



ANALYSIS

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1992, No. 1—*Local*

An Act—

- (a) To validate rates made by the Masterton District Council for the year ended with the 30th day of June 1991; and
- (b) To provide for rating in the Masterton District for the years ended with the 30th day of June 1991 and ending with the 30th day of June 1992

[2 May 1992

WHEREAS—

- (a) Immediately before its dissolution on the 1st day of April 1989, the Masterton County Council operated a differential rating system first introduced with effect on the 1st day of April 1981 and amended with effect on the 1st day of April 1987, which for rating purposes divided the Masterton County into areas, including areas known as “the AB area”, “the C area”, “the D area”, and “the E area”:
- (b) For the year ended with the 31st day of March 1990, the former Masterton District Council made and levied a general rate in its rural ward (the area of the former Masterton County) on the basis of the former Masterton County Council’s differential system, as required by clause 11 (2) of the Masterton Borough–Masterton County Union Order 1989, which reflected

the terms of a joint request to the Local Government Commission by the Masterton County Council and the Masterton Borough Council:

- (c) With effect on the 1st day of November 1989, the former Masterton District Council was dissolved and the current Masterton District Council was constituted by Part VIII of the Local Government (Wellington Region) Reorganisation Order 1989:
- (d) The Local Government (Wellington Region) Reorganisation Order 1989 did not re-enact clause 11 (2) of the Masterton Borough-Masterton County Union Order 1989, and constituted the rural ward of the Masterton District with different boundaries from those of the rural ward of the former Masterton District:
- (e) By special order resolution passed on the 27th day of June 1990, and confirmed on the 29th day of August 1990, the Masterton District Council introduced a system of differential rating for an area of the urban ward of the Masterton District:
- (f) By resolution dated the 29th day of August 1990, the Masterton District Council made and levied a general rate, a uniform annual general charge, certain separate rates, separate uniform annual charges, and other charges on rateable property in the Masterton District for the year ended with the 30th day of June 1991:
- (g) The resolution purported to make and levy the general rate and certain separate rates in the rural rating area of the district, which included the rural ward, on a uniform basis:
- (h) Certain ratepayers in the area of the rural ward formerly known as the AB area (hereinafter referred to as the plaintiffs), brought an action in the High Court at Wellington (CP 807/90) for judicial review of the Council's decision to make and levy rates in the rural ward on a uniform basis:
- (i) By judgment dated the 15th day of July 1991, the High Court held that, until the 31st day of March 1992, the Council has an obligation to maintain a system of differential rating which achieves the result of that in force or at least operated by the former Masterton District Council, and made certain declarations and orders setting aside a rate made and levied for the

rural ward for the year ended with the 30th day of June 1991 and requiring the Council to make and levy a new rate for the rural ward for that year:

- (j) Section 84 (1) (b) of the Rating Powers Act 1988 prevents the Council from now introducing a system of differential rating for the year ended with the 30th day of June 1991:
- (k) There is doubt as to the rate or rates invalidated by the orders:
- (l) Acknowledging that the precise effect of the orders could not be established without further reference to the Court, the Council and the plaintiffs entered into negotiations to reach agreement on arrangements which would reasonably adhere to the spirit of the judgment:
- (m) The terms of settlement were agreed to in principle by a meeting of ratepayers from the AB area held in Masterton on the 10th day of August 1991, and by the Council at a special meeting on the 20th day of August 1991, and were given formal effect to by agreement dated the 2nd day of October 1991:
- (n) The agreement includes an acknowledgment that it can only be given full effect to by local Act of Parliament:
- (o) It is desirable that there be a means of determining the rates lawfully payable in the rural area of the Masterton district for the years ended with the 30th day of June 1991 and ending with the 30th day of June 1992, in accordance with the terms of the agreement:
- (p) There is doubt whether it was lawful to introduce a system of differential rating in a part of the Masterton District which was not a ward, and it is desirable that the system of differential rating be validated for the avoidance of doubt:

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

1. Short Title—This Act may be cited as the Masterton District Council (Rates Validation and Empowering) Act 1992.

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

“AB area” means the area of the district comprising Group 1 as defined in a special order, confirmed by

the Masterton County Council on the 9th day of February 1988, as “All those properties located within Division ‘A’, ‘B’ and ‘H’ on Plan No 1.”:

“Council” means the Masterton District Council constituted by clause 140 of the Local Government (Wellington Region) Reorganisation Order 1989:

“District” means the Masterton District constituted by clause 139 of the Local Government (Wellington Region) Reorganisation Order 1989:

“General Capital Purposes Fund” means the fund so designated by approval of the Local Government Commission given on the 6th day of August 1991:

“Property Realisation Fund” means the fund so named under the heading “Land and Buildings” in the financial statements of the Council prepared pursuant to section 223D of the Local Government Act 1974 for the year ending with the 30th day of June 1992:

“Rural rating area” means that area of the district comprising the Rural Ward of the Masterton District and the Group 11 area:

“Urban rating area” means so much of the district as is not in the rural rating area.

3. Validating certain 1990–1991 rates—(1) Subject to section 4 of this Act, to the extent that any of the rates for the year ended with the 30th day of June 1991 purportedly made and levied by resolution of the Council dated the 29th day of August 1990 were invalid and of no effect, those rates are hereby validated and declared to have been lawfully made and levied.

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

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

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

4. 1990–1991 rates in the AB area—(1) Nothing in section 3 of this Act shall apply to the following rates for the year ended with the 30th day of June 1991 purportedly made and levied by resolution of the Council dated the 29th day of August 1990:

- (a) The general rate of \$0.0015199 on land value; and
- (b) The separate subsidised roading works rate of \$0.0052472 on land value; and
- (c) The separate roading engineering services rate of \$0.0005760 on land value—

so far as those rates were purportedly made and levied on any rateable property in the AB area.

(2) For the avoidance of doubt, the rates excluded from the application of section 3 of this Act by subsection (1) of this section, are hereby declared to be invalid and of no effect.

(3) A general rate of \$0.003634 on land value is hereby deemed to have been made and levied by the Council on all rateable properties in the AB area for the year ended with the 30th day of June 1991.

(4) Subject to subsections (5) and (6) of this section—

- (a) The rate deemed to be made and levied by subsection (3) of this section is hereby declared to be and to have been payable to the Council; and
- (b) Such part of that rate as has not yet been paid to the Council is hereby declared to be capable of being collected—

in all respects as if it had been lawfully made and levied by the resolution of the Council to make and levy rates dated the 29th day of August 1990.

(5) Notwithstanding anything in subsection (4) of this section, the due date for payment of the rate deemed to be made and levied by subsection (3) of this section shall be 10 working days after the date of the commencement of this Act, and an additional charge of 10 percent shall be added to any amount remaining unpaid 2 working days after the due date, as if that date were the 1st day of July 1991 for the purposes of the resolution made by the Council pursuant to section 132 of the Rating Powers Act 1988 on the 29th day of August 1990.

(6) Where, in respect of any separately rateable property which existed during the year ended with the 30th day of June 1991, the total amount received by the Council as at the commencement of this Act in respect of all or any of the rates specified in subsection (1) of this section exceeds the amount payable pursuant to subsection (3) of this section, the amount of the excess shall, subject to, and in accordance with, the Schedule to this Act—

- (a) Be credited to any rates or charges made and levied by the Council for the year ending with the 30th day of June 1992 in respect of that property; or

(b) On specific written request from a person who paid any part of the total amount, be refunded to that person.

(7) Not later than 28 days before the date specified in clause 9 of the Schedule to this Act, the Council shall publish a notice in a newspaper circulating generally in the district advising of the opportunity to request a refund pursuant to the provisions of the Schedule to this Act.

(8) Before the due date calculated in accordance with subsection (5) of this section, the Council shall issue to every ratepayer for the time being of any separately rateable property in the AB area a written notice—

(a) Advising of the due date calculated in accordance with subsection (5) of this section, any amount of rates deemed to be made and levied by subsection (3) of this section in respect of that separately rateable property, and that an additional charge of 10 percent shall be added to any part of such amount remaining unpaid 2 working days after the due date; and

(b) Advising of the opportunity to request a refund pursuant to the provisions of the Schedule to this Act.

5. Rating in the rural area for the 1991–1992 year—

(1) For the year ending with the 30th day of June 1992, the Council shall make and levy in accordance with this section a differential general rate in the rural rating area, being a rate made and levied for the same purposes as the rates specified in section 4 (1) of this Act.

(2) The rate in the dollar on land value for the AB area shall be such as is calculated to yield an amount which is 18.46 percent greater than the amount calculated to have been yielded from that area in general rates in the year ended with the 31st day of March 1990.

(3) The rate in the dollar on land value for the balance of the rural rating area shall be such as is calculated to yield the same amount as was calculated to have been yielded from that area by the rates specified in paragraphs (a) to (c) of section 4 (1) of this Act in the year ended with the 30th day of June 1991.

(4) Nothing in Part V of the Rating Powers Act 1988 shall affect the ability of the Council to make and levy rates in the rural rating area in accordance with this section.

(5) Subject to subsection (4) of this section, the provisions of the Rating Powers Act 1988 shall apply to the making, levying, and collection of rates made and levied under the authority of this section as if the rates were made and levied pursuant to a

system of differential rating in terms of Part V of the Rating Powers Act 1988.

6. Application of special funds—Notwithstanding any enactment or rule of law regulating or limiting the application of the proceeds of any special fund or other fund, the Council is hereby authorised—

- (a) To apply the General Capital Purposes Fund to any funding shortfall which arises from the application of sections 3 and 4 of this Act; and
- (b) To apply such of the Property Realisation Fund as it thinks fit to any funding shortfall which arises from the application of section 5 of this Act.

7. Provisions relating to rating in the urban area—

(1) For the avoidance of doubt, the system of differential rating in the urban rating area introduced by special order confirmed on the 29th day of August 1990 is hereby declared to be lawful and of full effect until the 30th day of June 1992, notwithstanding that the urban rating area is not a subdivision of the district in terms of section 2 of the Rating Powers Act 1988.

(2) Nothing in the Rating Powers Act 1988 shall prevent the Council from making and levying a different general rate in the urban rating area for the year ending with the 30th day of June 1992 from that made and levied in the rural rating area in accordance with section 5 of this Act.

Section 4 (6)

SCHEDULE

**CREDITS OR REFUNDS IN RESPECT OF RATES IN THE AB AREA
FOR THE YEAR ENDED WITH THE 30TH DAY OF JUNE 1991**

1. Subject to the provisions of this Schedule, any excess to which section 4 (6) of this Act refers shall be credited to the rates account of the relevant separately rateable property in respect of any rates and charges made and levied by the Council for the year ending with the 30th day of June 1992.

2. Where any separately rateable property which would otherwise be entitled to a credit under clause 1 of this Schedule has been subdivided, the credit shall be apportioned to the subdivided parts of the property—

- (a) In proportion to the rateable value of those parts appearing in the valuation roll for the year ending with the 30th day of June 1992, where that is the case; or
- (b) In any other case, as if section 120 of the Rating Powers Act 1988 applied:

Provided that in either case there shall be no right of objection to such apportionment.

3. (1) Any person who paid any instalment of rates for the year ended with the 30th day of June 1991 in respect of any property entitled to a credit pursuant to clause 1 or clause 2 of this Schedule may request a refund.

(2) No such request shall be of any effect unless it is—

- (a) Made in writing; and
- (b) Accompanied by such information and documentation as may be required under any provision of this Schedule; and
- (c) Received at the principal office of the Council not later than 4 p.m. on the 5th day of June 1992.

(3) Subject to clauses 4 to 8 of this Schedule, the Council shall refund to the person making the request the amount which would otherwise have been credited to the property under this Schedule.

4. (1) Where a property was sold during the year ended with the 30th day of June 1991, and there was an apportionment of rates as between the vendor and purchaser, any request under clause 3 of this Schedule shall be made by the vendor and purchaser jointly, and any refund shall be made in accordance with the apportionment set out in the request which shall be determined by reference to the settlement date or any other apportionment used in the agreement for sale and purchase.

(2) Such requests shall be accompanied by—

- (a) A copy of the settlement statement or other similar documentation to substantiate the basis of apportionment; and
- (b) Statutory declarations by both parties supporting the request.

5. Where, in respect of any request to which clause 4 of this Schedule applies,—

- (a) The vendor and purchaser cannot agree on an apportionment and/or request for refund; or
- (b) Either the vendor or the purchaser or their attorneys or agents cannot be contacted by the party wishing to make the request—
the Council shall make the refund—
- (c) If there is only one requester, to the person making the request; or

SCHEDULE—*continued*CREDITS OR REFUNDS IN RESPECT OF RATES IN THE AB AREA
FOR THE YEAR ENDED WITH THE 30TH DAY OF JUNE 1991—
continued

- (d) Where there is more than one requester, one of whom was named as the occupier on the valuation roll on the 1st day of July 1990, to that person; or
- (e) In any other case, to any person making the request.
6. The making of any refund under clause 5 of this Schedule shall be on the basis that—
- (a) The recipient receives the money on trust for that person and for others who contributed to the rates payable in respect of the property in the year ended with the 30th day of June 1991; and
- (b) The Council discharges all obligations and liabilities in respect of the request by payment in accordance with clause 5 of this Schedule.
7. Where there has been a subdivision of a property to which clause 2 of this Schedule applies, and one or more parts of the property was transferred to separate owners during the year ended with the 30th day of June 1991, requests for refunds, and the apportionment of refunds, shall be dealt with in accordance with clauses 3 to 6 of this Schedule.
8. The Council shall be under no obligation—
- (a) To identify whether or not any request is one to which clause 4 of this Schedule applies; or
- (b) To make any further enquiry as to any matter or information required to be provided under clause 4 of this Schedule—
- and shall have discharged all of its obligations and liabilities under this Schedule upon making refunds in accordance with any request and the provisions of this Schedule.
9. As soon as practicable after the 5th day of June 1992, the Council shall make the credits in terms of clauses 1 and 2 of this Schedule to all properties other than those in respect of which a valid request has been received pursuant to clause 3 of this Schedule.
10. Refunds shall be made not later than the 3rd day of July 1992, provided that in any case where the Council has received insufficient information to determine any request for a refund, the provisions of clauses 1 and 2 of this Schedule shall apply.
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