

THAMES-COROMANDEL DISTRICT COUNCIL
(*VALIDATION OF RATES*)
(WHITIANGA LUMP SUM
VALIDATION) BILL

AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL
GOVERNMENT COMMITTEE

COMMENTARY

Recommendation

The Internal Affairs and Local Government Committee has examined the Thames-Coromandel District Council (Validation of Rates) Bill and recommends that it be passed with the amendments shown in the bill.

The Standing Orders have been complied with and the rights and prerogatives of the Crown are not affected.

Conduct of the examination

The Thames-Coromandel District Council (Validation of Rates) Bill, which was referred to the committee on 29 November 1995, validates certain rates purported to have been made and levied by the Thames-Coromandel District Council.

We spent two hours and seven minutes considering the bill. Advice was received from the Department of Internal Affairs and Senior Parliamentary Counsel.

This commentary sets out the details of our consideration of the Thames-Coromandel District Council (Validation of Rates) Bill and the major issues we addressed.

Background to the bill

Whitianga sewerage scheme

On 28 March 1985 the Thames-Coromandel District Council resolved to construct a sewerage disposal scheme for Whitianga and to invite ratepayers in the area of benefit covered by the scheme to make lump sum contributions towards the capital costs of the work, in accordance with section 164c of the Local

Government Act 1974. However, the council omitted to record in the resolution a description of the area of benefit of the scheme, as required under section 164c of the Act.

A total of 675 ratepayers elected to pay by lump sum contribution, with a further 937 ratepayers paying by a uniform annual charge within their rates. The council calculated the lump sum contribution on the basis that there were 1655 separately rateable properties within the area of benefit.

During the construction of the sewerage scheme several properties were amalgamated reducing the number of separately rateable properties within the area of benefit to 1612. The council calculated the final lump sum contribution when only 99.5 percent of the work was completed using the reduced number of separately rateable properties within the area of benefit. Both actions contravened the requirements of section 164i of the Local Government Act 1974. As a result of the recalculation of the lump sum contribution on 99.5 percent completion of the work, a balance of \$1,986.36 was payable by the ratepayers who elected to pay by lump sum.

The balance lump sum payment represents the increase from the original estimated lump sum of \$2,000 to the final lump sum contribution of \$3,986.36. Initially, as a result of the cost overrun, four ratepayers refused to pay the lump sum and five ratepayers instigated High Court proceedings on the matter. At this time there are only two ratepayers who have not paid and they remain as plaintiffs in the Court proceedings.

Coromandel sewerage scheme

On 23 September 1987 the council resolved to construct a sewerage system for Coromandel and to invite the ratepayers within the area of benefit to make a lump sum contribution to the capital project. The council resolution was inaccurate in that it made incorrect reference to the appropriate section of the Local Government Act, resulting in the resolution stating that the estimated lump sum contribution would be calculated on the basis of the number of properties within the area of benefit, not the rateable value of the properties. The resolution also referred incorrectly to another section of the Local Government Act.

Similar to the Whitianga scheme, the council calculated the final lump contributions for the Coromandel project when only 99.5 per cent of the work was completed, which contravenes the requirements of the Local Government Act. This project caused less public concern as the work came in under budget and lump sum contributors received a refund from the council. At the time the bill was introduced into the House, one ratepayer had not paid the lump sum contribution. However we understand that the ratepayer has subsequently paid the amount that was owed.

Removal of Coromandel provisions

The purpose of the bill as introduced is to validate lump sum contributions levied by the Thames-Coromandel District Council for the Whitianga and Coromandel sewerage schemes. However, the council's submission on the bill sought the removal of the Coromandel provisions. There are no rates outstanding from the Coromandel scheme and all landowners who chose to pay by lump sum have paid their contributions in full. The council stated in its submission that, "There is no practical purpose today in validating the Council resolutions relating to the Coromandel sewerage scheme." The council, as promoter of the bill, should normally decide whether the provisions should be included. We note the council's clear view and accordingly recommend that provisions relating to the Coromandel scheme be removed from the bill.

Submissions

We received seven submissions on the bill, most of them relating to the Whitianga sewerage scheme. Oral evidence was heard from the Thames-Coromandel District Council, the Department of Internal Affairs and Mr Matt Casey, a Barrister and Solicitor from Honoria Gray & Associates representing the ratepayers who instigated High Court proceedings on the matter.

The Thames-Coromandel District Council submission on the bill requests that Parliament validate the resolutions and the recalculation of the lump sum contributions because it is not desirable that the High Court rule that the rates are illegal or invalid. The council is concerned that a declaration by the Court that the rates are illegal or invalid would provide the opportunity for other lump sum contributors to take action against it. The council's submission was that the reason for the cost overrun on the Whitianga project was the technical problems that were experienced. Ground water through Whitianga was at a much higher level than expected, and a number of unknown underground streams were encountered in construction, which made the laying of deep sewer lines more difficult and expensive than expected.

The submission by Honoria Gray & Associates, Barristers and Solicitors, who represent the ratepayers involved with the High Court action, do not oppose the validation action in principle, providing the rights of the plaintiffs taking the action in the High Court are protected.

Two of the submissions oppose the validation on the grounds that it will encourage the practice of increasing the costs in the middle of sewerage projects. These submitters believe that the cost overruns should have been foreseen. The Combined Coromandel Peninsula Ratepayers Association states that one of its grounds for opposing the validation action is that it may set a precedent for the future conduct of council affairs.

Validation

When deciding whether or not to validate the council's resolutions for the Whitianga scheme we considered several options. These included:

- validating the errors made by the council, thereby potentially removing the rights of the plaintiffs;
- validating the actions of the council, while providing protection for the current plaintiffs;
- resolving the issue before the High Court in the bill; or
- not proceeding with the validation action until after the High Court has decided on the case before it.

Standing Orders 115 and 116 prohibit reference to any matters awaiting judicial decision. However, the provisions are subject to the right of Parliament to legislate on any matter. We carefully considered whether it was appropriate for Parliament to intervene in this matter and the effects any validation would have on relief available through the courts. We are reluctant to intervene in a matter that is currently before the High Court and we do not wish to take away the rights of the plaintiffs who are currently party to that action.

We note, without making any comment, the reasons for the cost overruns outlined in the council's submission and do not believe that validating the council's actions will set a precedent for the future conduct of council affairs. While Parliament has validated lump sum contributions in the past the committee considers each piece of validating legislation on its own merits.

We have decided to recommend the validation of the council's actions to ensure the council is protected from further court action. We also recommend that the

bill be amended specifically to protect the rights of the current plaintiffs taking the Court action.

Amendments proposed by the committee

Clause to protect the rights of the plaintiffs

Clause 6 proposes that nothing in the bill affects the claim of the parties to the High Court proceedings as discussed above.

Definitions

The bill as introduced does not define the terms used through an interpretation section and we believe this could lead to confusion about what the bill seeks to achieve. We propose a new clause 2 to define general terms and a new clause 3 that includes definitions of the "Area of Benefit" and contributions involved with the Whitianga scheme.

Validation of resolution

The bill as introduced omitted to validate a resolution made by the council on 28 March 1985. The resolution that omitted to specify the Area of Benefit for the Whitianga scheme is validated in proposed clause 3(2).

Removal of Coromandel provisions

With the payment of the one outstanding lump sum contribution to the Coromandel sewerage scheme, and at the request of the promoter, all reference to the Coromandel scheme has been omitted from the bill.

Preamble

We are concerned that the preamble as introduced does not accurately explain or identify matters requiring validation. It does not clearly identify each aspect of the Local Government Act 1974 that is breached, nor does it clarify what is being validated. We have amended the preamble to the bill so that it comprehensively explains all matters requiring validation. Paragraph (l) of the proposed preamble outlines the sections of the Local Government Act 1974 that were breached. Paragraph (m) identifies matters within council resolutions that need to be validated.

Short Title

We recommend that the Short Title be amended to include the name of the scheme and acknowledge that the validation is concerned with lump sum contributions. We believe that the new Short Title "Thames-Coromandel District Council (Whitianga Lump Sum Validation) Bill" more accurately reflects the contents of this bill.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Warren Kyd

THAMES-COROMANDEL DISTRICT COUNCIL
((VALIDATION OF RATES))
(WHITIANGA LUMP SUM
VALIDATION)

[LOCAL]

ANALYSIS

Title	4. Validation of recalculation of lump sum contribution
Preamble	5. Validation of collection of rates
1. Short Title	6. Certain rights not affected
2. Interpretation	
3. Validation of Area of Benefit	

A BILL INTITULED

Struck Out (Unanimous)

**An Act to make provision for validating certain rates
purported to have been made and levied by the
5 Thames-Coromandel District Council**

WHEREAS the Thames-Coromandel District Council (herein-
after referred to as the Council) was, by virtue of section 164b
to section 164k of the Local Government Act 1974, empowered
10 to seek lump sum contributions from ratepayers to finance
capital costs of works as defined in section 164c of that Act,
namely, works which would require the Council—

- (a) To raise a special loan under the Local Authorities Loans
Act 1956; or
15 (b) To make and levy a separate rate or a uniform annual
charge:

And whereas on the 28th day of March 1985, the Council
resolved to construct a sewage disposal system for Whitianga
("the first work") and to invite the ratepayers to make a lump

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Struck Out (Unanimous)

sum contribution towards the capital cost of that work: And whereas the Council established an area of benefit and advised the ratepayers of the options either to make a lump sum contribution or to pay for the capital works by a separate rate or uniform annual charge: And whereas the Council gave notice to the 1655 ratepayers within the area of benefit: And whereas section 164i of that Act required the Council to recalculate the lump sum contribution on the completion of the first work: And whereas when the Council purported to recalculate the lump sum contribution, only 99.5 percent of the first work had been completed and the purported calculation was achieved by dividing the 99.5 percent of the total cost by 1612 as some of the ratepayers had amalgamated their properties so reducing the number of separately rateable properties in the area of benefit: And whereas the number of lump sum contributors who have not paid have been reduced to 7 ratepayers: And whereas an application to the High Court has been lodged by those ratepayers to test the validity of the Council's action: And whereas on the 23rd day of September 1987, the Council resolved to construct a sewage disposal system for Coromandel ("the second work") and to invite the ratepayers to make a lump sum contribution towards the capital cost of that work: And whereas the Council established an area of benefit and advised the ratepayers of the options either to make a lump sum contribution or to pay for the capital works by a separate rate or uniform annual charge: And whereas the Council gave notice to the ratepayers within the area of benefit: And whereas section 164i of that Act requires the Council to recalculate the lump sum contribution on the completion of the work: And whereas when the Council purported to recalculate the lump sum contribution, only 99.5 percent of the work had been completed and the purported calculation was achieved by dividing the 99.5 percent of the total cost by the number of ratepayers in the area of benefit: And whereas the number of lump sum contributors who have not paid has been reduced to 1 ratepayer: And whereas on a strict interpretation of the provisions of section 164i of that Act, the Council appears to have breached the Act in regard to both schemes: And whereas

Struck Out (Unanimous)

the reason for the recalculation of the lump sum contributors when only 99.5 percent of the work was completed was that the maintenance period and finalising any compensation to any ratepayer could take a further 2 to 3 years to finalise: And whereas it is desirable to validate the resolutions of the Council in regard to the number of separately rateable properties in the are of benefit and the recalculation of the assessment of the lump sum contributions based on 99.5 percent of the total cost for both works:

New (Unanimous)

An Act to validate the lump sum contributions levied by the Thames-Coromandel District Council for the Whitianga Sewerage Scheme

15 WHEREAS—

(a) The Thames-Coromandel District Council (hereinafter referred to as the Council) was empowered by section 164b to section 164k of the Local Government Act 1974 to seek lump sum contributions from ratepayers to finance capital costs of works as defined in section 164c of that Act, namely, works which would require the Council—

(a) To raise a special loan under the Local Authorities Loans Act 1956; or

(b) To make and levy a separate rate or a uniform annual charge:

(b) On the 28th day of March 1985 the Council resolved to construct a sewage disposal system for Whitianga (the work) and to invite the ratepayers in the Area of Benefit to make a lump sum contribution towards the capital cost of the work:

(c) The Council established an Area of Benefit for the work and advised the ratepayers of the options either to make a lump sum contribution or to pay for the capital works by a uniform annual charge but omitted to record in the resolution mentioned in

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| | paragraph (b) above a description of the said Area of Benefit: | |
| (d) | The Council calculated the estimated lump sum contribution under section 164D (1) (b) (i) of the Local Government Act 1974 on the basis that there were 1655 separately rateable properties within the Area of Benefit: | 5 |
| (e) | Section 164I (1) (b) (i) of the Act required the Council to recalculate the lump sum contribution on the completion of the work by dividing the actual net capital cost of the work by the number of separately rateable properties that were in the Area of Benefit at the time when the estimated net capital cost of the work was calculated: | 10 |
| (f) | Section 164I of the Local Government Act 1974 required the Council to recalculate the lump sum contribution of the work on the work's completion and the Council recalculated the lump sum contribution when 99.5 percent of the work had been completed: | 15 |
| (g) | Between the calculation of the estimated lump sum contribution and the recalculation of the lump sum contribution upon substantial completion of the sewerage scheme, the number of rateable properties within the Area of Benefit was reduced by the amalgamation of titles to 1612 separately rateable properties: | 20 |
| (h) | The Council accordingly recalculated the lump sum contribution on substantial completion of the work on the basis that there were only 1612 rateable properties within the Area of Benefit: | 25 |
| (i) | As a result of the recalculation of the lump sum contribution on substantial completion of the work a balance lump sum contribution of \$1,986.36 (GST inclusive) was payable in respect of all rateable properties within the Area of Benefit upon an election to make a lump sum contribution had been made: | 30 |
| (j) | Four lump sum contributors have not paid their contributions: | 35 |
| | | 40 |

New (Unanimous)

- (k) An application to the High Court has been lodged by those ratepayers to test the validity of the Council's action:
- 5 (l) The provisions of sections 164c and 164i of the Local Government Act 1974 have been breached in regard to the scheme as follows:
- (i) The Council failed, pursuant to section 164c of that Act, in its resolution of the 28th day of March 10 1985 to define the Area of Benefit:
- (ii) The Council—
- (A) Recalculated the lump sum contribution pursuant to section 164i (b) (i) prior to the full completion of the work:
- 15 (B) Recalculated the lump sum contribution for each contributor by dividing the lump sum by 1612 rateable properties instead of 1655 rateable properties that were in the Area of Benefit at the time when the estimated net capital cost of the work was calculated:
- 20 (m) It is desirable to validate resolutions of the Council in regard to the—
- (i) The Area of Benefit;
- 25 (ii) The recalculation of the assessment of the lump sum contributions based on 99.5 percent of the total cost of the work;
- (iii) The number of separately rateable properties in the Area of Benefit on the recalculation of the lump sum contribution; and
- 30 (iv) The levying and collection of the lump sum contributions:

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

- 35 **1. Short Title**—This Act may be cited as the Thames-Coromandel District Council (*Validation of Rates*) Act 1995 (Whitianga Lump Sum Validation) Act 1996.

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Struck Out (Unanimous)

- 2. Validation of recalculation of lump sum contributions**—(1) The resolutions of the Council on the 27th day of August 1987 recalculating the lump sum contributions to the Whitianga Sewage Scheme are hereby validated and declared to have been lawfully passed notwithstanding that the work had not been fully completed, and the number of separately rateable properties in the area of benefit had been reduced. 5
- (2) The resolutions of the Council on the 24th day of November 1988 recalculating the lump sum contributions to the Coromandel Sewage Scheme are hereby validated and declared to have been lawfully passed notwithstanding that the work had not been fully completed. 10
- 3. Validation of collection of contributions, etc.**— 15
- (1) The actions of the Council in making, levying, and collecting the lump sum contributions in accordance with the resolutions referred to in **section 2** of this Act are hereby validated and declared to have been lawful.
- (2) All money received by the Council in payment of the said lump sum contributions are hereby declared to have been lawfully paid to and received by it. 20
- (3) Such part of the said lump sum contributions, including any penalty on any unpaid part of the said lump sum contributions, as has not yet been paid to the Council is hereby declared to be lawfully payable to and capable of being collected by the Council as if the sum had always been lawfully payable. 25

New (Unanimous)

- 2. Interpretation**—In this Act, unless the context otherwise requires,— 30
- “Council” means the Thames-Coromandel District Council:
- “Lump sum contribution” means the lump sum contribution calculated in accordance with 35

New (Unanimous)

sections 164B to 164K of the Local Government Act 1974 in respect of the capital costs of the sewerage scheme for the Area of Benefit:

5 “Rateable property” means a rateable property within the Area of Benefit.

3. Validation of Area of Benefit—(1) For the purposes of this section and of sections 4 and 5 of this Act, unless the context otherwise requires,—

10 “Area of Benefit” means the area of the Whitianga Township edged green on the plan marked “Area Served” attached to the Council’s file no. 05/40/03:

15 “Balance lump sum contribution” means \$1,986.36 (GST inclusive), being the balance payable in respect of each separately rateable property within the Area of Benefit after calculation by the Council of the final lump sum contribution in respect of the capital cost of the sewerage scheme for that portion of the Whitianga Township in the Area of Benefit, and
20 payable in respect of each separately rateable property within the Area of Benefit upon which a lump sum contribution is payable, being the amount by which the final lump sum contribution exceeded the estimated lump sum contribution:

25 “Estimated lump sum contribution” means \$2,000.00, being the estimated lump sum contribution calculated by the Council for the purposes of section 164D of the Local Government Act 1974 in respect of the capital cost of the sewerage scheme for
30 the Area of Benefit:

35 “Final lump sum contribution” means \$3,986.36, being the final lump sum contribution as calculated by the Council for the purposes of sections 164i and 164j of the Local Government Act 1974 in respect of the capital cost of the sewerage scheme for the Area of Benefit.

(2) The 3 resolutions made on the 28th day of March 1985 are hereby validated notwithstanding that they did not

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prescribe the Area of Benefit for the Whitianga Sewerage Scheme.

(3) The Area of Benefit for the Whitianga Sewerage Scheme is hereby defined as that portion of the Whitianga Township edged green on the plan prepared by Bruce Wallace Partners Limited marked "Areas Serviced" and attached to the Council's file no. 05/40/03. 5

(4) The actions of the Council in making, levying, and collecting the estimated lump sum contributions in accordance with the resolutions referred to in subsection (1) of this section are hereby validated and declared to have been lawful. 10

(5) All money received by the Council in payment of the said estimated lump sum contributions are hereby declared to have been lawfully paid to and received by it. 15

(6) Such part of the said estimated lump sum contributions, including any penalty on any unpaid part of the said lump sum contributions, as has not been paid to the Council is hereby declared to be lawfully payable to and capable of being collected by the Council as if the sum had always been lawfully payable. 20

4. Validation of recalculation of lump sum contribution—The resolution of the Council on the 27th day of August 1987 recalculating the lump sum contributions to the Whitianga Sewerage Scheme is hereby validated and declared to have been lawful notwithstanding that at that date the work had not been fully completed, and the number of separately rateable properties in the Area of Benefit had been reduced. 25

5. Validation of collection of rates—(1) The actions of the Council in making, levying, and collecting the balance lump sum contributions in accordance with the resolutions referred to in section 4 of this Act are hereby validated and declared to have been lawful. 30

(2) All money received by the Council in payment of the said balance lump sum contributions are hereby declared to have been lawfully received by it. 35

(3) Such part of the said balance lump sum contributions including any penalty on any unpaid part of the said balance

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lump sum contributions, as has not yet been paid to the Council is hereby declared to be lawfully payable to and capable of being collected by the Council as if the sum had always been lawfully payable.

6. Certain rights not affected—Nothing in this Act affects the claim of any party in proceedings commenced before the 29th day of November 1995.