units carrying capacity to be at a rate of \$1,475 per stock unit.

When questioned in relation to the “D” Sale in July 2004, Valuer 1 said this was sold from a farmer to an adjoining farmer where there was significant locality value and ability to pay more than \$1,000 per stock unit.

The Board of Inquiry gained the impression that Valuer 1 was very honest in his views, however he had no satisfactory explanation to link his sales with the farmland figures that he put on the various classes of property.

Valuer 1 appeared to have difficulty in explaining the different land areas used in his August 2006 retrospective valuation report versus his March 2007 report.

The inquiry may have been assisted more by Valuer 1 providing his own assessment of the areas and then making a direct comparison referencing Valuer T’s areas. The adoption of Valuer T’s areas as effectively Valuer 1’s own area classification gave rise to many of the questions in this respect.

Valuer 1 in saying that some of the land classification changes were just a different way of remeasuring the area were not a sufficient explanation. It was clear Valuer 1 deferred to Valuer T’s areas.

The Board of Inquiry had some sympathy with Mr Parker's comment to Valuer 1, that if it was difficult to link the sales with the property, why did the valuer not say this rather than leave a potential credibility doubt with his final answer.

The bulk allowance provided by Valuer 1 had no basis other than his own opinion. Valuer 1 could not say what was profit, what was real estate expenses, interest on holding costs or any of these factors. Valuer 1 said there was no market evidence. Valuer 1 could have made reference to examples of legal decisions where market evidence is not available and that reference to Court decisions can be made in these instances.

Second Witness – Valuer 2

Valuer 2 stated that although now living elsewhere the majority of his working life has been spent operating out of the subject area. Valuer 2 stated that in the course of his career he has provided a wide range of rural valuations, been involved in numerous valuations for farm purchases and leases and has been involved in the valuation of orchard country. He has also appeared as an Expert Witness in a number of Court cases, arbitrations, planning hearings and various tribunals.

Valuer 2's retrospective valuation as at 17 August 2006 was \$3,000,000, allocated as follows;

Land (221.1ha)	\$2,560,000 (\$11,578.50 per ha)
Improvements	\$430,000
Chattels	\$10,000
Total	\$3,000,000 (\$13,568.50 per ha)

GST should be added (if applicable)

The land value allocation being as follows:

Notional house site and laws (0.4ha) say		= \$60,000
Irrigated (a) Border dyke	10ha @ \$16,000/ha	= \$160,000
(b) Wild flooded	12ha @ \$13,000/ha	= \$156,000
Top Terrace	19.9ha @ \$10,500/ha	= \$208,950
Balance of flats in reasonable pasture		
	92.7ha @ \$10,500/ha	= \$937,350
<i>(Arithmetic error by Valuer 2 not revealed under cross examination)</i>		
Corrected figure	92.7ha @ \$10,500/ha	= \$973,350
<i>This does not alter Valuer 2's valuation</i>		
Total usable flats	134.6 ha (\$11,131.50/ha)	= \$1,498,300
Terrace face	15.5ha @ \$5,000/ha	= \$77,500
Dams/ponds	2.1ha @ \$3,000/ha	= \$6,300
Hill	68.5ha @ \$3,750/ha	= \$256,875
	81.6ha (\$3,954.70/ha)	= \$340,675
	211.1ha (\$8,588.76/ha)	= \$1,898,975

Subdivision potential 35% premium	= \$664,641
Total	= \$2,563,616
Total Land Valuer – say	= \$2,560,000

Valuer 2 included in his report details of the land utilisation, fertiliser and lime, applications, stocking and production taken from Valuer T's report.

Valuer 2 also noted that the property was in reality a very large lifestyle block rather than a farm unless it was to be amalgamated with another farmland within the district.

Valuer 2 stated that the subject property had so many different aspects with contour and irrigability that it did become somewhat difficult to try to allocate a value for the different land classes. In addition, there was the potential for some subdivision which would reduce even more the added value of the improvements.

In his valuation Valuer 2 determined the value for the property as farmland and decided that a premium somewhere between 20% and 50% would apply to that value for potential resurvey and subdivision. He chose an intermediate figure of 35% as a premium over and above what would be recognised as what would be reasonable farm value.

Mr Parker asked Valuer 2 what was going on in the market between November 2005 and August 2006. Valuer 2 said it was dubious whether it was going up or down although it was becoming harder to sell property.

Valuer 2 pointed out that the subject area can have its own dynamic.

Mr Parker pointed out that Valuer 2's resource management/zoning section was an error, and in fact the zoning had changed in the late 1990s. Valuer 2 accepted this was an error.

Valuer 2 accepted Mr Parker's contention that the rating value is used by members of the public.

Valuer 2 also advised that he has been involved in the subject locality carrying out valuations although he retired in November 2008. We note Valuer 2's report was dated 14 August 2008.

Valuer 2 stated he was dubious of the sales of the subject property and the adjoining "A" sale. He admitted it did have some relevance and was probably in the real estate statistics, as conditional, but this can record agreements that eventually fall through. Valuer 2 had found the "A" sale through the real estate statistics.

Valuer 2 thought the background to the property from Valuer T's report was important as Valuer T had had the figures from the previous owner.

Valuer 2 stated that the subject property was a real mixture.

In connection with the sales, Valuer 2 stated that most sales are in the \$20,000 per hectare and up to \$30,000 per hectare range but were all smaller blocks.

Valuer 2 went on to state that this is an area "*that anything goes*". It is one of the few areas in the country where values were increasing. Valuer 2 said that the increasing prices in more affluent local areas was spreading out into the subject area.

When asked by Mr Parker whether there could be a range that valuers could ascribe to in this area, Valuer 2 answered "*could be, yes*"

Valuer 2 said he went through all the real estate sales statistics to get information. He further said that if he wasn't preparing a report regarding Valuer T's valuation, he would have seen them for information.

Valuer 2 further went on to comment that he had made contact with Valuer 1 to see if he had any sales.

In relation to his sales evidence, Valuer 2 said that he had looked at all the sales, had taken photographs, but unfortunately, he was unable to retrieve the file from his previous workplace.

From the inquiry perspective this disadvantaged both Valuer 2 and the inquiry. All valuers appearing as witnesses are asked to bring all relevant documents to the hearing.

When asked by Mr Parker about the "E" sale in January 2006, Valuer 2 said that it had sold to Company 2 with potential for gravel. Valuer 2 said the property was mostly in pine trees.

Mr Parker entered Exhibit 2, being a Google Earth aerial photograph. This showed that there were only trees down most of the frontage and a further stand of trees running diagonally through the block. In fact most of the block would appear to have been an open paddock.

The Board asked Valuer 2 a range of questions. Responding to Mr Puketapu regarding sales evidence, Valuer 2 stated that he did have sales but had also asked Valuer 1 what sales he was aware of.

Valuer 2 confirmed that he thought the property should be worth around \$3,000,000 but that he didn't have any specific reason why the \$11,500 per hectare was arrived at, this being his overall land value. Valuer 2 said that stock units only provide some form of guide.

Mr Gamby asked where the 20% - 50% premium came from and was it a difficult one to determine. Valuer 2 answered "*yes it is*"

Valuer 2 stated in response to a question from Mr Gamby that the subject property sale of \$2.8m may well have influenced the valuation of \$3m. When asked by Mr Gamby if the sale had been \$3.5m would it have made some difference, Valuer 2 responded "*it may have done*"

Mr Gamby asked whether another valuer may come up with a range of 50% to 80% as a premium as compared to the 20% - 50% used by Valuer 2, he replied "*Yes they could*"

Valuer 2 stated that he was not aware that Valuer 1 had valued this land. "*I don't remember whether he said he had valued this property - I don't remember*"

Valuer 1 stated that the "B" sale in October 2004, was one of the most relevant sales. The other relevant sale was the "A", but he did not know if this had fallen through.

The Board of Inquiry had some difficulty in accepting Valuer 2's position that he was unable to produce his original file including photographs which would have been helpful to clarify some matters. This especially in connection with having stated he had inspected all of the sales and taken photographs.

The Google Earth aerial photograph of the "B" was an example of where Valuer 2's evidence differed from what was physically on the ground.

Valuer 2 did give a useful explanation to the inquiry about the difficulty of valuing without good comparable sales but unfortunately did not give this type of explanation in his report.

A more forthright view from both valuers as to how the sales link with their valuation would have been of assistance to the inquiry.

APPLICATION TO DISMISS CASE

At the conclusion of Valuer 2's evidence Mr Parker made an application to dismiss the case. He said that there had been contact between the two valuers carrying out the retrospective valuations and there was potential contamination of evidence.

Mr Parker further said there was no cogent evidence of Valuer T grossly over valuing the property.

Mr Oliver, in response, stated he hadn't known of Valuer 2 contacting Valuer 1. He had however thought that the evidence provided was sufficient to prove overvaluation. Mr Oliver did raise the fact that potential contamination of evidence in a past inquiry did result in the case being dismissed.

BOARD DECISION

The Board retired to consider the application to dismiss the charge. After considering the matter the Board provided an oral decision.

The Board stated that they did not believe that the prosecution had proved its case to a sufficient level for the matter to proceed further.

Additionally, contact between Valuer 2 and Valuer 1 for any available evidence is a concern. Valuer 2 couldn't state whether or not Valuer 1 had said he had valued the property. Valuer 2 had said "*I don't remember*"

The Board's decision, notwithstanding not having heard from Valuer T, was to dismiss the case.

The Board confirms its oral decision.

Philip Curnow

Inquiry Chairperson