



1.5 Separate Properties and Rating Apportionments

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- 1.501 For the past four years we have reported on the accounting and audit implications for local authorities of ongoing court proceedings between local authorities and the Valuer-General as to what is a “separate property” for the purposes of valuation and rating.
- 1.502 Under the Rating Powers Act 1988, local authorities could levy only certain charges – such as a uniform annual general charge – on each separate property. Some local authorities levied such charges on apportionments of a single separate property. The dispute concerned how a separate property is identified for rating and valuation purposes.
- 1.503 The legality of the historical rating apportionment practices is now clear, following a Privy Council decision on 7 October 2002.⁷ The Privy Council favoured the approach of local authorities rather than the Valuer-General, but the decision did not address all rating practices.

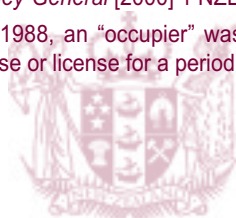
Background

- 1.504 The Valuer-General argued that a “separate property” means a property as defined by a certificate of title, regardless of the number of occupiers. The local authorities argued that a property that is “separately occupied” should be entered as a “separate property” on the valuation roll. The High Court found in favour of the local authorities, but the Court of Appeal found in favour of the Valuer-General.
- 1.505 The Privy Council allowed the appeal of three councils and Local Government New Zealand (LGNZ) against the Court of Appeal’s decision, and restored the declarations made in the High Court.⁸ The Privy Council agreed with the “occupation” approach of the New Zealand High Court – that where two or more people occupy land, the Valuer-General should enter each *separately occupied* part of the property as a separate property on the valuation roll, provided the property is *occupied* within the meaning of the Rating Powers Act.⁹

⁷ *Rodney District Council & Others v Attorney-General* (Privy Council Appeal No. 29 of 2001).

⁸ *Rodney District Council v Attorney-General* [2000] 1 NZLR 101.

⁹ Under the Rating Powers Act 1988, an “occupier” was the owner of land or any person who had a right to occupy land under a lease or license for a period of a year or more.





Financial Statements Disclosure

1.506 In 1998, when the rating apportionments issue was identified, we took the view that where authority for collection was in doubt local authorities should disclose the value of rates collected as a contingent liability in their financial statements for the year ended 30 June 1998. Because of the lack of resolution of the issue, we maintained that view for the years ended 30 June 1999, 2000 and 2001. In each of those years, some local authorities also recognised actual liabilities in relation to this issue.

Impact of the Privy Council Decision

1.507 Following the Privy Council decision, LGNZ commissioned legal advice on its impact for affected local authorities that had recognised liabilities or disclosed contingent liabilities in their financial statements.

1.508 The advice identified three “categories” of liabilities:

- Definitely no longer liabilities.
- Probably no longer liabilities and not warranting disclosure unless actual claims are lodged.
- Still liabilities.

Definitely No Longer Liabilities

1.509 The Privy Council decision established that a property shown in the valuation roll as an apportionment, but in respect of which a person had a right to occupy the property for a year or more, should have been shown as a separate property. Therefore, a local authority that has levied separate charges on such a property would have a strong defence to any claim for a refund. Accordingly, amounts disclosed in provisions or contingent liability notes for such properties could be eliminated.





Probably No Longer Liabilities

- 1.510 The Privy Council did not explicitly address the Valuer-General's discretion under section 8(2) of the Valuation of Land Act 1951 to treat properties occupied for periods of less than one year as separate properties. This means that many properties that have been subject to separate charges, but which have been occupied under tenancies on a monthly basis, are not covered by the judgement.
- 1.511 However, the circumstances supporting a refund of any separate charges on such properties have not been established. Therefore, LGNZ has advised local authorities that a liability for such properties should continue to be disclosed only where proceedings have been brought for recovery of particular charges.
- 1.512 Amounts disclosed in provisions or contingent liability notes in this category could be eliminated, subject to there being no proceedings for recovery. We are not aware of any proceedings issued against local authorities for recovery, or any claims received.

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Still Liabilities

- 1.513 The Privy Council decision also confirmed that separate charges levied against apportionments where there is no underlying separate occupation are unlawful. Amounts disclosed in provisions or contingent liability notes in this category of property that are not based on separate occupation should be disclosed as liabilities and local authorities should make refunds.

Subsequent Adjustment of Liabilities

- 1.514 Following the Privy Council decision in October 2002, some affected local authorities amended or eliminated the contingent liability disclosures or provisions recognised in their financial statements for the year ended 30 June 2002. However, in other cases, local authorities were not able to address the matter prior to issue of the audit report for that year, and will need to do so in their 30 June 2003 financial statements.





SEPARATE PROPERTIES AND RATING APPORTIONMENTS

Local Government (Rating) Act 2002

1.515 In March 2002, the Local Government (Rating) Act 2002 was passed with effect from the rating year starting on 1 July 2003. This Act has clarified the liability for, and basis of, rates for the future.

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