

Kaipara District Council (Validation of Rates and Other Matters) Bill

Local Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Kaipara District Council (Validation of Rates and Other Matters) Bill and recommends that it be passed with the amendments shown.

Introduction

The Kaipara District Council (Validation of Rates and Other Matters) Bill seeks to validate a number of irregularities that occurred in the setting and assessing of rates by the Kaipara District Council in the financial years 2006/07 to 2011/12. It also seeks to validate the 2010/11 annual report of the council, a number of irregularities relating to its 2009–2019 and 2012–2022 long-term plans, and use of the special consultative procedure regarding the 2012–22 long-term plan.

Mangawhai Community Wastewater Scheme

Between 2008/09 and 2011/12 the council levied a one-off targeted rate for capital costs on properties connected to the Mangawhai Community Wastewater Scheme—the Mangawhai uniform targeted rate. The bill seeks to validate the targeted rate set by the council for the financial years 2008/09 to 2010/11. It would also validate the requirement to pay amounts in line with the proposed scheme the council consulted on in 2006.

The following historic issues relating to the scheme are outside the scope of the bill:

- the basis on which the scheme was commissioned and financed
- the decision to expand the scheme or increase borrowings
- the level of debt incurred or the council's debt management approach.

While outside the scope of this bill, these are important issues and are being covered by the Controller and Auditor-General's inquiry into the scheme.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Purpose

We recommend amending clause 3 by deleting paragraph (g). This paragraph would not validate any actions or omissions by the council, and implies that the proposed legislation would have a wider legal effect than intended.

Validation of penalties

We recommend amending clause 6 to ensure that only penalties that would have been lawful had they been added to valid rates would be validated under this legislation.

Validation of the annual report and long-term plan

For the avoidance of doubt, we recommend amending clauses 12 and 13 to remove the suggestion that the 2012–22 long-term plan and the 2011–12 annual report are invalid because they were adopted after the statutory deadlines (sections 93(3) and 98(3) of the Local

Government Act 2002). We are satisfied that the late adoption of a long-term plan or annual report does not invalidate it.

The right to bring proceedings

We recommend amending clause 14 so that any person—not just the Kaipara District Council—might bring proceedings against any person arising out of, or in connection with, any actions or omissions associated with matters validated by this legislation.

Wider issues

We recognise that elements of the governance of the Kaipara District Council were unsatisfactory over a period of time, and led to the problems that this bill addresses. We hope this bill, while limited in scope, will contribute to a resolution of the issues so the council and its ratepayers can move forward.

We have given considerable thought to the question of penalties being waived that relate to rates withheld as part of the “rates strike”. Notwithstanding the legal requirement for ratepayers to pay their rates, we acknowledge that the strike came about after many people from across the district had raised concerns about the activities of the council, which do not seem to have been actioned.

Section 85 of the Local Government (Rating) Act 2002 stipulates that a local authority may remit rates in accordance with its rates remission policy. This approach was followed by the Kaipara District Council Commissioners for the 2011/12 rates. We are pleased that the commissioners have undertaken to extend this to include the 1 January 2013 and 1 July 2013 rates. We support this course of action and feel that it, in conjunction with the withheld rates being paid, would go some considerable way to resolving the situation so that the people of the Kaipara District as a whole may move on.

We note that the Controller and Auditor-General is soon to release a report on these issues. The report was not available at the time of deliberation, but we were assured that the bill contains nothing that interferes with, or compromises, the pending Controller and Auditor-General’s report, or actions that might eventuate from it.

In the interests of securing a fair and legitimate settlement of the matter of the Mangawhai Community Wastewater Scheme, we trust that if the Controller and Auditor-General finds parties culpable then

the Government and the council will ensure those parties are held accountable.

For the same reason, we welcome the agreement by the Kaipara District Council to implement an amnesty by way of relief of rates penalties levied on ratepayers in relation to the Mangawhai Community Wastewater Scheme from July 2012 to 1 January 2014.

Appendix

Committee process

The Kaipara District Council (Validation of Rates and Other Matters) Bill was referred to the committee on 12 June 2013. The closing date for submissions was 25 July 2013. We received and considered 157 submissions from interested groups and individuals. We heard 77 submissions, and held hearings in Maungaturoto and Wellington. We received advice from the Department of Internal Affairs.

Committee membership

Nicky Wagner (Chairperson)

Maggie Barry

Jacqui Dean

Paul Goldsmith

Claudette Hauti

Hon Phil Heatley

Gareth Hughes

Moana Mackey

Eugenie Sage

Su'a William Sio

Phil Twyford

Andrew Williams

**Kaipara District Council (Validation of
Rates and Other Matters) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Mike Sabin

**Kaipara District Council
(Validation of Rates and Other
Matters) Bill**

Local Bill

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Preamble

2006/2007 financial year

- (1) At a meeting held on 7 June 2006, the Kaipara District Council (the **Council**) resolved to adopt its funding impact statement as part of its long-term council community plan for 2006–16 (the **LTCCP**). The funding impact statement set out all of the rates that the Council proposed to set and assess in the Kaipara District for the 2006/2007 financial year: 5
- (2) The LTCCP contained a policy on development contributions or financial contributions that provided for development contributions for the Mangawhai EcoCare Wastewater Treatment Scheme and Mangawhai roading: 10
- (3) At a meeting held on 28 June 2006, the Council resolved to set, among other things, the following rates:
 - (a) a water supply rate (being a targeted rate set under section 19 of the Local Government (Rating) Act 2002) for Maungaturoto, Station Village. The rate was set at \$1.75 (GST inclusive) per cubic metre and was subject to the minimum charge of \$73.25 per meter reading: 15
 - (b) a wastewater disposal rate (being a targeted rate set under section 16 of the Local Government (Rating) Act 2002) for the wastewater disposal areas of Dargaville Wastewater District, Te Kopuru Urban Drainage District, Maungaturoto Urban Drainage District, Kaiwaka 20

Urban Drainage District, and Glinks Gully Effluent Disposal Area:

- (4) In relation to the water supply rate for Maungaturoto, Station Village, the Council did not comply with section 19 of the Local Government (Rating) Act 2002. This is because section 19 does not authorise a rate to be set on the basis of a minimum charge per meter reading: 5
- (5) In relation to the wastewater disposal rate, the Council did not comply with section 18 of the Local Government (Rating) Act 2002. This is because— 10
 - (a) section 18 states that the calculation of liability for a targeted rate must utilise only a factor (or factors) that are identified in the funding impact statement as factors that must be used to calculate the liability for the targeted rate, as well as being factors that are listed in Schedule 3 of the Act; and 15
 - (b) the factor identified in the funding impact statement for certain schools and educational establishments was no longer an authorised factor; and
 - (c) the reference in the funding impact statement to a factor being “a uniform annual connection fee per separately occupied or inhabited residential property ...” and “a uniform non-connection fee, being 50% of the full connection fee per separately unoccupied or uninhabited residential property capable of being effectively connected ...” was not in accordance with the factor in Schedule 3 of the Act: 20 25
- (6) Also, the Council failed to comply with section 23 of the Local Government (Rating) Act 2002 in relation to wastewater disposal rate. This is because— 30
 - (a) section 23 requires a Council to set its rates in accordance with the relevant provisions of the Council’s funding impact statement for a financial year; and
 - (b) the categories of rateable land for setting a targeted rate or setting the targeted rate differentially for different categories of rateable land must be identified in the funding impact statement; and 35
 - (c) the Council resolution setting the targeted rate did not refer to “a uniform annual connection fee per separately

- occupied or inhabited residential property ...” or “a uniform non-connection fee, being 50% of the full connection fee per separately unoccupied or uninhabited residential property capable of being effectively connected ...” or “a uniform annual pan charge per commercial wc or urinal”, as was specified in the funding impact statement, but instead referred to “targeted annual rate ... for each wc or urinal in respect of each rating unit ... served either directly or through a private drain by a public sewerage drain” and to a “uniform annual charge ... in respect of each premises ... within 30 metres of a public sewerage drain to which is capable of being effectively connected”; and
- (d) the Council resolution setting the targeted rate did not refer to “a graduated scale of pan charges, based on a notional one pan per 20 pupils/staff members, for certain schools and educational establishments (paying sewerage charges) as defined in the Rating Powers (Special Provision for Certain Rates for Educational Establishments) Amendment Act 2001, and any amending or repealing legislation in respect of that Act” as was specified in the funding impact statement, but instead referred to a “Special 75% School Charge” and a “Special 50% School Charge”:
- (7) Under section 45(1) of the Local Government (Rating) Act 2002, a rates assessment must clearly identify certain matters, including—
- (a) the relevant matters in Schedule 2 of the Act that are required to determine the category (if any) to which a rating unit belongs for the purposes of setting a targeted rate under section 16(3)(b) or (4)(b) of the Act; and
- (b) information on the factors used to calculate the amount of the liability of a rating unit in respect of each targeted rate; and
- (c) the methods by which rates may be paid; and
- (d) the right of ratepayers to inspect the rating information database and rates records, and the right of ratepayers to object to any of the information included in the rating information database and rates records:

- (8) The Council failed to comply with section 45(1) of the Local Government (Rating) Act 2002 with respect to rates assessments for the 2006/2007 financial year because it did not—
- (a) set out the categories to which a rating unit belonged for the purposes of setting 1 or more targeted rates; and 5
 - (b) set out the information on the factors used to calculate the amount of the liability of a rating unit in respect of 1 or more targeted rates; and
 - (c) state the methods by which rates could be paid; and
 - (d) state the right of ratepayers to inspect the rating information database and rates records, and the right of ratepayers to object to any of the information included in the rating information database and rates records: 10
- (9) In relation to the Mangawhai EcoCare Wastewater Treatment Scheme,— 15
- (a) at a meeting on 22 February 2006, the Council resolved to adopt the Mangawhai EcoCare Wastewater Treatment Scheme Statement of Proposal for release as contained in the Schedules of the Draft LTCCP for 2006–2016; and 20
 - (b) at a meeting on 7 June 2006, the Council resolved to adopt the LTCCP for 2006–2016 which provided for the Mangawhai EcoCare Sewerage Scheme; and
 - (c) at a meeting on 25 October 2006, the Council considered a report that provided full details of the proposed Mangawhai EcoCare Sewerage Scheme, its capital costs and its funding regime, and set out a scope change that would double the scope of the scheme; and 25
 - (d) at a meeting on 25 October 2006, the Council resolved that the report be adopted: 30
- (10) Also, in relation to the Mangawhai EcoCare Sewerage Scheme,—
- (a) the Council subsequently borrowed approximately \$58 m to fund the capital costs of the scheme; and
 - (b) it is acknowledged that section 117 of the Local Government Act 2002 applies to those borrowings and that they are protected transactions that remain valid and enforceable: 35

2007/2008 financial year

- (11) At a meeting held on 6 June 2007, the Council resolved to adopt its funding impact statement as part of its annual plan for 2007–2008. The funding impact statement set out all of the rates that the Council proposed to set and assess in the Kaipara District for the 2007/2008 financial year: 5
- (12) At a meeting held on 27 June 2007, the Council resolved to set, among other things, the following rates:
- (a) a water supply rate for Maungaturoto, Station Village. The rate was set at \$1.80 per cubic metre (GST inclusive) and made subject to a minimum charge of \$75.45 per meter reading: 10
- (b) a wastewater disposal rate for the wastewater disposal areas of the Dargaville Wastewater District, Te Kopuru Urban Drainage District, Maungaturoto Urban Drainage District, Kaiwaka Urban Drainage District, and Glinks Gully Effluent Disposal Area: 15
- (13) In relation to the water supply rate Maungaturoto, Station Village, the Council did not comply with section 19 of the Local Government (Rating) Act 2002 because it made the same type of error as described in recital (4): 20
- (14) In relation to the wastewater disposal rate, the Council did not comply with sections 18 and 23 of the Local Government (Rating) Act 2002 because it made the same type of errors as described in recitals (5) and (6): 25
- (15) Further, the Council failed to comply with section 45(1) of the Local Government (Rating) Act 2002 with respect to rates assessments for the 2007/2008 financial year because it made the same type of errors as described in recital (8):

2008/2009 financial year 30

- (16) At a meeting held on 4 June 2008, the Council resolved to adopt its funding impact statement as part of its annual plan for 2008/2009. The funding impact statement set out all of the rates that the Council proposed to set and assess in the Kaipara District for the 2008/2009 financial year: 35
- (17) At a meeting held on 25 June 2008, the Council resolved to set, among other things, the following rates:

- (a) a water supply rate for Maungaturoto, Station Village. The rate was set at \$1.85 per cubic metre (GST inclusive) and made subject to a minimum charge of \$77.71 per meter reading; and
- (b) a wastewater disposal rate for the wastewater disposal areas of the Dargaville Wastewater District, Te Kopuru Urban Drainage District, Maungaturoto Urban Drainage District, Kaiwaka Urban Drainage District, and Glinks Gully Effluent Disposal Area (excluding the Mangawhai Urban Drainage Area); and
- (c) a targeted rate for the Mangawhai Urban Drainage District as follows:
 “(The following charges are applicable only to those properties for which connection to the reticulation network will be available before 30 June 2009)
 “Uniform Targeted Rate, for allotment or household units created:
- | | | | |
|-----------|------------------------------|----------|---|
| (i) | On or prior to 23 March 2002 | 1,327.05 | (first 50%) |
| (ii) | On or after 24 March 2002 | 7516.60 | (one-off) |
| <i>Or</i> | | | |
| (iii) | On or after 24 March 2002 | 517.60 | (pa for 25 years) (but see Note 1 which follows) |
- Note 1:** the \$517.60 is the first year charge only, and will subsequently increase in line with inflation.
- (d) a uniform annual charge for the Mangawhai Urban Drainage District as follows:
- | | |
|---|----------------|
| | 2008/09 |
| Residential 3/12th of \$692.90 pa | \$173.23 |
| Non-residential 3/12th of \$692.90 pa per pan | |
| Per annum | \$173.23 |
| Vacant lots | \$86.61 |
- (18) In relation to the water supply rate for Maungaturoto, Station Village, the Council failed to comply with section 19 of the Local Government (Rating) Act 2002. This is because—
- (a) it made the same error as described in recital (4); and

- (b) section 19 requires the Council to set the targeted rate in accordance with its funding impact statement; and
 - (c) the funding impact statement specified that the annual minimum amount of the rate be \$151 whereas the resolution referred to a minimum amount of \$77.71 per reading: 5
- (19) In relation to the wastewater disposal rate, the Council failed to comply with sections 18 and 23 of the Local Government (Rating) Act 2002 because it made the same errors as described in recitals (5) and (6): 10
- (20) In relation to the Mangawhai uniform targeted rate, the Council failed to comply with section 17 of the Local Government (Rating) Act 2002. This is because—
 - (a) section 17 provides the categories of rateable land for setting a targeted rate or setting the targeted rate differentially for different categories of rateable land must be those categories that are defined in terms of 1 or more of the matters listed in Schedule 2 of the Act; and 15
 - (b) the Council’s resolution provided that the rate would be assessed as a fixed amount per rating unit (or possibly per allotment or household unit), which amount would differ depending on the date the allotment or household unit was created; and 20
 - (c) these categories were not in accordance with any categories defined in Schedule 2 of the Act: 25
- (21) Also, in relation to the Mangawhai uniform targeted rate, the Council failed to comply with section 23 of the Local Government (Rating) 2002. This is because—
 - (a) section 23 requires a Council to set its rates in accordance with the relevant provisions of the Council’s funding impact statement for that financial year; and 30
 - (b) the funding impact statement did not refer to a uniform targeted rate for the Mangawhai Urban Drainage District (apart from an oblique reference to “Mangawhai (pan charge)”): 35
- (22) Further, in relation to the Mangawhai uniform targeted rate,—
 - (a) the Council wrote to each ratepayer who would be eligible in that year (where the ratepayer’s allotment was created before 23 March 2002) and advised the

- ratepayer that a one-off targeted rate (payable over 2 years) would apply; and
- (b) the Council wrote to each ratepayer who would be eligible in that year (where the ratepayer's allotment was created after 23 March 2002) and asked the ratepayer to elect whether a one-off targeted rate or the targeted rate (payable over 25 years) would apply. Ratepayers subsequently made an election, and if no election was made, the one-off targeted rate applied and the Mangawhai uniform targeted rate was assessed accordingly:
- (23) To the extent that the Mangawhai uniform targeted rate had characteristics of being a lump sum contribution for a capital project, the Council did not comply with Part 4A of the Local Government (Rating) 2002 Act. This is because—
- (a) Part 4A of the Act sets out a procedure (which includes a capital project funding plan) where a Council wishes to fund, or partially fund, a capital project by lump sum contributions from its ratepayers; and
 - (b) while the chapter called the Mangawhai EcoCare Wastewater Treatment Scheme as contained in the Schedules of the LTCCP for 2006–2016 had characteristics of a capital project funding plan, this chapter did not make it clear that it was a capital project funding plan or meet some of the requirements of section 117E of the Act; and
 - (c) while invitations were sent to eligible ratepayers, these invitations did not meet some of the requirements of section 117G of the Act; and
 - (d) the invitations that were sent contravened section 117C of the Act in that they specified the lump sum contribution was the default option; and
 - (e) the Council did not comply with section 117I of the Act in that it did not deliver to ratepayers who had elected to pay the one-off targeted rate, a separate invoice (had it in fact been a lump sum contribution); and
 - (f) the Council did not comply with section 117K(2) of the Act; and
 - (g) the Council did not comply with section 117L of the Act in that it did not meet the notification requirements

- where there was a change in ownership of the rating unit:
- (24) In relation to the Mangawhai uniform annual charge, the Council did not comply with section 23 of the Local Government (Rating) Act 2002. This is because— 5
- (a) section 23 requires a Council to set its rates in accordance with the relevant provisions of the Council’s funding impact statement for that financial year; and
 - (b) the funding impact statement referred to a factor being “a uniform annual connection charge per separately occupied or inhabited residential property ...” and “a uniform non-connection charge, being 50% of the full connection charge per separately unoccupied or uninhabited residential property capable of being effectively connected ...” and also made a reference to the “Mangawhai (pan charge)” of \$693; but 10 15
 - (c) the Council’s resolution refers to a uniform annual charge of residential three-twelveths of \$692.90 and non-residential of three-twelveths of \$692.90, as well as vacant lots having a uniform annual charge of \$86.61: 20
- (25) Further, in relation to the Mangawhai uniform annual charge, the Council did not comply with section 43(2) and (4) of the Local Government (Rating) Act 2002. This is because—
- (a) the effect of sections 43(2) and (4) is that a factor on which a rate is set must be one which exists as at the close of the previous financial year and no rate can be affected by a change in factors during a financial year; and 25
 - (b) the Council’s resolution provided that the uniform annual charge would be assessed on those properties for which connection to the reticulation network would be available before 30 June 2009; and 30
 - (c) this allowed the Council to assess the uniform annual charge on rating units where there had been a change in the factor during the 2008/2009 financial year by virtue of connection: 35
- (26) However, the Council has subsequently refunded to the applicable ratepayers the Mangawhai uniform annual charge that

was assessed on any rating unit where there had been a change in the factor where connection occurred during the 2008/2009 financial year:

- (27) In addition, the Council did not comply with section 45(1) of the Local Government (Rating) Act 2002 with respect to rates assessments for the 2008/2009 financial year because it made the same type of errors as described in recital (8): 5
- 2009/2010 financial year*
- (28) At a meeting held on 23 June 2009, the Council resolved to adopt its funding impact statement as part of its LTCCP for 2009–2019. The funding impact statement set out all of the rates that the Council proposed to set and assess in the Kaipara District for the 2009/2010 financial year: 10
- (29) The LTCCP for 2009–2019 contained a policy on development contributions or financial contributions that purported to continue the development contributions policy for the Mangawhai EcoCare Wastewater Treatment Scheme and Mangawhai roading previously adopted by the Council in its LTCCP for 2006–2016. However, the policy in the LTCCP for 2009–2019 failed to do so in a way that complied with section 106 of the Local Government Act 2002: 15 20
- (30) At a meeting held on 24 June 2009, the Council resolved to set, among other things, the following rates:
- (a) a water supply rate for Maungaturoto, Station Village. The rate was set at \$1.94 per cubic metre (GST inclusive) and made subject to a minimum charge of \$81.50 per meter reading: 25
- (b) a wastewater disposal rate for the wastewater disposal areas of the Dargaville Wastewater District, Te Kopuru Urban Drainage District, Maungaturoto Urban Drainage District, Kaiwaka Urban Drainage District, and Glinks Gully Effluent Disposal Area (excluding Mangawhai Urban Drainage Area): 30
- (c) a targeted rate for the Mangawhai Urban Drainage District as follows: 35
- “(The following charges are applicable only to those properties for which connection to the reticulation network will be available before 30 June 2010)

“Uniform Targeted Rate, for allotment or household units created:

- (i) On or prior to 23 March 2002 1,366.85 (first 50%)
 - (ii) On or after 24 March 2002 7,742.10 (one-off)
- Or*
- (iii) On or after 24 March 2002 533.,20 (pa for 25 years)
(but *see Note 1* which follows)

Note 1: the \$533.20 is the first year charge only, and will subsequently increase in line with inflation.

- (d) a uniform annual charge for the Mangawhai Urban Drainage District as follows:

2009/10

| | |
|------------------------------------|--------|
| Residential: per pan per annum | 713.70 |
| Non-residential: per pan per annum | 713.70 |
| Vacant lots | 356.85 |

- (e) a forest owners’ roading impact rate (being a targeted rate set under section 16 of the Local Government (Rating) Act 2002 at the rate of 0.3096 cents in the dollar (GST inclusive) of land value on every rating unit with a Valuation New Zealand Code of FE (Exotic Forest): 5
- (31) In relation to the water supply rate for Maungaturoto, Station Village, the Council did not comply with section 19 of the Local Government (Rating) Act 2002 because it made the same type of errors as described in recital (18): 10
 - (32) In relation to the wastewater disposal rate, the Council did not comply with section 18 or 23 of the Local Government (Rating) Act 2002 because it made the same errors as described in recitals (5) and (6): 15
 - (33) In relation to the Mangawhai uniform targeted rate, the Council did not comply with section 17 of the Local Government (Rating) Act 2002 because it made the same errors as described in recital (20): 20
 - (34) Also, in relation to the Mangawhai uniform targeted rate, the Council did not comply with section 23 of the Local Government (Rating) Act 2002. This is because—

- (a) section 23 requires a Council to set its rates in accordance with the relevant provisions of the Council’s funding impact statement for that financial year; and
 - (b) the funding impact statement did not refer to a uniform targeted rate for the Mangawhai Urban Drainage District: 5
- (35) Further, in relation to the Mangawhai uniform targeted rate,—
- (a) the Council wrote to each ratepayer who would be eligible in that year (where the ratepayer’s allotment was created before 23 March 2002) and advised the ratepayer that a one-off targeted rate (payable over 2 years) would apply; and 10
 - (b) the Council wrote to each ratepayer who would be eligible in that year (where the ratepayer’s allotment was created after 23 March 2002) and asked the ratepayer to elect whether a one-off targeted rate or the targeted rate (payable over 25 years) would apply. Ratepayers subsequently made an election, and if no election was made, the 25-year targeted rate applied and the Mangawhai uniform targeted rate was assessed accordingly: 15 20
- (36) To the extent that the Mangawhai uniform targeted rate had characteristics of being a lump sum contribution for a capital project, the Council acknowledges that the same irregularities occurred as described in recital (23) (except recital 23(d)):
- (37) With respect to the Mangawhai uniform annual charge, the Council failed to comply with section 23 of the Local Government (Rating) Act 2002. This is because— 25
- (a) section 23 requires a Council to set its rates in accordance with the relevant provisions of the funding impact statement for that financial year; and 30
 - (b) the funding impact statement did not refer to a uniform annual charge for the Mangawhai Urban Drainage District:
- (38) The Council failed to comply with sections 43(2) and (4) of the Local Government (Rating) Act 2002 in relation to the Mangawhai uniform annual charge to the extent that it made the same type of errors as described in recital (25): 35

- (39) In relation to the forest owners' roading impact rate, the Council did not comply with section 17 of the Local Government (Rating) Act 2002. This is because—
- (a) section 17 provides that categories of rateable land are categories that are identified in the Council's funding impact statement as categories for setting the targeted rate; and 5
 - (b) the funding impact statement did not identify the category of rateable land for this rate:
- (40) Also, in relation to the forest owners' roading impact rate for that financial year, the Council failed to comply with section 18 of the Local Government (Rating) Act 2002. This is because— 10
- (a) section 18 states that the calculation of liability for a targeted rate must utilise only a factor (or factors) that are identified in the funding impact statement as factors that must be used to calculate the liability for the targeted rate, as well as being factors that are listed in Schedule 3 of the Local Government (Rating) Act 2002; and 15
 - (b) the funding impact statement did not identify the factor that would be used to calculate the liability for this targeted rate: 20
- (41) Further, in relation to the forest owners' roading impact rate, the Council failed to comply with section 23 of the Local Government (Rating) Act 2002 because it made the same type of errors as described in recital (21): 25
- (42) In addition, the Council failed to comply with section 45(1) of the Local Government (Rating) Act 2002 with respect to rates assessments for the 2009/2010 financial year because it made the same type of errors as described in recital (8): 30
- 2010/2011 financial year*
- (43) At a meeting held on 9 June 2010, the Council resolved to adopt its funding impact statement as part of its annual plan for 2010–2011. The funding impact statement set out all of the rates that the Council proposed to set and assess in the Kaipara District for the 2010/2011 financial year: 35
- (44) At a meeting held on 25 June 2010, the Council resolved to set, among other things, the following rates:

- (a) a water supply rate for Maungaturoto, Station Village. The rate was set at \$1.80 per cubic metre (GST exclusive) and made subject to a minimum charge of \$75.41 per meter reading:
- (b) a wastewater disposal rate for the wastewater disposal areas of Dargaville Wastewater District, Te Kopuru Urban Drainage District, Maungaturoto Urban Drainage District, Kaiwaka Urban Drainage District, and Glinks Gully Effluent Disposal Area (excluding Mangawhai Urban Drainage Area):
- (c) a targeted rate for the Mangawhai Urban Drainage District as follows:
 - “(The following charges are applicable only to those properties for which connection to the reticulation network will be available before 30 June 2011)
 - “Uniform Targeted Rate, for allotment or household units created:
 - (i) On or prior to 23 March 2002 1,251.41 (first 50%)
 - (ii) On or after 24 March 2002 7,088.35 (one-off)
 - Or*
 - (iii) On or after 24 March 2002 488.18 (pa for 25 years)
(but *see Note 1* which follows)

Note 1: the \$488.18 is the first year charge only, and will subsequently increase in line with inflation.
- (d) a uniform annual charge for the Mangawhai Urban Drainage District as follows:

| | 2010/11 |
|------------------------------------|----------------|
| Residential: per pan per annum | 652.44 |
| Non-residential: per pan per annum | 652.44 |
| Vacant lots | 326.22 |
- (e) a forest owners’ roading impact rate on land where the targeted rate would be a rate of 0.5511 cents in the dollar (GST exclusive) of land value on every rating unit with a Valuation New Zealand Code of FE (Exotic Forest):
- (45) In relation to the water supply rate for Maungaturoto, Station Village, the Council failed to comply section 19 of the Local

- Government (Rating) Act 2002 because it made the same type of errors as described in recital (18):
- (46) In relation to the wastewater disposal rate, the Council failed to comply with sections 18 and 23 of the Local Government (Rating) Act 2002 because it made the same errors as described in recitals (5) and (6): 5
- (47) In relation to the Mangawhai uniform targeted rate, the Council failed to comply with section 17 of the Local Government (Rating) Act 2002 because it made the same errors as described in recital (20): 10
- (48) Further, in relation to the Mangawhai uniform targeted rate, the Council failed to comply with section 23 of the Local Government (Rating) Act 2002 because it made the same errors as described in recital (34):
- (49) With respect to the Mangawhai uniform targeted rate,— 15
- (a) the Council wrote to each ratepayer that would be eligible in that year (where the ratepayer’s allotment was created before 23 March 2002) and advised the ratepayer that a one-off targeted rate (payable over 2 years) would apply; and 20
- (b) the Council wrote to each ratepayer that would be eligible in that year (where the ratepayer’s allotment was created after 23 March 2002) and asked the ratepayer to elect whether a one-off targeted rate or the targeted rate (payable over 25 years) would apply. Ratepayers subsequently made an election, and the Mangawhai uniform targeted rate was assessed accordingly: 25
- (50) To the extent that the rate had characteristics of being a lump sum contribution for a capital project, the Council acknowledges that the same irregularities occurred as described in recital (23): 30
- (51) In relation to the Mangawhai uniform annual charge, the Council did not comply with section 23 or section 43(2) and (4) of the Local Government (Rating) Act 2002 because it made the same type of errors as described in recitals (25) and (37): 35
- (52) In relation to the forest owners’ roading impact rate, the Council failed to comply with section 17, 18, and 23 of the Local

Government (Rating) Act 2002 because it made the same type of errors as described in recitals (39) and (40):

- (53) Also, the Council failed to comply with section 45(1) of the Local Government (Rating) Act 2002 with respect to rates assessments for the 2010/2011 financial year because it made the same type of errors as described in recital (8): 5
- (54) Finally, under section 98(3) of the Local Government Act 2002, the Council was required to adopt an annual report for the 2010/2011 financial year by 30 November 2011. The Council resolved to adopt the annual report for the 2010/2011 financial year on 29 August 2012: 10
- 2011/2012 financial year*
- (55) At a meeting held on 8 June 2011, the Council resolved to adopt its funding impact statement. The funding impact statement set out all of the rates that the Council proposed to set and assess in the Kaipara District for the 2011/2012 financial year: 15
- (56) At a meeting held on 22 June 2011, the Council resolved to set, among other things, the following rates: 20
- (a) a water supply rate for Maungaturoto, Station Village. The rate was set at \$2.36 per cubic metre (GST inclusive) and made subject to a minimum charge of \$99.20 per meter reading: 25
- (b) a wastewater disposal rate for the wastewater disposal areas of the Dargaville Wastewater District, Te Kopuru Urban Drainage District, Maungaturoto Urban Drainage District, Kaiwaka Urban Drainage District, and Glinks Gully Effluent Disposal Area (excluding Mangawhai Urban Drainage Area): 25
- (c) a targeted rate for the Mangawhai Urban Drainage District as follows: 30
- “(The following charges are applicable only to those properties for which connection to the reticulation network will be available before 30 June 2012)
- “One-off Uniform Targeted Rate based on location only. The deciding location is either within or outside, the original scope of servicing in the Mangawhai Community Wastewater Scheme Contract. 35

- (i) Within original contract scope 1,482.50 (first 50%)
- (ii) Outside original contract scope 4,198.50 (first 50%)
- (d) a uniform annual charge for the Mangawhai Urban Drainage District as follows:

| | |
|------------------------------------|----------------|
| | 2011/12 |
| Residential: per pan per annum | \$773.00 |
| Non-residential: per pan per annum | \$773.00 |
| Vacant lots | \$386.50 |
- (57) In relation to the water supply rate for Maungaturoto, Station Village, the Council did not comply with section 19 of the Local Government (Rating) Act 2002 because it made the same type of errors described in recital (18): 5
- (58) In relation to the wastewater disposal rate, the Council did not comply with sections 18 and 23 of the Local Government (Rating) Act 2002 because it made the same errors as described in recitals (5) and (6): 10
- (59) In relation to the Mangawhai uniform targeted rate, the Council did not comply with section 23 of the Local Government (Rating) Act 2002. This is because—
 - (a) section 23 requires a Council to set its rates in accordance with the relevant provisions of the Council’s funding impact statement for that financial year; and 15
 - (b) the Council resolution setting the targeted rate did not describe it as a one-off targeted rate for each separately occupied or inhabited residential property differentiated by location with a one-off amount of \$8,397 as was indicated in the funding impact statement: 20
- (60) With respect to the Mangawhai uniform annual charge, it is unclear whether the Council complied with section 23 of the Local Government (Rating) Act 2002. This is because—
 - (a) section 23 requires a Council to set its rates in accordance with the relevant provisions of the Council’s funding impact statement for that financial year; and 25
 - (b) the funding impact statement referred to a factor being “a uniform annual connection charge per separately

- occupied or inhabited residential property ...” and “a uniform non-connection charge, being 50% of the full connection charge per separately unoccupied or uninhabited residential property capable of being effectively connected ...” and also made a reference to the “Mangawai—Annual Fee” of \$773; but 5
- (c) the Council’s resolution refers to a uniform annual charge of residential per annum of \$773, non-residential; per pan per annum of \$773.00, and vacant lots of \$386.50: 10
- (61) In addition, the Council failed to comply with section 45(1) of the Local Government (Rating) Act 2002 with respect to rates assessments for the 2011/2012 financial year because it made the same type of errors as described in recital (8):
- 2012/2013 financial year* 15
- (62) Section 93(1) of the Local Government Act 2002 provides that the Council must, at all times, have a long-term plan (**LTP**). Under section 93(3) of the Local Government Act 2002, the Council was required to adopt the LTP for the 2012–2022 period by 30 June 2012. The Council resolved to adopt its LTP for 2012–2022 on 29 August 2012: 20
- (63) Section 93(2) of the Local Government Act 2002 also provides that the Council must use the special consultative procedure in adopting an LTP. Section 83 of the Local Government Act 2002 sets out the requirements of the special consultative procedure and requires the Council to ensure that any person who makes a submission on the proposal within that period— 25
- (a) is sent a written notice acknowledging receipt of that person’s submission; and
- (b) is given a reasonable opportunity to be heard by the local authority (if that person so requests): 30
- (64) In addition, section 83 of the Local Government Act 2002 provides that the Council must ensure that the notice given to a person who has asked for an opportunity to be heard contains information— 35
- (a) advising that person of that person’s opportunity to be heard; and
- (b) explaining how that person may exercise that person’s opportunity to be heard:

- (65) The Council did not comply with section 83 of the Local Government Act 2002 because although it sent written notices acknowledging receipt of submissions, in that notice it failed to—
- (a) advise submitters (whether they had asked for an opportunity to be heard or not) of their opportunity to be heard by way of an oral submission; and 5
 - (b) explain how they could exercise their opportunity to be heard: 5
- (66) The Council failed to comply with section 45(1) of the Local Government (Rating) Act 2002 with respect to rates assessments for the 2012/2013 financial year because it made the same type of errors as described in recital (8): 10
- General*
- (67) It is desirable that the irregularities relating to the forest owners' roading impact rate, the Mangawhai uniform annual charge, the Mangawhai uniform targeted rate, the wastewater disposal rate, and the water supply rate for Maungaturoto, Station Village for financial years 2006/2007 to 2011/2012 (inclusive) be validated and the penalties added to those rates be validated: 15 20
- (68) It is desirable that the irregularities relating to the continuation of the Council's development contributions policy in 2009 be validated:
- (69) It is desirable that the irregularities relating to the conduct of the special consultative procedure for the Council's LTP for 2012–2022 be validated: 25
- (70) It is desirable that the irregularities relating to the Council's late adoption of its annual report for the 2010/2011 financial year and its late adoption of its LTP for 2012–2022 be validated for the avoidance of doubt: 30
- (71) It is desirable that the omissions relating to the Council's rates assessments for the financial years 2006/2007 to 2012/2013 (inclusive) be validated:
- (72) Legislation is the only means by which the forest owners' roading impact rate, the Mangawhai uniform annual charge, the Mangawhai uniform targeted rate, the wastewater disposal 35

rate, and the water supply rate for Maungaturoto, Station Village, and the other irregularities can be validated:

- (73) The objects of this Act cannot be attained other than by legislation:

The Parliament of New Zealand therefore enacts as follows: 5

1 Title

This Act is the Kaipara District Council (Validation of Rates and Other Matters) Act **2013**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 10

**Part 1
Preliminary provisions**

3 Purposes

The purposes of this Act are to— 15

- (a) validate the specified rates set and assessed by the Council and the penalties added to those rates; and
- (b) treat all money received by the Council in payment of the specified rates or penalties added to those rates as having been lawfully paid to, and received by, the Council; and 20
- (c) authorise the Council to recover any part of the specified rates and any penalties added to those rates that remain unpaid as if the specified rates or penalties had always been lawfully payable; and 25
- (d) validate any election or application (as the case may be) of the Mangawhai uniform targeted rate for the financial years relating to 2008/2009 to 2010/2011 (inclusive) and any subsequent financial years; and
- (e) validate the information contained in the rates assessments for the financial years relating to 2006/2007 to 2012/2013 (inclusive); and 30
- (f) validate other actions or omissions of the Council relating to—

- (i) the continuation of its 2006 development contributions policy for the 2009 financial year; and
- (ii) the late adoption of its annual report for the 2011/2012 financial year and its long-term plan for 2012–2022; and 5
- (iii) its conduct of the special consultative procedure for its long-term plan for 2012–2022; and
- ~~(g) validate any other actions or omissions of the Council relating to the financial years 2006/2007 to 2012/2013 (inclusive).~~ 10

4 Interpretation

In this Act, unless the context otherwise requires,—

Council means the Kaipara District Council

forest owners’ roading impact rate means the targeted rate— 15

- (a) set by the Council under section 16 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2009/2010 and 2010/2011 (inclusive); and
- (b) referred to in the rates resolutions of the Council for those financial years as the forest owners’ roading impact rate 20

funding impact statement has the meaning given by section 5 of the Local Government (Rating) Act 2002

long-term plan has the meaning given by section 5(1) of the Local Government Act 2002 25

lump sum contribution has the same meaning as in section 117A of the Local Government (Rating) Act 2002

Mangawhai uniform targeted rate—

- (a) means the targeted rate—
 - (i) set by the Council under section 16 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2008/2009 to 2011/2012 (inclusive); and 30
 - (ii) referred to in the rates resolutions of the Council for those financial years as the “uniform targeted rate” for the Mangawhai Urban Drainage District 35

under the heading “Wastewater disposal rates”;
and

(b) includes any second payment of any 50% amount
Mangawhai uniform annual charge means the targeted rate— 5

(a) set by the Council under section 16 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2009/2010 to 2011/2012 (inclusive); and

(b) referred to in the rates resolutions of the Council for those financial years as the “uniform annual charge” for the Mangawhai Urban Drainage District under the heading “wastewater disposal rates” 10

rate, rates assessment, rates invoice, and rating unit have the same meaning as in section 5 of the Local Government (Rating) Act 2002 15

specified rates means the following rates:

(a) forest owners’ roading impact rate:

(b) Mangawhai uniform targeted rate:

(c) Mangawhai uniform annual charge:

(d) wastewater disposal rate: 20

(e) water supply rate for Maungaturoto, Station Village

wastewater disposal 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 relating to 2006/2007 to 2011/2012 (inclusive); and 25

(b) referred to in rates resolutions of the Council for those financial years as the “wastewater disposal rates” for the Dargaville Wastewater District, Te Kopuru Urban Drainage District, Maungaturoto Urban Drainage District, Kaiwaka Urban Drainage District, and Glinks Gully Effluent Disposal Area 30

water supply rate for Maungaturoto, Station Village means the targeted rate—

(a) set by the Council under section 19 of the Local Government (Rating) Act 2002 for each of the financial years relating to 2006/2007 to 2011/2012 (inclusive); and 35

(b) referred to in rates resolutions of the Council for those financial years as a “water supply rate” for the Maungaturoto, Station Village Water Supply Area.

Part 2**Validation of rates and other matters**Subpart 1—Validation of matters under
Local Government (Rating) Act 2002*Specified rates* 5**5 Validation of specified rates**

Despite any failure of the Council to comply with sections 16, 17, 18, 19, 23, and 43 of the Local Government (Rating) Act 2002,—

- (a) the specified rates (as stated in the rates assessments and rates invoices for the specified rates) are valid and declared to have been lawfully set by the Council; and 10
- (b) all actions of the Council in setting, assessing, and recovering the specified rates are valid and declared to be and to always have been lawful; and 15
- (c) the assessment of the wastewater disposal rate in respect of each separately occupied or inhabited residential property is to be treated as if it were an assessment in respect of each separately used or inhabited part of a rating unit. 20

6 Validation of penalties

(1) This section applies to all penalties added to the specified rates (as stated in the rates assessments and rates invoices for the specified rates).

(2) All penalties added to the specified rates (as stated in the rates assessments and rates invoices for the specified rates) The penalties are valid and declared to be and to always have been lawfully imposed by the Council to the extent that the penalties would have been lawfully imposed if the specified rates had always been lawfully payable. 30

7 Payment of specified rates declared lawful

All money received by the Council in payment of the specified 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. 35

8 Recovery of unpaid specified rates or penalties declared lawful

Any part of the specified 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—

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- (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.

Specified rates assessments

9 Validation of specified rates assessments

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Despite the failure of the Council to comply with section 45(1) of the Local Government (Rating) Act 2002, the specified rates assessments are valid and declared to be and to always have been lawful.

Mangawhai uniform targeted rate

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10 Validation of one-off targeted rate or 25-year targeted rate for Mangawhai uniform targeted rate

(1) This section applies—

- (a) to the Mangawhai uniform targeted rate set by the Council for the financial years relating to 2008/2009 to 2010/2011 (inclusive) and any subsequent financial years; and
- (b) whether or not the Council intended the Mangawhai uniform targeted rate in any of those financial years to be funded by lump sum contributions as set out in Part 4A of the Local Government (Rating) Act 2002.

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(2) If a ratepayer was invited to elect whether the one-off targeted rate or a one-off targeted rate (payable over 2 years) or the 25-year targeted rate would apply to the ratepayer's rating unit, whichever election the ratepayer made, or in the absence of such an election whichever targeted rate applied, the election or application is to be treated as being and always having been lawful.

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(3) If the one-off targeted rate was elected or applied to the rating unit, that election (including any amendments to that election agreed between the Council and the ratepayer) or application

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remains valid and enforceable in respect of the applicable rating unit.

Subpart 2—Validation of matters under Local Government Act 2002

- 11 Validation of continuation of policy on development contributions and financial contributions in 2009–2019 long-term plan** 5
- Despite any failure of the Council to comply with section 106 of the Local Government Act 2002, the Council’s policy on development contributions and financial contributions as far as it relates to the Mangawhai EcoCare Wastewater Treatment Scheme and Mangawhai roading as set out in its long-term council community plan for 2006–2016 is valid and declared to be and to always have been lawfully adopted by the Council in its long-term community plan for 2009–2019. 10 15
- 12 Validation of long-term plan**
- ~~Despite~~ To avoid doubt, despite any failure of the Council to comply with sections 83(1) and 93(3) of the Local Government Act 2002, the Council’s long-term plan for 2012–2022 is valid and declared to be and to always have been lawfully adopted by the Council. 20
- 13 Validation of annual report**
- ~~Despite~~ To avoid doubt, despite any failure of the Council to comply with section 98(3) of the Local Government Act 2002, the Council’s annual report for the 2010/2011 financial year is valid and declared to be and to always have been lawfully adopted by the Council. 25

Subpart 3—Other matters

- 14 ~~Council’s right~~ Right to bring proceedings unaffected** 30
- To avoid doubt, nothing in this Act affects the right of the Council or any other person to bring any proceedings against

**Kaipara District Council (Validation of
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any person arising out of, or in connection with, any actions
or omissions associated with matters validated by this Act.

Legislative history

4 June 2013
12 June 2013

Introduction (Bill 125-1)
First reading and referral to Local Government and
Environment Committee
