VICTORIAN INSTITUTE
of RATE ADMINISTRATORS

A.C.N. 005 304 254
INCORPORATED 1977

Folio No. 4

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Vol XVIII No 2

VIRA NEWS

JANUARY, 1994

PRESIDENT'S REPORT

It only seems like a few months ago when I put pen to paper to write my December 1992 Presidents Report. I guess that living life in the fast lane of Local Government (Rates Administration) requires the skills of professional people that can adapt well to the ever changing climate in which we work.

On our doorstep at the moment are issues such as amalgamations, compulsory competitive tendering (CCT), enterprise agreements, rating reviews, legislative change. All in addition to the pressures and time commitments that are already placed upon us.

We are certainly living in climate of dramatic change that is filled with uncertainty, but at the same time filled with "opportunities". It is these "opportunities" that VIRA wants to aid its members in taking a hold of. We must learn the skills to not only be able to capitalise on opportunities that come our way but just as importantly we must be able to create opportunities as well.

An example would be that in the area of rates administration most of us are responsible for "property data management for the organisation" which requires a high level of accuracy and skill in the performance of this function. We must look beyond our boundaries and see the opportunities for us to effectively tender for and take on the data management responsibilities of other areas ie. local laws, building department, payroll etc.

Now more than ever we must use our initiative to become more innovative if we are to achieve efficiencies and increase productivity.

I can assure you that VIRA will continue to meet its commitments to its members and continue professional development that will assist us in these times of change.

"RATING REVIEW - LETS WORK IT THROUGH SEMINAR/WORKSHOP"

And what a success it was. I have received nothing but praise for this tremendous achievement which resulted in providing the 60 to 70 councils (120 attendees) that were represented some 600 hours of workshop views on the Minister's Rating Review Paper.

We achieved what I believe to be a Local Government first and will be the trend for future seminars, in that the results were captured on disc (by our secretarial support) in each Council's specified format, that enabled each Council then to take home the results on the day.

The completed results documented equipped Councils with a "broad view" of the impacts of the proposals contained in the Rating Review Paper and enabled Councils to formulate their

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(Articles and contributions should be faxed to Clare on the above number.)

own response to the Minister by the required time being the 1st October, 1993.

I understand that there are a considerable number of concerns that the Minister now has in relation to the proposals and I believe informal approaches have been made for consultation to occur between VIRA and the Ministers Office.

BUSINESS PLAN

As I reported in our last newsletter VIRA is well under way in developing its business plan. The Executive, Committee and Regional Convenors have all attended a training session conducted by Laurie Boyd of Laurie Boyd & Associates to commence the development of the plan. It is hoped that the business plan will establish a solid foundation from which VIRA can conduct its business and provide focus and direction for the present and future committees of VIRA.

ANNUAL COUNTRY GENERAL MEETING & CONFERENCE FEBRUARY 1994

Following the fantastic success of the 1993 Conference VIRA has again secured the facilities of the Mulwala Services Club for the 1994 Conference.

Training/workshop and lecture sessions have not yet been finalised but some of the following topical items are under consideration:-

- Compulsory Competitive Tendering
- Amalgamations
- Legislative Change - Elections & Voter Entitlement
- Rating Review/Implementation
- Much much more .....

We have secured accommodation for approximately 100 and based on 1993 success, registrations will again fill fast and will be allocated on a first in, first served basis.

Make a note in your diary now for February 17th, 18th, and 19th. There will of course be more information circulated early *January, however* initial enquiries can be made by contacting VIRA's Treasury/Membership Co-ordinator Mr. Dale Muir at the City of Knox on (03) 881 8210.

As 1993 closes a new beginning in 1994 awaits us. It will no doubt be a challenging year ahead and I look forward to us all continuing in working together and supporting each other in our *professional careers.*

In closing I wish you and your family members a very safe and happy Christmas for 1993 and the very best for 1994.

Regards,
Martin King,
STATE PRESIDENT,

REGION NEWS

Ballarat and North Central Joint Regional Meeting

On Wednesday, 11th August, a joint Regional Meeting was hosted by the City of Maryborough and held in the comfortably restored "Old Fire Station". Approximately 40 Rate Administrators attended.

The Mayor of the City of Maryborough, Cr. Margaret Harrison, welcomed all present to Maryborough and hoped that the Joint Regional Meeting would be a time for sharing of information between Regions and that all discussions would be fruitful. Joint Conveners, Ian Effrett and Graham Tindle, also welcomed all administrators to the meeting and thanked Cr. Harrison for her warm welcome to the City.

Perhaps the highlight of the meeting, was the information passed on to members by the two guest speakers.

Firstly Alan Wise, from the Greater Geelong Council, Bellarine District spoke on the amalgamation of Councils in the Greater Geelong Area, outlining where they are at present, and referring to, in particular, the rating developments.

The second guest speaker was Noel Grant, who gave a very informative talk on professional development (Noel's baby as we all know). Thanks to Alan and Noel for their time and efforts.

The successful meeting concluded with hot soup and sandwiches provided by the City of Maryborough.

Thanks to Sandra Wilson for her organisation and hospitality.

Ian Effrett
Convenor Ballarat Region

Ballarat Region

The quarterly meeting was held on Wednesday, 3rd. November at the Municipal Offices at the Shire of Ballarat.

Convenor, Ian Effrett, welcomed 20 members to the meeting, including Clare Bowkett and Gerry Pekin representing the V.I.R.A. Executive, and Guest Speaker, Sue Hough, a Financial Counsellor with the Ballarat Children's Home and Family Services.

Sue gave a very interesting outline on her work as Financial Counsellor, and presented some case histories pertaining to family companies which have gone "to the wall" during the past two years. Members present felt it was good to now know Sue personally, rather than just by letter or telephone contact, as Rate Administrators and Financial Counsellors have very much in common when it comes to dealing with the financial affairs of people. A vote of thanks to Sue was given by Rod Leith and carried with acclamation. Gerry gave a short promotional talk on the forthcoming Annual Country General Meeting and Conference to be held at Mulwala and the proposed meeting of the Committee together with the Regional Convenors to be held in Melbourne on Wednesday, 15th, December, to formulate a Business Plan for the Institute. This meeting is to be co-ordinated by Laurie Boyd.

Other topics of interest discussed at the meeting were elections, rate notices, municipal restructure and State Deficit Levy.

The next meeting was set for Thursday, 3rd, February, 1994, (note change of date) to be held at the Ballarat Water Board Offices, Learmonth Road, Wendouree.

The meeting concluded with a light lunch.

Ian Effrett
Convenor

South Western Region

A joint meeting of the Wimmera Mallee and South Western Regions was held at the Shire of Kowree, Edenhope on Friday, 17 September, 1993. Brian Hall facilitated a lively debate of most of the issues to be resolved in the office of Local Government Rating Review.

Other matters included frequency of Municipal Revaluations, Catchment and Land Protection Legislation and the Residential Tenancies Act as it affects Water Authorities.

Our region also met at the City of Portland on Wednesday 1st December, 1993. Ken Burton gave a report on the effects of amendments to the Water Act. Conduct and Outcomes of Land Valuation Boards of Review were discussed in the light of perceived fairness. Alan Wise gave a report on progress in establishing and administering the City of Greater Geelong. A recommendation was taken from the meeting by Alan Wise to our executive that V.I.R.A. accept an invitation extended by the Minister for Local Government, Roger Hallam, through Ken Burton, to formulate a recommendation drawn from the arguments raised in the course of the Rating Review, for his consideration.

The next meeting is scheduled for Tuesday, 1st March, 1994, at the Shire of Warnambool offices.

Dayle King
Convenor

Welcome to New Members

Robert Owen
Julie Anson
Sharon Schryver
Lynette Flynn
Sally Musgrove
Norah Warburton
Loxley Hoffman
James Forssman
Reid Dodson
Karen Burns
John Roxburgh

Geelong Region

The Geelong Region held their last meeting at The City Of Greater Geelong - Geelong West District on the 18th November, 1993 with 12 members present. The main topics covered at this meeting included; Legislation Amendments, State Deficit Levy, Pensioner Verifications, Rating Review and Non - Rateable Properties.

The Region has undergone some major changes during 1993 with members of 6 Municipalities being involved in the creation of The City of Greater Geelo[redacted] and 2 Municipalities being in the proposed Surf Coa[redacted] Council. Once staffing appointments have been finalised in theses Municipalities the future meetings of the Region will be reviewed.

J. Stewart
Convenor

Gippsland Region

A meeting was held at Sale on 8th December, 1993. The following issues were discussed.

State Deficit Levy and the difficulty in collecting it from some.

Concerns with new Pensioner Cards and difficulty i[redacted] determining eligibility.

Comparison of rates and charges.

Amalgamations and who would be the Lead Rate Administrator when they happen.

Helen Arbuthrot of Central Gippsland T.A.F.E spoke about the course being offered to rate office staff.

Paul Telfer
Covenor

Wimmera Mallee Region

As I haven't yet reported on the Wimmera Mallee's activities to date I will give a brief run down on what has transpired during the last twelve months.

Following an initial meeting to gauge interest our formation meeting was held on the 5th March, 1993 at Wycheproof. As we were now off the ground and running another meeting was held on the 21st of May, 1993 at the Shire of Birchip where our guest Speaker was Mr Wayne Slack, Managing Director of Laurens & Co, Debt Collection Agency. Although numbers were slightly down a very informative and enjoyable day was had by all. (The poor old publican had a minor coronary coping with all the additional counter meals - I hope our local members at Birchip got some form of payoff for throwing all that extra business around!)

Our last meeting for the year was held at the Convenor's Site (Shire of Kowree) on the 17th September, 1993. This meeting was held jointly with the South Western Region and my thanks go to Dayle King for his assistance in arranging this meeting.

As this date was just prior to the closing of submissions for the Review of Section 8 this item completely dominated our agenda. Other items discussed include the Residential Tenancies Act and Catchment and Land Protection Legislation. At least we offer variety!

I would like to thank the State Executive for never failing to have a representative at our meetings - their experience and knowledge is always utilised.

Our next meeting will be on the 11th March, 1993 at a venue yet to be announced - feel free to attend as all VIRA members are welcome in the wild West.

Shane Hinchliffe
Convenor

LOCAL GOVERNMENT (MISCELLANEOUS AMENDMENTS) BILL

The Local Government (Miscellaneous Amendments) Bill has had its second reading and is due to be passed in this session of Parliament. According to the Minister's second reading speech the purposes of the bill are to further microeconomic reform within Local Government by amending employment conditions for designated Council officers, secondly to clarify the road provisions and thirdly make some technical amendments to various parts of the Local Government Act 1989. The Bill does not introduce any amendments following from the Rating Review Paper.

In relation to employment provisions the Bill proposes to remove the designated positions of Municipal Clerk and Municipal Engineer and the Local Government Qualifications Board will be abolished. All Councils will be required to appoint a Chief Executive Officer by 1 October 1994 who in addition to the existing functions of the Municipal Clerk will have the following responsibilities:

a) ensuring the decisions of the Council are implemented without undue delay;

b) day to day management of operations in accordance with the corporate plan;

c) providing advice to Council;

d) appointing, directing and dismissing the Council staff;

e) ensuring staff are appointed in accordance with the organisational structure of the Council.

In addition all Senior Officers of Councils will be required to enter into a Performance based Contract by 1 October, 1994. Senior Officers are defined as all staff whose total employment cost to the Council is greater than $60,000 per annum or such other figure prescribed by the Minister. The total employment cost includes the gross salary and the cost in dollars of all other benefits, allowances or remuneration paid for the benefit of the staff member. The contracts are to be for between 1 and 5 years and an annual performance review must be held. A register will be required to be kept detailing the amounts payable or that have been paid to the Senior Officer. The contracts may be renewed.

In relation to roads, the provisions in the Local Government (Miscellaneous) Act 1958 and the Local Government Act 1989 will be repealed and replaced with the provisions of the new Bill. One interesting point to note is that the Minister is proposing to remove the exemptions from Special Charges for the components of roads previously constructed under a Private Street Scheme or Special Improvement Charge etc. However, this amendment is to be deferred to allow further consideration, but the Minister has stated he is determined to proceed with the proposal. The proposal will allow for Special Rates or Charges to be used to fund reconstruction or repairs of any roads regardless of whether the road was previously constructed as a subdivision requirement or private street scheme and will allow Special Rates or Charges to be more used more consistently.

Sebastapols Rate Reduction

Mr Ian Effrett, at the Ballarat region's last meeting was bragging to a financial counsellor who was a great speaker at the meeting, that Sebastopols rates actually went down 1% this year. He accepted the financial counsellors congratulations. He then waited until she left and then informed the rest of the meeting that the rates may have gone down but the garbage charge went up $5-.

This article appeared in the Law Journal October, 1993.
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Special rates and charges - getting it right!

by Peter Lucas

In a series of recent cases which for the first time have reviewed the imposition of a special rate or charge, the Administrative Appeals Tribunal (the tribunal) has now shed some light on the meaning of "special benefit".

Section 163 of the Local Government Act 1989 (the Act) which is included in Part 8 of the Act dealing with rates and charges on rateable land, came into operation on 1 October 1992. The section (when read in conjunction with s.155) empowers a council to declare and levy a special rate or special charge.

At the outset, it should be noted that while s.163 replaces a number of "equivalent" sections under the (now) Local Government (miscellaneous) Act 1958 (separate rate provisions (Part X Division 5); private street and footpath schemes (Part XIX Divisions 10 and 11); drainage schemes (Part XXI Division 5); and special improvement charges (Part XLII)), it would seem, potentially, to be much wider in both scope and application than the more limited and prescriptive provisions which under the 1958 Act it has replaced. The section can be used where a council considers that the performance of any function or the exercise of any power under the Act is or will be of special benefit to the persons required to pay the special rate or special charge. In making this observation it is important to remember that one of council's objectives as set forth in s.7 of the Act (para.(h)) is "to raise funds for local purposes by the equitable imposition of rates and charges. . . ". This theme of equity (subjective as it is) embraces one of the principal philosophies which underpins the Act. It recognises that local government in taking itself into the next decade and beyond will be required to reshape its values, take up new challenges and, in doing so, become more visionary as to the way in which it has traditionally raised revenue from the rating base.

POWERS OF COUNCIL

Sub-section (1) provides:

"A Council may declare a special rate, a special charge or a combination of both only for the purposes of -

(a) defraying any expenses; or

(b) repaying (with interest) any advance made to or debt incurred or loan raised by the Council -in relation to the performance of a function or the exercise of a power of the Council, if the Council considers that the performance of the function or the exercise of the power is or will be of special benefit to the persons required to pay the special rate or special charge".

In exercising its power under the section, a council may declare a special rate, a special charge or a combination of both. While the calculation of a special rate is something that will necessarily be tied to the rateable value of the land which is to be burdened with the rate, this is not the case in respect of a special charge, which will be calculated by reference to a unit amount per property, regardless of its rateable value. With respect to this distinction, it is important for a council in applying the special benefit test (with respect to a special rate) to be satisfied that there is the necessary correlation between the rate applied and the rateable value of the land (which may not always be so).

The functions and powers of a council are set forth in s.8 of the Act which, in terms of a proper consideration of s.163, should be read in conjunction with ss.6 and 7 of the Act (dealing with the purposes and objectives of a council). It is also important to bear in mind schedule 1 to the Act (functions of a council), s.204 and Schedule 10 (powers over roads and public highways) and s.205 and Schedule 11 (powers over traffic.

Having first satisfied itself that the moneys which are to be raised by way of the special rate or the special charge are to be used for either the purpose set forth in para.(a) of sub sec.(1) (defraying any expenses), or para.(b) (repaying a debt or loan), a council must then satisfy itself in relation to the last part of sub-sec.(1).

That, in effect, is a twofold test, requiring on the one hand the council to form a view that the proposal or scheme relates to the performance of a function or the exercise of a power which is authorised by the Act("the function/power test") and, on the other, that in the performance of the function or the exercise of the power, there will be a special benefit to the persons who are to be made liable to pay the special rate or charge ("the special benefit test").

There would not appear to be a great deal of difficulty in applying the first of these tests - either a council has

the power or it does not, although it is acknowledged that there may, at least initially, be some grey areas in interpreting s.8 (functions and powers), particularly where a council seeks to chart new waters in a desire to widen its rating base.

It would seem that the real area of difficulty in applying s.163 will be in giving some meaning to the nature and extent of the special benefit which the council must be satisfied of before it can properly declare and levy the special rate or charge. There is a requirement in sub-sec.(2) for a council to specify in its declaration the criteria by which, in the council's view, the special benefit test has been satisfied, and of course (particularly as far as any challenge is concerned) the whole success of the scheme or proposal will depend upon the test being satisfied.

The types of criteria referred to in sub-sec.(2) would generally require a council to determine, first, who is going to receive the special benefit and, secondly, to allocate the total cost of the scheme or proposal on the basis of fairness, having considered the type and amount of benefit each person will receive.

In doing this, and as required by sub-sec.(3), the council must also specify in its declaration of the rate or charge:

(a) the wards, groups, uses or areas for which the special rate or special charge is declared;
(b) the land in relation to which the special rate or special charge is declared;
(c) the manner in which the special rate or special charge will be assessed and levied; and
(d) details of the period for which the special rate or special charge remains in force; and comply with s.168(1) and set out the circumstances:
(e) in which (any) incentives for prompt payment of the rate or charge will be given.

All of the requirements on the part of a council to ensure proper compliance with sub-secs.(1), (2) and (3) of s.163 must be viewed not only in the context of "getting the declaration right" (for that is the starting point upon which everything else that follows is dependant), but also in the context of ensuring that it properly deals with the submission process.

Section 182 provides that a person may make a submission under s.223 of the Act (which sets out generally the procedures for making, hearing and determining submissions and objections) in relation to:

(a) a council's declaration of the special rate or charge;
(b) the application of the special rate or charge to certain land;
(c) the amount of the special rate or charge;
(d) the basis of calculation; or
(e) the special benefit which the council considers will result from the special rate or charge.

These considerations lead one to the view that, if it is to minimise the incidence of an appeal (remembering that an appeal against a special rate or charge may be commenced under s.185 before the tribunal with respect to the grounds referred to in sub-sec.(2)(b); under s.184 before the County Court with respect to the grounds referred to in sub sec.(2); and generally before the Supreme Court on common law or natural justice grounds), a council must ensure that it does its homework, and that it does it well.

In using s.163 as a replacement section for those schemes which would otherwise have been implemented under the 1958 Act (e.g. street and footpath schemes), it would seem appropriate for the time being, at least until some contrary direction is given either by the tribunal or the court, to treat the nature and extent of the special benefit which a council would have looked for in implementing a scheme under the 1958 Act as being identical with the degree of special benefit which needs to be satisfied of in terms of implementing a s.163 scheme or proposal. There is of course considerable law on the implementation of schemes under the 1958 Act and it is not proposed in this article to consider that material. It is also suggested that it is appropriate to adopt this approach when using s.163 in its wider application, although it is acknowledged that (at least initially) this approach may produce its own special set of problems, given the wider and more unique path which s.163 seeks to take.

INTERPRETATION OF "SPECIAL BENEFIT"

The above analysis can now be placed in some practical context as in a series of recent cases which for the first time have reviewed the imposition of a special rate or charge by way of appeal pursuant to s.185 of the Act, the tribunal has considered the application of s.163 generally and the meaning of "special benefit" in particular (at the time of writing, sixteen cases had been listed for hearing before the tribunal, of which four have had determinations handed down).

In Nunn & ors v.Shire of Woorayl, the shire had previously declared a special charge for the purpose of defraying expenses associated with the construction of a community health centre. The special charge had been levied on each ratepayer within the South Riding of the shire, being the area in which the health centre had been constructed. Understandably, the sire's case was put on the basis that all persons so charged would derive a special benefit from the construction and operation of the centre. Indeed, Deputy President Barton noted in the determination that it was "a most worthy objective".

various objectors to the specified charge argued that they would not receive any special benefit and their reasons can be conveniently summarised as to proximity (they were too far away from the Centre); choice (they would prefer to use other health care facilities); location/distance (they did not live in the shire); land status (only vacant (and unoccupied) land was owned); frequency (holiday home owners infrequently visited the shire and so were unlikely to place demands upon the centre).

In dealing with the objections, the tribunal made a number of general observations which highlight the difficulties in determining (so it would appear) the nature and extent of the special benefit which a council must resolve before it can properly declare and levy the rate or charge. The observations also confirm that every such assessment must be made on a case-by-case basis.

The tribunal said that the section relates "to a special benefit to a person," and not "to a benefit to land owned at person" (my emphasis). This is clearly a change om the basis on which schemes were considered under the 1958 Act. In the words of Deputy President Barton:

"The emphasis on the provision of a special benefit to an individual seems to me to open a Pandora's Box in that all sorts of matters become relevant which were formerly irrelevant. One such is the personal situation of the person charged. These are obviously relevant matters to the determination of the questions whether the special charge will or will not provide a "special benefit" to the person charged."

In attempting to give a definition to "special benefit" the tribunal said that the words mean "a benefit over and above that available to persons not the subject of the special charge".

Applying this analysis to the various personal situations of the objectors, the tribunal upheld the objections of, and quashed the special charge, against:

1. Objector 1, for she suffered Alzheimer's disease, lived in a nursing home some distance from the centre, owned only vacant land upon which there was no intention of building a house and rarely visited the land because of her health and financial problems;

2. Objectors 2, for they lived at a point which was about half-way between the centre and the town of Leongatha. Their evidence was accepted "that should any medical necessity arise which they could not cope with themselves (one of these objectors was a medical practitioner) they would go to Leongatha where there was a choice of doctor, a hospital of reasonable standard, chemist and pathology services...";

3. Objector 3, for he did not live in the shire and although he owned land close to the centre was unlikely to be a user of its facilities;

4. Objectors 4, on the basis that they lived in Melbourne and although they owned a holiday house in Venus Bay their submission that "We have been married for over 14 years, have no children and are most unlikely to have any in the future. We use the Leongatha Medical Group for any personal medical attention required. Any guests we have staying with us do not have children for which this health centre would be of any use. We can therefore see no benefit for us or any of our guests in the Health Centre" demonstrated to the tribunal's satisfaction they would not receive a special benefit;

5. Objector 5, on the basis that he too lived in Melbourne and although owning a vacant block of land in Venus Bay had no intention of ever living there; and

6. Objector 6, on the basis that he only ever visited his vacant block of land on a Sunday (when the centre's facilities would be closed), so deriving no special benefit. The last of the objections was dismissed (and the charge confirmed) on the basis that there was a sufficient geographical proximity to the centre and "whether (the objector) likes it or not, he could very

well be a user of the facility".

To the extent that the Woorayl case may have purported to open "Pandora's Box," it was firmly shut when the second review was heard before the tribunal on 31 March 1993. In that case, H. & S. McDonald & Ors v. City of Hawthorn, the tribunal reviewed a special rate which had been imposed by the council to finance activities promoting the Glenferrie Shopping Centre in Hawthorn.

Unlike the Woorayl case, the charge was levied by a special rate on the basis of geographic criteria, ranging from $100-$200 per year, with the rate to remain in force for five years.

In the words of the tribunal, "The main objections by all (of the appellants) was that because of the nature of their business, trade or profession the special rate would be of no benefit to them as they did not rely on passing trade and in some instances did not advertise publicly their presence in the...shopping centre. It was submitted that offices should be exempted from the promotional activities...intended to benefit the retail traders."

In considering these objections, the tribunal agreed with the interpretation of "special benefit" given in the Woorayl case, but not the emphasis of that benefit on individuals and their particular circumstances. In this respect, the tribunal *found* that the requisite special benefit needed to be established in the context of the owner the subject of, and liable for, the special rate or charge, that is, in the context of benefit to land or property.

In the Hawthorn case, the tribunal found that the benefit to the owners of the commercial properties (being the objectors) would be in the enhancement of the value of their properties. In the tribunal's words: "...It follows that the owner of land in the Glenferrie Road, Shopping Precinct, whether operating a business himself or leasing the land to a trader and in either case relying on passing trade, receives an obvious benefit from promotion of the Centre if increased pedestrian traffic and consumer shopping and expenditure results. Such a result must be an increase in the land's value. It also makes the land more attractive for rental to a wider range of tenants at a higher rental with a tenant better able to sustain the rent.
"This is equally true if the land is used for a form of business or a trade *which* is not a "shop-front" nature. It matters not how the land is used at present. *I consider* it appropriate to have regard to potential uses of the land as uses may change..."

Accordingly, on the basis of there being a special benefit for each of the commercial property owners, and on the further basis of there being a reasonable distribution of the rate among those owners liable to pay it (s.185(2)(b)(ii)), the tribunal disallowed the appeals and confirmed the special rate as previously declared and levied by the council.

The Hawthorn case was followed in ATO Development Project Pty. Ltd. v. City of Essendon which was heard on 20 April 1993 before His Honour Judge W[redacted] Fagan, President (perhaps understandably given the two conflicting decisions of the tribunal with which he was confronted). In dismissing the application and confirming the special rate (which had been declared "for the purpose of defraying any expenses in relation to advertising, promotion, management , security, decoration and incidental expenses for the encouragement of commerce for the Moonee Ponds Shopping Centre"), the tribunal said:

"The viability of the area as a retail commercial area benefits the applicant by maintaining or enhancing the property's desirability as a letting proposition. That will tend to maintain or increase the value of the land. The expenditure foreshadowed for the purposes contemplated by the resolution is aimed at maintaining or improving the viability *of the* area.

"Again, the continued viability of the area including maintenance and improvement of the present transport facilities enhances the site as a place to and from which employees of the tenant can readily commute - an u[redacted] doubted advantage to the employer tenant.

"The proximity of the site to the variety of shops and services in Puckle Street, the junction and adjoining streets, is of particular advantage to employees at this office block and indirectly, therefore, to both the Tax Office and then the applicant...

"The character of and significance of these benefits is not in my view diminished by the fact that the owner or occupier of the land pays to the Council other monies for other purposes such as general rates or parking contribution and allows the Council concessional

carparking. Nor is it to be diminished by the fact that the 900 employees contribute to the turnover of local retailers. "In my opinion, considered separately or severally, these advantages are to be regarded as a significant and special benefit accruing to the applicant and the tenant. I regard this conclusion as consistent with the decision of this Tribunal in McDonald & Ors v. City of Hawthorn 1993/01503 and the cases referred to therein."

In further nailing down "Pandora's Box," the tribunal on 19 May 1993 in City of Richmond v. Koklas & Ors followed the Hawthorn and Essendon cases and upheld a special rate which had been imposed by the City of Richmond for the purpose of defraying expenses and repaying (with interest) a loan raised by the council in relation to land which had been purchased for the purposes of development of a carpark to better service the needs of the Swan Street Richmond Shopping Precinct. In disallowing all of the applications of review and confirming the special rate the tribunal confirmed that the personal situation of the person charged with the special rate was not a relevant consideration and stated that where "...the special benefit flows to the land, directly or indirectly, the owner of that land enjoys a special benefit and should not be excluded from the rating scheme," although of course "...the affected land must be in close proximity to the works or project".

Conclusion

It would seem from the foregoing cases that s.163 of the Act has been "bedded down" such that practitioners now have (at least to the extent of the factual situations and grounds of appeal upon which they are based) a reasonably clear picture as to the manner in which the tribunal considers the section should be interpreted, particularly with respect to the nature and extent of the necessary special benefit, and the basis of distribution of the special rate or charge. From a local government point of view, the interpretation which has been given to the section would also seem to confirm that councils throughout Victoria have available to them an effective means by which they can widen their rating bases. It will be a conservative council which does not seek to avail itself of this power.

HOME WILKINSON & LOWRY
BARRISTERS AND SOLICITORS

PETER LUCAS
PARTNER

Telephone: 654 3455

Disclosure of Information contained in Council Rate Records

This is an example of a policy that may be useful to other rate administrators.

Background

The purpose of this paper is to propose a policy relating to the disclosure of rating and valuation information. At the present, Local Government has different practices and it is considered necessary to adopt a uniform policy throughout the State.

The proposed Policy is in keeping with the soon to be introduced Freedom of Information Act and Section 222 of the Local Government Act, 1989.

In preparing the Policy, there are four basic objectives:

1. To provide good service to the Community;
2. That a duty of care is owed to all ratepayers in the giving out of their personal property rating details;
3. That any information which is provided should be to the benefit, and not to the detriment of the ratepayer;
4. The Council be protected against criticism, ad verse publicity or legal action as a result of the disclosure of information about individual rate payers.

The Policy contains some restrictions which may inconvenience some enquirers. However, any person may apply for a Land Information Certificate at a cost of $20.00 which will provide information relating to individual properties, or purchase, at the statutory charge, a copy of the Voters' Roll which also provides a range of ratepayer information.

There is a level of concern in the community that people are seeking more privacy and people are concerned about unnecessary disclosure of personal and private information.

As a result, the policy proposes some restrictions on the provision of information over the telephone. There have been experiences where persons seeking information over the telephone, have given false names when asked for their identity. There are, for example, family law issues and disputes over divorces.

The policy in general, does not provide for information to be disclosed over the phone, but it requires a written request which can either be mailed, faxed or completed at the counter. This enables the following to be established;

1. The identity of the applicant which lessens the risk of dubious enquiries;
2. The purpose of the enquiry;
3. The Council has a record of the transaction.

The policy does however provide for the provision of information over the telephone in certain circumstances which are detailed later.

The Policy also provides for varying charges for the provision of information. These range from nil where the information is of benefit to the Ratepayer concerned and it sets fees at hourly rates for the provision of information which is being used for commercial purposes. The charges reflect the complexity of the information sought, the rank of officer involved and the technical resources used in providing the information.

For example, sales information sought by a valuer would be handled by a Rates Clerk whereas adverse possession and conversion applications must be investigated by the Rating Services Co-Ordinator, who is required to search archival records. Hence the differing fees, none of which are considered unreasonable and which reflect the cost to Council of providing the service.

The City of "Kennetsville" has been advised by its S[redacted]licitors that a Policy is necessary and it should ensure that any member of staff dealing with public enquiries about property, is aware of the constraints which should be applied and the provision of information. The Policy should include:-

1. Maintenance of adequate records about the person making the enquiry;
2. The date of the enquiry;
3. The nature of the enquiry
4. The nature of the information given.

POLICY FOR THE PROVISION OF INFORMATION FROM THE CITY'S PROPERTY/RECORDS

Information will be given in relation to:-

1. Ownership;
2. Rates and Valuations;
3. Sales;
4. Adverse possession claims
5. Property types (Description)

1. OWNERSHIP

Supply of ownership details will be provided free of charge provided it is of direct benefit to the ratepayer. The request for the information is to be submitted in writing (mailed, faxed or presented in person). Telephone enquiries will be accepted in the following cases:

1. Emergencies;
2. Fencing enquiries, (from a property owner or a known fencing contractor seeking the name of adjoining property/owners);
3. Finance enquiries where the ratepayer is involved;
4. Enquiries by Solicitors;
5. Enquiries by neighbours;
6. Confirmation of ownership will be acknowledged over the telephone provided the inquirer provides full ownership details ie: name and address which matches the Council records.
7. State and Federal Authorities will be given the information over the telephone. Provided that the member of staff will obtain the enquiries name and the name of the Authority and will provide the information by return telephone call.
8. Staff will have the discretion to provide information ifthey consider there are special circumstances and the request is warranted.
9. General enquiries of a commercial nature are tc be in writing. If the enquiry is of no direct benefit to the ratepayer and may be of potential financial benefit to the enquirer, it will be subject to a charge.

The charges are:-

(a) First enquiry - $5.00

(b) Enquiries in excess of one property and up to twenty properties - $5.00 plus $1.00 per property in excess of the first enquiry.

(c) Enquiries in excess of twenty properties - $24.00 plus 50c per property in excess of the first twenty.

2.RATES AND VALUATIONS

General enquiries regarding rates and valuations.

1. Where Land Information Certificates have been previously issued, staff will verbally update the information contained in a Certificate for a period of two months after its issue. A new Certificate will need to be provided where the Certificate was issued more than two months prior to the enquiry.
2. The ratepayer or their authorised representative will be given details free of charge provided it relates to their own property.
3. All other enquiries that seek rate or valuation details will be advised to apply for a Land Information Certificate.

3.SALES

Sales information will only be made available to registered valuers. The charge structure will be:-

1. Where the Valuer accesses the information unassisted, no charge will be made;
2. Where the assistance is provided by Council's staff, a charge of $20.00 per hour will apply.

4. ADVERSE POSSESSION CLAIMS AND CONVERSION APPLICATIONS

Where the Council is requested to provide ownership details for previous years in relation to adverse possession or conversion applications, a fee will be charged which relates to the work involved.

The proposed fees are:-

1. Minimum charge of $100.00 which provides for up to four hours research;
2. A charge of $30.00 per hour after the first four hours;
3. If a Statutory Declaration is required, it will not be signed until all charges have been paid.

What Minimum Rate Phase Out?

A certain gentlemen, who shall remain nameless, openly admitted to bringing in new properties in his municipality on the minimum rate. His basis for doing so - "the ratepayer doesn't know I shouldn't be doing this".

A

HAPPY NEW YEAR TO ALL

CITY OF KENNETTSVILLE

ENQUIRY APPLICATION

The City of Kennettsville has adopted a policy in relation to the disclosure of ratepayer/property details. Four basic objectives of this policy are:-

1. To provide good service to the community;

2. That a duty of care is owed to all ratepayers in the supply of their personal, property and rating details;

3. That any information which is provided should be to the benefit, and not to the detriment of the ratepayer;

[redacted] The Council be protected against criticism, adverse publicity or legal action as a result of the disclosure of information about individual ratepayers;

The policy requires this enquiry application be completed and approved prior to the supply of any information. Depending on the purpose and nature of the enquiry, there may be a fee charged. Any information supplied cannot be transferred to a third party without the prior approval of a City of Kennetsville Authorised Officer.

Incomplete applications will not be approved

1. What is the address of the property (or range of properties) to which this application relates?

2. What information do you require?

3. For what purpose do you require this information?

4. [redacted] What is your name and address?

5. Your signature and date. _____Date:

OFFICE USE ONLY:

Approved By:_____Date:
(AUTHORISED OFFICER)

(EST. 1979)

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