

17. RATING APPORTIONMENTS DECISION

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The purpose of this report is to advise the Council of the recent Privy Council decision on rating apportionments. The Privy Council overturned the Court of Appeal decision and has ruled in favour of local government.

BACKGROUND

This case was a challenge to the way the Valuer-General and his predecessors have classified blocks of flats, shops and similar properties for rating purposes. Although these properties are in single ownership, they have occupiers (identified as the ratepayers) with long-term leases. The Valuer-General directed that these 'blocks' should be treated as single 'separate properties' for rating purposes, whereas Local Government New Zealand (with the support of 58 local authorities) believed each flat or shop within a block should be a 'separate property' in its own right.

The councils were levying a uniform charge on each occupation, whereas if the title based rating approach was to be strictly followed, only a single uniform charge was applicable. It is the potential refund of the additional charges which was in contention. The bulk of our rates are levied by capital values and therefore unaffected by this case.

The case was heard by the High Court in June 1999, and in the Court's declaratory judgement Local Government New Zealand was successful in most of what it sought. The Court of Appeal overturned that judgement in September 2000.

Local Government New Zealand and three co-appellants (Hutt City Council, Manukau City Council and Rodney District Council) then proceeded with an appeal to the Privy Council. The appeal was funded by way of a levy on all those councils that had identified a liability to refund rates.

The Privy Council ruled that occupation, not the existence of a separate title, is the prime determinant of a separate property for rating purposes – in other words that each flat or shop in a block is a separate property.

The decision provides a final resolution to an issue that had been ongoing since late 1997.

The full text of the case is available.

THE CONSEQUENCES OF THE DECISION

This is a significant decision. It means that local authorities need not refund any of the rates that were under challenge. Had the appeal to the Privy Council been unsuccessful, 58 local authorities would have had to make refunds of at least \$36 million to around 12,000 properties. For Christchurch City Council the refund related to uniform annual general charges and would have amounted to \$925,000. This is the amount which was disclosed as a contingent liability in the Council's Annual Report for 2001.

This decision also gives a clear directive that the primary consideration in rating and valuation law is the promotion of a fair and equitable rating system rather than what is administratively convenient.

In the Local Government New Zealand memorandum on the decision, the work of the Apportionments Steering Group, of which Geoff Barnes, the Funds and Financial Policy Manager, was a member, is acknowledged as contributing to this successful outcome.

Chair's

Recommendation: That the information be received.