

Thames-Coromandel District Council (Whitianga Lump Sum Validation) Act 1996

Local Act 1996 No 6
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An Act to validate the lump sum contributions levied by the Thames-Coromandel District Council for the Whitianga Sewerage Scheme

WHEREAS—

- (a) The Thames-Coromandel District Council (hereinafter referred to as the Council) was empowered by section 164b to section 164k of the Local Government Act 1974 to seek lump sum contributions from ratepayers to finance capital costs of works as defined in section 164c of that Act, namely, works which would require the Council—
- (i) To raise a special loan under the Local Authorities Loans Act 1956; or
 - (ii) To make and levy a separate rate or a uniform annual charge:
- (b) On the 28th day of March 1985 the Council resolved to construct a sewage disposal system for Whitianga (the work) and to invite the ratepayers in the

Area of Benefit to make a lump sum contribution towards the capital cost of the work:

- (c) The Council established an Area of Benefit for the work and advised the ratepayers of the options either to make a lump sum contribution or to pay for the capital works by a uniform annual charge but omitted to record in the resolution mentioned in paragraph (b) above a description of the said Area of Benefit:
- (d) The Council calculated the estimated lump sum contribution under section 164d(1)(b)(i) of the Local Government Act 1974 on the basis that there were 1655 separately rateable properties within the Area of Benefit:
- (e) Section 164I(1)(b)(i) of the Act required the Council to recalculate the lump sum contribution on the completion of the work by dividing the actual net capital cost of the work by the number of separately rateable properties that were in the Area of Benefit at the time when the estimated net capital cost of the work was calculated:
- (f) Section 164I of the Local Government Act 1974 required the Council to recalculate the lump sum contribution of the work on the work's completion and the Council recalculated the lump sum contribution when 99.5 percent of the work had been completed:
- (g) Between the calculation of the estimated lump sum contribution and the recalculation of the lump sum contribution upon substantial completion of the sewerage scheme, the number of rateable properties within the Area of Benefit was reduced by the amalgamation of titles to 1612 separately rateable properties:
- (h) The Council accordingly recalculated the lump sum contribution on substantial completion of the work on the basis that there were only 1612 rateable properties within the Area of Benefit:
- (i) As a result of the recalculation of the lump sum contribution on substantial completion of the work a balance lump sum contribution of \$1,986.36 (GST inclusive) was payable in respect of all rateable properties within the Area of Benefit upon an election to make a lump sum contribution had been made:
- (j) Four lump sum contributors have not paid their contributions:
- (k) An application to the High Court has been lodged by those ratepayers to test the validity of the Council's action:
- (l) The provisions of sections 164c and 164I of the Local Government Act 1974 have been breached in regard to the scheme as follows:
 - (i) The Council failed, pursuant to section 164c of that Act, in its resolution of the 28th day of March 1985 to define the Area of Benefit:
 - (ii) The Council—
 - (A) Recalculated the lump sum contribution pursuant to section 164I(b)(i) prior to the full completion of the work:

- (B) Recalculated the lump sum contribution for each contributor by dividing the lump sum by 1612 rateable properties instead of 1655 rateable properties that were in the Area of Benefit at the time when the estimated net capital cost of the work was calculated:
- (m) It is desirable to validate resolutions of the Council in regard to—
- (i) The Area of Benefit; and
 - (ii) The recalculation of the assessment of the lump sum contributions based on 99.5 percent of the total cost of the work; and
 - (iii) The number of separately rateable properties in the Area of Benefit on the recalculation of the lump sum contribution; and
 - (iv) The levying and collection of the lump sum contributions:

Be it therefore enacted by the Parliament of New Zealand as follows:

1 Short Title

This Act may be cited as the Thames-Coromandel District Council (Whitianga Lump Sum Validation) Act 1996.

2 Interpretation

In this Act, unless the context otherwise requires,—

“Council” means the Thames-Coromandel District Council:

“Lump sum contribution” means the lump sum contribution calculated in accordance with sections 164b to 164k of the Local Government Act 1974 in respect of the capital costs of the sewerage scheme for the Area of Benefit:

“Rateable property” means a rateable property within the Area of Benefit.

3 Validation of Area of Benefit

- (1) For the purposes of this section and of sections 4 and 5 of this Act, unless the context otherwise requires,—

“Area of Benefit” means the area of the Whitianga Township edged green on the plan marked “Area Serviced” attached to the Council’s file no. 05/40/03:

“Balance lump sum contribution” means \$1,986.36 (GST inclusive), being the balance payable in respect of each separately rateable property within the Area of Benefit after calculation by the Council of the final lump sum contribution in respect of the capital cost of the sewerage scheme for that portion of the Whitianga Township in the Area of Benefit, and payable in respect of each separately rateable property within the Area of Benefit upon which a lump sum contribution is payable, being the amount by which the final lump sum contribution exceeded the estimated lump sum contribution:

“Estimated lump sum contribution” means \$2,000.00, being the estimated lump sum contribution calculated by the Council for the purposes of section 164d of

the Local Government Act 1974 in respect of the capital cost of the sewerage scheme for the Area of Benefit:

“Final lump sum contribution” means \$3,986.36, being the final lump sum contribution as calculated by the Council for the purposes of sections 164I and 164J of the Local Government Act 1974 in respect of the capital cost of the sewerage scheme for the Area of Benefit.

- (2) The 3 resolutions made on the 28th day of March 1985 are hereby validated notwithstanding that they did not prescribe the Area of Benefit for the Whitianga Sewerage Scheme.
- (3) The Area of Benefit for the Whitianga Sewerage Scheme is hereby defined as that portion of the Whitianga Township edged green on the plan prepared by Bruce Wallace Partners Limited marked “Areas Serviced and attached to the Council’s file no. 05/40/03.
- (4) The actions of the Council in making, levying, and collecting the estimated lump sum contributions in accordance with the resolutions referred to in subsection (1) of this section are hereby validated and declared to have been lawful.
- (5) All money received by the Council in payment of the said estimated lump sum contributions are hereby declared to have been lawfully paid to and received by it.
- (6) Such part of the said estimated lump sum contributions, including any penalty on any unpaid part of the said lump sum contributions, as has not been paid to the Council is hereby declared to be lawfully payable to and capable of being collected by the Council as if the sum had always been lawfully payable.

4 Validation of recalculation of lump sum contribution

The resolution of the Council on the 27th day of August 1987 recalculating the lump sum contributions to the Whitianga Sewerage Scheme is hereby validated and declared to have been lawful notwithstanding that at that date the work had not been fully completed, and the number of separately rateable properties in the Area of Benefit had been reduced.

5 Validation of collection of rates

- (1) The actions of the Council in making, levying, and collecting the balance lump sum contributions in accordance with the resolutions referred to in section 4 of this Act are hereby validated and declared to have been lawful.
- (2) All money received by the Council in payment of the said balance lump sum contributions is hereby declared to have been lawfully received by it.
- (3) Such part of the said balance lump sum contributions including any penalty on any unpaid part of the said balance lump sum contributions, as has not yet been paid to the Council is hereby declared to be lawfully payable to and capable of being collected by the Council as if the sum had always been lawfully payable.

6 Certain rights not affected

Nothing in this Act affects the claim of any party in proceedings commenced before the 29th day of November 1995.