

# 'Legal Potpourri'

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Conference

by

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# An Overview

- King & Company's services
- Current issues
- Special rating – Whiting -v- Somerset R C
- Differential general rating - the Xstrata case

# King & Company's Services

- Planning & Environment
- Administrative and industrial
- Liability and commercial litigation
- Commercial and advisory

# What are the current issues?

Enforcement of common law covenants

Use of statutory covenants

Dealing with impounded stock

What is a road/Council's responsibility for maintenance of roads

Information Privacy Act\*

Disposing of interests in land

Delegations

Accessing land to install new Council infrastructure\*

# What are the current issues? (continued)

Confidentiality of information\*

Conflict of interest

Joint government activities/formation of joint  
government entities\*

Defamation

Polls\*

Rating issues!

# Special rates and charges

Local Government (Finance, Plans and Reporting) Regulation 2010, subsections 28(3), (4) and (5) –

- (3) The local government's resolution to levy special rates or charges must identify—
  - (a) the rateable land to which the special rates or charges apply; and
  - (b) the overall plan for the service, facility or activity to which the special rates or charges apply.

# Special rates and charges (continued)

- (4) The *overall plan* is a document that—
- (a) describes the service, facility or activity; and
  - (b) identifies the rateable land to which the special rates or charges apply; and
  - (c) states the estimated cost of carrying out the overall plan; and
  - (d) states the estimated time for carrying out the overall plan.

# Special rates and charges (continued)

- (5) The local government must adopt the overall plan before, or at the same time as, the local government first resolves to levy the special rates or charges.

# Differential general rating

## The first judgment – paragraph 68

...In essence, the Council considered that coal mining activities resulted in the imposition of higher financial burdens on the Council in performing its functions; that the presence of coal mines in its local government area reduced the amount of financial assistance received below what it otherwise would be (a matter discussed later in these reasons); and that the persons who own land on which coal mining is carried out are likely to have the capacity to pay the proposed rates...

# Differential general rating (continued)

## The first judgment – paragraphs 70 & 71

The applicants have also submitted that while it might have been lawful for the Council to take into account the capacity of the land to generate income, but that is to be distinguished from the ability of the owners of the land to pay rates; and that in the present case, the Council has taken the latter into account. For reasons already stated, I do not consider that this is an irrelevant consideration, which would vitiate its decisions.

In my view, the Council's rating decisions are not invalid by reason of the fact that it took into account the capacity of landowners to pay rates.

## Differential general rating (continued)

The Court of Appeal's judgment – paragraph  
27

The point in contention on the appeal therefore condenses to this: were the differential rates set by reference to the appellant's *personal capacity to pay rates*, or by reference to the capacity of the *land in the separate categories to produce the capacity to pay*?...

## Differential general rating (continued)

The Court of Appeal's judgment – paragraph  
27 (continued)

...If it were the former, the terms of the Act, authority and the respondent's concession would invalidate the Council's resolutions. If it were the latter, the appellants' challenge to the resolution and the rates would fail.

# Differential general rating – the future?

- Review wording of revenue policies, revenue statements and rating resolutions
- Regardless of the outcome of the High Court proceedings, legislative intervention is required
- Legislative solution A – absolute prohibition on legal challenges to differential rating decisions
- Legislative solution B – legal challenge only available on the grounds that the amount of the rate levied is unreasonable