IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

CIV 2015-488-95
[2016] NZHC 2192

UNDER	Part 1 of the Judicature Amendment Act 1972
IN THE MATTER OF	an application for judicial review
BETWEEN	MANGAWHAI RATEPAYERS' & RESIDENTS' ASSOCIATION INC First Plaintiff
AND	RICHARD BRUCE ROGAN & HEATHER ELIZABETH ROGAN Second Plaintiffs
	NORTHLAND REGIONAL COUNCIL First Defendant
	KAIPARA DISTRICT COUNCIL Second Defendant

Hearing:	9-11 May 2016
Counsel:	J Browne for plaintiffs and appellants D Laing & L Wiessing for defendants in judicial review proceeding D Neutze for respondents
Judgment:	15 September 2016

INTERIM JUDGMENT OF DUFFY J

This judgment was delivered by me on 15 September 2015 at 2.15 pm pursuant to Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Solicitors:
Simpson Grierson, Wellington
Henderson Reeves Connell Rishworth, Whangarei
David Neutze, Auckland

Cont.

CIV 2015-488-182

UNDER	Section 72 of the District Courts Act 1947
IN THE MATTER OF	an appeal from a judgment of the District Court
BETWEEN	RICHARD BRUCE ROGAN & HEATHER ELIZABETH ROGAN Appellants
AND	KAIPARA DISTRICT COUNCIL First Respondent
	NORTHLAND REGIONAL COUNCIL Second Respondent

Introduction

[1] These two civil proceedings were heard together as they concern common issues about rating in the Kaipara District. The first proceeding is an application for judicial review brought by the Mangawhai Ratepayers' and Residents' Association ("MRRA") as well as Bruce and Heather Rogan (collectively, "the Plaintiffs"), alleging that rates for the period between the 2011/2012 and 2015/2016 rating years ("subject rates") were set unlawfully. The second proceeding is an appeal against a decision of the District Court regarding Mr and Mrs Rogan's liability to pay the subject rates.

[2] The Northland Regional Council ("NRC") and the Kaipara District Council ("KDC") are defendants in the judicial review and respondents in the appeal (collectively, "the Local Authorities"). The KDC is a territorial authority under the Local Government Act 2002 ("LGA"). It is responsible for the Kaipara region, which encompasses approximately 19,000 individuals and 14,000 rateable properties. The NRC is a regional council under the LGA. It operates across the Northland region which includes areas governed by the Far North District Council, the Whangarei District Council and the KDC. Both the KDC and NRC are recognised as local authorities under the LGA.

[3] The MRRA was formed in 1995 and has been embroiled in a lengthy legal battle over the legality of various rates charged by the KDC and, more recently, the NRC. Mr Rogan is the Chairperson of the organisation.

[4] This interim judgment gives my decision in respect of the Plaintiffs' application for judicial review as well as granting partial relief to the Plaintiffs. A further judgment shall follow in due course regarding the balance of the relief sought by the Plaintiffs as well as a judgment on Mr and Mrs Rogan's appeal.

Grounds of judicial review

[5] The application for judicial review raises six key questions:

(a) Was there a failure by the NRC to specify calendar dates for the payment of the subject rates in its yearly rates resolutions, and if so, what is the effect thereof?

(b) Has the NRC unlawfully delegated its responsibilities for the assessment and recovery of the subject rates to the KDC?

(c) Are the Local Authorities required to set rates on a GST-inclusive or GST-exclusive basis?

(d) Can the Local Authorities impose penalties upon the GST component of a rates bill?

(e) Are the penalties that were imposed by the Local Authorities in respect of the subject rates unlawful?

(f) Does the Kaipara District Council (Validation of Rates and Other Matters) Act 2013 ("Validation Act") save the subject rates?

[6] The Plaintiffs seek a declaration that the subject rates are unlawful; as well as an order setting the subject rates and the accompanying penalties aside. They seek to have the subject rates refunded. They also seek costs.

[7] The Local Authorities oppose the judicial review. They contend that the application should be dismissed with costs awarded to them.

The rating process

[8] Counsel for Plaintiffs, Mr Browne, provided the following helpful summary of the rating process.

(a) *The local authority makes a revenue and financing policy and a funding impact statement in the long-term plan* – see s 95 of the LGA. All decisions and actions must be consistent with the revenue and financing policy. The local authority has a consultation requirement

before setting such a policy. The long term plan covers a period of 10 years. A new long term plan is prepared every 3 years.

(b) *The local authority makes a funding impact statement in the annual plan* – see cls 15 and 20 of sch 10 to the LGA. This sets out the details of the proposed rates. Again, the local authority has an obligation to consult with the community. The annual plan covers a period of a single year. In the year a new long term plan is adopted, the funding impact statement in the long term plan is used.

(c) *The local authority passes a rates resolution* – refer to s 23 of the Local Government (Rating) Act 2002 ("Rating Act"). The local authority can only set "rates" as defined in s 5 of the Rating Act. The rates must be set in accordance with the relevant provisions of the local authority's long-term plan and funding impact statement for that financial year.[1] A rates resolution cannot be validly passed prior to the adoption of an annual plan. There are a number of mandatory things that the resolution must state. Section 24 requires the rates resolution to include the due dates for payment of instalments. If penalties are charged, then a resolution complying with ss 57 and 58 must be made no later than the date of the rates resolution.

(d) *The local authority assesses the rates* – refer to s 43 of the Rating Act. The assessment of rates will use the rateable values in the rating information database etc and will be in accordance with the rates resolution.

(e) *A rates assessment, also known as a rates assessment notice, is delivered to the ratepayer* – refer to s 44 and 45 of the Rating Act. A regional council like the NRC can have a territorial authority such as the KDC issue a rates assessment notice on its behalf. As to delivery, ss 48 and 136 of the Rating Act set out how delivery can be achieved.

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1 Local Government (Rating) Act 2002 [Rating Act], s 23(2).

(f) *A rates invoice is delivered to the ratepayer* – refer to ss 46 to 50 of the Rating Act. The rates invoice is the "bill" that sets the due date for payment of the rates. The delivery of the rates invoice creates the liability to pay the rates by the date specified (provided the invoice is compliant and delivered at least 14 days before the payment date – see s 49). A separate invoice must be issued for each instalment. Again, for delivery see ss 48 and 136.

(g) *Collection of rates* – see ss 52 to 56 of the Rating Act. One local authority can collect rates on behalf of another.[2]

(h) *Penalties* – if rates are not paid on time, penalties can be added; refer ss 57 and 58 of the Rating Act.

(i) *Recovery of rates* – see ss 61 to 76 of the Rating Act. The Rating Act makes a distinction between the "collection" and "recovery" of rates. Recovery refers to the measures taken to extract payment at a time when the rates are in arrears. These include legal proceedings[3] and obtaining payment of the rates from the mortgagee (if any).[4]

[9] This summary was generally accepted by counsel for the Local Authorities.

[10] In principle, the rating process is an interlinked chain. Once a material flaw in this process is identified, the chain will be broken, which is likely to result in a finding that the subject rates are invalid.

[11] It is also necessary to bear in mind the nature of rates payments. As the Select Committee has stated:[5]

> The rating of land is a non-arbitrary coercive tax. Ultimately, defaulting ratepayers can lose their property. It is important, therefore, that policies and processes associated with all aspects of rating are subject to transparency and accountability.

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2 Section 53.
3 Section 63.
4 Section 62.
5 Local Government (Rating) Bill (149-2) (select committee report) at 4.

Failure to specify payment dates

[12] The first issue which falls to be determined is whether there was a failure by the NRC to specify dates for the payment of the subject rates in its yearly rates resolutions. This turns on the proper interpretation of s 24 of the Rating Act, which provides:

> **24 Due date or dates for payment**
>
> A local authority must state, in the resolution setting a rate,—
>
> (a) the financial year to which the rate applies; and
>
> (b) the date on which the rate must be paid or, if the rate is payable by instalments, the dates by which the specified amounts must be paid.

[13] Specifically, this ground of review requires me to determine whether the "date" which is stated in a rates resolution must be stated as a calendar date, or whether that "date" may be defined by reference to some other document.

The form of the NRC rates resolutions

[14] The NRC rates resolutions for the rating years 2011/2012 through to 2013/2014 inclusive did not state a calendar date by which each instalment of rates was to be paid. Instead, each of those resolutions stated:

> The dates and methods for the payment of instalments of rates and any discount and/or additional charges applied to the regional rates shall be the same as resolved by the Far North District Council, the Kaipara District Council and the Whangarei District Council and shall apply within those constituencies of the Northland region.

[15] There were practical reasons for adopting this arrangement. As discussed above, the NRC covers the regions of three territorial authorities. During the relevant time period, each of the territorial authorities was collecting the NRC's rates as well as its own. This was a practically sensible arrangement, as it meant that ratepayers made only one set of rates payments and the Local Authorities were able to make efficiency savings in the collection process. Given the existence of this collection arrangement, it was desirable to ensure that the NRC's rates would be due and payable on the same date as that specified by each territorial authority. In order

to avoid the difficulties of synchronising calendar dates across the rates resolutions of the NRC and three individual territorial authorities, the NRC sought to define the date on which its rates would become due and payable by reference to the rates resolutions by reference to the rates resolutions of the territorial authorities. The reasons for this decision are understandable. However, unless that process was permitted by s 24 of the Rating Act, the NRC rates resolutions may be invalid for illegality and accordingly, the subject rates may have been gathered unlawfully.

[16] The Plaintiffs say that the "cross-referencing" method which was employed by the NRC does not comply with the requirements of s 24. Alternatively, if such cross-referencing is permissible then, in principle, the Plaintiffs submit that this particular instance of cross-referencing was unlawful on the basis that the documents which are cross-referenced (namely, the KDC rates resolutions) did not actually exist at the time when the NRC passed the relevant rates resolutions.

[17] In reply, the Local Authorities say that the wording of the NRC rates resolutions in the relevant years satisfied the s 24 requirements. In particular, their counsel submits that the definition of "due date" in the Rating Act does not require that a due date must be stated by reference to a particular date in the calendar. Furthermore, he argues, the rates assessments that were ultimately supplied to residents gave a specific calendar date setting the due date for payment of rates. Thus, the manner in which the due date was stated on the rates resolution could not cause the ratepayer any uncertainty as to the due date or any prejudice.

Interpreting s 24 of the Rating Act

[18] Neither of the parties was able to refer me to any case law regarding the proper interpretation of s 24. The term "date" is not defined in the Rating Act itself or in the Interpretation Act 1999. Further there does not appear to be any discussion regarding the meaning of the term "due date" in the major textbooks regarding local government law or in parliamentary materials regarding the Rating Act.

[19] In the absence of any authority on this issue, I turn to s 5 of the Interpretation Act, which provides that "the meaning of an enactment must be ascertained from its text and in the light of its purpose."

[20] Regarding the text of s 24, *The New Zealand Oxford Dictionary* defines the term "date" to mean:[6]

> **1** a day of the month, esp. specified by a number. **2** a particular day or year, esp. when a given event occurred. ... **5** the time when an event happens or is to happen. (…)

[21] The *Dictionary* further defines "due date" to mean "[t]he date on which payment of a bill etc. falls due."[7]

[22] I turn now to the purpose of the enactment. The apparent objective of s 24 is to create certainty and clarity in the setting of rates. This would tend to support an interpretation of "date" to mean a day in the calendar year.

[23] A narrower interpretation of the term "date" would also be consistent with the predecessor legislation, which unequivocally required rates resolutions to expressly state the day or days on which the rates would become payable:[8]

> **109. Conditions on which rates may be made—**
>
> (1) Except as otherwise provided in this Act every rate made by a local authority shall—
>
> (a) Be made for a year or some period less than a year; and
>
> (b) Be of a stated amount—
>
> (i) In the dollar on the rateable values; or
>
> (ii) Per hectare—
>
> of the rateable property appearing in the valuation roll for the time being in force; and
>
> (c) *Be payable in one sum on a date to be fixed at the time of making the rates or in instalments on a date or dates to be fixed pursuant to section 151 of this Act, and different dates may be so fixed in respect of rateable property in different parts of the district.*
>
> (2) …
>
> (emphasis added)

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6 Tony Deverson and Graeme Kennedy (eds) *The New Zealand Oxford Dictionary* (Oxford University Press, Auckland, 2005) at 275.

7 At 330.

8 Rating Powers Act 1988.

[24] And then:

> **110. Local authority to give notice of making rate—**
>
> (1) No local authority shall make any rate or rates under this Act unless—
>
> (a) The local authority has prepared and adopted an annual report …
>
> (b) The local authority has, not less than 14 days before making the rate or rates, given, in accordance with subsection (2) of this section, public notice of its intention to make the rate or rates.
>
> (2) Every public notice required by subsection (1)(b) of this section shall, in respect of each rate to which the notice relates, state—
>
> (a) The time and place of the meeting at which the local authority intends to make the rate; and
>
> (b) The revenue sought from the intended rate and the purpose or purposes for which that revenue is to be applied; and
>
> (c) The amount or amounts—
>
> (i) In the dollar on the rateable values; or
>
> (ii) Per hectare; or
>
> (iii) Per separately rateable property; or
>
> (iv) Per separately used or inhabited portion of a property or building; or
>
> (v) Per unit of water supplied or consumed; or
>
> (vi) Per water closet or urinal connected; or
>
> (vii) Per container of waste,--
>
> as the case may be, of the intended rate; and
>
> (d) The period for which the rate is intended to be made; and
>
> (e) *The day or days on which the intended rate or any instalment thereof is to become payable*; …
>
> …
>
> (emphasis added)

[25] Section 24 is expressed in more general language and in a briefer fashion than its predecessor; however, its purpose remains constant. Resolutions which

determine the amount of rates and when they will be paid require precision and certainty. Such resolutions should also be transparent and unambiguous. They should not allow for a circumstance where the proposed time for payment is undefined at the time of the resolution's making. There is nothing to suggest that when Parliament enacted the Rating Act, Parliament intended to broaden how rates resolutions might be formed to the point where one of the components (the time for payment) could be stipulated at a later date by a third party.

[26] The cross-referencing method described above undermines the certainty and therefore the integrity of the NRC's rates resolutions. This is emphasised by the circumstances surrounding the relevant resolutions, since at the time when they were made by the NRC, the KDC had not yet passed its own rates resolutions. This means that at the time when the rates resolutions were passed by the NRC, the resolutions were incomplete as they failed to fix a time for payment of the intended rates.

[27] I find, therefore, that the context and the purpose of s 24 requires the days/dates on which the intended rates of the NRC will become payable to be stated specifically and explicitly by reference to a calendar date. It follows that the resolutions for the 2011/2012, 2012/2013 and 2013/2014 rating years were not made lawfully in accordance with s 24.

Delegation of rates assessment and collection

[28] The Plaintiffs' second ground of review alleges that the NRC has unlawfully delegated its powers to assess and recover rates to the three territorial authorities in its region, including the KDC.

[29] The NRC and KDC have passed their own individual rating resolutions in each of the relevant years. However, the KDC has purported to assess and to recover rates on behalf of the NRC, pursuant to various rating services agreements. This has occurred in each of the rating years between 2011/2012 and 2015/2016 inclusive.

[30] There is no dispute that one local authority may appoint another local authority to collect rates on its behalf.[9] However, the Plaintiffs claim that the powers to assess and to recover rates are separate and non-delegable powers.

Submissions for the Plaintiffs

[31] Local authorities have a general competence "to carry on or undertake any activity or business, do any act, or enter into any transaction", subject to the LGA and any other law.[10] However, the Plaintiffs say, that power of general competence does not extend to the setting, assessing, collecting and recovery of rates. In that respect, they say, a local authority only has the power to act if that power is set down in the Rating Act.

[32] Regarding the assessment of rates, the Plaintiffs note that there is no section in the Rating Act which explicitly allows a local authority to delegate the assessment of its rates to another local authority. They identify the following sections of that Act in support of this argument:

(a) Section 43 provides that rates must be assessed in accordance with values and factors set out in the rating information database.[11]

(b) Section 53(1) provides that "[o]ne or more local authorities may appoint a person or a local authority to collect the rates they assess."

(c) Section 132 provides that a local authority may internally delegate certain functions, powers or duties to its chief executive officer or any other specified officer, except for a function, power, or duty conferred by subpart 2 of Part 1[12] or subpart 1 of Part 5.[13]

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9 Rating Act, s 53.

10 Local Government Act 2002, s 12(2) and (3).

11 Section 27(1) of the Rating Act requires a local authority to keep and maintain a rating information database. Subsection (7) provides that a regional council may keep a separate rating information database in respect of the constituent districts of the region and may delegate the function of maintaining those databases to the territorial authorities concerned.

12 Subpart 2 of Part 1 provides for a number of crucial matters including the definition of rateable land; the definition of a ratepayer; liability for rates; and the kinds of rates that may be set.

13 Subpart 1 of Part 5 provides for certain matters relating to the replacement of rates.

[33] The Plaintiffs argue that none of the sections listed above permits a local authority to delegate or contract the assessment of its rates to another local authority. They say that this can be contrasted with s 127 of the former legislation, the Rating Powers Act 1988, which provided that a regional authority could enter into an agreement whereby its rates could be "levied and collected" by the territorial authority. On that basis, the applicants submit that the NRC has breached the requirements of s 43 of the Rating Act[14] and therefore the rates for those years are invalid.

[34] Regarding the recovery of rates, the Plaintiffs say that it is important to distinguish between the different functions of "collection" versus "recovery". Within the Rating Act, s 53 is categorised under the heading "[c]ollection of rates" and permits a local authority to appoint another local authority to collect rates on its behalf. In contrast, the powers to recover unpaid rates are categorised under separate headings, and those powers make no provision for a local authority to appoint a third party to recover its rates.[15]

[35] The Plaintiffs acknowledge that s 63(1) of the Rating Act provides that "[a] local authority may commence proceedings in a court of competent jurisdiction to recover as a debt rates unpaid", but they submit that the use of the indefinite article should not be taken to mean that one local authority can recover rates owed to another. If Parliament had intended to permit one local authority (in its own name) to recover rates owed to another, it would have explicitly said so in the legislation.

[36] The Plaintiffs acknowledge that the predecessor legislation permitted one local authority to delegate to another the power to recover unpaid rates by legal proceedings, however, they regard the silence on this topic in the present legislation as an indication that Parliament has chosen not to carry this power through to the Rating Act.[16] Accordingly, the applicants argue that the delegation of recovery powers to a third party is impermissible under the Rating Act, which means that the

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14 Section 43 of the Rating Act provides that rates must be assessed in accordance with the rateable value of a rateable unit and any relevant factors set out in the rating information database.

15 Sections 59 through to 66 are categorised under the separate headings of "Recovery of unpaid rates", "Recovery from persons other than the owner" and "Legal proceedings to recover rates". None of those sections provides for the appointment of a third party to recover unpaid rates.

16 See Rating Powers Act, ss 126–128.

purported action by the KDC to sue in its own name in respect of the NRC rates is unlawful. Instead, the KDC must sue for its unpaid rates and the NRC must sue for its unpaid rates.

Submissions for the Local Authorities

[37] The Local Authorities contend that the appointment of the KDC to perform certain functions, including the assessment and recovery of rates, falls squarely within the scope of s 53. Thus, they argue that the changes introduced by the Rating Act were not intended to limit the flexibility provided by the former legislation in how the administration of rates was to be managed. In summary, they say that the assessment and recovery of rates as well as the addition of penalties should all be taken to fall within the powers inherent in the appointment of a collector under s 53 of the Act. That section provides:

> **53 One or more local authorities may appoint collector**
>
> (1) One or more local authorities may appoint a person or a local authority to collect the rates they assess.
>
> (2) A collector who acts on behalf of 2 or more local authorities may, in a single rates assessment, combine all the rates for which a ratepayer is liable to each local authority, but the rates assessment must—
>
> (a) clearly distinguish the rates that are payable to each local authority; and
>
> (b) set out the information required by section 45 as it relates to each local authority.
>
> (3) A collector who acts on behalf of 2 or more local authorities may combine in a single rates invoice all the rates payments payable by a ratepayer to each local authority for a particular period, but the rates invoice must—
>
> (a) clearly distinguish the rates that are due to each local authority; and
>
> (b) set out the information required by section 46 as it relates to each local authority.
>
> (4) A local authority and a collector may agree to any other arrangement for the delivery of rates assessments and rates invoices, and for the collection of rates, but only if the rates assessments and rates invoices meet the requirements of subsections (2) and (3) respectively.

[38] In support of their argument, the Local Authorities point to the text of s 53(2) of the Rating Act, which allows the collector to issue a combined rates assessment. They contend that when a collection agreement is in place, the collector's authority to produce a combined rates assessment must include the act of actually assessing the rates. Similarly, they point to s 53(3), which provides that a collector may produce a combined rates invoice in respect of two separate local authorities, as being implicit recognition that a collector can assess the rates of another local authority. Furthermore, they contend that the absence of any specific provision in the legislation requiring a rates assessment and an invoice to be issued by the local authority whose rates are the subject of the assessment indicates that this task can be delegated to a collector.

[39] Regarding the recovery of rates, the Local Authorities submit that this must also fall within the collection function, particularly since the purpose of recovery is to collect unpaid rates. The Local Authorities acknowledge the Plaintiffs' submission regarding the headings to the different sections of the Rating Act, but they submit that these indications are far from determinative. They say that the headings in the enactment should not be invoked to displace the most appropriate interpretation of an enactment in accordance with s 5(1) of the Interpretation Act.

Delegation of rates assessment

[40] Part 3 subpt 1 of the Rating Act deals with the assessment, payment and recovery of rates. Sections 43 to 51 deal with the assessment of rates, which is the process by which the rates liabilities of individual rate payers are ascertained. Sections 52 to 54 deal with the collection of the rate payments. Sections 59 to 63 deal with the recovery of unpaid rates.

[41] Sections 43 to 51 do not stipulate who will assess rates. Section 43 mandates the values and factors to be taken into account in assessing rates but the section does not identify who will carry out this role. Under ss 44 and 46, the local authority that imposes the rates is made responsible for delivering the notice of rates assessment and the rates invoice to the ratepayer. Section 48 allows a local authority to deliver a

rates assessment that includes a rates invoice, thus avoiding the need to send two separate documents to the ratepayer.

[42] The logical and reasonable place to expect to find a power to delegate the assessment of rates to a third party would be in the provisions that specifically deal with the assessment of rates. However, these are silent when it comes to such delegation. I acknowledge that ss 43 to 51 do not specifically express a power for the relevant local authority to assess its rates. Nonetheless, the overall tenor of those provisions supports this being so. However, there is nothing in those same provisions to support the view that the power to assess rates can be delegated to third parties.

[43] The only provision for a third party to become involved in the rating process is to be found in s 53, which authorises a local authority to appoint a third party, being either a person or another local authority, to collect rates on its behalf.

[44] Section 53(1) appears to assume that the local authority which appoints a third party collector will assess the rates to be collected, which is inconsistent with a power to delegate this function to third parties. However, ss 53(2) and (3) permits a collector who acts on behalf of two or more local authorities to combine the rates assessments and rates invoices for each local authority in one assessment or invoice. This could suggest that it is the collector who can prepare the rates assessments and rates invoices of each local authority. Alternatively, it could suggest no more than that a collector who acts for two or more local authorities can, on receipt from those authorities of their rates assessments and rates invoices, combine this information into one new document which gives notice of the rates assessments and rates invoices of each respective local authority. The first understanding of s 53(2) and (3) carries with it the implication that the power to assess rates can also be exercised by the collector under the terms of appointment, which fits with there being a power to delegate this function to the collector, but the second does not.

[45] I consider that the second understanding of ss 53(2) and (3) is more likely to be consistent with what Parliament intended. It would be unusual to include an implicit power of delegation in relation to the assessment of rates in a section which

is directed at the appointment of third parties to collect rates. Particularly as the third party need not be another local authority but instead could be a private entity that provides money collection services. Further, some guidance on the meaning of s 53(2) and (3) can be gleaned from s 53(4). This provision allows a local authority and a collector to agree to an arrangement other than as set out in 52(2) and (3) for the delivery of rates assessments and rates invoices, provided the mandatory requirements in those sections are complied with. This suggests to me that the power set out in ss 53(2) and (3) for a collector to combine the rates assessments and rates invoices for multiple local authorities in the one document exists only to enable easy delivery of those assessments and invoices. Those subsections do not authorise the collector to undertake the initial task of assessing the rates to be collected.

[46] I pause here to consider a submission put forward by the Local Authorities in reliance upon the former legislation, the Rating Powers Act 1988. That Act expressly authorised a regional authority to enter into an agreement with the territorial authorities in its region for the latter to levy (the equivalent of "assess") and collect the regional authority's rates.[17] The former legislation also included a separate power for local authorities to appoint a third party as the collector of their rates, much like s 53 of the Rating Act.[18] However, unlike s 53, the former provision specifically referred to the rates in question having been levied by the local authorities for whom they were to be collected.

[47] An understanding of the former legislation is relevant here as the Local Authorities argue that Parliament did not intend to introduce change when it passed the present legislation. However, I have difficulties with this argument as in my view, the former legislation did not permit a broad delegation of powers that would enable third parties, including private persons, to assess (levy) and to recover unpaid rates, as has occurred in the present case. Further, to the extent that the former legislation permitted a territorial authority to levy rates on behalf of a regional authority, that power was expressly stated.

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17 See s 127 of the Rating Powers Act.

18 Section 126 gave no express delegation of the power to levy rates.

[48] Finally, there are general powers of delegation in the Rating Act and the LGA. However, none of those powers go so far as to enable a local authority to delegate its power and functions to a third party. Instead the line of delegated authority sits very much within the particular local authority.

[49] Section 132 of the Rating Act provides:

> **132 Delegation**
>
> (1) A local authority may delegate the exercise of functions, power, or duties conferred by this Act on the local authority to—
>
> (a) its chief executive officer; or
>
> (b) any other specified officer of the local authority.
>
> (2) A local authority must not delegate—
>
> (a) the power to delegate; or
>
> (b) a function, power, or duty conferred by subpart 2 of Part 1 or subpart 1 of Part 5.

[50] The reference in s 132(1)(b) to "any other specified officer of *the* local authority" can only mean an officer acting within the particular local authority to which the power or function relates. It cannot be read to include a specified officer of any other local authority as well, which is how s 132 would need to be read if it were to be understood to permit delegation outside one local authority to persons employed by another local authority.

[51] Similarly, cl 32(1) of Schedule 7 to the LGA provides:

> **32 Delegations**
>
> (1) Unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers except—
>
> (a) the power to make a rate; or
>
> (b) the power to make a bylaw; or

(c) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan;

(d) the power to adopt a long-term plan, annual plan, or annual report; or

(e) the power to appoint a chief executive; or

(f) the power to adopt policies required to be adopted and consulted on under this Act in association with the long-term plan or developed for the purpose of the local governance statement; or

(g) *[Repealed]*

(h) the power to adopt a remuneration and employment policy.

[52] Clause 32(1) applies unless expressly provided by the LGA or any other Act. As with s 132 of the LGA, the language of cl 32(1) is not broad enough to be read as allowing delegation of the permitted responsibilities, duties or powers to third parties. All the persons mentioned in cl 32(1) are persons with a designated connection to the local authority on whose behalf the delegated responsibilities, duties or powers would be exercised. In relation to the exercise of the NRC's powers to assess rates and to recover unpaid rates, the KDC does not fall within the description of any of those designated persons.

Delegation of rates recovery

[53] Section 59 to 63 of the Rating Act deal with the power to recover unpaid rates. Again, there is no express power to delegate this function to a third party. So, for the same reasons as set out above regarding the delegation of rates assessment, I can see no reason to read such a power into those sections.

[54] The Local Authorities argued that the use of the term "collection" of rates in s 53 is intended to encompass: (a) assessing the rates to be paid be each ratepayer; (b) steps taken to recover unpaid rates; as well as (c) simply taking payment as it falls due of rates that have already been assessed. However, that reading of s 53 flies in the face of the language used in the section. It would also expand the powers to delegate to third parties beyond the scope of the former legislation. If Parliament intended such expansion I would expect Parliament to express this intent clearly, which it has not done.

[55] Moreover, if "collection" had the broad meaning for which the Local Authorities contend, the drafter could have simply dealt with all aspects of the assessment, receipt of payments and recovery of late payments under the one provision. The fact that each of those aspects of rates gathering is dealt with discretely in the Rating Act indicates to me that Parliament saw them as different discrete actions which required discrete powers to allow those actions to be accomplished.

Conclusion

[56] I am satisfied that Parliament has not provided power to delegate to third parties the assessment of rates and the recovery of unpaid rates. Whether this was by intention or by omission, the absence of an express power is not something that I consider I can undo by reading such power into s 53, or elsewhere in the Rating Act. If the omission were intentional, it would be wrong for me to adopt an interpretation that was contrary to Parliament's purpose. If the omission were by oversight, such an omission is not for me to cure. Rather Parliament is the appropriate body to rectify an omission of this nature.

[57] I am also satisfied that specific express powers permitting delegation of the assessment of rates and the recovery of rates to third parties are required before such delegations can occur. In this regard the NRC can only exercise powers that Parliament has provided to it, particularly when it comes to rates which are a form of local government taxation.

[58] I find, therefore, that the NRC cannot lawfully delegate the power to assess or to recover rates to the KDC. Any actions the KDC has taken in this regard in the rating years between 2011/2012 and 2015/2016 inclusive are unlawful, unless saved by the Validation Act. I will return to that point later in my judgment.

Setting of rates on a GST-inclusive basis

[59] The third issue in this judicial review proceeding concerns the relationship between rates and GST. The Plaintiffs claim that the Local Authorities' current

practice of setting rates on a GST-inclusive basis is unlawful. Rather, they say, rates should be set and assessed on a GST-exclusive basis.

[60] The relevant paragraphs of the Plaintiffs' submissions state:

> 74 GST is not a "rate" as defined by section 5 and therefore cannot be set in accordance with subpart 2 of Part 1 of the Rating Act:
>
> (a) Rate is defined in section 5 as meaning "a general rate, a targeted rate, or a uniform annual general charge that is set in accordance with subpart 2 of Part 1".
>
> (b) Pursuant to subpart 2 of Part 1 of the Rating Act, rates may only be set in respect of values, categories, matters and factors relating to land situated in the territorial authority's district (ss 13-20 Rating Act).
>
> (c) Rates may only be assessed in accordance with a rating unit's rateable values or the factors relevant to it (s 43 Rating Act).
>
> (d) The purpose of rates is to fund local government activities (s 3(a) Rating Act).
>
> 75 GST is a central government tax that is levied for central government purposes and has nothing to do with the formal legal process of setting and assessing rates.
>
> 76 The combined effect of sections 5(7)(a) and 9(8) of the Goods and Services Tax Act 1985 is that the time of supply for GST purposes is when the rates invoice is issued.
>
> 77 A local authority has no power to change the time of supply and apply the GST at a different time (when the rates are set). However, there is nothing to stop the local authority setting and assessing the rates without GST and then indicating what the rates will be with GST added to inform ratepayers what their total liability will be at the invoice stage.

[61] In reply, the submissions of the Local Authorities address the interpretation and application of the Goods and Services Tax Act 1985 ("GST Act"). They contend that:

> (a) GST is a tax charged on "supplies" and is payable by the supplier only.[19] The purchaser is not under any legal obligation to pay GST. Whilst it is common practice for suppliers to explicitly state the GST

[19] Goods and Services Act 1985 [GST Act], s 8.

component of a price on an invoice, this statement is made for reasons of transparency only. In the present context, this means that each individual ratepayer is required to pay rates only, not rates plus GST.

(b) Section 5(7) of the GST Act provides that every local authority is deemed to supply goods and services to any person where any amount of rates is payable by that person to that local authority. Thus, when rates are invoiced, this creates a GST output tax liability for the local authority. The total liability will be equal to 3/23rds (known as the tax fraction) of the total rates figure invoiced.[20]

(c) The concept of "time of supply" is relevant in the GST Act because it determines when the obligation on suppliers to pay GST to Inland Revenue arises.[21] In the case of a local authority, it will be liable to pay GST in the taxable period when the rates invoice and/or instalment notice is issued.[22] The provisions in the GST Act regarding "time of supply" are completely irrelevant in terms of how a local authority sets its rates.

[62] In light of the legal principles set out above, counsel for the Local Authorities submits that it is irrelevant whether the total amount of rates, as invoiced to individual ratepayers, is arrived at by adding GST to a set rates amount (ie "plus GST") or whether the rates invoice is simply stated as being "GST inclusive".

[63] I consider that the submissions for the Local Authorities correctly state the law in relation to this issue. Individual ratepayers are not legally required to pay "rates plus GST". Individual ratepayers pay "rates", a percentage of which is then used by the local authority meet one of its expenses; namely, its obligation to pay GST to the New Zealand government. A local authority may choose to state the GST component in a rates invoice. When it does so, that statement should be viewed as an assertion about how the local authority intends to spend the rates, rather than as a reference to the imposition of a separate GST charge on the rate payer.

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20 GST Act, ss 10(2) and 10(11).
21 GST Act, s 9.
22 GST Act, ss 9(1) and 9(8).

[64] Accordingly, there can be no objection to the Local Authorities' rates on this basis.

[65] However, the method of calculating the final rates bill is not "irrelevant", as is asserted by counsel for the Local Authorities. The GST component of a rates bill must be subject to the same procedural standards as every other component of the rates bill, as provided in s 23 of the Rating Act:

> **23 Procedure for setting rates**
>
> (1) Rates must be set by a resolution of the local authority.
>
> (2) Rates set by a local authority must—
>
> (a) relate to a financial year or part of a financial year; and
>
> (b) be set in accordance with the relevant provisions of the local authority's long-term plan and funding impact statement for that financial year.
>
> (3) A local authority may set a rate that is not provided for in its long-term plan and funding impact statement only if—
>
> (a) the local authority is satisfied that the rate is required to meet an unforeseen and urgent need for revenue that cannot reasonably be met by any other means, having regard to the manner in which it has, in its long-term plan and funding impact statement allocated the costs of the activities or groups of activities to which the need for revenue relates; and
>
> (b) the local authority has given at least 14 days' public notice of its intention to set the rate.
>
> (…)

[66] There does not appear to be any obvious reason why an authority's long-term plan and funding impact statement could not take account of the need for the local authority to meet its GST obligations. This cost could then be accounted for as part of a general rate, as defined by s 13 of the Rating Act, which provides that "[a] local authority may set a general rate for all rateable land within its district."

Imposition of penalties on GST component of unpaid rates

[67] The fourth ground of review follows from the Plaintiffs' previous submissions regarding GST.

[68] The Plaintiffs submit that if rates are assessed on a GST-exclusive basis, then it follows that the penalty should only be imposed on the amount of unpaid rates and not on the GST that is later added to the rate. The Plaintiffs suggest that the present approach, which imposes a penalty of up to 10% in respect of the GST-inclusive rates bill, results in a windfall to the Local Authorities.

[69] The position set out in the submissions for the Local Authorities similarly follows on from their position on the previous issue:

> 133. As submitted above… when rates are invoiced, the invoice is simply for rates (and not for two things, rates and GST). Accordingly, the inclusion of the words "GST inclusive" does not change the fact that GST output tax liability is that of the council, not the ratepayer.
>
> 134. Accordingly, where the defendants imposed a penalty on the unpaid amount of the rates invoice they are not charging GST on penalties. Rather, they are simply imposing a penalty on the unpaid amount of rates (ie the amount that the ratepayer failed to pay).

[70] Given my finding on the previous issue, it follows that I also reject the Plaintiffs' submissions on this issue. Instead I accept the Local Authorities' submissions as these are consistent with the legal character of GST, being a tax imposed on local authorities rather than on the ratepayer. Any failure to pay rates due that incurs a penalty must necessarily involve the penalty attaching to the entire amount of the unpaid rates, including the so-called "GST component".

[71] Even if the Plaintiffs are correct to contend that there is a separate "GST component" to a GST-exclusive rates invoice, it is unclear why that component should be exempted from penalties, as it still forms part of the rates to be paid. Furthermore, whilst the Plaintiffs are correct in a sense to state that a penalty on the "GST component" of a rates bill results in a windfall to the Local Authorities, this feature of the penalty regime is not unique to the "GST component". A penalty in respect of any part of a rates bill means that the local authority in question becomes entitled to money that it would otherwise not have had. On the other hand, the payment of a penalty may go some way to compensate a local authority from the effects of not receiving its rates in a timely fashion.

[72] It follows that this ground of review must fail.

Unlawful penalties

[73] The fifth issue in this judicial review proceeding concerns the legality of certain penalties that were imposed by the Local Authorities in the rating years between 2011/2012 through to 2015/2016 inclusive.

[74] I consider that the NRC resolutions which purport to impose penalties in respect of unpaid rates are vulnerable to the same criticisms set out at [28]-[58] above. In each of the relevant years, the NRC purported to delegate its powers to assess and recover penalties to the three territorial authorities within its jurisdiction, including the KDC. There is nothing in the Rating Act which, either implicitly or explicitly, empowers the NRC to delegate those powers to a third party. I am therefore satisfied that the penalties imposed during those years in respect of NRC rates were unlawful.

[75] However, the Plaintiffs also challenge the validity of the penalties that were imposed by the KDC during those years. They identify three main objections to the KDC penalty resolutions:

(a) The penalty resolutions for the 2012/2013 and 2014/2015 rating years are worded so that, instead of authorising the imposition of a penalty, the resolutions instead grant an option to add a penalty.

(b) The penalty resolutions for the 2011/2012 and 2013/2014 rating years do not comply with the timing requirements set out in s 58(1)(b) of the Rating Act.

(c) The penalty resolutions in the rating years 2011/2012 through to 2015/2016 inclusive do not authorise the adding of further penalties on penalties.

[76] Each of those grounds is addressed below.

Did the penalty resolutions unlawfully grant KDC the option to add a penalty?

[77] This ground of review focuses on the text of the KDC penalty resolutions for the 2012/2013 and 2014/2015 rating years. The wording of the 2012/2013 resolution was as follows:

> **P) Penalties**
>
> Under sections 57 and 58 of the Act:
>
> a) A penalty of 10 per cent of the rates assessed in the 2012/2013 financial year that are unpaid after the due date for each instalment *may* be added on the day following the due date except where a ratepayer has entered into an arrangement by way of direct debit authority, or an automatic payment authority, and honours that arrangement so that all current years rates will be paid in full by 30 June in any year, then no penalty will be applied; and
>
> b) A penalty of 10 per cent of the amount of all rates assessed in any financial year that are unpaid on 05 September 2012 *may* be added on the day following that date.
>
> c) A penalty of 10 per cent of the amount of all rates to which a penalty has been added under (b) and which are unpaid on 5 March 2013 *may* be added on the day following that date.
>
> (emphasis added)

[78] The wording of the 2014/2015 is substantially similar, although the dates have been changed.

[79] The Plaintiffs submit that the use of the word "may" creates the option to add a further penalty, rather than making an election at the time of making the resolution as to whether a penalty will be added; and that the resolution is accordingly unlawful. In reply, the KDC argues that the use of the word "may" should be interpreted in context. In this case, it says, that context involves a detailed narrative in the resolutions regarding penalties and further penalties. Further, the penalty resolutions were passed within the timeframe prescribed by s 57(2) of the Rating Act. The KDC says that both these factors are strong indications that the penalties in question were to be added without further consideration or decision.

[80] It is now a well-established principle that the word "may", in some circumstances, can be mandatory rather than permissive.[23] Section 5(1) of the Interpretation Act 1999 provides that "[t]he meaning of an enactment must be ascertained from its text and in the light of its purpose." I consider that the same courtesy must be extended in respect of the KDC penalty resolutions. It is clear that the KDC penalty resolutions were intended to set penalties for the upcoming rating year. The resolutions stated the amount of each penalty and the dates when the penalties would be imposed. Notwithstanding the ordinary meaning of the word "may", I do not think that a person reading the text of the KDC penalty resolutions, in context, could plausibly believe that penalties were to be imposed as a matter of discretion, rather than as a matter of course.

[81] Accordingly, I consider that this ground of review must fail.

Did the penalty resolutions comply with s 58 of the Rating Act?

[82] The Plaintiffs allege that the KDC penalty resolutions for the 2011/2012 and 2013/2014 rating years do not comply with s 58(1)(b) of the Rating Act. That section provides:

> **58 Imposition of penalty**
>
> (1) A local authority may impose the following types of penalty:
>
> (a) …
>
> (b) a further penalty on rates assessed in any financial year and that are unpaid on whichever day is the later of—
>
> (i) the first day of the financial year for which the resolution is made; or
>
> (ii) 5 working days after the date on which the resolution is made:
>
> …

[23] *Far North District Council v Local Government Commission* [1994] 3 NZLR 78 (HC) at 84 – 85.

[83] Section 58(1)(b) therefore empowers the KDC to impose penalties in respect of any rates which remain unpaid from previous rating years. So, for example, the 2011/2012 resolution provides that the KDC resolves:

> **That** the Council delegates authority to the Chief Executive and the Management Accountant to apply the following penalties on unpaid rates:
>
> - A penalty of 10 per cent will be added to each instalment or part thereof which are unpaid after the due date for payment.
>
> - Previous years' rates which remain unpaid will have a further 10 per cent added on 10 July 2011, and again on 10 January 2012.

[84] The Plaintiffs submit that, since the date upon which the penalty will accrue according to that penalty resolution (10 July 2011) is more than 5 working days after the date of the resolution (21 June 2011), the penalty is unlawful.

[85] In my view, this submission is based upon a flawed interpretation of s 58(1)(b). According to the Plaintiffs' interpretation of that section, a further penalty must be levied on either the first day of the rating year, or five days after the date of the penalty resolution, whichever is later. However, s 58(1)(b) makes no comment about when the penalty may be levied. Rather, that section establishes a threshold for the imposition of further penalties: namely, that a local authority may impose further penalties in respect of rates which remain unpaid after either the first day of the rating year, or five days after the date of the penalty resolution, whichever is later. Provided that threshold is met, the timing of the penalty is left to the discretion of the local authority. There can be no objection to the 2011/2012 penalty resolution on this basis.

[86] The KDC penalty resolution for the 2013/2014 rating year is more problematic. That resolution was passed on 25 June 2013 and provided that:

> b A penalty of 10 per cent of the amount of all rates assessed in any financial year that are unpaid on 1 July 2013 will be added on the day following that date.

[87] The effect of this resolution was that on 2 July 2013, the KDC levied a further penalty of 10 per cent on unpaid rates dating back to the previous year. However, s 58(1)(b) provides that a further penalty may only be levied in respect of

rates which remain unpaid on the later of the first day of the financial year for which the resolution was made, in this case 1 July 2013; or 5 *working* days after the date of the resolution, which in this case was 2 July 2013.

[88] In order to determine whether the timing of that further penalty was lawful, it is necessary to ascertain the meaning of the phrase: "rates … that are unpaid on whichever day is… 5 working days after the date on which the resolution is made". Specifically, it is necessary to determine whether the KDC's jurisdiction to impose a further penalty arose *on* 2 July 2013, or *after* 2 July 2013. I consider that the former interpretation is more consistent with the text and purpose of s 58(1)(b). It follows that there is no objection to the KDC penalty resolution for the 2013/2014 rating year on this ground.

Did the penalty resolutions fail to authorise the imposition of "penalties on penalties"?

[89] The final ground of review in relation to the KDC penalty resolutions turns on whether the KDC was required to explicitly state that it would impose "penalties on penalties" – in other words, that penalties would be applied cumulatively.

[90] It is clear that the KDC penalty resolutions did not explicitly state that further penalties would be imposed upon any unpaid penalties, as well as any unpaid rates. This ground of review therefore turns on the application of s 58(2), which provides:

> **58 Imposition of penalty**
>
> (1) …
>
> (2) The amount of unpaid rates to which a penalty may be added includes—
>
> (a) a penalty previously added to unpaid rates under this section; or
>
> (b) additional charges added to unpaid rates under section 132 of the Rating Powers Act 1988; or
>
> (c) rates levied under the Rating Powers Act 1988 that remain unpaid.

[91] The Plaintiffs submit that s 58(2) is permissive only and must be read in the context of s 57(2)(b)(i), which requires a penalty resolution to state "how the penalty is calculated". Further, the Plaintiffs say, the explicit wording of the KDC penalty resolutions for the 2012/2013 through to 2015/2016 rating years (inclusive) stated that penalties would be imposed on "rates assessed". For example, in 2014/2015 the relevant resolution provided:

> b A penalty of 10 per cent of the amount of all *rates assessed* in any financial year that are unpaid on 1 July 2014 may be added on the day following that date[.]
>
> (emphasis added)

[92] The Plaintiffs submit that, in to the language of the Rating Act, penalties are not "assessed" but rather are "added" to existing rates. Accordingly, the Plaintiffs contend that the most appropriate interpretation of the KDC penalty resolution above is that a 10 per cent penalty will be added to the initial rates bill, excluding existing penalties. If that is the case, then the KDC is not entitled to seek "penalties on penalties" from defaulting ratepayers for those years.

[93] In reply, the Local Authorities submit that the effect of s 58(2) of the Rating Act is that once penalties are added to unpaid rates, they themselves become "rates assessed" for the purposes of adding further penalties (assuming that they remain unpaid). The Local Authorities argue that this interpretation is supported by the definition of "rate" in s 5 of the Rating Act, which provides:

> **rate—**
>
> (a) means a general rate, a targeted rate, or a uniform annual general charge that is set in accordance with subpart 2 of Part 1; and
>
> (b) includes a penalty added to a rate in accordance with section 58; but
>
> (c) does not include a lump sum contribution[.]

[94] On that basis, the Local Authorities submit that regardless of whether the KDC penalty resolutions refer to "rates" or "rates assessed", it is clear that "rates" must have included the earlier penalties.

[95] I consider that the submissions on behalf of the Local Authorities are correct. The definition of a "rate" in the Rating Act is very clear. I acknowledge that, in the absence of any indication to the contrary, "rates assessed" could be interpreted more narrowly to refer only to the initial amount of rates, excluding penalties. However in light of the legislative context, I consider that "rates assessed" should be interpreted to mean all rates, including penalties, that flow from the original rates assessment.

[96] Accordingly, I consider that this ground of review must fail.

Conclusion

[97] The NRC penalty resolutions for the rating years 2011/2012 through to 2015/2016 inclusive purportedly delegate the NRC's power to assess and recover penalties to its three territorial authorities and are accordingly unlawful.

[98] The Plaintiffs' claims in respect of the KDC penalty resolutions for the same rating years are dismissed.

Application of the Validation Act

[99] The final issue which I am required to consider is whether the errors that I have found in respect of the NRC rates can be cured by the Validation Act. Given my findings in respect of the KDC rates and penalties, it is not necessary to consider the application of the Validation Act in respect of those resolutions.

[100] The Plaintiffs submit that the Validation Act has no application to the rates and penalties imposed by the NRC. They note that the title, preamble and definition of "specified rates" in the Validation Act are directed to the KDC and that, in fact, there is no mention of the NRC or its rates anywhere in the Validation Act at all. Further, at the time when the Validation Act was enacted, there was no challenge to or concern with the NRC's rates. There is nothing in the Parliamentary history to indicate that the Validation Act was intended to address the NRC's rates. Finally, the Plaintiffs submit that in any case, the Validation Act is only applicable in respect of rates up to and including the 2011/2012 rating year. Therefore, any rates that were imposed after that time are not validated.

[101] In reply, the Local Authorities submit that since the NRC's rates were assessed in the same rates assessment as those imposed by KDC, the effect of the Validation Act is to also validate the rates assessment for the NRC. Further, the Local Authorities argue that also the definition of "specified rates assessments" in the Validation Act should be interpreted consistently with the Preamble to that enactment, so that the validation extends to specified rates set, assessed and invoiced in the 2012/2013 rating year. The Local Authorities apparently accept that the Validation Act can have no application in respect of the 2013/2014, 2014/2015 and 2015/2016 rating years.

[102] The definitions set out in s 4 of the Validation Act are relevant to this issue:

> **Council** means the Kaipara District Council
>
> **forest owners' roading impact rate** means the targeted rate—
>
> (a) set by the Council under section 16 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2009/2010 and 2010/2011 (inclusive); and
>
> (b) referred to in the rates resolutions of the Council for those financial years as the forest owners' roading impact rate.
>
> …
>
> **Mangawhai uniform annual charge** means the targeted rate—
>
> (a) set by the Council under section 16 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2009/2010 to 2011/2012 (inclusive); and
>
> (b) referred to in the rates resolutions of the Council for those financial years as the "uniform annual charge" for the Mangawhai Urban Drainage District under the heading "wastewater disposal rates"
>
> **Mangawhai uniform targeted rate—**
>
> (a) means the targeted rate—
>
> (i) set by the Council under section 16 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2008/2009 to 2011/2012 (inclusive); and
>
> (ii) referred to in the rates resolutions of the Council for those financial years as the "uniform targeted rate" for the Mangawhai Urban Drainage District under the heading "Wastewater disposal rates"; and
>
> (b) includes any second payment of any 50% amount

…

specified rates means the following rates:

(a) forest owners' roading impact rate:

(b) Mangawhai uniform targeted rate:

(c) Mangawhai uniform annual charge:

(d) wastewater disposal rate:

(e) water supply rate for Maungaturoto, Station Village

wastewater disposal rate means the targeted rate—

(a) set by the Council under section 16 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2006/2007 to 2011/2012 (inclusive); and

(b) referred to in rates resolutions of the Council for those financial years as the "wastewater disposal rates" for the Dargaville Wastewater District, Te Kopuru Urban Drainage District, Maungaturoto Urban Drainage District, Kaiwaka Urban Drainage District, and Glinks Gully Effluent Disposal Area

water supply rate for Maungaturoto, Station Village means the targeted rate—

(a) set by the Council under section 19 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2006/2007 and 2011/2012 (inclusive); and

(b) referred to in rates resolutions of the Council for those financial years as a "water supply rate" for the Maungaturoto, Station Village Water Supply Area.

[103] The remainder of the Act validates all actions of the KDC in setting, assessing and recovering the specified rates;[24] all penalties added to the specified rates;[25] and all payments towards the specified rates.[26] The focus of the Validation Act is on the rating decisions and processes of the KDC in relation to its own rates.

[104] In contrast, the focus in the present case is on the rates of the NRC. The KDC is only involved to the extent that: (a) the NRC unlawfully purported to delegate the assessment of rates to the KDC, which I have found is unlawful; and (b) the KDC is the appointed collector of the NRC's rates, which is lawful. The

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24 Kaipara District Council (Validation of Rates and Other Matters) Act 2013, s 5.
25 Section 6.
26 Section 7.

Validation Act says nothing about validating any unlawful actions or omissions of the KDC in relation to another local authority's rates. At the time the Validation Act was passed, no-one was seemingly aware that the NRC had erred in its rating processes.

[105] In *Mangawhai Ratepayers and Residents Association Inc v Kaipara District Council*, the Court of Appeal held:[27]

> [194] We are in no doubt about the effect of the Validation Act. The Act's first stated purpose is to validate the specified rates set and assessed by the Council and the penalties added to those rates. The specified rates are defined in s 4, and validated by s 5. The language used is clear:
>
> > **5 Validation of specified rates**
> >
> > ...
> >
> > (a) the specified rates (as stated in the rates assessments and rates invoices for the specified rates) are valid and declared to have been lawfully set by the Council; and
> >
> > (b) all actions of the Council in setting, assessing, and recovering the specified rates are valid and declared to be and to always have been lawful ...
>
> [195] This wording effectively deals with all the actions of the Council in relation to rates. They leave no room for residual illegalities not reached by the Validation Act. It is not only the rates as set, assessed and recovered, that are validated, but also the rates assessments and rates invoices. This means the invoices sent to individual ratepayers are valid. We take this as a clear expression of legislative intent that the ratepayers are obliged to pay what they have been charged. That means there can be no residual defect in the rates.

[106] The Court of Appeal made its findings on the Validation Act in the context of a judicial review application alleging unlawful conduct by the KDC in relation to its own rates. The Court of Appeal found that all aspects of the "specified rates" were validated. In doing so, it rejected an argument for the appellants that left room for there being residual illegalities, but in my view this was relative to those rates only.

[107] The previous litigation between the MRRA and the KDC appears to be the only instance when the text of the Validation Act has been considered in any depth. In the present case the Local Authorities want me to read the first sentence of [195]

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[27] *Mangawhai Ratepayers and Residents Association Inc v Kaipara District Council* [2015] NZCA 612, [2016] 2 NZLR 437.

from *Mangawhai Ratepayers and Residents Association Inc v Kaipara District Council*, to which I have referred above, to suggest that the Court of Appeal read the Validation Act as validating every action of the KDC including its assessment of the NRC's rates. However, I consider that would be to read the passage too widely. I consider that the Court of Appeal meant to do no more than to refer to all aspects of the KDC's actions in relation to the rates that are specified in the Validation Act. To read the Validation Act as going beyond the "specified rates" and therefore applying to each and every action of the KDC in relation to rates that fall outside the definition of "specified rates" in the Validation Act would be to read this legislation too expansively. By enacting such legislation, Parliament has sought to rectify particular ultra vires conduct on the part of the KDC; in such circumstances courts are usually careful to ensure the scope of the validation goes no further than what Parliament has expressed.

[108] I acknowledge that s 9 of the Validation Act refers to "specified assessments" and that this phrase is not defined in s 4 of the Validation Act, whereas "specified rates" are so defined. However, in my view the "specified rates assessments" to which Parliament refers in s 9 are the assessments for the "specified rates". When read in this way there is no need to define "specified rates assessments".

[109] Further, I note that the Rating Act requires appointed collectors of rates, when issuing notices of rates assessments for more than one local authority to ratepayers, to "clearly distinguish the rates that are payable to each local authority" and the same applies for rates invoices.[28] By imposing this requirement, Parliament has sought to keep separate the rates for each local authority.

[110] Insofar therefore as the KDC has combined its rates with the NRC's rates in the assessment notice sent to ratepayers, I see this as a separate and subsequent act to the actual rates assessment that each local authority is required to make.

[111] I am satisfied therefore that the errors I have identified in relation to the NRC's rates are not cured by the Validation Act. Whilst the clear intent of Parliament in passing the Validation Act was to cover each and every aspect of the

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[28] Rating Act, s 53.

rating processes it sought to validate, that is separate from validating other unlawful conduct, particularly in relation to another local authority's rates. The present unlawful conduct arises from a failure on the part of the NRC to act lawfully in setting its rates and in assessing its rates. Part of that unlawful conduct included the NRC purporting to delegate its statutory powers and functions to the KDC. The cure for such conduct is legislation to validate the NRC's unlawful actions and omissions. The legal errors of the NRC cannot by a side wind be cured through this Court adopting an overly expansive interpretation of the Validation Act.

Relief

[112] The Plaintiffs seek the following relief:

(a) a declaration that the NRC's rates for the KDC region have not been lawfully set or assessed for the rating years from 2011/2012 to 2015/2016 inclusive;

(b) an order quashing the NRC's rates for the KDC region in respect of the rating years from 2011/2012 to 2015/2016 inclusive;

(c) an order quashing the penalties imposed by or on behalf of the first defendant for the KDC region in respect of the rating years from 2011/2012 to 2015/2016 inclusive; and

(d) an order that the NRC refund the unlawfully set and assessed rates and unlawfully added penalties.

[113] The Local Authorities oppose the granting of the relief sought. They rely on relief being at the discretion of the Court.[29]

[114] The Local Authorities contend that any ground for relief relates to defects in form or technical irregularities and so there has been no substantial wrong or miscarriage of justice. In this respect they refer to s 5 of the Judicature Amendment Act 1972 and seek for the Court to make an order validating the relevant decisions.

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[29] See s 4 of the Judicature Amendment Act 1972.

They also refer to well settled authority relating to relief in judicial review proceedings, including Air Nelson Ltd v Minister of Transport[30] and *A J Burr Ltd v Blenheim Borough Council*.[31]

[115] The Local Authorities acknowledge that the nature of the statutory requirement, the degree of non-compliance and the effect of non-compliance are all highly relevant to the decision on whether or not to grant relief.[32]

[116] The Local Authorities also point to the impact of delay where judicial review of rating decisions is concerned. They rely on a comment of the Court of Appeal in *Hauraki Catchment Board v Andrews* where, in the course of declining an appeal against a decision of this Court to grant relief, it was said:[33]

> In most cases a delay of approximately two and a half years in bringing review proceedings can be expected to be fatal, particularly in a rating case where the issue intended to be raised has been readily discernible throughout.

[117] On the other hand, the Plaintiffs contend that here the errors are substantial and more serious than technical irregularities. They refer to the passage in *Air Nelson v Minister of Transport* where it was said:[34]

> [60] Nevertheless, there must be extremely strong reasons to decline to grant relief. For example, in *Berkeley v Secretary of State for the Environment* [2001] 2 AC 603 (HL), Lord Bingham of Cornhill described the discretion as being "very narrow" (at 608) whereas Lord Hoffmann said cases in which relief would be declined were "exceptional" (at 616).
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> [61] In principle, the starting point is that where a claimant demonstrates that a public decision-maker has erred in the exercise of its power, the claimant is entitled to relief. The usual assumption is that where there is "substantial prejudice" to the claimant, a remedy should issue: *Murdoch v New Zealand Milk Board* [1982] 2 NZLR 108 at 122 (HC).

[118] The Plaintiffs accept that until the Court declares otherwise, the rates are to be treated as valid.

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30 *Air Nelson Ltd v Minister of Transport* [2008] NZAR 139 (CA).
31 *A J Burr Ltd v Blenheim Borough Council* [1982] NZLR 1 (CA).
32 See *Just One Life Ltd v Queenstown Lakes District Court* [2003] 2 NZLR 411 (HC).
33 *Hauraki Catchment Board v Andrews* [1987] 1 NZLR 445 (CA) at 451.
34 *Air Nelson Ltd v Minister of Transport*, above n 30.

[119] The exercise of rating powers by a regional authority has a significant impact on the ratepayers within the region. Failure to pay rates results in penalties, with the ultimate sanction being the forcible sale of a ratepayer's property. On the other hand, regional authorities depend upon rates to fund their functions and activities. They would be very adversely affected if some years after collecting rates they found themselves having to refund them because the rating process by which they were made was flawed. There is a strong public interest, therefore, in local authorities being able to expect that the rates they have received will not have to be refunded. Recognition of this interest can be seen from Parliament's willingness to correct flaws in a rating process by passing validating legislation.

[120] The errors that I have identified are serious and substantial. In short, the NRC has failed to exercise its statutory powers properly when determining rates resolutions and it has unlawfully sought to delegate the performance of a number of its functions in relation to rates to KDC. These are substantial and grave errors that warrant recognition by this Court making declarations of invalidity.[35]

[121] I consider, therefore, that the Plaintiffs are entitled to the declarations that they seek. When a local authority has exceeded its powers, it is important that this is recognised by the Court making declarations of invalidity. As Whata J observed in *Akaroa Marine Protection Society Inc v Minister of Conservation*:[36]

> …an underlying premise of judicial review … is the maintenance of the rule of law and it is the role of his Court to see that it is maintained.

[122] However, I have concerns regarding the balance of the relief sought. Apart from the two most recent rating years, the others go back some way in time. Complaints about illegality of rating decisions should be made promptly, as delay may give rise to other interests that tell against relief being granted. The undoing of past rates, when accompanied by a requirement for the monies paid in accordance with the unlawful rates to be returned, can result in highly detrimental outcomes for

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35 See discussion in *Macpherson v Napier City Council* [2013] NZHC 2518, [2015] NZAR 342 at [96] to [101].

36 *Akaroa Marine Protection Society Inc v Minister of Conservation* [2012] NZHC 933; [2012] NZAR 65 at [70].

the ratepayers of a region. Decisions will have been made, costs incurred and funding allocated in reliance on the rates being available to the local authority.

[123] Moreover, the region of the NRC covers the districts of two other territorial authorities. So, the NRC will have to consider whether the findings I have made impact on rates it has received from the other parts of its region.

[124] This is not a situation where the NRC has flagrantly exceeded its authority. The legislation itself is difficult; the drafting style adopted relies more on statements of principle rather than the prescriptive approach that was taken under the former legislation. The difficulty with a principles-based approach is that there is more room for people to interpret and to apply the principles differently from each other. It is no wonder in such circumstances that a local authority can err in the exercise of its powers. I note that there have already been a number of validating statutes to cure the errors of local authorities in the exercise of their powers under the Rating Act.[37]

[125] The reality, therefore, is that in the past, errors of the type which exist here have resulted in Parliament passing validating legislation. I consider that before reaching a final view on the balance of the relief sought, the NRC should have the opportunity to give further consideration to the findings that I have made and to take further steps in regard to the balance of the relief sought, including providing the Court with further evidence and submissions if it seeks to do so.

[126] I direct, therefore, that the NRC should provide updating evidence by no later than 21 November 2016 on this topic, as well as supplementary submissions. The Plaintiffs have 15 working days from the date of receipt of such evidence to file any evidence in response as well as any supplementary submissions. The NRC has 5 working days to file any reply to the material filed by the Plaintiffs.

[127] Regarding the relief sought by the Plaintiffs for their judicial review application against the KDC in relation to the imposition of penalties on rates, I have

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[37] Recent examples include the Christchurch City Council (Rates Validation) Act 2015; Tasman District Council (Validation and Recovery of Certain Rates) Act 2014; and the Kaipara District Council (Validation of Rates and Other Matters) Act 2013.

found no error was made in that regard, and for that reason the claim and relief sought against the KDC is dismissed.

[128] I will deal with the question of costs when I deliver a final judgment on this matter. Before I do so the parties will be given leave to file memoranda on costs.

Result

[129] I make the following declaration: The NRC's rates for the KDC region have not been lawfully set or assessed for the rating years from 2011/2012 to 2015/2016 inclusive.

[130] The balance of the relief sought by the Plaintiffs and costs will be determined in a final judgment.

[131] The Plaintiffs should take no steps in relation to the declaration until the balance of the relief they seek is determined.