

GOVERNANCE

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USE OF TARGETED RATE FOR LAND PURCHASE

Local authorities should be reassured that sometimes the Courts can be persuaded to see the wood for the trees.

Targeted rate to support open space land purchase

In **Tacon v Hastings District Council**, a recent High Court case brought under the Declaratory Judgments Act 1908, Wylie J takes a pragmatic approach to the interpretation and application of the provisions of the Local Government (Rating) Act 2002 (**LGRA**) concerning targeted rates. The plaintiff, a Mrs Tacon, sought a declaration under section 3 of the Declaratory Judgments Act that targeted rates imposed by the Hastings District Council ("**the Council**") were not lawfully levied in terms of the LGRA.

Mrs Tacon was one of 18 landowners adjoining land that had been leased to the Council for many years for the purposes of a domain. When the rental for lease of the domain land became prohibitively expensive, the Council first consulted with the community, and then resolved to purchase the land on the basis that it would recover \$360,000 of the total purchase price of \$1,170,000 from surrounding landowners. The landowner contribution was justified on the grounds that there were considerable benefits to those landowners from the retention of the domain as open space. The Council had obtained a valuation stating that retention of the land as open space would avoid a decrease in land value of up to 25%, and in market value of up to 14%, in each of the surrounding residential properties.

Declaratory judgement process limits scope of Court

At the outset of the case it was apparent that what was sought by way of declaratory judgment was rather wider than the Declaratory Judgments Act would allow. As the Court could not issue a declaration where there were facts in dispute, or where questions for determination relied on a mixture of law and fact, the case boiled down to two issues:

- What do the words "identified in its funding impact statement" used in section 16 LGRA mean?
- What do the words "despite subsection (1)" mean as used in section 18(2) of the LGRA?

Appropriateness of targeted rate as a funding source

Before considering these specific questions the Court examined the requirement in section 101(3) of the Local Government Act 2002 (**LGA'02**) for the Council, when determining funding sources, to consider the factors there set out. These include, at section 101(3)(a)(ii):

"The distribution of benefits between the community as a whole, any identifiable part of a community, and individuals;"

The Court found that once the Council had considered the matters set out in section 101(3) and concluded that the benefits arising from the purchase of the land would be shared by the adjoining owners, it was entitled to determine how its funding needs arising from the purchase would be met. Wylie J notes at [47]:

"... it [the council] determined to allocate the funding needs between itself, the regional council, and the 18 individual landowners. This apportioned the benefit of acquiring the domain between adjoining landowners, the wider regional community, and the district community. It is noteworthy that the Council did not seek to recover the full benefit assessed to each adjoining landowners by Logan Stone Limited. Rather, it determined to recover part of its funding needs for the purchase of the domain from the adjoining landowners to recoup in part the benefit derived by those landowners. It was entitled to reach that conclusion on the materials before it, and at law."

Meaning of "identified in its funding impact statement"

The Court then went to address the specific provisions in section 16 and 18 of the LGRA that were in dispute. Section 16 allows a targeted rate to be set for "one or more activities or groups of activities" that are identified in a funding impact statement (**FIS**) as activities for which the targeted rate is to be set. The acquisition of the domain land was clearly an activity, and the Court found the words "identified in its funding impact statement" to be perfectly clear, and to bear their ordinary common sense meaning. Wylie J states at [52]:

"The section requires simply that the activity or groups of activities intended to be the subject of a targeted rate must be identified or set out by a local authority in its funding impact statement."

In this case, although the FIS might best be described as imperfect in terms of its layout and clarity, it did contain quite specific reference to the acquisition of the land in question, and the intention to fund it by way of a targeted rate on the adjoining properties. The targeted rate was said to be "calculated based on the direct private benefit to the adjoining land owners." While describing the format of the Council's Long term Plan containing the FIS as "unfortunate", and identifying some deficiencies in the information provided, the Court had no difficulty in concluding that there was no need for a declaration further clarifying the words in section 16. Wylie J went further by stating at [66]:

"...even had I been dealing with the matter on an application for review, I would not have granted relief to Mrs Tacon, for the following reasons:

- (a) The Council assiduously consulted with its community, and in particular with the particular landowners.
- (b) The proposed targeted rate and the basis on which it was calculated was clearly explained to all adjoining landowners.
- (c) With the exception of Mrs Tacon, all were happy with the targeted rate, and all have paid either by way of a lump sum contribution, or are paying over the 10 year period.
- (d) The purpose of a long term plan is to provide an opportunity for community participation in Council decision making. That purpose was clearly met in the present case. Mrs Tacon was not prejudiced. She lodged a detailed written submission on the targeted rate. That submission was presented to the Council.
- (e) The information that was included in the plan sufficed to put Mrs Tacon on notice, and there can be no suggestion that she was not properly informed in relation to the issue.
- (f) Were the targeted rate to be set aside, the Council could address the situation afresh and repeat the exercise properly."

Section 18 LGRA

The Court next had to address the relationship between subsections (1) and (2) of section 18 of the LGRA, which states the means by which liability for a targeted rate is calculated. Subsection (1) says the calculation for a targeted rate must utilise a factor or factors identified in the FIS for that purpose, and listed in Schedule 3 of that Act. But subsection (2) reads:

"Despite subsection (1), the liability for a targeted rate may be calculated as a fixed amount per rating unit."

The question for determination was over the meaning of the words "despite subsection (1)". The Court had no hesitation in finding that the Council had the option either to calculate liability under section 18(1) using the factors listed in Schedule 3, or as a fixed amount per rating unit under section 18(2). That is to say the two subsections provide alternatives, and a Council is not required to take section 18(1) factors into account when calculating liability for a targeted rate as a fixed amount per rating unit.

Conclusion

Wylie J concluded at [80]:

"While I am not persuaded that the Council has fully complied with its obligations under section 16 of the Local Government (Rating) Act, Mrs Tacon is not entitled to a declaration under the Declaratory Judgments Act in that regard. Further, had I been dealing with the matter by way of application for review, I would have declined her relief, notwithstanding what are, in my view, deficiencies in the way in which the Council handled the matter."

While this outcome should not be taken as a signal to local authorities that procedural deficiencies are unimportant, it is somewhat heartening to find that where the process applied is seen to be fair and inclusive, such deficiencies will not necessarily dictate the outcome.

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