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Why council rates and charges are just so special

A recent decision of the Supreme Court of Queensland in *Kozik & Ors v Redland City Council* [2021] QSC 233 was handed down on 13 September 2021, which required Redland City Council (**Council**) to refund the full amount of special rates and charges that it had levied with respect to land adjacent to its canal estates since 2011. The Council expended considerable funds in dredging, maintenance and managing environmentally relevant activities in relation to the canal estates and had sought to cover these costs because the service provided a special benefit to the landowners adjacent to the canal estates.

What happened

From July 2011 to 30 June 2017, the Council had passed resolutions to levy special rates and charges (**Special Charges**) against landowners whose land was adjacent to the Aquatic Paradise Canal Reserve and Marina, Sovereign Waters Lake Reserve and Raby Bay Cabal Reserve and Marina (**Reserves**) within the Redland local government area.

The Council has the power to levy Special Charges under the Local Government Act 2009 (**LGA**) and Local Government Regulation 2012 (**LGR**) and, before the enactment of the LGR, under section 28 of the superseded Local Government (Finance, Plans and Reporting) Regulation 2010 (**2010 LGR**) which has similar provisions as the LGR.

Under the LGR, a local government may levy Special Charges for services, facilities and activities that have a special relationship to particular land because the land or occupier of the land:

- specially benefits; or
- has or will have special access; or
- the land is, or will be, used in a way that specially contributes to the need; or
- the occupier specially contributes to the need for the service facility or activity.

In this case, the Special Charges were to fund capital and operational expenditure for the services undertaken in the Reserves by the Council and for which the adjacent landowners were considered to receive a special benefit.

The Council issued rates notices from 2011-2017 and included the Special Charges to be paid by the landowners who dutifully paid the rates notices, including the Special Charges. However, around March 2017, the Council became aware that the Resolutions it had passed each year to levy the Special Charges were not validly made.

As a result, the Council refunded, with interest, the balance of the Special Charges that had not been expended for the services to each affected landowner.

The landowners then commenced proceedings in the Supreme Court to recover all the Special Charges they paid since 2011, which included the amount of the funds already spent by the Council to provide the services.

What does the law say

A local government must levy general rates for rateable land, a requirement under section 94 of the LGA. However, in addition to the general rates and charges, a local government may levy Special Charges if it chooses to do so and must follow the process set out in section 94 of the LGR. In this case, both the 2010 LGR and the LGR were relevant.

To levy rates and charges, a local government must pass the appropriate resolutions at its budget meeting each financial year, stating what rates and charges will apply for the coming financial year.
However, to levy Special Charges, a local government must also comply with the process set out in section 94B of the LGA and section 94 of the LGR. If it intends to levy Special Charges, a local government must pass a resolution that identifies the rateable land to which Special Charges will apply and adopt an overall plan.

The overall plan must be adopted when the local government first resolves to levy Special Charges and must include the following:

- a description of the service, facility or activity that is the subject of the Special Charge
- identifies the rateable land to which the Special Charge will apply
- include an estimate of the cost of carrying out the overall plan
- include an estimated time frame to carry out the overall plan.

In addition to the above, a local government must adopt an annual implementation plan if the proposed service, facility or activity costs need to be recovered over more than one financial year. The annual implementation plan, which sets out the activities of the overall plan that will be undertaken that financial year, must be adopted at the annual budget meeting until the service facility or activity identified in the overall plan has been completed.

Section 94 (14) of the LGR also provides that a resolution or overall plan is not invalid merely because it does not identify all rateable land to which the Special Charges could apply or where rateable land is included where the Special Charges should not have been levied.

Section 95 of the LGR also states that surplus Special Charges collected in a financial year can be retained for the following financial year's annual implementation plan if it is not spent in the financial year in which it was collected. However, this is only the case for the duration of the overall plan. Once the overall plan expires, any surplus Special Charges must be refunded to the relevant ratepayer.

More relevant is section 98 of the LGR, which requires a local government to refund Special Charges if "a rates notice includes special rates and charges that were levied on land to which the special rates or charges do not apply or should not have been levied". This section provides that while the rate notice is not invalid, the local government must return surplus Special Charges as soon as practicable.

What went wrong

The fundamental issue was that the resolutions passed by the Council in 2011 and 2012 identified a document as the overall plan, but this document did not include an estimate of costs or time to complete the overall plan. As such, the adoption of the overall plan, which was non-compliant with the requirements of the LGR, was invalid. Failing to adopt a valid overall plan at the time the Council first resolved to levy Special Charges meant that the resolutions passed (by the Council) over the subsequent years were also invalid because the overall plan is, as held by the Court, the "central feature of the regulatory scheme for special rates and charges".

The Court also held that because each of the resolutions was invalid, it "makes it appropriate to regard them as of no effect from the beginning and incapable of ever having provided legal effects".

While the Council refunded unspent Special Charges (when it became aware that the resolutions were invalid), it did not refund an amount equivalent to the spent portion of the Special Charges, arguing that to refund the full amount would "unjustly enrich" the landowner who had, and would continue to, receive the benefit of the services already provided.

On this point, the Court held that "The Council cannot avoid or diminish its statutory obligation to return the amount of the Special Charges to each person who paid them, by a defence that the payers will be unjustly enriched by the return". This is because the Special Charges were not valid from the beginning, and if the Council did not return the Special Charges in total, it would in effect retain funds to which it has no entitlement. The Court held that the full amount of the Special Charges had to be returned to the relevant ratepayers because the Special Charge itself was invalid and should not have been levied. Therefore, by operation of section 98 of the LGR, the Council is required to refund the Special Charges in full.

It may be that the Council will appeal this decision given the implications and the Special Charges that will have to be refunded. Local governments throughout Queensland including those with canal estates for which Special Charges are levied will also be watching on with interest.

Rate increase strikes sour note with small business owners

A 33 per cent rate increase imposed this year by Georges River Council on small businesses in the old Hurstville Council area has struck a sour note with Peakhurst businesses.

"Like many ratepayers, I received my annual rate notice in the mail at the beginning of August," said Carey Beebe, owner of Carey Beebe Harpsichords Australia.

The increase is due to a legislative requirement for the council to harmonise the minimum rates between the former Hurstville and Kogarah Councils following their amalgamation.

The timetable for the rates harmonisation has been set by the State Government.

"I had been following the various mailings from council over the past eighteen months or so about establishment of a fairer rating system, although I recall the information provided at the time was rather vague," Mr Beebe said.

"The rates on my small business factory unit in Lorraine Street, Peakhurst which I've occupied for more than 30 years have increased by more than a third this year.

"While there may have been rating inequalities between the old Kogarah and Hurstville Councils, that's rather an excessive increase to happen across a single year, especially considering the present COVID-19 environment affecting us all.

"I won't have trouble paying this new amount, but perhaps I won't be the only ratepayer who has voiced their disapproval.

"We were sold on council amalgamation bringing rationalization of services, and economies of scale. The cover letter from the council which accompanied my new rate notice mentioned a fairer rating system.

"There must be hundreds of businesses in the old Hurstville Council area affected by this minimum rate being applied all of a sudden," he said.

The landlord of three of the units within the Lorraine Street business complex, Graeme, who did not want to use his last name, has given his rental tenants a 50 per cent rent decrease and said that the council should consider a similar measure.

"The strata fees go up about three per cent a year, the water rates go up with the CPI. The rates go up 33 percent," Graeme said.

"But as landlords we can't put our rental up. In this COVID situation I've just reduced the rents for three of my tenants. I've given them a 50 per cent discount on their rents for the next three months. One business owner, a plumber said his business is down 90 per cent, another has seen his business down in excess of 70 per cent. They have been long-term tenants for me and if they move out then no-one else is going to move in. I could have deferred their rent or offered them a discount. I told them to halve their rental for three months and then we will reassess.

"For landlords outgoings have not decreased and in this case they have considerably increased with the new council rates," he said.

Tahnee Westbury who owns and operates Hopalong Occupational Therapy for Children at the Lorraine Street complex, said the rates increase was unfortunate in these COVID times.

"But it would have been unfortunate at any time," she said.

"It's an excessive burden on businesses who have been providing service to the community and employment opportunities.

"I've got ten staff. It's really tricky to cover all the costs."

Georges River Council would not comment other to say that the timetable is actually NSW legislation that provided no choice to merged councils other than to harmonise their business and residential rates before 30 June 2021.

Any ratepayer who may be experiencing problems in paying their rates should contact Council to discuss the options available under its Hardship and Debt Management Policy on 9330 6400 or complete an online application at https://www.georgesriver.nsw.gov.au/Council/Online-Forms/Hardship-Assistance-Payment

Landlord Graeme said that the State Government should readjust its timetable for rates harmonisation to suit the times.

"The government needs to offer landlords, who have been forced to give their tenants rent reductions, the same sort of consideration that the landlords have given their tenants," he said.

Tears and anger as Queensland house prices soar leaving some buyers with nowhere to live

The Queensland housing market is so hot 90 days doesn't leave you enough time to buy back in when you sell.

Key points:

- Some buyers have had to settle for less when property hunting
- Core Logic latest data shows nationally the average home had jumped $103,000 in value in just one year
- Real Estate Institute of Queensland CEO says it was the toughest market she had ever seen

That depressing reality is stressing out teacher Megan Whiting as she and her partner spend every weekday hunting down real estate and every weekend going to open homes after selling a Murrumba Downs property in March.

"It went under offer within 24 hours and we agreed on a three-month settlement thinking that would be more than enough time to buy a house," she said.

"We have seen hundreds of houses and made offers on 15, but our success rate is zero, zip, we have not got one."

"It gets really frustrating to be constantly let down."

"We put three offers on three houses in one weekend and systematically got rejected from all three," Ms Whiting said.

"We got really close sometimes, we actually offered more money than what they took in the end, but the conditions I suppose with a 90-day settlement didn't get us across the line.

"Because the market is so hot, vendors are picking quicker options."

"I track all the houses we go to and when they sell I see what they are selling for and they are often way over what they're valued at.

"In the time we've been looking we have seen up to $200,000 added to the same houses in same street."

Ms Whiting said the relationships with agents could be tricky too.

"Sometimes you do not even hear from the agent, it is like a bad relationship. You think, 'I have not heard from them for a while, maybe they are just not into us' — you get pretty over it," she said.

"We have good jobs, stable employment, we have a lot of cash and yet we cannot even afford a house around a million at the moment, we just keep getting priced out."

Facing the prospect of being homeless, the couple decided to rent for a year as they keep hunting.

Georgina Auton and her partner Jordan McNee sympathise, as they too have had to settle for something less after hunting for a home for the past 18 months.

"It has been disheartening. We have looked at over 100 homes and made plenty of offers," Ms Auton said.

"When we first started looking we were too picky worried about termite damage, asbestos and we wanted a garden, now we go: 'Oh asbestos, no problem'."

Core Logic latest data showed nationally the average home had jumped $103,000 in value in the past year, with house prices rising almost 11 times faster than wages growth, creating a more significant barrier to entry for those who don't yet own a home.

It's that stark reality that made the couple realise the great Australian dream of owning a home was no longer realistic for them.

They will move into a townhouse at Kedron in October.

They paid $592,000, outbidding three others, but paying only a few thousand dollars less than the very first house they looked at and "loved" at Keperra 18 months earlier.

They said they were "too picky" to make an offer at the time.

"When the agent called me we had got the place I was so overwhelmed I cried, so when I rang Jordan to tell him he thought we didn't get it because I was crying," she said.

"But it was tears of joy."

Toowong real estate agent Gabrielle Trickey, who has witnessed properties selling recently for up to $300,000 over the asking price in Brisbane's leafy western suburbs, said some buyers became aggressive and angry when told their offer was too low.

A house she has listed at 39 Duke Street, Toowong, got five firm offers in the first three days, but she said two were way "too low".

As real estate agents struggle to find superlatives big enough to describe the boom in south-east Queensland property, analysts say the crazy market looks set to continue well into next year.

"One of the buyers said it was a really good offer, but no we had others $200,000 to $300,000 more," she said.

"Buyers are aggressive and getting stressed. One may say, 'But I know the market' — but clearly they don't.

"We are having people who are buying other houses just to make sure they have got a house before they come to an auction and then buy the house at auction and then have to crash the first contract.

"So just really erratic, irrational behaviour — very desperate, it is like they think there will never be another chance that they can purchase this house.

"Certainly in some areas it is hard to get a house and certainly it has become much more difficult to buy a house now than it has ever been ever and competition is rife."

Real Estate Institute of Queensland CEO Antonia Mercorella said it was the toughest market she had ever seen and an inability to buy was across all demographics.

"Even buyers with a generous budget are struggling to secure property, you have to move very quickly in this marketplace.

"We are seeing tears and some extreme disappointment.

"Buying a home at auction and a second one is a dangerous game to play, but it is a risk some purchasers are willing to make.

"But I think we need to acknowledge that it can be a very frustrating and frightening time for people trying to secure property.

"There is no panacea for a solution, it is being driven by very strong demand it remains to be seen how long this will last.

"We also want to see people entering into mortgages they can afford, where they can service then mortgage if rates go up and not enter into financial stress."

Ms Mercorella said competition in regional areas was also fierce.

"Certainly I do not recall a time when we have seen virtually the entire state of Queensland performing so strongly as we've seen in the last 15 months," she said.

Buyers' Agent Brett Warren said buyers were compromising and doing things they would ordinarily not.

"The heart starts to rule over the head as FOMO [fear of missing out] creeps in and takes hold," he said.

"Buyers are increasingly frustrated, impatient and are taking a win-at-any-cost attitude.

"They want their house and their weekends back.

"We have seen some cry and get upset, confronting agents.

"If they do go to open homes they want an immediate answer on their offer, but of course the agent can't give it to them.

"This is the worst it has ever been. We had the usual waiving of building and pest inspections and finance, but now also buyers are waiving the cooling-off period.

"Also people are now making offers sight unseen and in many cases without actually inspecting the property.

"They are sometimes compromising and buying what we would call secondary properties in flood zones, on busy roads and railway lines.

"But then when they need to sell in a lesser market, they lose out.

"People are also thinking there are no more properties coming up, so it clouds the decision-making process and judgment."

Mr Warren is telling his clients to be pre-approved for finance so they can be ready to make an immediate unconditional offer and to put in a higher deposit upfront.

"The market is definitely not slowing down anytime soon, although I would suspect it will change down a gear from white-hot to red hot over the next 12 to months," he said.

Sheds surpass CBD office towers as values surge

Returns on prime warehouses have fallen below those for top CBD office towers for the first time, as industrial property values are driven higher by a boom in e-commerce, record low vacancy and a $50 billion wall of capital competing for investment.

According to CBRE, average yields on prime logistics facilities fell to 4.75 per cent in the June quarter while returns on prime office towers remained almost flat at 5 per cent despite rising vacancy rates as more people work from home.

Ever-tightening prime industrial yields, which have fallen by 50 basis points in the year to June, have driven a 10 per cent rise in values, adding about $10 billion to Australia's pool of investment-grade warehouses, now worth a combined $137 billion.

"In Australia, super-prime industrial yields are now firming to a position beyond the office sector, similar to what is being experienced in most OECD economies," said CBRE's head of industrial research, Sass J-Baleh.

As a prime example of how industrial values have nudged ahead of offices, in December Lendlease bought a quarter stake in landmark Sydney office tower Farrer Place on a 4.39 per cent yield and then in May, it acquired the Best and Less warehouse in Sydney on a record low 3.62 per cent yield.

ESR Australia's $3.8 billion acquisition in April of Blackstone's Milestone logistics portfolio on a yield of 4.5 per cent has revalued industrial portfolios across the country at a time of unprecedented demand for warehouse space, which has driven vacancy rates as low as 1.4 per cent in Sydney and at similar levels up and down the east coast.

While tightening yields have made industrial look expensive and some office investments more attractive – a point made this reporting season by Growthpoint managing director Tim Collyer – Jefferies equities analyst Sholto Maconochie said prime industrial assets would continue to be sought after "given the favourable fundamentals and strong demand from both tenants and capital".

"Industrial has been a net beneficiary of COVID-19, with increased demand and leasing," he said. "Online sales have increased from 9 to about 14-15 per cent currently, but still well below the 20-30 per cent in other developed markets."

ESR Australia boss Phil Pearce, who orchestrated the benchmark-setting Milestone deal, told The Australian Financial Review numerous tailwinds would underpin values and the current low-yield environment, with "maybe a little room left for further tightening".

"Demand is at record levels. There is high occupancy across the country, vacancy is at all-time lows and there is positive outlook for rental growth," Mr Pearce said.

"We're not at 12 o'clock and about to come down the other side. I expect there will be a sustained period of yields being reasonably stable. What will drive capital values [now] is rental growth."

He added that the 4.5 per cent cap rate struck for the Milestone portfolio was starting to look like a "very good deal" given assets were now regularly selling at below 4 per cent.

Jesse Curtis, fund manager of the Centuria Industrial REIT, which booked a $587 million – or 25 per cent – valuation gain over the past financial year as yields across its $2.9 billion portfolio firmed 151 basis points to 4.54 per cent, said he did not expect any dampening of investor appetite even as yields headed lower.

"We talk to investors all the time and there is still significant demand for Australian product, which by global comparisons is relatively well priced," he said.

"Industrial property has been under-invested for years by institutional investors, who have typically favoured sectors like office and retail.

"If you look at the office and retail, 90-95 per cent is held by institutional owners versus 50-60 per cent in industrial," Mr Curtis said.

He added that industrial offered more attractive characteristics compared to office, including less capital expenditure, lower incentives, longer leases and a more resilient tenant base.

"If you think of those elements, industrial is a more attractive asset class than office," Mr Curtis said.

What Are Annual Property Taxes Like on the East Coast of Australia?

They vary between council districts in Queensland and New South Wales

Sydney has some of the lowest council taxes on the east coast of Australia, according to data on the average annual residential rate from the New South Wales Council.

Council taxes—which fund essential services and facilities in communities—are on average A$708 (US$513) a year, the data showed. In North Sydney, a separate taxing council, they are roughly A$748.

Council rates are paid by whomever is living in the residence, whether they rent or own. They are calculated based on the unimproved land value of parcels in the taxing area.

Other New South Wale councils with low residential rates, another name for the tax, include Inner West suburbs of Sydney, such as Strathfield, where the annual rate is around A$785 and Canada Bay, A$931. Willoughby, on the lower North Shore of Sydney, clocks in at A$1,033, statistics show.

In Wollondilly, west of the state capital, residents pay substantially more—about A$1,810 in annual council taxes, according to the data. Hunters Hill, a suburb of the lower north shore of Sydney, has a rate of about A$1,736 a year, while Northern Beaches, north of the city, charges roughly A$1,427.

The state of Queensland makes up the northern half of Australia's east coast, and the rates also vary between council districts.

In Brisbane, the minimum general council rates are around A$780, according to the Brisbane City Council. To the north, in Sunshine Coast, rates are around A$1,270 per year, according to the city's 2021/2022 budget.

Logan, south of Brisbane, has an average tax of about A$1,018 per year, based on an A$280,000 property, according to its city council.