KAIPARA DISTRICT COUNCIL
(VALIDATION OF RATES AND OTHER MATTERS) BILL

WHY THE DRAFT BILL SHOULD NOT PROCEED AT THIS STAGE

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1. BILL INAPPROPRIATE AT THIS STAGE

The Kaipara Council is in dire straits both financially and legally.

Since the financial and legal excesses of the McKerchar/Tiller/Geange regime there has been no independent scrutiny of the finances of Council, both past and present.

The financial projections and models for the future are ill-based and as suspect as the projections and models of the past that helped bring about the present financial crisis.

Likewise there has been no independent examination and assessment of the legal problems facing Council arising from all the historic and current illegal/invalid/ultra vires actions.

It is the view of ratepayers that before any remedial action can be agreed upon there has to be a thorough, independent and expert examination of **ALL** the problems facing Council. There then has to be an assessment of those problems, and a joint plan has to be agreed between Council and ratepayers for solving those problems.

Ratepayers agree that a validation bill will almost certainly be necessary at that stage, and would endorse it provided that it is part of an approach agreed with ratepayers and following the independent examination and assessment of all Council's related problems.

Ratepayers do not agree with, and will not support, the current bill which they believe is rushed, ad hoc, incomplete and was not consulted with ratepayers.

2. CONSULTATION

There has been no proper consultation with ratepayers either in respect of:

(a) The options for dealing with illegal rates etc of the past, or

(b) The proposal to pursue a validation bill.

(a) The options for dealing with illegal actions of the past

In respect of these options the previous Council resolved as follows on 16 July 2012:

16 July 2012:

"Reconfirms its commitment to work with the community in identifying and assessing the options that might exist for addressing the rates irregularities that have been identified to date and in that regard agrees to form a Focus Group to review the options available for addressing the historical rating irregularities prior to any wider community consultation process being undertaken; and

Asks staff to develop Terms of Reference for the proposed focus group and that these be presented to Council at the time that the report outlining options for addressing the historical rating irregularities is presented."

Without any warning or advice to ratepayers that resolution was rescinded by a resolution of the commissioners on 18 December 2012, with the following reason being given:

Reason for the decision

The Commissioners through their Terms of Reference have the task of addressing the irregularities identified in relation to the processes that Council has followed to set rates in the past.

So, the commissioners reneged on a clear agreement with, and commitment to, ratepayers without any prior indication or discussion; a complete breach of good faith.

In addition they misrepresented and breached their clear legal obligations, set out in their terms of reference.

Note that in the Reason for the Decision above they stated that through their terms of reference they "*had the task of addressing the irregularities*". That is not quite correct. The terms of reference actually read:

work with the Kaipara community and ratepayers and the Department of Internal Affairs to identify options for dealing with invalidly set rates and other legal compliance matters.

They chose to omit the vital words highlighted in yellow and proceeded to ignore the requirement to work with the community and ratepayers to identify the options.

When confronted with these allegations, chair of commissioners John Robertson advised:

> *"We have considered these options in depth, including with members of the community and representatives of ratepayer groups".*

There is no evidence of any robust consultation with members of the community and representatives of ratepayer groups that would satisfy an independent observer that the commissioners had complied with their legal obligations under their terms of reference.

In respect of the previous Council's commitment to set up focus groups with ratepayers to discuss the options, John Robertson advised that it had been rescinded by the commissioners because he did not believe that it would "*add value to the governance process".*

No further comment is necessary.

(b) The proposal to pursue a validation bill

The proposal to pursue a validation bill and to decide what would be included in the bill was taken without any consultation with ratepayers. Council simply advised that the validation decision had been taken and then published a draft validation bill.

There was no indication of any sort that the views of ratepayers were being sought in respect of the draft until now – after ratepayers had no option other than to launch legal proceedings.

3. DEMOCRACY

There is no democracy in Kaipara. The commissioners were not democratically elected and yet they are forcing retroactive legislation on unwilling and disenfranchised ratepayers without any consultation. This is totally in breach of New Zealand's constitutional principles of democracy, the rule of law and natural justice.

4. COST

The full costs of the validation process have not been disclosed to ratepayers. However at a private meeting with the MRRA it was intimated by a commissioner that the Council's solicitors would charge between $100,000 and $150,000 for their fees alone.

In addition there would be the costs of supporting the bill in Parliament and ancillary costs.

The bill has already been through a redrafting and it will have a very rocky ride through Parliament, so the legal bill may be considerably higher than anticipated.

Ratepayers object to the cost on the following basis:

- The non-budgeted cost is excessive for the amount of work that is involved.

- The full cost should have been disclosed to all ratepayers in the current draft annual plan and they should have been consulted on spending that amount of money.

- Ratepayers should not be responsible for meeting the costs of a validation bill to validate illegal actions that came about because of the actions of Councillors, the Chief Executive and employed staff. Ratepayers are the innocent party.

Instead, the Council should be using ample evidence to support a claim of negligence against those parties responsible and Council should ask the Auditor-General to trigger a claim under section 44 of the Local Government Act. Instead ratepayers have had to ask the Auditor-General to take the latter step.

If this rushed bill fails to be passed by Parliament then the monies spent will be wasted. Better to wait until the problems have been resolved and the bill can be introduced with the support of ratepayers.

5. ONE OPPORTUNITY

Under Parliament's standing orders a bill that is defeated in Parliament cannot be resubmitted in the same calendar year.

It is therefore imperative that the Council gets the bill right at the first attempt, gets the support of ratepayers, and ensures the passage through Parliament.

If it fails then the delay will create insurmountable difficulties for the financial and legal position of Council.

The commissioners need to listen to the objections of ratepayers and take the appropriate steps to ensure that any bill has ratepayer support and meets the concerns set out in this document so that it succeeds on its first passage through Parliament.

6. NATURAL JUSTICE AND HUMAN RIGHTS

Historical background

For several years ratepayers have alleged that many of the matters included in the bill were illegal or ultra vires, including all the EcoCare rates, the rates assessments, the unit of demand charges and some of the development contributions.

In later years the Chief Executive and Councillors were advised of the non-compliance with the rating process and the LGA and LGRA before passing the rates resolutions, were referred to third party sources of rating information, and advised to get separate legal advice. The advice and warnings were all ignored.

The Councillors also ignored clear evidence presented by ratepayers that the Chief Executive was misrepresenting the legal opinions of Bell Gully to Councillors.

Not only that, the Councillors passed a resolution denying themselves access to any of the legal opinions.

For years Council rejected all of these claims made by ratepayers and ignored all of the advice and warnings, and responded that it had legal opinions that confirmed the validity of the matters that were being challenged.

The Chief Executive even acknowledged that the rates were "flawed" but continued to use the same format knowing that it was legally non-compliant.

Complaints by ratepayers to the Ombudsman, the Auditor-General and the Minister were all rejected and none of those parties would interfere. The only positive response was the Auditor-General's recommendation that the Council should commission *an independent first principles review* of the EcoCare rates.

Under the previous Chief Executive the Council delayed actioning this review for over a year and it was not until the new Chief Executive took over that Jonathan Salter of Simpson Grierson was appointed by Council to review the validity of the rates.

Council reneged on an agreement with ratepayers to have a fully independent review with agreed terms of reference, and an agreement to abide by the decision of the reviewer. Council appointed Jonathan Salter as its own solicitor and adopted a very narrow terms of reference, with no undertaking to comply with the findings of the reviewer.

The Salter report confirmed that all of the rates and development contributions alleged by ratepayers to be invalid, and others in addition, were invalid. He also stated:

> *In my opinion if (legal) proceedings were brought it is highly likely that all of the rates identified would be invalidated. In a real sense, the rates cannot be regarded as enforceable by the Council. Therefore the situation is serious and remedial action is required, assuming the Council is not disposed to simply refund the rates received.*

Ratepayers were buoyed by the decision and the Mayor sent out a personal apology to all ratepayers acknowledging and regretting the errors.

Council indicated that it would work with the ratepayers to look at options for dealing with the irregularities and also commissioned a further report from Jonathan Salter to examine all other rates and development contributions.

Council's attitude then changed. The second Salter report was kept secret and Council did an about-turn on its approach to the illegalities. It adopted the view that all of the rates were in fact legal and enforceable until they were declared to be invalid by the court.

In its resolution of 16 July 2012 (refer CONSULTATION above) Council reconfirmed *its commitment to work with the community in identifying and assessing the options that might exist for addressing the rates irregularities.*

However, as we have seen, the commissioners unilaterally reneged on that agreement and decided to proceed with a validation bill without consultation with the community.

More recently the ratepayers have claimed that the 2012/22 LTP is invalid and the current years rates are accordingly invalid.

Council denied this and stated categorically that it had a legal opinion confirming the validity of both the plan and the rates. However it refused to produce the opinion on the basis that it was privileged.

Council has now retreated from that stance and included the LTP and the current year's rates in the validation bill.

When the secret file of public excluded decisions relating to EcoCare was released in November 2011 by Glennis Christie of the Council, following the departure of the previous Chief Executive, the ratepayers made legal submissions to the Council, the Auditor-General and the Minister to the effect that the decisions to commence EcoCare and to raise finance were illegal and ultra vires.

As a direct result of those submissions the Council was compelled to approach the Auditor-General to conduct an inquiry into every aspect of EcoCare including the role played by the auditor.

The issues

After ratepayers putting all this effort in to maintain the rule of law in Kaipara it would be a breach of the rule of law, inconsistent with natural justice and a denial of human rights if the ratepayers' efforts were to be defeated by a validation bill.

For years Council denied any illegality. It then admitted the illegalities but then taunted ratepayers with the necessity of getting a court decision to confirm the invalidity.

Ratepayers were faced with determination of the Commissioners to pursue a validation bill without engaging with ratepayers over how to solve the real problems. Such a bill would negate all ratepayers' efforts over those years and effectively expunge the rule of law in Kaipara for that period. Given that, and following a total refusal of the Minister to discuss options with them, the ratepayers were left with little choice but to issue proceedings for judicial review.

Council's performance and behaviours through this whole affair have been deplorable. It has been incompetent, reckless and negligent. At times it has deliberately flouted the law and denied ratepayers their legal rights in full knowledge that it was acting illegally. It has acted in bad faith. It has delayed and prevaricated and has used the cost of access to the courts as a shield to allow it to enforce its illegal rates.

Ratepayers have acted honestly, reasonably and fairly. They have acted in good faith. They have maintained all along that the rule of law should be maintained and that the Council should be made to comply with its statutory obligations.

They have also been vindicated at every step, and stand a very good chance of being vindicated in court.

To deny them their final vindication in court by validating all the illegalities that they fought against would be a total denial of the rule of law, of justice, of equity and of fairness.

If Parliament allows the Kaipara Council to ride rough-shod over the rights of its ratepayers and whitewash its past then there will anger and resentment in the community that will never be assuaged.

The ratepayers have fought long and hard for their rights and Parliament should not become an accomplice of the Council in denying those rights and creating a future of rancour and bitterness.

7. SEPARATION OF POWERS

Parliament effectively has supreme power but it is one of the conventions of the Westminster system that it must not interfere with the courts. The separation of powers and rule of law is one of the foundations of our democracy.

If a court makes a decision which Parliament considers inappropriate then it has full power to remedy the situation by enacting legislation that will effectively change the law for the future.

In this particular case the Commissioners are proceeding with a validation bill that is intended to retroactively change substantive law which relates to the judicial review that is already before the courts.

Such an action would deny justice to the applicants and would be a fundamental breach of the rule of law and separation of powers.

If the bill were to be passed, it would signal that Parliament is prepared to effectively block any application to the courts that it deemed unacceptable and contrary to the policies and the views of the government.

This would be a dangerous step for democracy in New Zealand.

8. OTHER OPTIONS NOT CONSIDERED

One of the requirements of an application for validation is that the local authority has looked at all other options and that they are deemed to be inappropriate.

Ratepayers suggest that the Council has not given adequate consideration to other options for regularising the illegal rates.

Rates replacement under the LGRA in particular was rejected because of the problems of refunding the illegal rates to ratepayers who owned the property at that specific time, but may have sold the property, and then charging the current owners for the replaced rates which have nothing to do with them.

That is a totally spurious argument. Rates run with the land and the obligation to pay rates rest with the current owner. Local authorities do not concern themselves with the apportionment of rates.

The rate refund would therefore be made to the current owner, and then the current owner would be billed for the replacement rate. The argument advanced is spurious, as stated, and does not justify the proposed action.

9. THE EXTENT OF RETROACTIVE VALIDATION

Ratepayers acknowledge that validation may ultimately be necessary to validate certain illegalities where the rates were clearly due and payable and it is only minor irregularities that render them invalid.

However ratepayers believe that Parliament should not become a laundry for washing and disinfecting all the incompetent and reckless actions of a local authority and making them squeaky clean.

The validation procedure should be for genuine mistakes where there are simply issues of procedure or form and where the technical defects alone cause the illegality.

The validation procedure is inappropriate where there are major issues of substance and wholesale non-compliance with the law that are brought about by actions that are reckless, negligent or deliberate.

In this instance the commissioners are seeking to validate rates and charges that would not comply with the legislation even if the correct procedure and wording had been used.

We cite the following examples:

- Some rates in the validation bill were not even mentioned in the funding impact statements. That means that the commissioners are seeking to validate something that effectively did not exist.

- They are seeking to validate rates that were set in breach of the LGRA which are totally ultra vires (under section 43 LGRA) and would still be ultra vires and beyond any local authorities power even if the form and the procedure had been correct.

- They are seeking to validate a charge that was levied completely outside the provisions of the LGA which no local authority has any power to levy (unit of demand).

- They are also seeking to validate rates that were not assessable because the factor of liability was not assessable on any property at that time (connection to the sewer) by arguing that the properties would have been assessable if another factor of liability had been used. That other factor of liability (location) has never previously been mentioned, discussed or consulted on with ratepayers, and has not been used subsequently in respect of the same rate. (The rates that breach section 43 LGRA.)

This bill does far more than validating defective rates. It is introducing retroactive legislation that creates special powers for the Kaipara Council that no other local

authority in New Zealand has and extends its powers beyond the limits of the LGRA and the LGA.

We also draw attention to the NZ Bill of Rights Act 1990 and section 26(1) which relates to retroactive penalties and prevents a person being convicted of any offence that did not constitute an offence at the time it was committed.

The section only relates to *offences* butit reflects a core constitutional principle. The Guidelines of the Legislation Advisory Committee, with which all Government bills are required to comply, states (at 3.3):

> The overall question is one of fairness to those affected (*L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd, the Boucraa* [1994] 1 AC 486). In particular, legislation should not interfere with accrued rights and duties, nor should it create criminal liability or penalty retrospectively.

Parliament should only use retroactive legislation sparingly and only in situations where the equity is vey clear, only benign effects are created, where actions taken were generally understood to be consistent with the previous law and where there is no infringement of personal rights. None of that is true here.

Imposing retroactive penalties for an act that was clearly illegal at the time, flies in the face of constitutional principle in New Zealand.

10. A LESSON TO BE LEARNT

Following on from the point made immediately above, the Kaipara Council carried on its course of legal non-compliance for many years, and also carried it on even after it was warned of the resulting invalidity and of the legal complications that would be created.

Its behaviour appears cavalier at best, and at worst it appears totally disdainful of the law, did not care that it breached the LGA and the LGRA, and was totally indifferent to its own legal obligations under the law. It treated the rights of ratepayers with total disregard.

In short It displayed a contumelious disregard for the rule of law.

On the other hand the ratepayers, as noted above, acted in good faith, honestly and openly and in compliance with the law to try and protect their legal rights and to try and make the Council comply with its own legal obligations.

Parliament needs to recognise the situation and should not be seen to be as an avenue where such unacceptable behaviour by a local authority can be sanitised and validated at a single stroke by Parliament.

On the contrary, Parliament should be using an example such as this to send a clear message to this Council and to all local authorities in New Zealand that they are not above the law, that Parliament will not rubber-stamp their incompetence and "kiss it better".

Errant local authorities need to learn that if they make such gross errors, or act in such a way as this Council did, then they must bear the consequences, both legal and financial, of those actions.

When Hon Nick Smith was Minister of Local Government he made it very clear that he would not support any validation of the Kaipara rates if "incompetence or dishonesty" were involved.

Parliament should do the same.

11. PENALTIES

The effect of validation is retroactive so that what was illegal becomes legal, not from the date of the actual validation but from the date it came into existence.

Thus local authorities seek to validate illegal rates so that they can retain the monies that they have already received from ratepayers.

Going a step further, a local authority might argue that it is entitled to recover those rates that have no been paid but have been validated.

That brings in questions of fairness.

Ratepayers argue that it is unfair to charge them rates that were clearly invalid (and which they had every right not to pay) simply because they were validated retroactively with the stroke of a parliamentary pen.

If the rates were in fact for a service that was actually received then on the balance of fairness the council could argue that the service had been received, that other ratepayers had paid the rate, and that to maintain equities all ratepayers should be charged equally.

The problem arises when it comes to penalties on rates. The commissioners are currently seeking to recover penalties on illegal rates that have not been paid.

This must be a bridge too far for Parliament. The Council's own lawyer Jonathan Salter was adamant that the rates were invalid, that the court would confirm that view and then added:

> *In a real sense, the rates can cannot be regarded as enforceable by the Council.*

In such circumstances ratepayers would have every legal right to refuse to pay those rates until the matter had been decided by the court.

In the validation process it may be deemed fair to impose those rates as if they had been valid on the basis of fairness and equity as mentioned above, but it would be going a step too far to punish ratepayers by charging penalties for not having paid invalid rates.

They had acted on clear legal statements made by the Council and its solicitor that the rates were invalid and it would be totally unacceptable for them to be penalised for that.

The scales of equity and fairness are massively in favour of the ratepayers on this issue.

As an additional point, it must also be said that this whole matter of rating irregularities should have been resolved over four years ago when the non-compliance was first pointed out to Council.

It would be scarcely just to allow Council to impose draconian penalties and benefit from its own tardiness and inaction.

12. PUBLIC INTEREST NOT SERVED BY VALIDATION

There are instances where validation is absolutely necessary in the public interest. For example, where members of the Police were sworn in an invalid way it was deemed to be essential in the public interest that the defect was remedied by validation.

The Kaipara situation has no such hallmark of public interest. The rating issue could easily be sorted out in genuine consultation with ratepayers, and the validation of the Long Term Plan could be dealt with at a later date when all the issues facing the Council have been resolved and there is an accord with ratepayers.

No doubt Council would like the validation to go through prior to 1 July so that it can comply with its obligations under the LGA and the LGRA. However, that deadline scarcely appears achievable.

In any case, there are provisions in the Local Government Act for a plan to adopted outside the time-frame set down in the Act, and an amendment to the LTP can be adopted at any time provided the appropriate procedure is followed.

The public interest would best be served by delaying any validation until liability for the debts is decided and all matters in dispute can be resolved with ratepayers.

13. URGENCY

The commissioners may seek to have the matter dealt with urgently, and perhaps under urgency in Parliament, so that they can meet the statutory deadlines mentioned above.

This is not appropriate because:

1. As mentioned above, the LGA allows a council to adopt plans out of time.

2. Deciding this matter under urgency would limit the rights of ratepayers to make submissions on this matter and would limit the time that the select committee would have to research and consider the matter.

3. The Council has had ample opportunity to proceed with the validation so that there would be sufficient time for the full parliamentary process. It should not be allowed to prejudice the rights of ratepayers further and to reduce the level of scrutiny by the select committee because of its own tardiness.

14. NO APOLOGY

The Kaipara Council is responsible for a litany of illegalities and incompetence the like of which has rarely been seen from a local authority in New Zealand.

In spite of that there has been little expression of regret from any of those who were responsible.

When the illegality of the rates was confirmed by Jonathan Salter there was a letter of apology from the Mayor sent to ratepayers, but after that the Council closed ranks and adopted the view that the rates were in fact legal until the court said otherwise.

Ratepayers were outraged by the arrogant and dismissive attitude towards such blatant malfeasance.

There was little mention of the "problems" whilst the previous Council was in office.

The commissioners took over in August 2012 and have consistently tried to minimise the extent and gravity of the illegalities and relabelled them as "procedural irregularities" and other such names that diminish the true extent of the illegalities.

In addition, they have carefully tried to insulate themselves from any liability for the prior errors of the former Councillors and have consistently maintained that ratepayers are responsible for all debts of Council.

This stance gives no credence to ratepayers' legal arguments that they are not liable in law for the illegal debts of Council.

15. THE PURPOSE OF THE LGRA NEGATED

The purpose of the LGRA is set out in section 3 of the Act.

3 Purpose

The purpose of this Act is to promote the purpose of local government set out in the Local Government Act 2002 by—

(a) providing local authorities with flexible powers to set, assess, and collect rates to fund local government activities:

(b) ensuring that rates are set in accordance with decisions that are made in a transparent and consultative manner:

(c) providing for processes and information to enable ratepayers to identify and understand their liability for rates

All of these matters were ignored by the Kaipara Council.

It persistently failed to comply with the statutory requirements for setting rates.

It also exceeded its powers and set rates that were ultra vires.

It failed to issue legally compliant assessments for any rates in the past 5 years and probably going back even further.

The decisions to set the rates in question were not made in a transparent and consultative manner. The wrong terminology was used; conflicting terminology was used; different names were used for the same rate; and some rates were completely omitted from the funding impact statement.

Some of the rates were completely unintelligible. It was hard to tell what rate was being referred to, what type of land it referred to, and what was the basis of liability.

Factors of liability were used that were outside the Act.

In an unguarded moment the chair of commissioners, John Robertson, called the errors a "dog's breakfast".

There was a total failure to comply with subclauses (b) and (c) because ratepayers could not offer any opinions or consult on the rates because they could not understand them. They had absolutely no idea what they meant or how they applied to them.

It would be contrary to democracy, justice and equity to allow the Council to validate rates when it had failed totally to comply with every element of the clearly stated purpose of the LGRA.

16. POLITICAL EXPEDIENCY OVERRIDES RULE OF LAW

For over five years the Kaipara Council has ridden rough-shod over legal compliance Ratepayers have pointed this out and asked the regulatory authorities to step in and return the rule of law to Kaipara.

That has not happened. The former Councillors refused to have any independent inquiry into the problems of the district. They were supported by the Minister of Local Government.

The commissioners were appointed by the Minister with the major task of ensuring that the debt is paid by ratepayers. The Minister has rejected all attempts from ratepayers to discuss the concerns of ratepayers and their legal claims.

With local authorities throughout the country stretching their legal powers to the limit, and with the regulatory authorities and auditors being perceived as inactive, there is wide-spread concern about the shakiness of the whole local government edifice.

Two of the main assumptions that are at issue in the legal proceedings here are whether:

- Ratepayers are responsible for all the debts of a local authority whether illegal or not.

- Local authorities are seen as cast-iron securities that are impervious to challenge.

Both of those issues are important for the whole future of local government in New Zealand.

For the first time the court has the opportunity to consider those principles and decide if they are valid.

Passage of the validation bill now would ensure that the lawful basis for these assumptions are not considered by the courts.

On the other hand, the ratepayers believe that they are entitled to their day in court and that the rule of law should not continue to be a victim of political expediency

17. FINANCIAL EXPEDIENCY

The Kaipara Council is in dire straits financially. For years its accounts have been inaccurate and riddled with errors and did not reflect the true financial status of the Council.

The commissioners have continued along the same road and have carefully structured the financial statements and financial models so that they can obtain the stamp of approval from the auditor.

Council has to meet the *going concern* test which effectively means that it can meet its liabilities out of income for the foreseeable future.

The reality is that the Council debt is far too large for the ratepayers of Kaipara to support without the whole district being ruined financially.

However Council has constructed the accounts to show a different picture.

First it has minimised its liabilities. It states that its total debts are $80 million. However this figure does not include internal debt. It has borrowed monies from the Mangawhai Endowment Fund (about $5.5 million) and an unknown amount from the Reserves Fund. These will have to be repaid and should be included as a debt.

Council also acknowledges that it owes $17.3 million to ratepayers for the historic illegal rates. In addition there is an unknown amount for the historic illegal development contributions, and an unknown amount for the illegal current year's rates.

It may also be that other levies and charges made by Council since 1 July 2012 are invalid and will have to be refunded because Council is not operating with a valid LTP and the power to levy those charges stems from the LTP.

Some estimate that the true Council debt is more likely to be in the region of $120 million, but that cannot be ascertained with accuracy until independent accountants are allowed to examine the accounts.

Council has also included projections and financial models for income that are totally flawed, and are as unreliable as the original projections that resulted in the financial chaos that we have now.

These projections relate to development contributions in the future meeting a large proportion of the debt liability when in fact there is little development and the future of development contributions themselves is under scrutiny by the government.

Council is hoping that by validating all the illegal charges they will no longer be classed as liabilities and can be genuinely excluded from its balance sheet, and that should be sufficient to convince the auditor to sign off the Council as a going concern.

Parliament should not be a party to such a cynical manoeuvre. The Council has refused to allow any independent scrutiny of its financial past or its present position and is continuing down the track of misleading ratepayers as to its financial viability.

By refusing to validate the errors of the past, Parliament will be helping to make the Council accountable to its ratepayers.

18. VALIDATION BILL FIERCELY DISPUTED OR VALIDATION BILL BY AGREEMENT?

Many of the comments made above point to two clear options.

If Council proceeds with the validation bill at this stage it is not only taking a huge risk in that Parliament might reject it, but, more than that, it is going to be a very bitter battle fought at every step by the Kaipara community.

The ad hoc, hurried validation bill and the failure to date to consult on it, has perhaps alienated ratepayers more than any other action taken by the commissioners.

There will be serious turmoil in Kaipara and a resentment that will be impossible to mend.

On the other hand, if Council changes its approach and acknowledges the validity of ratepayers claims, and allows them to be resolved, then a bill could proceed at a later date with the full support of both parties.

Mangawhai Ratepayers and Residents Association
16 April 2013