

Tasman District Council (Validation and Recovery of Certain Rates) Bill

Local Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Tasman District Council (Validation and Recovery of Certain Rates) Bill, and recommends that it be passed with the amendments shown.

Introduction

The Tasman District Council (Validation and Recovery of Certain Rates) Bill seeks to validate a number of irregularities that occurred in the setting and assessing of rates in the financial years 2003/04 to 2008/09. While retrospective legislation should be used sparingly, there are precedents for Parliament validating rating irregularities through local bills. We were pleased to learn that steps have been taken by the Tasman District Council to improve the way rates are set so that similar errors are not likely to occur in future.

Technical amendments

For the sake of consistency, we recommend amending clauses 5(a), 6, and 9 to replace “declared to have been” with “declared to be and to always have been”.

Ligar Bay and Tata Beach stormwater rates

Clause 9 seeks to validate targeted rates set by the council for the 2006/07 financial year for the purposes of stormwater works in the Ligar Bay and Tata Beach urban drainage areas. While we are sympathetic to proposals to delete clause 9, this course of action would be outside the scope of the bill. Therefore, we recommend only the technical amendments discussed above.

We also note that the practical implications of deleting clause 9 would be manifold. The intent of the Local Government (Rating Act) 2002 is for local authorities to address rating errors as soon as practicable. However, given the historic nature of the rating errors in question, this would be decidedly difficult. Without such validation the council would be required to

- determine which ratepayers had paid the rate in 2006/07 and the amount they paid
- ascertain whether the current ratepayers are the same ratepayers as those in 2006/07
- apportion rates if there are or were multiple owners
- write to each ratepayer advising them of the amount of the refund and requesting bank details for repayment.

We are aware of opposition to the initial levying of a stormwater rate on the grounds that no stormwater drainage services are provided by the council and that there is no need for them. While we acknowledge that council consultation on this matter was not perhaps ideal, the merits of setting a stormwater rate are also outside the scope of this bill.

Appendix

Committee process

The Tasman District Council (Validation and Recovery of Certain Rates) Bill was referred to the committee on 20 February 2013. The closing date for submissions was 4 April 2013. We received and considered 14 submissions from interested groups and individuals. We heard four submissions.

We received advice from the Department of Internal Affairs.

Committee membership

Nicky Wagner (Chairperson)

Maggie Barry

Jacqui Dean

Paul Goldsmith

Claudette Hauiti

Hon Phil Heatley

Gareth Hughes

Moana Mackey

Eugenie Sage

Su'a William Sio

Phil Twyford

Andrew Williams

**Tasman District Council (Validation and
Recovery of Certain Rates) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

Hon Damien O'Connor

Tasman District Council (Validation and Recovery of Certain Rates) Bill

Local Bill

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Preamble

2003/2004 rates

- (1) At a special council meeting held on 26 June 2003, the Tasman District Council resolved, among other things, as follows:
- “That the general rate, including utilities rate, and Uniform Annual General Charge be adopted as proposed in Council’s draft 2003/2004 Annual Plan: 5
- “That the Motueka Business Rate, as proposed in Council’s draft 2003/2004 Annual Plan, be approved for the 2003/2004 financial year: 10
- “That the Richmond Business Rate be increased to raise \$5,000 more than last year and the Corporate Services Manager write to all ratepayers in the defined area advising them of the increased amount:
- “That Council adopt a Community Facilities Rate for the 2003/2004 year: 15
- “That the Community Facilities Rate for the 2003/2004 year be set at \$35.00 per rateable property:
- “That Council adopts its 2003/2004 Annual Plan, as amended, including rates and charges, pursuant to section 83 of the Local Government Act 2002: 20
- “That Council adopts its Funding Impact Statement, as amended, for the 2003/2004 financial year”.”
- (2) The funding impact statement—
- (a) set out all of the rates that the Council proposed to set and assess in the Tasman District for the 2003/2004 financial year; and 25
- (b) provided that the rates could be paid by instalments for the 2003/2004 financial year and set out the dates by which the specified amounts were to be paid; and 30
- (c) set out the penalties that were to be added to rates that were not paid by the due date:
- (3) However, the resolutions did not comply with section 23 of the Local Government (Rating) Act 2002 (the **Act**) because they failed— 35
- (a) to state clearly that the Council was setting rates as required by that section; and

- (b) to refer to all of the rates that were purported to be set (when the resolutions only referred to the adoption of some of the rates):
- (4) The Council did not comply with section 23 of the Act by purporting to set the rates before the Council had resolved to adopt the annual plan and the funding impact statement: 5
- (5) The Council did not comply with section 24 of the Act because it failed to state in a resolution,—
- (a) for all of the rates that were purported to be set and assessed, the financial year to which the rates applied; 10
and
- (b) that the rates could be paid by instalments for the 2003/2004 financial year and the dates by which the specified amounts were to be paid:
- (6) The Council did not comply with section 57 of the Act because it failed to resolve to authorise that penalties be added to rates that were not paid by the due date: 15
- 2004/2005 rates*
- (7) At a special council meeting held on 29 June 2004, the Tasman District Council resolved, among other things, as follows: 20
- “That the rating information and charges incorporating the Uniform Annual General Charge and targeted rates No 1 to 7 inclusive be adopted:
- “That wording in the Funding Impact Statement for the targeted rate—Mapua Stopbank, read “Council sets a targeted rate for the purpose of meeting targeted investigations costs of the Mapua stopbank”: 25
- “That the remaining items of the Funding Impact Statement, including targeted rates 9 to 16 inclusive, and definitions, assessment and invoicing, penalties, uneconomic balances, and early payment be adopted: 30
- “That—
- “(a) the Tasman District Council sets rates under the Local Government (Rating) Act 2002 on rating units in the District for the financial year commencing 1 July 2004 and ending on 30 June 2005, as detailed in the Funding Impact Statement: 35

- “(b) except for metered water rates, the Council will invoice rates quarterly, with final dates for payment of each instalment being 31 August 2004, 30 November 2004, 28 February 2005, and 31 May 2005. Metered rates are invoiced separately. All invoices for metered water rates are due for payment on the 20th day of the month following the month in which the invoice issued: 5
- “That Council adopt its Long Term Council Community Plan for the period commencing 1 July 2004”:
- (8) The funding impact statement— 10
- (a) set out all of the rates that the Council proposed to set and assess in the Tasman District for the 2004/2005 financial year; and
- (b) provided that the rates could be paid by instalments for the 2004/2005 financial year and set out the dates by which the specified amounts were to be paid; and 15
- (c) set out the penalties that were to be added to rates that were not paid by the due date:
- (9) The Council did not comply with section 23 of the Act by purporting to set the rates before the Council had resolved to adopt the Long-term Council Community Plan and the funding impact statement: 20
- (10) The Council did not comply with section 57 of the Act because it failed to resolve to authorise that penalties be added to rates that were not paid by the due date: 25
- 2005/2006 rates*
- (11) At a meeting held on 24 June 2005, the Tasman District Council resolved, among other things, as follows:
- “That the Refuse/Recycling Rate of \$55 (inclusive of GST) and refuse bag price of \$1.10 (inclusive of GST) be adopted for incorporation into Council’s Funding Statement for the 2005/2006 financial year: 30
- “That the general rate increase for the 2005/2006 financial year be 5.9%:
- “That the Uniform Annual General Charge for the 2005/2006 financial year be \$160: 35
- “That targeted rates 1–4 as identified in the Funding Impact Statement be adopted for the 2005/2006 year:

- “That targeted rates 5–18, from the Funding Impact Statement, with amendments as noted, be adopted for the 2005/2006 year”.”
- (12) At a meeting held on 30 June 2005, the Tasman District Council resolved, among other things, as follows: 5
- “That Council—
- “(a) adopts the Funding Impact Statement dated 30 June 2005 for the 2005/2006 financial year; and
- “(b) adopts its 2005/2006 Annual Plan as amended by the Council resolutions of 24 June 2005”: 10
- (13) The funding impact statement—
- (a) set out all of the rates that the Council proposed to set and assess in the Tasman District for the 2005/2006 financial year; and
- (b) provided that the rates could be paid by instalments for 15
the 2005/2006 financial year and set out the dates by which the specified amounts were to be paid; and
- (c) set out the penalties that were to be added to rates that were not paid by the due date:
- (14) The resolutions did not comply with section 23 of the Act because they failed— 20
- (a) to state clearly that the Council was setting rates as required by that section; and
- (b) to refer to all of the rates that were purported to be set (when the resolutions only referred to the adoption of 25
some of the rates):
- (15) The Council did not comply with section 23 of the Act by purporting to set the rates before the Council had resolved to adopt the annual plan and the funding impact statement:
- (16) The Council did not comply with section 24 of the Act because 30
it failed to state in a resolution,—
- (a) for all of the rates that were purported to be set and assessed, the financial year to which the rates applied; and
- (b) that the rates could be paid by instalments for the 35
2005/2006 financial year and the dates by which the specified amounts were to be paid:

- (17) The Council did not comply with section 57 of the Act because it failed to resolve to authorise that penalties be added to rates that were not paid by the due date:
- 2006/2007 rates*
- (18) At a special council meeting held on 20 June 2006, the Tasman District Council resolved, among other things, as follows: 5
- “That the general rate increase for the 2006/2007 year be 4.8% (excluding growth):
- “That the Uniform Annual General Charge be increased by \$20 in 2006/2007, and a further proposed \$20 for the subsequent two years, ie 2007/2008 and 2008/2009: 10
- “That—
- “(a) the Funding Impact Statement, as amended, for 2006/2007 be adopted by Council for inclusion in the LTCCP: 15
- “(b) Council adopt its final LTCCP, as amended, for audit for 2006–2016”:
- (19) At a special council meeting held on 29 June 2006, the Tasman District Council resolved, among other things, as follows:
- “That the 2006–2016 Long Term Council Community Plan Volumes 1 and 2 be adopted for audit with the amendments noted: 20
- “That Council adopts the audited LTCCP for 2006–2016”:
- (20) The funding impact statement—
- (a) set out all of the rates that the Council proposed to set and assess in the Tasman District for the 2006/2007 financial year; and 25
- (b) provided that the rates could be paid by instalments for the 2006/2007 financial year and set out the dates by which the specified amounts were to be paid; and 30
- (c) set out the penalties that were to be added to rates that were not paid by the due date:
- (21) The Council did not comply with section 23 of the Act because it failed to resolve to set its rates:
- (22) The Council did not comply with section 24 of the Act because it failed to state in a resolution,— 35
- (a) for all of the rates that were purported to be set, the financial year to which the rates applied; and

- (b) that the rates could be paid by instalments for the 2006/2007 financial year and the dates by which the specified amounts were to be paid:
- (23) The Council did not comply with section 57 of the Act because it failed to resolve to authorise that penalties be added to rates that were not paid by the due date: 5
- 2007/2008 rates*
- (24) At a special council meeting held on 22 June 2007, the Tasman District Council resolved, among other things, as follows:
- “That the Kaiteriteri refuse rate be \$41.00 for the 2007/2008 financial year: 10
- “That—
- “(a) a fire protection feasibility study for the central Takaka township be undertaken at a cost of up to \$90,000 and the fire protection operations rate as indicated in the draft annual plan be reduced from \$140.00 to \$88.00 for the 2007/2008 financial year: 15
- “(b) the revised wording be included in the 2007/2008 Annual Plan:
- “That the funding impact statement be adopted for the 2007/2008 year: 20
- “That Council adopts its 2007/2008 Annual Plan incorporating the following documents, as amended:
- “• Schedule of fees and charges
 - “• Reserve financial contributions 25
 - “• Variations to engineering work programme
 - “• Amendment to the LTCCP
 - “• Funding Impact Statement”:

(25) The funding impact statement—

(a) set out all of the rates that the Council proposed to set and assess in the Tasman District for the 2007/2008 financial year; and 30

(b) provided that the rates could be paid by instalments for the 2007/2008 financial year and set out the dates by which the specified amounts were to be paid; and 35

(c) set out the penalties that were to be added to rates that were not paid by the due date:

- (26) The Council did not comply with section 23 of the Act because it failed to resolve to set its rates:
- (27) The Council did not comply with section 24 of the Act because it failed to state in a resolution,—
- (a) for all of the rates that were purported to be set, the financial year to which the rates applied; and 5
 - (b) that the rates could be paid by instalments for the 2007/2008 financial year and the dates by which the specified amounts were to be paid:
- (28) The Council did not comply with section 57 of the Act because it failed to resolve to authorise that penalties be added to rates that were not paid by the due date: 10
- 2008/2009 rates*
- (29) At a meeting held on 26 June 2008, the Tasman District Council resolved, among other things, as follows: 15
- “That the Richmond business rate contained in the draft 2008/2009 Annual Plan be increased by 3%.
- “That Council fund the additional costs identified in the annual budgets of community boards in Golden Bay and Motueka by way of a targeted rate over each community board area. 20
- “That—
- “(a) the funding impact statement as attached to the agenda, and as amended to include the increased funding for Nelson Tasman Tourism, exclusion of funding for the Headingley Centre, the increase to the Richmond Business Rate and cost savings and additional revenue, be adopted for the 2008/2009 year: 25
 - “(b) Council adopts its 2008/2009 Annual Plan:
 - “(c) the ASB Bank Aquatic Centre targeted rate be considered in next year’s LTCCP review”: 30
- (30) The funding impact statement—
- (a) set out all of the rates that the Council proposed to set and assess in the Tasman District for the 2008/2009 financial year; and
 - (b) provided that the rates could be paid by instalments for the 2008/2009 financial year and set out the dates by which the specified amounts were to be paid; and 35

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- (c) set out the penalties that were to be added to rates that were not paid by the due date:
- (31) The Council did not comply with section 23 of the Act because it failed to resolve to set its rates:
- (32) The Council did not comply with section 24 of the Act because it failed to state in a resolution,— 5
- (a) for all of the rates that were purported to be set and assessed, the financial year to which the rates applied; and
- (b) that the rates could be paid by instalments for the 2008/2009 financial year and the dates by which the specified amounts were to be paid: 10
- (33) The Council did not comply with section 57 of the Act because it failed to resolve to authorise that penalties be added to rates that were not paid by the due date: 15
- Ligar Bay and Tata Beach stormwater rates*
- (34) The funding impact statement for the 2006/2007 financial year—
- (a) referred to the Council setting a targeted rate for the purposes of stormwater works, with the rate being based on the capital value of each rating unit in various drainage areas; and 20
- (b) further set out the categories of property and the rates (in cents per dollar of capital value) for the different drainage areas; and 25
- (c) referred to the Council resolving to include new drainage areas (including Ligar Bay and Tata Beach) from 1 July 2006:
- (35) Each of the drainage areas was purported to be accompanied by a map setting out the boundaries of the area. However, maps purporting to show the boundaries of the Ligar Bay urban drainage area and the Tata Beach urban drainage area for the 2006/2007 financial year for the purposes of the Ligar Bay and Tata Beach stormwater rates were not identified: 30
- (36) The Council did not comply with section 17 and Schedule 2 of the Act because it failed to identify the category of rateable land in Ligar Bay and Tata Beach in respect of which the Ligar 35

Bay and Tata Beach stormwater rates were purported to be set and assessed:

General

- (37) It is desirable that the irregularities relating to the 2003 rates, 2004 rates, 2005 rates, 2006 rates, 2007 rates, 2008 rates (the **specified rates**), and Ligar Bay and Tata Beach stormwater rates for the 2006/2007 financial year be validated and that the penalties added to those rates be validated: 5
- (38) Legislation is the only means by which the specified rates and the Ligar Bay and Tata Beach stormwater rates can be validated: 10
- (39) The objects of this Act cannot be attained other than by legislation:

The Parliament of New Zealand therefore enacts as follows:

- 1 Title** 15
This Act is the Tasman District Council (Validation and Recovery of Certain Rates) Act **2013**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 20

**Part 1
Preliminary provisions**

- 3 Purposes**
The purposes of this Act are to—
- (a) validate specified rates set and assessed by the Council and the penalties added to those rates; and 25
- (b) treat all money received by the Council in payment of the specified rates or penalties added to those rates as having been lawfully paid to, and received by, the Council; and 30
- (c) authorise the Council to recover any part of the specified rates and any penalties added to those rates that remain

- unpaid as if the specified rates or penalties had always been lawfully payable; and
- (d) validate the Ligar Bay stormwater rate and the Tata Beach stormwater rate for the 2006/2007 financial year.

4 Interpretation 5

In this Act, unless the context otherwise requires,—

2003 rates means the rates as set out in the funding impact statement adopted by the Council for the 2003/2004 financial year

2004 rates means the rates as set out in the funding impact statement adopted by the Council for the 2004/2005 financial year 10

2005 rates means the rates as set out in the funding impact statement adopted by the Council for the 2005/2006 financial year 15

2006 rates—

(a) means the rates as set out in the funding impact statement adopted by the Council for the 2006/2007 financial year; and

(b) includes, to avoid doubt, the Tata Beach stormwater rate and the Ligar Bay stormwater rate 20

2007 rates means the rates as set out in the funding impact statement adopted by the Council for the 2007/2008 financial year

2008 rates means the rates as set out in the funding impact statement adopted by the Council for the 2008/2009 financial year 25

Council means the Tasman District Council

funding impact statement has the meaning given by section 5 of the Local Government (Rating) Act 2002 30

Ligar Bay stormwater rate means the targeted rate purportedly set by the Council for the 2006/2007 financial year for the purpose of stormwater works in the Ligar Bay urban drainage area

rate has the meaning given by section 5 of the Local Government (Rating) Act 2002 35

specified rates means the 2003 rates, 2004 rates, 2005 rates, 2006 rates, 2007 rates, and 2008 rates

Tata Beach stormwater rate means the targeted rate purportedly set by the Council for the 2006/2007 financial year for the purpose of stormwater works in the Tata Beach urban drainage area. 5

Part 2

Validation and recovery of certain rates

Specified rates

- 5 **Validation of specified rates** 10
Despite the failure of the Council to comply with section 23 or 24 of the Local Government (Rating) Act 2002,—
 - (a) the specified rates are valid and declared to be and to always 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. 15
- 6 **Validation of penalties**
Despite the failure of the Council to comply with section 57 of the Local Government (Rating) Act 2002, all penalties added to the specified rates in reliance on the penalty section of the funding impact statement for those rates are valid and declared to be and to always have been lawfully imposed by the Council. 20
- 7 **Payment of specified rates declared lawful** 25
All money received by the Council in payment of the specified rates and any penalties paid in respect of those rates are to be treated as having been lawfully paid to, and received by, the Council.
- 8 **Recovery of unpaid specified rates or penalties declared lawful** 30
Any part of the specified rates and any penalties payable in respect of those rates that have not been paid to the Council on or after the commencement of this Act—

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- (a) are declared to be lawfully payable to the Council; and
- (b) may be recovered by the Council as if the rates or penalties had always been lawfully payable.

Ligar Bay and Tata Beach stormwater rates

- 9 Validation of Ligar Bay and Tata Beach stormwater rates** 5
- (1) The Ligar Bay stormwater rate and the Tata Beach stormwater rate for the 2006/2007 financial year are valid and declared to be and to always have been lawfully set and assessed by the Council despite the Council's failure to identify the category of rateable land for the purposes of each rate as required by section 17 and Schedule 2 of the Local Government (Rating) Act 2002. 10
- (2) **Sections 5 to 8** apply, with any necessary modifications, in respect of the Ligar Bay stormwater rate and the Tata Beach stormwater rate. 15

Legislative history

23 January 2013
20 February 2013

Introduction (Bill 96-1)
First reading and referral to Local Government and Environment Committee
