



## ANALYSIS

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1989, No. 7—*Local***An Act—**

- (a) To validate certain rates and charges and other rating arrangements purportedly made by the Kapiti Borough Council; and**
- (b) To empower the Kapiti Borough Council to prepare and implement an urban farm-land roll**

[27 November 1989]

**WHEREAS—***Lump Sum Contributions*

(1) At a meeting held on the 18th day of February 1987 the Council resolved to adopt the recommendations contained in a report of a meeting of the Financial Review Committee of the Council held on the 28th day of January 1987, and thereby approved a scheme to allow ratepayers to make contributions towards the repayment of certain water and sewerage loans (hereinafter referred to as the lump sum contribution scheme); and

(2) Certain details of the lump sum contribution scheme were circulated to certain ratepayers of the Borough of Kapiti by memorandum in April 1987 and April 1988; and

(3) Purportedly in reliance on the lump sum contribution scheme, certain payments have been made to the Council, which payments have been or are to be applied by it in repayment of principal of certain water and sewerage loans; and

(4) The lump sum contribution scheme and the manner in which it was implemented are not authorised under the Local Government Act 1974 or under any other enactment; and

(5) It is desirable that all payments made and all money received and applied by the Council under the lump sum contribution scheme be validated, and that special provision be made for the continuation of the scheme; and

#### *1987-1988 Rates*

(6) At a meeting held on the 18th day of March 1987 the Council resolved to make and levy the rates, charges, discounts, and additional charges specified in the resolution for the year ending with the 31st day of March 1988; and

(7) Certain of those rates and charges, namely, the uniform annual charges in respect of the Paraparaumu water supply, the Paraparaumu sewerage system, and the coastal protection loan repayments, were not authorised by any enactment in force at the time the rates and charges were made; and

(8) The resolution of the 18th day of March 1987 purported to allow a discount on the total rates for the 1987-1988 year of 5 percent, 4 percent, or 3 percent upon payment of the total rates in full on or before the 30th day of April 1987, the 30th day of June 1987, or the 28th day of August 1987 respectively; and

(9) The dates before which payment was required to be made to qualify for discount were before the due dates for certain of the instalments and therefore the discounts were not authorised by section 70 of the Rating Act 1967; and

(10) In reliance upon the resolution of the 18th day of March 1987, the Council has made, levied, and collected some of the uniform annual charges and has allowed the discounts; and

(11) It is desirable that the uniform annual charges made, levied, and collected and the discounts allowed by the Council for the year ending with the 31st day of March 1988 be validated; and

*1988-1989 Rates*

(12) At a meeting held on the 17th day of February 1988 the Council resolved to give public notice of its intention to make and levy rates, charges, discounts, and additional charges specified in the resolution for the year ending with the 31st day of March 1989; and

(13) Public notice of the Council's intention to make and levy the rates and charges was given in the *Kapiti Observer* on the 14th day of March 1988; and

(14) At its meeting on the 23rd day of March 1988 the Council resolved to make and levy the rates and charges; and

(15) The resolutions and the public notice were purportedly made under the authority of, amongst other Acts, the Rating Powers Act 1987 and include references to provisions in the Rating Powers Act 1987; and

(16) All references in the resolution and in the public notice to the Rating Powers Act 1987 and to provisions in the Rating Powers Act 1987 should be to the Rating Act 1967 and to provisions in the Rating Act 1967 respectively; and

(17) Certain charges, discounts, and additional charges were not authorised by any enactment in force at the time they were made, namely, the uniform annual charges in respect of the Paraparaumu water supply, the Paraparaumu sewerage system, Paraparaumu stormwater, and for coastal protection loan repayments, the discount on rates, and the additional charge on rates; and

(18) All the rates and charges not authorised under existing legislation are not lawfully made and all other rates and charges may not have been lawfully made; and

(19) It is desirable that the rating resolutions, the rates assessments issued in reliance on the resolutions, and the rates and charges made, levied, and collected by the Council for the year ending on the 31st day of March 1989 be validated; and

*1989-1990 Instalments*

(20) Since the close of the year ending with the 31st day of March 1989, the Council has levied instalments of rates under the authority of section 153 of the Rating Powers Act 1988, assessed by reference to the last instalment levied in respect of each property in the 1988-1989 year; and

(21) The rates on which such instalments were based at the time the instalments were levied, and the assessments by which the instalments were levied, did not comply in all respects with the requirements of the Rating Powers Act 1988; and

(22) It is desirable that the levying and collection of the amounts specified in those assessments be validated; and

*Coastal Protection Loan Repayment Charges*

(23) The Council undertook the construction of continuous lengths of protective seawall at Raumati South and at Paekakariki after a severe storm in September 1976 caused major damage to beach front properties; and

(24) Before construction work commenced the Council obtained from Raumati South property owners with beach frontages to be protected by the seawall, undertakings to contribute to the costs of construction; and

(25) When construction of the seawall was completed, the Council reached agreement with a committee representing Raumati South beach front property owners, on various matters including—

(a) The total cost of construction to be recovered, adjusted to take account of subsidies received from the National Water and Soil Conservation Authority:

(b) The total cost expressed as a dollar value per metre of seawall constructed, to be paid in respect of each property protected by the seawall in proportion to the number of metres of beach frontage of that property:

(c) That payment could be made either in total before the 31st day of March 1980 at the rate of \$100.06 per metre of frontage or by annual payment at the rate of \$13.39 per metre of frontage per year for 15 years:

(d) That property owners making the annual payment could at any time within the 15 years repay the balance of the costs outstanding in respect of their property as at the time of repayment; and

(26) Initially property owners received invoices from the Council for the amounts owing in terms of the agreement and elections made under the agreement, but, at the request of property owners, the Council decided to include the amounts owing on rates assessments for the year ending with the 31st day of March 1982 and for subsequent years; and

(27) In the Council rates resolution for the year ending with the 31st day of March 1982 and in each year's rates resolutions since, provision has been made for the annual payment under the heading coastal protection loan repayment charge at the rate of \$13.39 (since 1986-1987 adjusted to take account of goods and services tax) per metre of property frontage protected on every property within the Raumati coastal protection special rating area, except for those properties where the liability in respect of the protection afforded by the seawall had been met, and assessments of the coastal protection charge have been included on rates assessments; and

(28) The making, levying, and collection of the coastal protection charge as a rate is not authorised under the Rating Act 1967 or any other legislation; and

(29) It is desirable that the making, levying, and collection of the coastal protection charge and any discount or additional charges in respect of the coastal protection charge be validated and that alternative provision be made for its collection in future; and

#### *Urban Farm-land Roll*

(30) The Council was required, pursuant to section 134 of the Rating Act 1967, to make a new farm-land roll for the Borough of Kapiti to come into force on the 1st day of April 1988, when a new valuation roll for the urban district of the Borough came into force; and

(31) The Council had not made a new farm-land roll as at the 29th day of June 1988 when Part X of the Rating Powers Act 1988 came into force; and

(32) Had a farm-land roll been in force at the commencement of the Rating Powers Act 1988 it would have continued in force in terms of section 169 of that Act; and

(33) There is doubt whether, with the commencement of the Rating Powers Act 1988, the Council now has authority to make a farm-land roll; and

(34) The Council has received requests from ratepayers for a farm-land roll and desires to make and implement such a roll:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

**1. Short Title**—This Act may be cited as the Kapiti Borough Council (Rates and Charges Validation and Empowering) Act 1989.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Annual charges”, in respect of any loan, means the amount payable each year (whether annually or at shorter intervals) by the Council in respect of interest on the loan and sinking fund contributions or instalments of principal:

“Area of benefit” means the water rating area as shown on Water Series Plan Number 16 of the Kapiti Borough Council:

“Coastal protection charge” means the charge included in the Council’s rates resolution for the year ending with the 31st day of March 1982 and in each year’s rates resolutions since under the heading coastal protection loan repayments charge:

“Council” means the Kapiti Borough Council; and, on and after the 1st day of November 1989, includes the Kapiti Coast District Council:

“Lump sum contributions scheme” means the scheme adopted in principle by the Council at a meeting on the 18th day of February 1987 to allow ratepayers to make contributions towards the repayment of the Paraparaumu sewerage loan, the Paraparaumu water loan, and the Waikanae joint water supply loan:

“Paraparaumu sewerage loan”—

(a) Means any borrowing undertaken by the Council under the sanction of—

(i) The Paraparaumu Sewerage Stage I Loan 1975 for \$2,400,000 sanctioned by the Local Authorities Loans Board on the 9th day of December 1975; or

(ii) The Paraparaumu Sewerage Stage II Loan 1979 for \$5,300,000 sanctioned by the Local Authorities Loans Board on the 7th day of August 1979; or

(iii) The Paraparaumu Sewerage Loan 1980 for \$2,850,000 sanctioned by the Local Authorities Loans Board on the 4th day of November 1980; and

(b) Includes any redemption or repayment loans raised in respect of the loans specified in paragraph (a) of this definition:

“Paraparaumu water loan”—

(a) Means any borrowing undertaken by the Council under the sanction of the Paraparaumu Water Supply Loan 1970 for \$3,000,000 sanctioned by the Local Authorities Loans Board on the 4th day of August 1970; and

(b) Includes any redemption or repayment loans raised in respect of the loan specified in paragraph (a) of this definition:

“Rates and charges” means the rates, charges, discounts, and additional charges (with the exception of the uniform annual charge for coastal protection repayments) which the Council resolved on the 23rd day of March 1988 to make and levy for the year ended with the 31st day of March 1989:

“The 1989–1990 instalments” means those rates instalments levied by the Council pursuant to section 153 of the Rating Powers Act 1988 in the year ending with the 31st day of March 1990:

“Uniform annual charges” means the uniform annual charges in respect of the Paraparaumu water supply and the Paraparaumu sewerage system which the Council resolved on the 18th day of March 1987 to make and levy for the year ended with the 31st day of March 1988:

“Waikanae joint water supply loan”—

(a) Means any borrowing undertaken by the Council or for which, and only to the extent to which, the Council has acquired responsibility under the sanction of—

- (i) The Waikanae/Paraparaumu Bulk Water Supply Loan 1974 for \$1,800,000 sanctioned by the Local Authorities Loans Board on the 10th day of December 1974; or
- (ii) The Waikanae/Paraparaumu Bulk Water Supply Loan No. 2 1976 for \$1,460,000 sanctioned by the Local Authorities Loans Board on the 3rd day of February 1976; or
- (iii) The Waikanae/Paraparaumu Bulk Water Supply Supplementary Loan 1976 for

\$326,000 sanctioned by the Local Authorities Loans Board on the 7th day of December 1976; and

(b) Includes any redemption or repayment loans raised in respect of the loans specified in paragraph (a) of this definition; and

(c) Does not include any borrowing which was, before the 1st day of November 1989, solely the responsibility of the Horowhenua County Council and for which the Council has acquired responsibility by virtue of the Local Government (Wellington Region) Reorganisation Order 1989:

“Water and sewerage loans” means the Paraparaumu sewerage loan, the Paraparaumu water loan, and the Waikanae joint water supply loan.

### **3. Lump sum contributions for loan repayments—**

(1) All payments made to the Council on or before the 15th day of January 1990, being payments purportedly made as lump sum payments pursuant to the lump sum contribution scheme, are hereby declared to be or to have been lawfully made and received by it and the application by the Council of such payments in repayment of any amount of principal outstanding under any of the water and sewerage loans is hereby declared to be lawful.

(2) The ratepayer for the time being of any separately rateable property in respect of which any payment or payments have been made pursuant to the lump sum contribution scheme may withdraw from the scheme by giving written notice to that effect under the hand of the ratepayer, or of the ratepayer’s solicitor or duly authorised agent, lodged at the office of the Council on or before the 15th day of January 1990.

(3) The Council shall, before the 1st day of December 1989, issue to every ratepayer to whom subsection (2) of this section applies a written notice—

(a) Informing the ratepayer that the arrangements for lump sum contributions entered into by the Council in 1987 were not in accordance with the law, and that in validating the past actions of the Council in respect of the scheme Parliament has required changes to the future operation of the scheme which are set out in the notice:

- (b) Setting out the right of the ratepayer to withdraw from the scheme by giving written notice to the Council not later than the 15th day of January 1990 in accordance with subsection (2) of this section:
  - (c) Informing the ratepayer that if the ratepayer does not withdraw from the scheme, the property will be exempt from all rates and charges made and levied in respect of the Paraparaumu sewerage loan, the Paraparaumu water loan, and the Waikanae joint water supply loan:
  - (d) Informing the ratepayer that if, at the close of the 15th day of January 1990, the sum of the payments made in respect of that separately rateable property is less than \$2,119, they will be deemed to have given notice of their withdrawal from the scheme:
  - (e) Informing the ratepayer of the amount of refund they would receive if they elect to withdraw, or are deemed to have withdrawn, from the scheme:
  - (f) Informing the ratepayer of the estimated uniform charges under subsection (6) and subsection (7) of this section which would be made and levied, and the duration of those charges, if all other ratepayers withdrew from the scheme:
  - (g) Advising the ratepayer that an election not to withdraw from the scheme has no effect on the ratepayer's liability for any other rates or charges:
  - (h) Advising the ratepayer that the decision will be irrevocable and binding on all persons who are or who may become liable to pay rates in respect of the property.
- (4) As soon as reasonably practicable after notice under subsection (2) of this section is received, the Council shall make a refund to the ratepayer in accordance with the following formula:

$$x - y = z$$

Where—

- x is the total amount of lump sum contribution paid in respect of the property together with compound interest at 15 percent per annum calculated from the date on which each payment was received by the Council to the date on which the refund under this section is made by the Council:

- y is the total amount by which the rates in respect of the property have been reduced by virtue of the lump sum contribution having been made, together with compound interest at 15 percent per annum calculated in respect of each such reduction from the date on which the payment in respect of which the reduction was made was received by the Council to the date on which the refund under this section is made by the Council:
- z is the refund to be made under this section.

(5) Where as at the close of the 15th day of January 1990 the sum of the payments made in respect of any separately rateable property, being payments purportedly made pursuant to the lump sum contribution scheme, is less than \$2,119, and the ratepayer for the time being of the property has not given notice pursuant to subsection (2) of this section, the ratepayer shall be deemed to have given such notice on the 15th day of January 1990 and a refund shall be made in respect of that property pursuant to subsection (4) of this section.

(6) Subject to subsections (8) and (9) of this section, for the financial year ending with the 31st day of March 1990 and for each subsequent financial year in which payment of any annual charges in respect of the Paraparaumu water loan or the Waikanae joint water supply loan is required, the annual cost of such payment shall be met by a uniform annual charge for the ordinary supply of water pursuant to section 24 of the Rating Powers Act 1988 made and levied by the Council on all properties within the area of benefit.

(7) Subject to subsections (8) and (9) of this section, for the financial year ending with the 31st day of March 1990 and for each subsequent financial year in which payment of any annual charges in respect of the Paraparaumu sewerage loan is required, the annual cost of such payment shall be met by a uniform annual charge for sewerage purposes pursuant to section 30 of the Rating Powers Act 1988 made and levied by the Council on all properties connected to the Paraparaumu sewerage scheme.

(8) Subject to subsection (13) of this section, no uniform annual charges shall be levied under subsection (6) or subsection (7) of this section on any property in respect of which, at the close of the 15th day of January 1990, the sum of \$2,119 has been paid pursuant to the lump sum contribution scheme and notice pursuant to subsection (2) of this section has not been received by the Council.

(9) The Council shall not make and levy any rate or charge, other than uniform annual charges under subsections (6) and (7) of this section, for the purposes of paying any annual charges in respect of the Paraparaumu sewerage loan, the Paraparaumu water loan, and the Waikanae joint water supply loan.

(10) Nothing in subsections (6) to (9) of this section shall apply, if, as at the close of the 15th day of January 1990, notice has been received or deemed to be received pursuant to subsections (2) or (5) of this section in respect of every property in respect of which any lump sum payment was made under the lump sum contribution scheme.

(11) Subject only to the provisions of the Rating Powers Act 1988, nothing in this section shall prevent the Council from making and levying any separate rate or uniform annual charge for the maintenance of any of the works to which the water and sewerage loans relate.

(12) Nothing in this section shall affect the validity of any special rate deemed to have been made by the Council under the Local Authorities Loans Act 1956.

(13) Where, after the 15th day of January 1990, any property to which subsection (8) of this section applies, becomes 2 or more separately rateable properties by way of subdivision or otherwise, that subsection shall apply to whichever of the separately rateable properties is so nominated by the occupier for the time being, and the other property or properties shall be liable for uniform annual charges made and levied under subsections (6) and (7) of this section.

(14) Nothing in this section shall be construed as preventing the Council from making or levying, before the 15th day of January 1990, rates or charges for any purposes other than the purposes of paying any annual charges in respect of the Paraparaumu sewerage loan, the Paraparaumu water loan, and the Waikanae joint water supply loan.

**4. Validating uniform annual charges and discount for 1987–1988 year—**(1) Notwithstanding that the uniform annual charges were not lawfully made and levied, the uniform annual charges are hereby validated and declared to have been lawfully made and levied.

(2) All actions of the Council in levying and collecting the uniform annual charges are hereby validated and declared to have been lawful.

(3) All money received by the Council in payment of the uniform annual charges is hereby declared to have been lawfully paid and received by it.

(4) Such part of the uniform annual charges as has not yet been paid to the Council is hereby declared to be lawfully payable and capable of being collected by the Council as if the uniform annual charges had always been lawfully payable.

(5) The Council shall be deemed to have been authorised to allow—

(a) A discount of 5 percent on the whole of the 1987-1988 rates and charges paid to the Council in full on or before the 30th day of April 1987; and

(b) A discount of 4 percent on the whole of the 1987-1988 rates and charges paid to the Council in full after the 30th day of April 1987 and on or before the 30th day of June 1987; and

(c) A discount of 3 percent on the whole of the 1987-1988 rates and charges paid to the Council in full after the 30th day of June 1987 and on or before the 28th day of August 1987,—

and all such discounts allowed by the Council shall be deemed to have been lawfully allowed.

**5. Validating 1988-1989 rates—**(1) Notwithstanding that the rates and charges were not or may not have been lawfully made and levied, the rates and charges are hereby validated and declared to have been lawfully made and levied in respect of the year ending on the 31st day of March 1989.

(2) All actions of the Council in levying and collecting the rates and charges are hereby validated and declared to have been lawful.

(3) All money received by the Council in payment of the rates and charges is hereby deemed to have been lawfully paid to and received by it.

(4) Such part of the rates and charges as has not yet been paid to the Council is hereby deemed to be lawfully payable and capable of being collected as if it had always been lawfully payable.

**6. Validating 1989-1990 instalments—**(1) Notwithstanding that the 1989-1990 instalments may not have been lawfully levied, the instalments are hereby validated and declared to have been lawfully levied in respect of that part of

the year ending on the 31st day of March 1990 to which they relate.

(2) All actions of the Council in levying and collecting the 1989–1990 instalments are hereby validated and declared to be lawful.

(3) All money received by the Council in payment of the 1989–1990 instalments is hereby deemed to have been lawfully paid to and received by it.

(4) Each such instalment is deemed to have fallen due and to have incurred an additional charge if not paid on or before the due date shown on the rates assessment in respect of that instalment.

(5) Such part of the 1989–1990 instalments as has been levied by the Council but has not yet been paid is hereby deemed to be lawfully payable and capable of being collected as if it had always been lawfully payable.

**7. Authorising Council to levy sixth instalment of 1989–1990 rates after 1 February 1990**—The levying by the Council of the sixth instalment of rates for the year ending with the 31st day of March 1990 in respect of the Borough of Kapiti, as that Borough existed on the 31st day of October 1989, at any time before the 28th day of February 1990 shall be deemed not to be a breach of the provisions of Part IX of the Rating Powers Act 1988.

**8. Validating coastal protection charges**—(1) Notwithstanding that the Council had no authority to make and levy coastal protection charges as charges pursuant to Part IX of the Local Government Act 1974, the coastal protection charges made and levied for the years ending with the 31st days of March 1982, 1983, 1984, 1985, 1986, 1987, 1988, and 1989 are hereby validated and declared to have been lawfully made and levied.

(2) All actions of the Council in levying and collecting the coastal protection charges in respect of properties with beach frontages protected by the seawall and in respect of which the full cost of the seawall had not yet been met, and any discounts allowed or additional charges applied in respect of such coastal protection charges are hereby validated and declared to have been lawful.

(3) All money received by the Council in payment of the coastal protection charges is hereby declared to have been lawfully paid and received by it.

(4) Such part of the coastal protection charges as has not yet been paid to the Council is hereby declared to be lawfully payable and capable of being collected by the Council as if the coastal protection charges had always been lawfully payable.

(5) Nothing in this section shall affect the rights of the Council or of any other person under any agreements entered into for the payment of contributions to the capital cost of the seawall:

Provided only that no further provision shall be made by way of rating by the Council for the recovery of any amounts outstanding under such agreements.

(6) Nothing in this section shall affect the validity of any special rate deemed to have been made by the Council under the Local Authorities Loans Act 1956.

**9. Urban farm-land roll**—(1) The Council is hereby declared to have and always to have had power to prepare a farm-land roll in accordance with section 120 of the Rating Act 1967, notwithstanding the repeal of that Act by the Rating Powers Act 1988.

(2) Any farm-land roll prepared under the authority of subsection (1) of this section shall be deemed for all purposes to have come into force on the 1st day of April 1988, and the provisions of section 169 of the Rating Powers Act 1988 shall apply as if the roll was in force at the commencement of that Act.

(3) Where any property having a rates postponement value determined under section 25A of the Valuation of Land Act 1951 (as amended by section 11 of the Valuation of Land Amendment Act 1988) is included in any farm-land roll prepared under the authority of subsection (1) of this section and deposited for inspection in terms of section 121 of the Rating Act 1967, the provisions of Part X of the Rating Powers Act 1988 (with the exception of section 169) shall not apply to that property for so long as the farm-land roll is in force unless, within the period allowed under section 122 of the Rating Act 1967 for the making of objections, the occupier gives written notice under the hand of the occupier, or of the occupier's solicitor or duly authorised agent, lodged at the office of the Council that the occupier does not wish the property to be included on the farm-land roll.

(4) On the expiry of the period allowed for objections under section 122 of the Rating Act 1967, any property in respect of which notice has been given in terms of subsection (3) of this

section shall forthwith and without further formality be removed from the farm-land roll and the provisions of Part VI of the Rating Act 1967 shall be deemed not to apply in respect of the property.

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