

***Auckland City Council v Royal New Zealand Foundation of the Blind
CA112/05, Court of Appeal, 29 August 2006***

The case

In a judgment issued on 29 August 2006, the Court of Appeal has upheld Auckland City Council's appeal.

The case related to land owned by the Royal New Zealand Foundation of the Blind at Parnell, leased to various commercial tenants and generating rental income which the Foundation used to help fund its activities. The issue was whether, in these circumstances, the land fell within the rating exemption provided by clause 5(e) of Part 1 of Schedule 1 of the Local Government (Rating) Act 2002:

"Land that is owned or used by, and for the purposes of-

...

(e) The Royal New Zealand Foundation of the Blind, except as an endowment."

The High Court had previously held that the land fell within the exemption and was therefore non-rateable. In overturning that decision, the Court of Appeal has made a declaration that land owned by the Foundation and leased directly or indirectly to third parties on commercial terms for the benefit of the Foundation and its charitable works is not within the rating exemption provided by clause 5(e) of Part 1 of Schedule 1 of the Local Government (Rating) Act 2002.

In reaching its conclusion, the Court relied on the fact that the land owned by the Foundation could be seen as an "endowment", that is, land used by a charity for the purposes of gaining income (and therefore rateable). However, the Court also made it clear that this approach could apply to other exemption clauses in Schedule 1.

The Court reviewed the other exemption clauses, in particular, the charitable exemptions – land used for religious purposes, education, and the relief of the aged, impotent and poor. The Court considered that the words "owned or used by, and for the purposes of" were seen by the legislature as encompassing an exclusion for endowment land.

Wider application

The Court of Appeal noted that this appeal "is of importance ... to local authorities throughout New Zealand who understandably wish to maintain or enhance the rating base and to minimise inequities amongst those who benefit from Council services and infrastructure".

This case is also important for the guidance it gives on certain rating exemptions other than the one specifically applying to the Royal New Zealand Foundation of the Blind.

It suggests that land within the formulation "land owned or used by, and for the purposes of" is unlikely to benefit from an exemption from rates if it is used other than directly by the institution concerned, particularly if it is leased to third parties on commercial terms. The particular exemptions using this wording formulation include:

- land owned or used by, and for the purposes of the New Zealand Historic Places Trust, Queen Elizabeth The Second National Trust, the Museum of New Zealand Te Papa Tongarewa Board, and the charitable trust known as Children's Health Camps – the New Zealand Foundation for Child and Family Health and Development (clause 5(a), (b), (c) and (d), Part 1, Schedule 1);
- land owned or used by, and for the purposes of, various educational establishments (clause 6, Part 2, Schedule 1);
- land owned or used by, and for the purposes of, an institution for the instruction and training of students in theology and associated subjects (clause 7, Part 1, Schedule 1).
- land owned or used by a district health board and used to provide health or related services (including living accommodation for hospital purposes and child welfare homes) (clause 8, Part 1, Schedule 1); and
- land used or occupied by, or for the purposes of, an institution that is carried on for the free maintenance or relief of persons in need, being land that does not exceed 1.5 hectares for any 1 institution (clause 21, Part 1, Schedule 1).

The case may also have some application to other exempt properties that are used solely for commercial purposes.

Finally, the Court made some helpful comments on the coherence of the rating exemptions as a whole, noting in particular that the "exemptions have always been disparate in nature and some of those which remain in the current Act seem distinctly odd". This observation may be of some assistance in encouraging any further review of existing rates exemptions.

Jonathan Salter

Partner

DDI 04-924 3419

Fax 04-472 6986

Mobile 021-480 955

jonathan.salter@simpsongrierson.com

Simpson Grierson

Level 24, 195 Lambton Quay, P O Box 2402, Wellington, New Zealand

www.simpsongrierson.com