

Christchurch City Council (Rates Validation) Bill

Local Bill

Explanatory note

General policy statement

It has come to the attention of the Christchurch City Council (the **Council**) that irregularities occurred in the resolutions setting the Council's rates for the financial years 2003/2004 to 2012/2013 (inclusive) with respect to the payment dates for those rates and the authority to impose penalties on unpaid rates. This has raised questions about the validity of the collection of the rates and the penalties added for non-payment.

More particularly, in each of the relevant years there was—

- a failure to state in the resolution setting the rates, in breach of section 24 of the Local Government (Rating) Act 2002 (the **Act**), that the rates were payable by instalments and the payment dates for the instalments; and
- a failure to resolve, in breach of section 57 of the Act, that penalties would be added to rates that were not paid by the due date, or in respect of rates from previous years that remained unpaid on certain dates, the dates that penalties would be added to unpaid rates, and that the penalty would be 10% of the amount remaining unpaid.

The payment date and penalty information was set out on the rates assessments and rates invoices in each year.

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The Council has also identified irregularities in relation to the setting of the Uniform Annual General Charge and some targeted rates (the Church Bay Sewer Loan rate, the Church Bay Water Loan rate, the Governors Bay Sewer Loan rate, the Governors Bay Water Loan rate, the Restricted Water Targeted rate, the Waste Minimisation rate, and the Water Fire Service Connection rate) for the financial years 2003/2004 to 2012/2013 (inclusive).

Although the funding impact statements for each year included information about how liability for the targeted rates was to be calculated (for example, as a fixed amount per rating unit, per separately used or inhabited part of a rating unit, or per connection), this information was not included in the rates resolutions.

Although the funding impact statement for each year indicated how the Uniform Annual General Charge was to be calculated (generally as a fixed amount per separately used or inhabited part of a rating unit, although in some years this was ambiguously expressed), this information was not included in the rates resolutions.

The Council considers that it is desirable to address these irregularities. Legislation is the only means by which the irregularities relating to the rates and penalties can be validated.

The objects of this Bill cannot be attained otherwise than by legislation.

Clause by clause analysis

The *Preamble* describes the background to the Bill and sets out the objects of the Bill.

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 states the purposes of the Bill.

Clause 4 defines certain terms used in the Bill.

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Part 2

Validation of rates, payments, and penalties

Clause 5 validates the payment dates for the rates.

Clause 6 validates any penalties added to the rates.

Clause 7 declares all money received by the Council in payment of the rates and any penalties paid in respect of those rates to be and to always have been lawfully paid to, and received by, the Council.

Clause 8 provides that any part of the rates or any penalties payable in respect of those rates (by virtue of *clause 7*) that have not been paid to the Council on or after the commencement of this Bill are lawfully payable to the Council and may be recovered by the Council as if the rates or penalties had always been lawfully payable.

Clause 9 validates the specified rates. The specified rates comprise the Council's Uniform Annual General Charge and 7 targeted rates where irregularities have been identified in terms of section 23 of the Act.

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Nicky Wagner

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Preamble

- (1) The Christchurch City Council (the **Council**) has identified a number of irregularities that occurred in the financial years

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2003/2004 to 2012/2013 (inclusive) with respect to the setting of the Council's rates, the payment dates for those rates, and the imposition of penalties in relation to unpaid rates:

- (2) The irregularities are as follows:
- (a) for the financial years 2003/2004 to 2012/2013 (inclusive), in each resolution to set the Council's rates, the Council failed, in breach of section 24 of the Local Government (Rating) Act 2002, to state clearly or to state at all that the rates would be payable by instalments and the dates by which the specified amounts would be payable:
 - (b) for the financial years 2003/2004 to 2012/2013 (inclusive), in each resolution to set the Council's rates, the Council failed, in breach of section 57 of the Local Government (Rating) Act 2002, to state clearly or to state at all that penalties were to be added to rates that were not paid by the due date and to rates assessed in previous years that remained unpaid, the dates that penalties would be added to unpaid rates, and the amounts of those penalties that would be so added:
 - (c) for the financial years 2006/2007 to 2008/2009 (inclusive), in each resolution to set the Church Bay Sewer Loan rate and the Church Bay Water Loan rate, the Council breached section 23 of the Local Government (Rating) Act 2002, to the extent that the resolutions did not state that the rate was set as a fixed amount per rating unit, as provided for in the Council's funding impact statements:
 - (d) for the financial years 2006/2007 to 2012/2013 (inclusive), in each resolution to set the Governors Bay Sewer Loan rate and the Governors Bay Water Loan rate, the Council breached section 23 of the Local Government (Rating) Act 2002, to the extent that the resolutions did not state that the rate was set as a fixed amount per rating unit, as provided for in the Council's funding impact statements:
 - (e) for the financial years 2009/2010 to 2012/2013 (inclusive), in each resolution to set the Restricted Water Targeted rate, the Council breached section 23 of the Local

Government (Rating) Act 2002, to the extent that the resolutions did not state that the liability for this rate was calculated on the level of service through a restricted water supply system, as provided for in the Council's funding impact statements:

- (f) for the financial year 2008/2009, in the resolution to set the Waste Minimisation rate, the Council breached section 23 of the Local Government (Rating) Act 2002, to the extent that the resolution did not state that the rate was set as a fixed amount per rating unit, as provided for in the Council's funding impact statement:
- (g) for the financial years 2009/2010 to 2012/2013 (inclusive), in each resolution to set the Waste Minimisation rate, the Council breached section 23 of the Local Government (Rating) Act 2002, to the extent that the resolutions did not state that the rate was calculated on the number of separately used or inhabited parts of a rating unit, as provided for in the Council's funding impact statements:
- (h) for the financial years 2003/2004 to 2005/2006 (inclusive) and 2007/2008 to 2012/2013 (inclusive), in each resolution to set the Water Fire Service Connection rate, the Council breached section 23 of the Local Government (Rating) Act 2002, to the extent that the resolutions did not state that the rate was calculated on the number of connections, as provided for in the Council's funding impact statements:
- (i) for the financial years 2004/2005, 2005/2006, 2007/2008, and 2008/2009,—
 - (i) the Council did not state clearly in the funding impact statements that the Uniform Annual General Charge would be calculated on the number of separately used or inhabited parts of a rating unit; and
 - (ii) in each resolution to set the Uniform Annual General Charge, the Council breached section 23 of the Local Government (Rating) Act 2002, to the extent that the resolutions did not state that the charge was calculated on the number of sep-

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arately used or inhabited parts of a rating unit,
as was intended by the Council's funding impact
statements:

- (j) for the financial years 2003/2004, 2006/2007, and 2009/2010 to 2012/2013 (inclusive), in each resolution to set the Uniform Annual General Charge, the Council breached section 23 of the Local Government (Rating) Act 2002, to the extent that each resolution did not state that the charge was calculated on the number of separately used or inhabited parts of a rating unit, as provided for in the Council's funding impact statements:
- (3) It is desirable that the irregularities with respect to the setting of the Council's rates for the financial years 2003/2004 to 2012/2013 (inclusive) be validated and that the penalties added to unpaid rates for those financial years be validated:
- (4) Legislation is the only means by which the irregularities relating to the rates and penalties can be validated:
- (5) The objects of this Act cannot be attained otherwise than by legislation:

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Christchurch City Council (Rates Validation) Act 2014.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1 Preliminary provisions

3 Purposes

The purposes of this Act are to—

- (a) validate the payment dates for the rates; and

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- (b) validate the penalties added to unpaid rates; and
- (c) validate the setting of the specified rates to the extent that the rates resolutions did not state the basis on which the liability for the rates would be calculated; and
- (d) treat all money received by the Council in payment of the rates (including the specified rates) and penalties added to those rates as having been lawfully paid to, and received by, the Council; and
- (e) authorise the Council to recover any part of the rates (including the specified rates) and any penalties added to those rates that remain unpaid as if the rates or penalties had always been lawfully payable.

4 Interpretation

In this Act, unless the context otherwise requires,—

Church Bay Sewer Loan 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 2006/2007 to 2008/2009 (inclusive); and
- (b) referred to in the rates resolutions for those financial years as either the Church Bay Sewer Loan Targeted rate or the Church Bay Sewerage rate; and
- (c) assessed on rating units in respect of which the relevant lump sum contribution had not been made as a fixed amount per rating unit as set out in the relevant funding impact statement

Church Bay Water Loan 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 2006/2007 to 2008/2009 (inclusive); and
- (b) referred to in the rates resolutions for those financial years as either the Church Bay Water Loan Targeted rate or the Church Bay Water Supply rate; and
- (c) assessed on rating units in respect of which the relevant lump sum contribution had not been made as a fixed amount per rating unit as set out in the relevant funding impact statement

Council means the Christchurch City Council

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funding impact statement has the same meaning as in section 5 of the Local Government (Rating) Act 2002

Governors Bay Sewer Loan 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 2006/2007 to 2012/2013 (inclusive); and
- (b) referred to in the rates resolutions for those financial years as the Governors Bay Sewer Loan Targeted rate or the Governors Bay Sewerage rate or the Loan Servicing Costs for Governors Bay Sewerage Loan rate; and
- (c) assessed on rating units in respect of which the relevant lump sum contribution had not been made as a fixed amount per rating unit as set out in the relevant funding impact statement

Governors Bay Water Loan 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 2006/2007 to 2012/2013 (inclusive); and
- (b) referred to in the rates resolutions for those financial years as the Governors Bay Water Loan Targeted rate or the Governors Bay Water Supply rate or the Loan Servicing Costs for Governors Bay Water Loan rate; and
- (c) assessed on rating units in respect of which the relevant lump sum contribution had not been made as a fixed amount per rating unit as set out in the relevant funding impact statement

rates—

- (a) means all of the rates—
 - (i) set by the Council under the Local Government (Rating) Act 2002 for each of the financial years 2003/2004 to 2012/2013 (inclusive); and
 - (ii) referred to in the rates resolutions of the Council for those financial years; and
- (b) includes the specified rates

rates assessment and **rates invoice** have the same meanings as in section 5 of the Local Government (Rating) Act 2002

rates resolutions means the rates resolutions of the Council referred to in the Schedule

Restricted Water Targeted 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 2009/2010 to 2012/2013 (inclusive); and
- (b) referred to in the rates resolutions for those financial years as the Restricted Water Targeted rate; and
- (c) assessed as a fixed amount per level of service as set out in the relevant funding impact statement

specified rates means the following rates:

- (a) Church Bay Sewer Loan rate:
- (b) Church Bay Water Loan rate:
- (c) Governors Bay Sewer Loan rate:
- (d) Governors Bay Water Loan rate:
- (e) Restricted Water Targeted rate:
- (f) Waste Minimisation rate:
- (g) Water Fire Service Connection rate:
- (h) Uniform Annual General Charge

Waste Minimisation 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 2008/2009 to 2012/2013 (inclusive); and
- (b) referred to in the rates resolutions for those financial years as the Waste Minimisation rate or the Waste Minimisation Targeted rate; and
- (c) assessed as a fixed amount per rating unit in 2008/2009 and as a fixed amount per separately used or inhabited part of a rating unit in subsequent financial years as set out in the relevant funding impact statement

Water Fire Service Connection 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 2003/2004 to 2005/2006 (inclusive) and 2007/2008 to 2012/2013 (inclusive); and
- (b) referred to in the rates resolutions for those financial years as the Water Fire Service Connection rate; and
- (c) assessed as a fixed amount per connection as set out in the relevant funding impact statement

Uniform Annual General Charge means the rate—

- (a) set by the Council under section 15 of the Local Government (Rating) Act 2002 for each of the financial years 2003/2004 to 2012/2013 (inclusive); and
- (b) referred to in the rates resolutions for those financial years as the Uniform Annual General Charge; and
- (c) assessed as a fixed amount per separately used or inhabited part of a rating unit as provided or implied in the relevant funding impact statement.

Part 2

Validation of rates, payments, and penalties

5 Validation of payment dates for rates

Despite any failure of the Council to comply with section 24 of the Local Government (Rating) Act 2002,—

- (a) the dates by which the specified amounts of the rates were to be paid are valid and declared to be and always have been lawfully specified by the Council as if the rates resolutions had included those dates (which appeared on the rates assessments and rates invoices for each applicable financial year); and
- (b) all actions of the Council in assessing and recovering the rates are valid and declared to be and to have always been lawful.

6 Validation of penalties

Despite any failure of the Council to comply with section 57 of the Local Government (Rating) Act 2002,—

- (a) all penalties added to the rates are valid and declared to be and to have always been lawfully imposed by the Council as if the rates resolutions had included those penalties (which appeared on the rates assessments and rates invoices for each applicable financial year); and
- (b) all actions of the Council in adding and recovering the penalties are valid and declared to be and to have always been lawful.

7 Payment of rates declared lawful

All money received by the Council in payment of the 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 rates or penalties declared lawful

Any part of the 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—

- (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.

9 Validation of specified rates

- (1) Despite any failure of the Council to comply with section 23 of the Local Government (Rating) Act 2002,—
 - (a) the specified rates are valid and declared to be and to have always 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 have always been lawful.
 - (2) To avoid doubt, sections 5, 6, 7, and 8 apply, with any necessary modifications, in respect of the specified rates.
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Schedule

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Rates resolutions as recorded in minutes of Christchurch City Council meetings

| Financial year | Minute reference |
|-----------------------|---|
| 2003/2004 | Item 1 and resolution (30) of the meeting of 15 July 2003 |
| 2004/2005 | Item 1 and resolution (29) of the meeting of 30 June 2004 |
| 2005/2006 | Item 6 and resolution (3) of the meeting of 30 June 2005 |
| 2006/2007 | Item 11, resolution (e), and appendix 2 of the meeting of 30 June 2006 |
| 2007/2008 | Item 6, resolution (b), and appendix 1 of the meeting of 28 June 2007 |
| 2008/2009 | Item 6, resolution (c), and appendix D of the meeting of 25 June 2008 |
| 2009/2010 | Item 4, resolution (r), and appendix 3 of the meeting of 25 June 2009 to 30 June 2009 |
| 2010/2011 | Item 3, resolution (c), and appendix C of the meeting of 21 June 2010 |
| 2011/2012 | Item 8, resolution (b), and appendix 8 of the meeting of 29 June 2011 and 30 June 2011 |
| 2012/2013 | Item 3.4, resolution (c), and appendix C as amended of the meeting of 25 June 2012 and 26 June 2012 |