Neil Construction Ltd v North Shore City Council - [2001] 3 NZLR 533

High Court Auckland
28, 29, 30, 31 August; 1 September; 4, 5, 6 October; 20 November 2000
Morris J and Mr I W Lyall

Local government -- Rating -- Valuation of land -- Whether unsold subdivided land previously valued in single assessment could be revalued as individual lots -- Power of local councils to amend valuation rolls -- When separate assessment for lot in subdivision can be generated -- Whether can be block discount -- Rating Valuations Act 1998, ss 2, 5, 7 and 14.

Statutes -- Interpretation -- Correction of errors and omissions -- Interpretation Act 1999, s 13.

The plaintiffs were urban developers and/or house-building companies which owned blocks of subdivided land. In 1998 each subdivision had been valued in a single rating assessment by the respective local councils. In 1999 the councils issued separate reassessments for each separately titled lot. The councils then altered the respective district valuation rolls to reflect the reassessment. The change in assessment resulted in the plaintiffs receiving an increase in both the value-based rates and uniform annual charges levied against the land. The plaintiffs objected to the assessments and the Land Valuation Court transferred the proceedings to the High Court. The plaintiffs also argued that the value ascribed to each lot had been assessed incorrectly and that the councils had failed to take into account a block discount factor.

Held:

1 Once a property fell within the definition of "separate property" under s 7(2) of the Rating Valuations Act 1998 (RVA) a council had no discretion whether to assess it as separate property; it had to be considered as a separate property and entered as such in the district valuation roll. Nor was a requirement of reasonableness imposed by s 7(4) which empowered the local authority to treat land which did not fall within the definition of s 7(2) as separate property; it did not reduce the category of separate property but potentially enlarged it (see paras [23], [24], [25], [28]).

Rodney District Council v Attorney-General [2000] 3 NZLR 678 (CA) distinguished.

2 Once a plan had been deposited each lot thereon was separate from each other lot on the plan and therefore separateness for the purposes of s 7 of the RVA arose when the plan was deposited and before title was issued (see para [31]).

3 The original entries in the valuation rolls followed valuations made in accordance with the then accepted valuation of land principles and had not resulted from any error, therefore the councils did not have the power to alter the roll under s 14 of the RVA (see paras [44], [45], [49]).

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4 The councils were not empowered by s 13 of the Interpretation Act 1999 to alter the roll since s 13 only applied unless the context otherwise required and the express and detailed provisions of the RVA and the Rating Valuations Rules 2000 prevented s 13 of the Interpretation Act from applying (see paras [47], [48], [49]).
Declarations made in part.

Other cases mentioned in judgment

Brader v Ministry of Transport [1981] 1 NZLR 73 (CA).

*New Zealand Land Development Co Ltd v **Valuer**-General* [1986] 2 NZLR 362 (CA).

***Valuer**-General v Alfred Kohn Family Trust* (1990) LVC 867.

***Valuer**-General v Mangatu Inc* [1997] 3 NZLR 641 (CA).

Walters v Supreme Court Registrar and Manukau County [1936] NZLR 546 (CA).

Application for declarations

This was an application by the plaintiffs, Neil Construction Ltd, Weiti Views Ltd, Elan Properties Ltd, A G Dryden Ltd, Cabra Holdings Ltd, Universal Homes Ltd and **Fletcher** Homes Ltd, for declarations: that the issue by the first defendants, the North Shore City Council, the Rodney District Council and the Waitakere City Council, of individual valuation assessments in 1999 for each separately titled lot in a block subdivision, thereby resulting in separate entries in the district valuation roll for each lot, was unreasonable and each lot should have been assessed as one block holding; that the first defendants had no power to alter the roll in the manner they did; that the value ascribed to each lot was incorrectly assessed and failed to take into account a block discount factor; and that a separate assessment for a lot subdivision could not be generated until a certificate of title for such lot had been issued. The first defendants sought alternative declarations and the second defendant, the **Valuer**-General broadly adopted the first defendants' submissions. A separate judgment of the same date (*Neil Construction Ltd v North Shore City Council* (High Court, Auckland, M 9901473-CO, 20 November 2000)) was given by Morris J alone dismissing an application by the same plaintiffs for other declarations and judicial review of decisions of the same defendants.

R Asher QC, *A Brown* and *R Bartlett* for the plaintiffs.

A R Galbraith QC and *G D Palmer* for the North Shore City Council and the Rodney District Council.

K W Berman and *S Manalo* for the Waitakere City Council.

H S Hancock and *E F Fitzgerald* for the **Valuer**-General.

Cur adv vult

MORRIS J and I W LYALL.

[1] The plaintiffs are the owners of unsold subdivided land in North Shore city, Waitakere city and Rodney district. On 1 July 1998 the Rating Valuations Act 1998 (RVA) came into force. It repealed the Valuation of Land Act 1951 (VLA). Under the RVA, local authorities are now responsible for the preparing and maintaining of district valuation rolls. These rolls are the basis for the striking of rates in each territorial district. The local authority is also the body responsible for the striking of rates in its district and the recipient of these rates. Under the VLA the **Valuer**-General was responsible for the preparing and maintaining of the valuation roll and of making any necessary valuations. Under the RVA the **Valuer**-General has

become the auditor of valuation practice and is empowered by the Act to make rules governing various aspects of this practice. Pursuant to the Act he made the Rating Valuations Rules (RVR) on 31 July 1998.

[2] Under the VLA and up until early 1999 unsold subdivided land comprising multiple certificates of title held by the one owner was valued as one landholding in a single assessment. In accordance with the then accepted valuation practice a block discount factor was applied to the aggregate value of the individual lots to assess the market value of the owner's interest in the land. As a consequence of the single valuation assessment a single rates assessment was then issued by the appropriate council for the land block. Further, because the developers' landholding was entered in the roll as one separate property, only one set of uniform annual charges (UAC) was charged on the land. On the sale of any lot/lots to a third party the land value for the remaining land held (in block) was then adjusted to take account of the sale.

[3] During 1998 the defendant councils, and we understand others, considered and then decided each unsold separately titled lot in a subdivision would be individually valued and an assessment issued for each titled lot. The valuations were

carried out. No block discount was allowed, each titled lot being valued individually. The council's valuation rolls were amended. In 1999 separate assessments were issued with the consequent assessment of rates.

[4] The plaintiffs objected to the assessments. Their objections have been transferred by the Land Valuation Court for determination by this Court. By consent, proceedings issued by the plaintiffs seeking various declarations from this Court under its general jurisdiction have been heard in conjunction with the objection hearing. A separate judgment covers these issues; the factual position is identical in both lots of proceedings.

[5] The plaintiffs contend:

(a) The issue of individual valuation assessments in 1999 for each separately titled lot, thereby resulting in separate entries in the district valuation roll for each such lot, was unreasonable in all the circumstances. Each area of subdivided land should have been assessed as one block holding.

(b) The councils had no power to alter the roll in the manner they did.

(c) The value ascribed to each lot has been assessed incorrectly and, in particular, has failed to take into account a block discount factor.

(d) A separate assessment for a lot in a subdivision cannot be generated until a certificate of title for such lot has been issued. Assessments cannot be based upon lots which appear on a plan deposited with Land Information New Zealand (LINZ) but in respect of which no certificate of title has been issued.

[6] A consideration of these issues has involved a consideration of the RVA issued by the **Valuer**-General which the plaintiffs contend are ultra vires his powers.

[7] The councils contend:

(a) The issue of the individual assessments was valid pursuant to s 7(2) of the RVA. No issue of reasonableness arises.

(b) The alterations to the roll were validly made. They rely particularly on s 14 of the RVA and R 4.1 of the RVR.

(c) The values were reached in accordance with practice, no discount is appropriate or required. We should not interfere with them.

(d) Once a plan is deposited, although no certificate of title is issued, individual assessments may be issued for properties which can be separately identified.

[8] The **Valuer**-General broadly adopts the submissions of the councils. He submits that in a residential subdivision each separate lot which has its own individual certificate of title is for rating valuation purposes a separate property. The owner's interest in each separate residential section and its certificate of title should be individually valued. He does not however agree the mere inclusion of a lot on a subdivisional deposited plan is sufficient to have the lot entered on the district valuation roll as separate property.

Background

[9] The plaintiffs are urban land developers and/or house-building companies. They are the owners of the subdivisions which are the subject of these proceedings. The 1999 change in the valuation process has brought about a marked increase in the rates payable by them on unsold sections held by them. In most cases the land involved is vacant land, unoccupied and with no amenities built on it. In the case of housing companies as opposed to pure land developers, in some case a "spec" house has been constructed on a site before its sale as a housing package to the purchaser. In most cases the sites when purchased were in rural areas adjoining urban boundaries. Having purchased the land the developer proceeded through the resource consent procedure and developed the land for subdivision. Financial contributions have been made to councils and roads formed. In every case the developer has constructed the waste water, water sewerage and other works necessary to connect the ultimate users of the property to the existing council infrastructure. Although any costs incurred are built into the price of lots, the sale process may extend over years.

[10] The proceedings which involve Rodney District Council are the proceedings by Weiti Views Ltd, Elan Properties Ltd, A G Dryden Ltd and Cabra Holdings Ltd. These proceedings by Weiti Views Ltd and Elan Properties Ltd relate to the Weiti Views and Manly Estate subdivisions at Whangaparaoa which are undertakings by a joint venture between

Hopper Developments Ltd and members of the Boocock family who also operate Cabra Holdings Ltd, and Mr J D Hamilton. In both cases as part of the general revaluation in the Rodney district as at 1 September 1998 a single notice of general revaluation was issued for each subdivision. In February 1999 the Rodney council issued new separate assessments for each separately titled lot in these subdivisions. The evidence establishes no further subdivision, that is subdivision of the land by the issue of new certificates of titles, occurred following the general revaluation and before Rodney issued the separate assessments in February 1999. Stages in the subdivisions have a projected sale-bound period of up to eight years.

[11] The A G Dryden proceedings relate to a subdivision called Omaha Point and is located on the Hibiscus Coast. In September 1998 the subdivision, including issues of titles, had been completed and the holding was valued in a single assessment. In May 1999 separate reassessments were issued for each separately titled lot. Part of this subdivided land is not being currently marketed.

[12] The Cabra Holdings proceedings relate to a subdivision on the Hibiscus Coast known as The Grange. Separate value assessments were issued by the council after the land had been subdivided as part of the process of vesting land for public works.

[13] The proceedings which involve North Shore City Council are brought by Neil Construction Ltd and concern two subdivisions known as Glenvar Heights and Unsworth Heights. In both cases the subdivisions have been valued in a series of single assessments following the subdivision of the land by the latest stage of subdivision. The subdivision had previously been assessed in block on 1 September 1996 being the previous revaluation date in the North Shore district.

[14] The proceedings against Waitakere are brought by Universal Homes Ltd and **Fletcher** Homes Ltd. They involve subdivisions at Woodbury Park in New Lynn, and Braeburn at Henderson. In both cases the partially subdivided land was valued as a single block assessment as part of the 1998 general revaluation. During the course of 1999 individual assessments were issued for each unsold separately titled lot, both of previously subdivided land as well as land which had previously been assessed without taking into account the issue of title.

[15] In all cases the plaintiffs have given evidence of the impact of the new practice resulting in an increase in both the value-based rates and UAC. The increases are significant and clearly of concern to the plaintiffs. They accept if the subdivided land could be sold, the effect of the change in method may be minimal but their evidence establishes much of the subdivided land will continue to be held for prolonged periods of time during which it will remain vacant and unused, receiving no benefit from the council services and placing little, if any, demand on the infrastructure.

[16] Small wonder the plaintiffs have taken steps to minimise the impact of the new practice. New certificates of title are issued only on application by or with the consent of the registered proprietor of land. A plan of subdivision may therefore be deposited with LINZ for approval as to survey, but no request made for the issue of titles in the subdivision shown on the plan. At stage 4A of its Grange subdivision Cabra Holdings Ltd requested 29 separate certificates of title. The remaining lots on the relevant deposited plan were held in one certificate of title. Neil Construction, at its Lincoln Park subdivision, drew down individual lots in batches or one by one as lots were sold, the remaining lots on the deposited plan continuing to be held under the original head title. Notwithstanding that no titles have been issued for each separate lot on the deposited plan of the subdivisions with LINZ, Rodney, in the case of Cabra Holdings, and Waitakere, in the case of Neil Construction, have issued separate valuation assessments in respect of each separate lot as shown on the plan.

The individual assessment issue

[17] Section 7 of the RVA provides:

> **7. Territorial authorities to prepare and maintain district valuation rolls** -- (1) Each territorial authority must prepare and maintain a district valuation roll for its own district in accordance with rules made under this Act.
>
> (2) Each roll must contain such information in respect of each separate property within the district as is required by the rules, whether or not that information relates to the method of rating adopted at the time by the territorial authority.
>
> (3) Where the boundaries of the district of a territorial authority are altered, or a new district is constituted, the relevant territorial authorities must prepare such new rolls or make such alterations in existing rolls as may be necessary to give effect to the provisions of this Act.

(4) For the purposes of this section any land that is capable of separate occupation may, if in the circumstances of the case it is reasonable to do so, and in accordance with any rules made under this Act, be treated as separate property whether or not it is separately occupied.

[18] Its precursor was s 7 of the Valuation of Land Act 1925 which was re-enacted as s 8 of the VLA. Section 7(4) of the RVA first appeared as s 8(2) of the VLA. The **Valuer**-General has told us this subsection was added in 1981 to make it clear ownership of flats was able to be valued separately in the roll.

[19] Section 7 of the 1925 Act was considered in *Walters v Supreme Court Registrar and Manukau County* [1936] NZLR 546. Concerning the correct meaning of the phrase "each separate property" Ostler J said at p 550:

> "As to the meaning of the term, I agree with the learned Judge in the Court below that in the absence of a statutory definition the words must be construed in their popular sense. I should construe the words `each separate property' as each separate `continuous area of land occupied and used as "one holding." ' "

[20] In ***Valuer**-General v Alfred Kohn Family Trust* (1990) LVC 867 the Court said at p 870:

> "What we think is essential in the preparation of the district roll is, first of all, to identify the separate properties. That phrase is not defined but it must be the case that separate occupation is one aspect of that. Subsection (2) necessarily implies that separate occupation and the capability of separate occupation are two of the ways in which the separate property can be identified.
>
> Other matters which the appellant submits, we think correctly, to be among criteria for that identification include separate ownership, different or distinct land tenure, separate land use and the availability of separate title."

[21] In *Rodney District Council v Attorney-General* [2000] 3 NZLR 678 Keith J said at para [24]:

> "The ordinary meaning of `separate property' in that context would be the distinct pieces of land identified as such through the land transfer system and in particular by the relevant certificate of title."

And at para [57]:

> **[ldquo] [57]** In our opinion the expression `separate property' in s 8(1) of the VLA meant a property as defined by a certificate of title. That follows from the plain meaning of the words in their particular statutory context and from their wider land law context and the valuation purpose of the expression."

Of major importance in support of that conclusion are the many indications in the RVA that a ``separate property can have more than one occupier, use or user".

[22] It is now settled therefore, in all cases where a certificate of title is issued for a lot in a subdivision, such lot/land is a separate property for the purposes of s 7(2) and must appear as such in the roll with the consequential liability for payment of rates.

[23] The *Rodney District Council* Court of Appeal judgment was delivered while these proceedings were being heard. Originally Mr Asher QC had

submitted that the appropriate basis for assessing and treating unsold subdivided land in the district valuation roll pursuant to s 7 of the RVA was in a single assessment of the developers' landholding in each subdivision applying the historical block deduction applicable for block assessments. He now accepts, as we understand it and we think rightly so, where a title has been issued for a lot in a subdivision it is a separate property within the meaning of s 7. He submits however, in such a situation the territorial authority has an overall discretion as to whether to so assess such property as

a separate property. We do not agree. In our judgment once a property falls within the legal definition of "separate property" it must be considered as a separate property and entered as such in the district valuation roll.

[24] Mr Asher further submits notwithstanding a property falls within s 7(2), the council is required by virtue of s 7(4) to consider whether it is reasonable in the circumstances of each case to so treat it as separate property. And the council should in an appropriate case not do so. He submitted under s 7(4) the controlling and overriding requirement for land capable of separate occupation to be treated as separate property is one of reasonableness and he submitted where land is not in fact occupied by different legal persons there is an obligation under s 7(4) for a territorial authority to exercise this discretion and in fact considers whether it is reasonable to do so. He advanced in considerable detail a number of grounds which in the circumstances of each case are required to be taken into account by the council. In view of the decision we have reached and set out below on this point, we do not find it necessary to cover these matters in this judgment.

[25] We are of the clear view s 7(4) was introduced to catch property which might otherwise fall through the s 7(2) net. It was not introduced to allow a property caught by s 7(2) to escape the consequences of such subsection. Section 7(4) empowers a council to treat land which does not fall within s 7(2) as if it were separate property. It is a deeming section. It potentially extends the category of separate property. It does not potentially reduce it.

[26] Mr Asher has referred us to passages in the *Rodney District Council* judgment which he submits supports his contention. At para [55] the Court said:

> "Counsel for the appellants questioned whether this provision [s 8(2) of the VLA] could be used in respect of a single separate property - that is in a disaggregating way, as well as in an aggregating way which counsel agreed was available. On its face the subsection is not limited in that sense. Many provisions of the legislation contemplate the separate occupation of a part of a separate property. And the related amendment made in the same amending statute in 1981 to s 25D(7) appears to be capable of operating only in that disaggregating way in the context of that provision."

He referred also to para [58] where the Court said:

> "We should add that it was possible for land to be *treated*, under s 8(2), as a separate property if that was reasonable in the circumstances. Because of the relatively abstract way in which this case has proceeded however we, like Fisher J, have no basis for questioning the decisions, if any, which the **Valuer**-General made under that provision relating to the particular properties in issue in this case."

[27] These parts of the Court's judgment must be read in the context of the real issue before the Court which was interpretation of the words

``each separate property" and arising in the factual situation established by the evidence before it. There is nothing in the passages to indicate the Court had the benefit of full submissions as we have had on the interpretation of s 7(2).

[28] We are, therefore, of the view that councils correctly assessed the individual lots where titles were issued as separate property under s 7(2) of the RVA. They were not required, having determined the lots were separate property, to consider the reasonableness of their decision under subs (4) or otherwise. They in fact did not. Reasonableness did not enter into their considerations.

[29] It is convenient at this stage to deal with the position of assessments which have been issued for lots depicted on a deposited land in respect of which no separate and individual certificate of title is issued. The contention for the plaintiffs supported by the **Valuer**-General, is the absence of a separate issued certificate of title means that there is no separate property for the purpose of s 7 of the RVA. The councils submit the absence of an issued separate certificate of title makes no difference and the properties are still separate properties in terms of s 7(2) of the RVA or, alternatively, can properly be treated as separate properties in terms of s 7(4). They submit each lot is legally defined by reference to a lot number and deposited plan, is identifiable by survey as shown on the plan and the lots may be separately sold, mortgaged, leased or caveated.

[30] In this country the process of land subdivision is governed by the Resource Management Act 1991 (RMA) and the Land Transfer Act 1952 (LTA). The RMA defines "subdivision of land" and governs the process relating to the issue of

resource consent by council and the completion of the work and conditions approved in such consent. The provisions of the LTA then govern the deposit of a survey plan of subdivision with LINZ and the legal division of such land by the issue of a new certificate of title to replace the previous title.

[31] For the plaintiffs it is submitted the effect of the provisions in the RMA and LTA is that a subdivision of land is not completed until application for title has been made. No ``separate property'' can be identified for purposes of s 7. Such is not the position in our view. The evidence establishes once a plan has been deposited the issue of title is purely an administrative step requiring nothing more than the signature of the registered owner, their agent or their solicitor. All the District Land Registrar must be satisfied of is that the plan has been deposited. The evidence also establishes the absence of a separate certificate of title for a particular lot on the deposit of a survey plan is no impediment to dealing with such lot as a separate property. Specifically, dealings may be registered in respect of an individual lot and a transfer, lease or mortgage can be registered. Mr Chapman (the District Land Registrar) has confirmed the issue of a title has not proved a prerequisite of such registration. We are satisfied from the evidence once a plan has been deposited each lot thereon is clearly identifiable as being separate and distinct from every other lot on the plan. From a practical point of view all the certificate of title does by way of description of the property is to record by reference to the deposited plan the area, the lot number and deposited plan number together with the boundary measurement dimensions, what is shown on the deposited plan. In our judgment separateness for the purpose of s 7 arises when the plan has been deposited and before the title is issued. This is consistent with the decision in ***Valuer**-General v Alfred Kohn Family Trust* where it was recognised the availability of a separate title rather than the existence of a separate title was the

relevant issue. It accords also with the decision in *Walters*. Under the RVA identification of property is the issue, not the nature of ownership. While we understand the **Valuer**-General's desire to have consistency and therefore ease of management, the statute has not seen fit to make the issue of a title the ultimate test (compare Australian legislation). No doubt this has been done for good reason as the circumstances under which a property can be regarded as a separate property will vary considerably.

[32] Mr Asher submitted to conclude the property becomes a separate property before a title has been issued would be contrary to all existing authority and in particular the Court of Appeal decision in the *Rodney District Council* case. We do not agree. The *Rodney* case did not deal with the situation we are faced with here. It was concerned with the contention occupancy was sufficient criteria of a separate property itself and a means of defining the property. The Court preferred the certificate of title test. In our view an individual lot described on a deposited plan fulfils the criteria of definition as required by s 7(2).

[33] We therefore reject this objection.

Alteration of the rolls

[34] Section 14 of the RVA provides as follows:

> **14.** **Alterations during currency of rolls** -- (1) A territorial authority may at any time, of its own motion or on the application of the owner or occupier of land appearing on the roll, make alterations to its current district valuation roll in order to readjust and correct valuations and entries and bring them up to date, -
> (a) In the manner and circumstances specified in rules made under this Act; and
> (b) In accordance with any procedure specified in the rules.
>
> (2) Any change in the valuation of a property under this section -
> (a) Must preserve uniformity with existing roll values of comparable parcels of land; and
> (b) Must be notified to the affected owner or occupier under section 17, and is subject to objection under section 32.
>
> (3) A territorial authority that alters its district valuation roll under subsection (1) must as soon as is reasonably practicable notify that alteration to all other local authorities that use the roll for rating purposes.

Rule 4.1 of the RVR sets out the circumstances as follows:

4.1 Alterations During the Currency of the District Valuation Roll

The District Valuation Roll may only be altered as result of one or more of the following:

- o any improvements being added to or removed from the land; or
- o any change in the ownership or occupancy of the land; or
- o any new valuation made in accordance with section 16 of the Act; or
- o any land being omitted from the roll, or any errors in the roll; or
- o any subdivision, amalgamation or resurvey of the land; or
- o any change in the provision of an operative district plan; or
- o any extraordinary event affecting property values; or
- o any change of use or changes of a minor or clerical nature which do not change the values; or

. . .

[35] In all cases which are the subject of these proceedings the first individual assessments for each lot were issued between general revaluations in all three territorial districts. In the case of Rodney and Waitakere the first new assessments were issued between four and seven months after certificates of the general revaluation. In the case of North Shore the first new assessment was issued in the last year of the current three-year roll period.

[36] The factual circumstances of each subdivision which we have referred to earlier appear to form three separate groupings:

(a) In the case of the individual assessments issued to Weiti Views Ltd, Elan Properties Ltd and Neil Construction Ltd the subdivided land had previously been valued in single-block assessments and there was no further subdivision of the land before the issue of the amended assessments in February and March 1999.

(b) The Dryden subdivision at Omaha Point and the **Fletcher** subdivision at Braeburn and the Universal subdivision at Woodbury Park were each previously valued as partly subdivided land in single block assessments in the 1998 general revaluations of Rodney and Waitakere. Some further subdivision then occurred within that land requiring the council to alter the land value in the roll entry when titles on a new stage of subdivision had issued in order to bring the roll entries up to date. Individual assessments for all the unsold lots were issued in May and June 1999.

(c) In the case of Cabra Holdings Ltd following the 1998 general revaluation certified in October 1998, new notices of valuation assessing each individual titled lot were issued in May and June 1999. No further subdivision of the land had occurred at that time. Subsequently one of the undeveloped titles was further revalued as six titles as part of the exercise of transferring land for roading and reserve purposes. The lots required further subdivision and development before sale as part of the subdivision. Some alteration of value was required at that time.

[37] The plaintiffs contend that in the subdivisions referred to in para [36](a) above there was no applicable ground under s 14 and R 4.1 for altering the roll by issuing the new individual valuations. In the subdivisions referred to in para [36](b) and (c), while some further act of subdivision occurred giving the council grounds to alter the land value to take into account the issue of title in the new area of development, the principle of comparabilities set out in s 14(2) and R 4.1 required such alterations during the relevant roll period should have been carried out on the basis of a single assessment of the total landholding consistently with the single block assessments of subdivided land which had been carried out during the general revaluation of the district.

[38] The councils contend the valuations of subdivided land in the districts carried out for many years previously were errors or omissions in the roll which the councils were required to remedy in order to comply with either what the councils had previously said were the requirements in R 3.6 of the RVR or what they now say the requirements of s 7(2) of the RVA.

[39] Mr Asher submits the amending provisions envisage alterations for minor errors or omissions, the correction of slips and the alterations resulting from a successful objection. He cites *New Zealand Land Development Co Ltd v*

***Valuer**-General* [1986] 2 NZLR 362 where the Court of Appeal considered the statutory scheme in the VLA and in particular the considerations governing alteration of the roll during the currency of a rating period. At p 363 Richardson J said:

"The legislation proceeds on the premise, understandable in the interests of order and certainty, that once any objections have been determined the valuations entered on the roll are to stand until the next roll revision unless there are any circumstances requiring or justifying review."

McMullin J expressed a similar opinion.

[40] Mr Asher points out the amendments were the result of a policy change following a decision to depart from the earlier and then accepted method of valuation. He submits the entries now amended were entries made deliberately after consideration and in accordance with the accepted practice of **valuers** at the time. In making the original entries he points out the roll was being completed in a manner adopted over many years. We accept these factual submissions.

[41] North Shore and Waitakere accept their actions amount to an alteration of the roll during its currency. They claim the earlier entries of valuation were on an aggregated block basis and were therefore not in accordance with s 7(2) of the RVA/RVR despite any certification by the **Valuer**-General. They were therefore, so the councils' argument goes, clearly made in error and the errors have been passed on to the roll. Accordingly the valuations are able to be altered under s 14 of the RVA and the fourth bullet point of R 4.1 of the RVR. They claim the effect of the changes was to preserve uniformity with existing roll values of comparable parcels of land as required by s 4. They submit if the course which they have taken had not been followed, the councils would be in breach of their statutory obligation to preserve uniformity within the roll valuation and in accordance with the principle of compatability: *New Zealand Land Development v **Valuer**-General*. They submit if the rolls had not been altered it would be unfair to other ratepayers and would leave the councils open to challenge.

[42] As an alternative source of authority the councils rely on s 13 of the Interpretation Act 1999. It provides:

13. **Power to correct errors** -- The power to make an appointment or do any other act or thing may be exercised to correct an error or omission in a previous exercise of the power even though the power is not generally capable of being exercised more than once.

[43] We accept the word ``error'' is broad enough to encompass something which is done inadvertently as well as something which is done intentionally and deliberately. Provided we are correct in my determination of the s 7 issue the councils, clearly in the broad sense, have acted erroneously. The issue is not however, whether they got it wrong, or right for that matter, but whether the actions they took by issuing the fresh assessments were within their statutory powers to correct an error.

[44] The original entries followed valuations made in accordance with the then recognised and accepted valuation of land principles. Valuations accepted by both the councils and the landowners. The entries did not result from any ``error'' such as, in our judgment, is envisaged by the legislation or the rules. The section is clearly aimed at spelling out precisely the powers of the councils

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which, of course, means as has been said by the Court of Appeal in *New Zealand Land Development v **Valuer**-General* that this ensures certainty for the period of at least three years.

[45] In our judgment this was not an error which the council had power to correct under s 14.

[46] Nor do we consider s 13 of the Interpretation Act assists the council, for the following reasons:

(a) Section 13 is in similar terms to s 25(j) of the Acts Interpretation Act 1924, but the new provision applies by reason of s 4(1) of the Act

(b) The councils submit as the original notices of valuation on the block basis were incorrect and unlawful because they did not comply with s 7(2) of the RVA (as I have ruled) the councils were therefore able to re-exercise the statutory powers of carrying out fresh valuations and sending out fresh notices of valuation in order to correct the error of law or to achieve the consistency required by the RVA with equivalent separate properties.

[47] Section 13 is to correct an ``error or omission''. For the reasons we have given we do not consider the entries were errors within this section. Furthermore, s 25 of the Acts Interpretation Act expressly provides this section only applies ``unless the context otherwise requires''. Section 4 of the Interpretation Act 1999 contains a provision to like effect.

[48] We are, therefore, of the view that where the RVA and the RVR contain express and detailed provisions relating to the correction of the roll, the express provisions prevent the more general provisions of the Interpretation Act applying in this case.

[49] Rodney District Council also submits s 14 of the RVA does not apply to it as the valuations in issue were made as part of the process of compiling the new district valuation roll to be used as from 1 July 1999. The valuations made were accordingly not valuations appearing on the ``current'' valuation roll. It submits that at the time in question, namely March 1999, the ``current'' valuation roll remained unchanged and was continuing to be used for rating purposes up until 30 June 1999 when it would be replaced by the new valuation roll. The new valuations sent out in March 1999 were not therefore ``alterations to [the] current district valuation roll'' in terms of s 14 of the new RVA. Rather, the council was in the process of compiling its new valuation roll which would only be ``current'' as from 1 July 1999. Counsel submits therefore, s 14 is not relevant and instead the council was entitled to issue the fresh notice of valuation in terms of s 13 of the Interpretation Act in order to correct the initial notices which wrongly aggregated the subdivided lots. In our view, looking at the actions of the council in the context of the process of compiling the new district valuation roll, this argument is without merit. This ground of objection is accordingly upheld.

Valuations of the properties

[50] This is simply a valuation issue. The question raised is, if each lot is separate property as we have ruled, what value should be attributed to each lot?

[51] ``Land value'' is defined by s 2 of the RVA and refers to ``the owner's estate or interest in the land''. The task of the **valuer** is to assess what the owner's estate or interest without improvements would realise if offered for sale on reasonable terms and conditions. Constraints on alienability must be considered: ***Valuer*-*General v Mangatu Inc*** [1997] 3 NZLR 641.

[52] The plaintiffs claim even if the lots were properly individually assessed the valuations were incorrect as they did not take into account a number of factors including:

(a) The possibility that the hypothetical purchaser would wish to acquire additional adjoining lots from the vendor on sale of the land, ie the possibility of a sale of a number or all of the lots to a single purchaser with the consequent deduction in the value of the property sold;

(b) The occasion of a large number of vacant unsold sections in one locality with the consequential effect on the value as a result of the oversupply of the market; and

(c) Allowance for profit and risk interest and holding costs arising from the fact that the sections would be sold down over a period of time.

[53] They submit that if each separate titled lot is to be entered as a separate property in the valuation roll then the assessment of the owner's interest in that property must take into account not only such factors as just outlined, but also factors relating to an owner's block holding of land in a subdivision in the same way that these would be taken into account if a single assessment were to be completed. Thus an oversupply of the market should be considered along with the other matters referred to.

[54] Such an approach, it seems, is no more than an attempt by the plaintiffs to obtain the same advantage as they would have obtained from a block assessment with an overall reduction. It misconceives, in our view, the requirement to value the owner's interest. Contrary to the underlying claim by the plaintiffs, what is to be valued is not the whole block but each separate property once identified as such. In each case where a title is issued this will be the full freehold interest subject to such limitations as fencing covenants etc. In the case of a lot identified as a separate property on a plan, this again will be for the full freehold interest less, no doubt, some allowance, minimal though it may be, for the fact that title has not yet been formally obtained. This valuation problem is a matter which any competent **valuer** would be capable of resolving.

[55] We heard from a number of witnesses on this aspect. We are satisfied the correct approach as to the value in respect of each lot has been adopted.

The Rating Valuations Rules

[56] These rules are a form of delegated legislation. They are therefore reviewable and can be declared ultra vires if found to be outside the terms of statutory delegation: *Brader v Ministry of Transport* [1981] 1 NZLR 73.

[57] The empowering provisions for the making of the rules is s 5 of the RVA. It provides:

> **5. Valuer-General may make rules setting requirements in relation to valuations and district valuation rolls** -- (1) The **Valuer**-General may from time to time make rules for all or any of the following purposes:
>
> (a) Prescribing standards, specifications, and methodologies for the rating valuation process, including -
>
> (i) The data which must be gathered and the form in which it is gathered:
>
> (ii) The processes which must be followed in gathering the data:
>
> (iii) The processes for forwarding that data to the **Valuer**-General:

> (b) Prescribing who may carry out valuations or provide valuation services for the purposes of this Act:
>
> (c) Prescribing rules as to the maintenance and content of district valuation rolls:
>
> (d) Providing for the auditing and monitoring of general revaluations, and of alterations during the currency of a roll:
>
> (e) Providing for the auditing and monitoring of equalisation adjustments and special rating areas:
>
> (f) Requiring the provision of information to the **Valuer**-General or any other person or body specified by the **Valuer**-General relating to valuations, general revaluations, equalisation adjustments, special rating areas, and alterations during the currency of a roll by territorial authorities:
>
> (g) Providing for the manner in which any valuation is to be reviewed by a territorial authority as a result of an objection:
>
> (h) Providing for such other matters relating to valuations and valuation services as are contemplated by or necessary for giving full effect to the provisions of this Act or as may be necessary or desirable to allow the **Valuer**-General to perform his or her functions under this Act or any related Act.
>
> (2) Any such rules may -
>
> (a) Provide for when any valuation is to take effect:
>
> (b) Apply generally throughout New Zealand, or only to such local authority or authorities or such district or districts as may be specified in the rules:
>
> (c) Exempt from their application any territorial authority which has commenced a general revaluation until the completion of that general revaluation.
>
> (3) Before making any rules under this section, the **Valuer**-General must -
>
> (a) Publish a notice of his or her intention to make the rules in daily newspapers published in Auckland, Wellington, Christchurch, and Dunedin, respectively, and also publish the notice in the *Gazette*; and

[Editorial note: For notice of intention to make Rating Valuations Rules see *Gazette* 2000, p 659.]

> (b) Give interested persons a reasonable time, which must be specified in the notice, to make submissions on the proposed rules; and
>
> (c) Consult with such persons or groups representative of **valuers,** local authorities, and other interested persons as the **Valuer**-General thinks appropriate having regard in each case to the content and effect of the proposed rules.
>
> (4) As soon as practicable after making any rules under this section, the **Valuer**-General must notify their making in the *Gazette*.

[Editorial note: For notice of Rating Valuations Rules coming into force from 7 July 2000, with effect from 1 July 2000, see *Gazette* 2000, p 1351.]

> (5) The *Gazette* notice must specify where copies of the rules may be inspected and obtained.
>
> (6) Any rules made under this section are to be treated for the purposes of the Regulations (Disallowance) Act 1989 (but not for the purposes of the Acts and Regulations Publication Act 1989) as if they were regulations within the meaning of that Act.

[58] Rule 3.6 states:

3.6 Separate Property

For the purposes of assessing land and capital value under section 7 of the Act, any property for which there is a certificate of title under the Land Transfer Act 1952 may be treated as a separate property. Where one parcel of land is held in more than one certificate of title, each title will be treated as a separate property except in the case of fractional interest, timeshare and leasehold titles.

Section 7(4) of the Act provides that Rules may be made to determine the circumstances where land capable of separate occupation may be treated as separate property.

In the following cases, land should be treated as separate property:

- properties held under cross lease or unit title should be valued as separate properties.
- where contiguous land is used as one farming operation the property may be entered on the roll in one assessment provided there are not different owners. Severance by a road, railway or river does not affect contiguity. However, in the case of a farm or other large property consisting of more than one block in different ownerships, separate assessments are necessary even though there may be common use and occupation;
- where a substantial building straddles land in different ownerships a single assessment may be made with apportionments to show the values of the differently owned parts;
- reserves and other large holdings such as airports, harbours, waterfronts etc may be assessed as one property; and,
- a property split by a local authority boundary will have to be shown on the roll as separate properties even though it may not meet the normal criteria. In this situation the land should not be valued as separately saleable but as an appropriate proportion of the value of the whole.

In the following cases, land should not be treated as separate property:

- commercial tenancies (eg in office blocks or shopping malls) must not be valued separately;
- where there are separate titles for freehold and leasehold interests other than cross leased properties a single valuation of the fee simple interest is required;
- where there are separate titles for undivided interests with no defined areas of exclusive occupation a single valuation of the land is required;
- residential premises and commercial floors held under a company shareholding structure, where the company is the legal occupier and ratepayer, are not capable of separate assessment; and,

[2001] 3 NZLR 533 page 548

- retirement villages will normally be treated as one property, unless the ownership arrangements require unit owners to pay their own rates.

[59] The plaintiffs contend neither s 5 nor s 7 of the RVA authorises the **Valuer**-General to make rules which, in effect, describe the circumstances in which a territorial authority is to treat a property capable of separate occupation as a separate property in the roll (see pleadings in the statement of claims).

[60] The **Valuer**-General contends the valuation rolls need to be nationally consistent and submits R 3.6 sets out general rules consistent with the RVA that each parcel of land held in a separate certificate of title is a separate property.

[61] That is, the rules provide the context within which the discretion applies and then provide a guideline as to how the discretion under s 7(4) of the RVA is to be applied in order to provide a nationally consistent valuation database.

[62] We accept the **Valuer**-General's submissions. In our view the rules are doing no more than indicating in a general manner how applications involving s 7(4) should be considered. It does not direct a manner in which a property must be considered nor does it direct that a property within the description of the rules must be deemed a separate property. Such a suggestion as we so interpret the rules is well within the powers of the **Valuer**-General and within his statutory obligation. The **Valuer**-General is not limited from making procedural rules.

[63] The rules are therefore intra vires in our judgment. We point out in view of our earlier ruling as to the effect of s 7(2), strictly speaking it was unnecessary for us to express any opinion in respect of these rules.

Result

(a) The issue of individual valuation assessments in 1999 for each separate lot, thereby resulting in separate entries in the district valuation roll for each lot, was valid.

(b) The councils had no power to alter the roll in the manner they did.

(c) The value ascribed to each lot has been assessed correctly.

(d) A separate assessment for a lot identified on a plan deposited with LINZ can be issued notwithstanding

no certificate of title for such lot has issued.

Judgment accordingly. In the circumstances there will be no order for costs.Declarations made in part.

Solicitors for the plaintiffs: *Ellis Gould* (Auckland).

Solicitors for the North Shore City Council and the Rodney District Council: *Simpson Grierson* (Auckland).

Solicitors for the Waitakere City Council: *Kensington Swan* (Auckland).

Solicitors for the **Valuer**-General: *Crown Law Office* (Wellington).

Reported by: Nicole Corner, *Barrister*