

B E T W E E N :

**Macedon Ranges Shire Council**

*Plaintiff*

- and -

**Glenn Alexander Thompson; and  
Cheryl Maree Thompson**

*Defendants*

**Defendants' Submission as to fact and law**

**And**

**Defendants' submission in support of an award of costs including all incidental costs.**

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Date of Document: - 25<sup>th</sup> February 2010

Filed on behalf of: The Defendants

Prepared by: The Defendants.

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- 1) With the greatest respect to this Court I submit that the facts and the law before this court are;
  - 2) In this proceeding the Council asserts<sup>1</sup> that the Rate Notices issued during the period 1983 until 1991 **relate** to the **land** defined in certificate of title volume 9408 folio 064 ("the parent title"). To the extent that this assertion contains an express or implied assertion that the rates purportedly levied during the period 1983 to 1991 were a rate upon the **property** being the parent title, then that assertion is untrue. The Rate Notices and the Rate Book clearly define that the properties purportedly rated were Lot 1 LP 135199, Lot 2 LP 135200, Lots 3-6 LP 135201 ("the six unlawful allotments").
  - 3) If this apparent assertion of the Council was true (which is denied) then such rate would not become due and payable unless and until 7 days after the Council amended its Rate Book<sup>2</sup> to accord with that assertion. The Council has had 25 years to amend the Rate Book but has failed to do so..
  - 4) **This Court does not have jurisdiction to amend or purport to amend the Council's Rate Book.**  
This power resides in the County Court.<sup>3</sup>
  - 5) **This Court does not have jurisdiction to amend or purport to amend the Council's Rate Book**  
**by finding or holding that any other **property** other than that expressly set out in the Rate Book was**

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<sup>1</sup> See paragraph 5 of Council's Reply.

<sup>2</sup> See ss303(5) Local Government Act 1958

<sup>3</sup> See ss406 Local Government Act 1958

rated during the period 1983 to 1991.<sup>4</sup>

- 6) If, in any circumstance, including by order of a competent court, the Rate Book is amended or purported to be amended then any rate becoming due as a consequence of that amendment does not become payable until 7 days after that amendment.<sup>5</sup> **This Court cannot make an order in relation to a debt not yet incurred and/or not yet due.**
- 7) The Council does not deny paragraphs 34(b) through (k) of the Final Defence which, inter alia, assert that the allotments purportedly rated were unlawful and could not be validly rated. Instead the Council says those things set out at paragraph 5 of its Reply and now referred to in paragraph 2 hereof. Accordingly the allegations at paragraphs 34(b) through (k) stand. **No rate is payable in relation to the six unlawful allotments defined in the Rate Notices and Rate Book for the period 1983 to 1991** and the Council does not say or imply anything to the contrary.
- 8) The Council does not say that during the period 1983 to 1991 it rated the parent title. Instead the Council says that the (purported) rate set out in the Rate Book “relates to the land”<sup>6</sup>, “pertaining to a property”<sup>7</sup> being the parent title.
- 9) Having failed and omitted to rate the **property** being the parent title the Council’s assertions are carefully crafted and coordinated obfuscations intended to lead this Court to believe and hold that the rate was in fact levied on the property being the parent title. . If these assertions were true (which is denied) the Council has had 25 years to amend its Rate Book to accord with that assertion and it has not done so.
- 10) Having failed to rate the property being the parent title then no rate is payable on that property.
- 11) Section 242(2) of the Local Government Act 1989 provides; *“A certificate certifying any matter relating to the contents of any document kept by a Council and purporting to be signed by the Chief Executive officer is admissible in any proceeding as evidence of the matters appearing in the certificate.”*

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<sup>4</sup> This Jurisdiction resides in the County Court.

<sup>5</sup> See ss303(5) of the Local Government Act 1958

<sup>6</sup> Paragraph 5 of Council’s Reply.

<sup>7</sup> Paragraph 4 of Council’s Outline of Submissions.

- 12) The certificate<sup>8</sup> signed by Peter Johnson is not in accord with the facts before this Court and before him at the time of signing his certificate. Peter Johnson's certificate states, to the effect;
- a) That Rate Notices are attached for the property situate (sic) at Lot 1 on Plan of subdivision 134684 being Certificate of Title Volume 9408 Folio 064 . **This is in direct contradiction to the express content of the Rate Notices for period prior to 1992 evinced by him.**
  - b) That extracts from the Rate Book are for the property situated at Lot 1 on Plan of subdivision 134684 being Certificate of Title Volume 9408 Folio 064. **Again this is in direct contradiction with the extracts evinced.**
  - c) That property situated at Lot 1 on Plan of subdivision 134684 being Certificate of Title Volume 9408 Folio 064 **was previously described** as Lot 1 LP 135199, Lot 2 LP 135200, Lots 3-6 LP 135201. **Again this is in direct contradiction to the facts evinced.**
- 13) In relation to the certificate of Peter Johnson the facts before this Court are;
- a) Firstly for the purpose of explanation, understanding and contrast;
    - i) While it is true that all land is ratable land, such land is rated in discrete parcels or properties. Rates are only payable by a person or entity in respect to land which is the **property** (whether as owner or occupier) of that person or entity **and which has in fact been rated** by the Council and recorded in the rate Book. The six unlawful allotments purportedly rated by the Council between 1983 and 1991 never were and never could be the property of any person or entity and the Council did not and does not purport to have rated the parent title.
    - ii) At paragraph 5 of its Reply the Council merely says that the Rate Notices **relate** to the **land** being the parent title. This is obfuscation. This may be construed as a true statement by the unwary because plainly the parent title and the unlawful allotments are each related to the self same land. However if, as it appears, the purpose of paragraph 5 of the Reply was to convey the meaning that a rate upon the six separate properties (were they capable of existing) referred to in the Rate Notices and Rate Book was one and the same as, or included, a rate

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<sup>8</sup> Tab 10 Council's Court Book Volume 2

upon the **property** being the parent title then such meaning is quite wrong and deceptive.

Manifestly they are separate and distinct properties, and a purported rate on one or more of those properties does not include or impart a rate on another.

- b) In his certificate, Peter Johnson is unequivocal, it includes a statement that the Rate Notices and Rate Book entries for the period 1983 to 1991 ARE FOR the PROPERTY being the parent title. **This is manifestly not true and is contradicted by the very documents exhibited by him.** The Rate Notices and Rate Book for the said period ARE NOT for the property being the parent title. They are manifestly for the six unlawful allotments purportedly rated and expressly defined in the Rate Notices and Rate Book exhibited by him.
- c) As to Peter Johnson's assertion that the parent title was previously known as Lot 1 LP 135199 etc the facts are;
- i) The **property** being the parent title has always been known as the Lot 1 on Plan of subdivision 134684 being Certificate of Title Volume 9408 Folio 064 and cannot be construed to be one and the same as any one or more of the six properties (were they capable of existing) referred to in the Rate Notices and Rate Book for the period 1983 until 1991.
- ii) During the period about 1984 until the Council ceased to rate them, the six unlawful allotments referred to in the Rate Notices and the Rate Book were valued commensurate with a value of six separate properties having an aggregate value greater than the single property being the parent title.
- iii) As and from the date of the first valuation following 1991, the parent title was valued at approximately half the value of the aggregate value of the six unlawful allotments. Neither the property being the parent title nor any other property in Kyneton depreciated by half at that time.
- iv) The fact that the Council rated the parent title at about half the aggregate value of the six unlawful allotments is clear evidence that the Council never described the property being the parent title as any one or more of the six unlawful allotments. The Council knew what it was

doing at all times and accurately recorded what it had done in the Rate Notices and Rate Book; there was no mistake or misdescription. **Peter Johnson's assertion that the property being the parent title was previously described as the six unlawful allotments cannot be true.**

v) It may well be that the Council's Rate Book folio or card bearing a particular "Property Number" has been continuous for the period 1983 until the present so that the "Property Number" which now indexes/records the property being the parent title previously indexed/recorded the purported properties being six the unlawful allotments however Peter Johnson's certificate does not imply or infer any such meaning and even if so this would be entirely irrelevant.

14) On the evidence before this Court **the certificate of Peter Johnson is in direct and irreconcilable conflict with the facts in every material respect** and must be taken to be disproved by this Court.

15) If there is any truth to Council's assertions (which is denied) as to rates for the period 1984 to 1991 then the Council has now had twenty five years in which to amend its Rate Book to accord with those assertions. Despite the fact of those twenty five years and two previous abandoned proceedings where these self same matters were in question it has failed to amend that Rate Book.

16) If the Council had amended its Rate Book to accord with its present assertions there would be no need for the obfuscation and representations now resorted to.

17) If this Court dismisses the present claim it remains open to the Council to belatedly amend its Rate Book and to bring a new proceeding in the unlikely event that any valid rates remain unpaid.

18) During the entire period 1984 until after the present proceeding was initiated, Council has, by its Rate Notices and Rate Book and two previous proceedings to recover the purported rates, expressly and unequivocally represented that the rates purportedly levied from about 1983 until 1991 were levied precisely as represented in the Rate Notices and Rate Book. The Defendants have believed and acted upon those representations including, at least in part reason, defending the present proceeding and the two previous proceedings. The Council is now estopped from asserting or implying that the Rates

relate to or were levied in respect to any other property whatsoever. It is also estopped from representing that the Rate Notices and Rate Book say or were intended to represent anything other than that which they explicitly and unequivocally presently represent. **The Council is estopped from making the assertions which it relies upon in this proceeding.**

19) The Council has not sought to amend its claim to exclude its baseless claim for the period 1983 to 1991.

20) I submit that this Court must dismiss the present claim with costs awarded to the Defendants.

**Defendants' submission as to costs.**

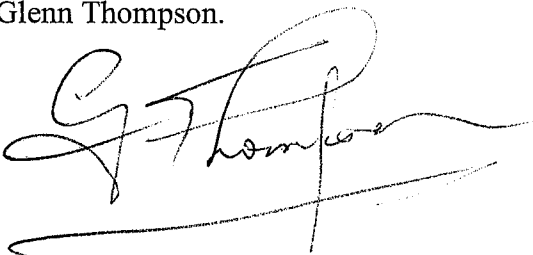
21) The Council brought this proceeding in the face of the facts and the law known to it and as with each and every previous proceeding since 1987 has made submissions which are in direct conflict with the facts known to it.

22) The Defendants are entitled to costs including all incidental costs of defending this proceeding.

23) I submit that the Court ought to order that the Council officers party to the representations made and /or the legal representatives of the Council personally pay those costs.

25<sup>th</sup> February 2010

Glenn Thompson.

A handwritten signature in black ink, appearing to read 'G Thompson', with a long horizontal flourish extending to the right.

No. 6299

## LOCAL GOVERNMENT ACT 1958

REPRINT (No. 4) incorporating amendments up to Act No. 10081

### An Act to consolidate the Law relating to Local Government

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. This Act may be cited as the *Local Government Act 1958*,\* and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*, and is divided into Parts Divisions and subdivisions as follows:

Short title  
commencement  
and Division.  
Amended by  
Nos. 6577 s. 2 (2)  
(a), 6601 s. 4 (a),  
7332 s. 2 (1st  
Sch. Items  
50-62).

Part I.—The Con-  
stitution of  
Municipalities  
generally, ss.  
8-15.

Division 1.—Incorporation and Government of  
Municipalities and Boundaries of Districts, ss.  
8-12.  
Division 2.—Appointment, &c., of Commis-  
sioner where no Council or Quorum of Coun-  
cil, ss. 13-15.

\*The *Local Government Act 1958* was assented to on 30 September 1958 and came into operation on 1 April 1959 (see *Government Gazette* 18 March 1959 at page 892).

This reprint incorporates the amendments made to the *Local Government Act 1958* by the following Acts:

Name	No.	Date of	
		Assent	Date of Commencement
<i>Statute Law Revision Act 1959</i>	6505	5.5.59	1.4.59: see s. 1 (2)
<i>National Art Gallery and Cultural Centre (Amendment) Act 1959</i>	6522	12.5.59	12.5.59
<i>Local Government (Amendment) Act 1959</i> (as amended by <i>Statute Law Revision Act 1959</i> , No. 6547)	6535	19.5.59	10.6.59: <i>Government Gazette</i> 10.6.59 p. 1668

50232/83—Price \$20.00

6002(F1)

Parts X. and XI.  
substituted by  
No. 7835 s. 3.\*

## PART X.—RATES

## DIVISION I—RATEABLE PROPERTY

Rateable  
property.  
S. 251  
substituted by  
No. 7847 s. 2 (a).

251. (1) All land shall be rateable property within the meaning of this Act except—

- (a) land the property of the Crown in right of the State of Victoria or which is vested in any Minister of the Crown in right of the State of Victoria or in any public statutory body which is constituted under the law of Victoria or in trustees appointed pursuant to an Act of the Parliament of Victoria to hold the land on trust for public or municipal purposes or in any municipality—
  - (i) which is used exclusively for public or municipal purposes; or
  - (ii) which is unoccupied;
- (b) land used exclusively for charitable purposes;
- (c) land vested in or held in trust for any religious body and used exclusively for either or both of the following purposes:
  - (i) As a residence of a practising minister of religion;
  - (ii) Education and training of persons to be ministers of religion;
- (d) land used exclusively for mining purposes; and
- (e) land held in trust and used exclusively for purposes of—
  - (i) a memorial to persons who served in the war which commenced in the year 1914 or the war which commenced in the year 1939 or who served in any other war or hostilities or special assignment for the time being specified for the purposes of the *Patriotic Funds Act 1958*; or
  - (ii) a club the members of which are persons who served in the war which commenced in the year 1914 or the war which commenced in the year 1939 or who served in any other war or hostilities or special assignment for the time being specified for the purposes of the *Patriotic Funds Act 1958*; or
  - (iii) any sub-branch of the Returned Services League of Australia; or
  - (iv) the Air Force Association (Victoria Division); or
  - (v) the Australian Legion of Ex-Servicemen and Women (Victorian Branch).

Para. (e)  
amended by No.  
9771 s. 15.

Sub-para. (iii)  
inserted by No.  
9224 s. 2.

Sub-para. (iv)  
inserted by No.  
9402 s. 20.

Sub-para (v)  
inserted by No.  
9771 s. 15.

\*Note: For a record of amendments made to previous sections 251 to 340 see Index to Victoria Statutes 1968.



(2) Land shall be deemed not to be used exclusively for public or municipal purposes if—

- (a) it is used for banking or insurance purposes;
- (b) it is land upon which is situated a house or flat used for residential purposes which is in the exclusive occupation of any person including a person who is required to reside there in order to carry out duties required of him; or
- (c) it is used for the purposes of—

\* \* \* \* \*

(ii) the Metropolitan Fire Brigades Board.

\* \* \* \* \*

(3) Where part of any single rateable property vested in or the property of any person or body referred to in paragraph (a) of sub-section (1) is used exclusively for public purposes that part of the property shall not be rateable.

(4) Land shall be deemed not to be used exclusively for charitable purposes if—

- (a) part of the land is separately occupied and is used for any purpose which is not an exclusively charitable purpose;
- (b) it is land upon which is situated a house or flat used for residential purposes which is in the exclusive occupation of any person including a person who is required to reside there in order to carry out duties required of him;
- (c) it is used for the retail sale of goods; or
- (d) it is used for carrying on a business for profit unless such use is necessarily involved in or merely incidental to the charitable purpose.

(5) Where part of any property which is a single property for rating purposes is used exclusively for charitable purposes that part of the property shall not be rateable.

(6) Where any land which is not rateable property under this section because it is used for any of the purposes specified in paragraphs (b) (c) and (e) of sub-section (1) becomes rateable property or becomes land described in paragraph (a) of sub-section (1) there shall be payable to the council of the municipality in respect of the said land an amount equal to the difference between the total of the amounts which were paid or payable in respect of such land as rates or in lieu of rates for each of the five years immediately preceding the land so becoming rateable property or becoming land described in paragraph (a) of sub-section (1) and the total of the amounts of the rates which would have been payable in respect of such land in each of those years if such land had then been rateable property.

Para. (c)  
amended by No.  
9182 s. 3 (a) (b).

Sub-para (i)  
repealed by No.  
9921 s. 255.

Sub-para. (iii)  
repealed by No.  
9182 s. 3 (b).

Se. (6)  
substituted by  
No. 8291 s. 10  
(1), amended by  
No. 8781 s. 10 (a)  
(b).

Ss. (12)  
amended by No.  
9283 s. 10 (1).\*

(12) The Minister may annually appoint some person holding a certificate issued by the Municipal Auditors Board to audit the accounts of the group and every such auditor shall be entitled to such remuneration from the group as the Minister determines.

Ss. (13)  
amended by No.  
8405 s. 8 (b).

(13) Notwithstanding anything to the contrary in any Act a supplementary valuation may be carried out by any person qualified to make a valuation pursuant to the provisions of sub-section (6) or by a full-time employé of a council whose appointment has been authorized in writing by the Minister after consultation with the Valuer-General but any such authorization may be made on such terms and subject to such conditions as the Minister thinks fit.

(14) The preceding provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

Value how  
computed.

(15) In every valuation the property rateable shall be computed at its net annual value, its capital improved value and, where so required by the council or another rating authority, its unimproved capital value.

Application of  
provisions of sub-  
section (15) to  
cities of  
Melbourne and  
Geelong.

(16) Notwithstanding anything in any Act, the provisions of sub-section (15) shall extend and apply to the city of Melbourne and the city of Geelong; and every Act and enactment relating to the said cities or either of them shall with such adaptations as are necessary be read and construed and take effect accordingly; and, in particular, without affecting the generality of the foregoing, any reference in any such Act or enactment to the annual value of property in the said cities or either of them shall be read and construed and take effect as if it were a reference to the net annual value thereof within the meaning of sub-section (1).

## (2) When and how Valuations are to be made

First valuation.  
Valuations from  
time to time.

255. (1) The council of a municipality constituted after the commencement of the *Local Government Act* 1969 may use in respect of rateable property within its municipal district valuations in force in respect of that property immediately before the constitution of the municipality for such period as the latest of the valuations might have been used by the municipality for which it was made.

(2) The council of any such municipality shall cause a valuation of all rateable property within its municipal district to be made and returned in time for the making of the rate for the year immediately following the last year in which the valuations may be used.

\*Note: Saving provisions in s. 10 (2) of Act No. 9283 as follows:

"(2) A person who pursuant to section 254 (12) of the Principal Act was prior to the coming into operation of this section validly appointed by the Governor in Council to audit accounts shall, notwithstanding the amendment of the said section 254 (12) by this section, continue to be validly appointed for the purposes of that sub-section."

(3) Subject to the provisions of sub-section (4), the council of every municipality may from time to time as it deems fit cause a valuation of all rateable property within its municipal district to be made and returned for the municipality.

(4) A council of a municipality which has caused a valuation of rateable property within its municipal district to be made and returned shall, subject to the provisions of sections 256 and 256A, cause another such valuation to be made and returned—

- (a) where the whole of any subdivision of the municipal district is subject to a rate made by the Melbourne and Metropolitan Board of Works—in time for the making of the rate for the year immediately following the end of the fourth year of use of the last such valuation; or
- (b) in every other case—in time for the making of the rate for the year immediately following the end of the sixth year of use of the last such valuation.

(5) Where several parcels of land in the same municipal district are occupied by the same person and separated from each other only by a road or railway or other similar area across or around which movement is reasonably possible, the parcels shall be regarded as forming one rateable property and valued accordingly.

Special provisions concerning manner of making valuation.

Ss. (5) amended by No. 9162 s. 16.

(5A) Where any person is liable to be rated in respect of two or more parcels of land in the same municipal district and the parcels form one continuous area the parcels shall be regarded as forming one rateable property and valued accordingly.

Unoccupied parcels to form one rateable property.

Ss. (5A) inserted by No. 8875 s. 3 (1), amended by No. 9162 s. 16.

(6) Notwithstanding anything to the contrary in sub-section (5) and sub-section (5A), where portion of a parcel of land (not being any rateable property referred to in section 254 (3) but being portion on which a building is erected) is occupied separately from, or obviously adapted to being occupied separately from, other land in the parcel, the land on which the building is erected, together with such other land as allows adequate and appropriate curtilage to the building, shall be regarded as a separate rateable property.

Ss. (6) amended by Nos. 8875 s. 3 (2), 9402 s. 21.

(7) Where any portion of a parcel or parcels of land forming one rateable property for the purposes of a municipal rate or of a rate to be levied by any other rating authority using the valuation is subject to a rate or rates levied in respect of that portion only, the value of the property shall be apportioned so as to show separately the value of the portion.

(8) Where land comprising one undertaking extends continuously beyond the boundaries of any municipal district the value, for the purposes of any rate, of so much of the land as is within any one municipal district shall be assessed as part of the value of the whole of the land.

Ss. (8) inserted by No. 8649 s. 24.

last successful application actually made by him under sub-section (1A) in respect of those premises in relation to any such rate or charge—

shall, if he fails without reasonable excuse to advise the council in writing within the first two months of the prescribed period that he is not seeking to be excused payment of part of the rate or charge in respect of those premises on that basis, be guilty of an offence against this section.

Penalty: 2 penalty units.

(2) This section shall extend and apply to the city of Melbourne and the city of Geelong.

Ss. (3) inserted  
by No. 8893 s. 4  
(c).

(3) The provisions of sub-section (1AC), (1AD) and (1E) shall have effect in relation to a rate or charge of any of the kinds referred to in sub-section (1A) that commences on or after the 1st day of July, 1976 and before the commencement of the *Pensioners' Rates Remission Act* 1976 but with the modifications that—

- (a) any reference in those sub-sections to a rate or charge about to commence shall be deemed to be a reference to a rate or charge for the time being in force;
- (b) sub-section (1AD) shall be deemed to require the publication of the notice referred to therein as soon as possible after the commencement of the said Act; and
- (c) any reference in sub-section (1AC) or sub-section (1E) to the first two months of the prescribed period shall be deemed to be a reference to the months of January and February of the year 1977.

Sub-div. heading  
amended by No.  
9573 s. 11.

(2) *Provisions applicable to General, Extra, Drainage and Separate Rates*

Form, &c., of  
rate.  
Ss. (1) amended  
by No. 9573  
s. 12.  
Twentieth  
Schedule.

299. (1) Every general rate extra rate drainage rate and separate rate shall be entered in a book or books to be kept for that purpose which book or books shall be called the "rate book" and may be in the form given in the Twentieth Schedule or as near thereto as the circumstances of the case will permit or in such other form or forms as the Governor in Council by order published in the *Government Gazette* appoints from time to time.

Rate to be signed  
and sealed.

(2) Every such rate shall be signed by not less than three members of the council and shall be sealed with the seal of the municipality.

Loose-leaf, &c.,  
rate-book.  
Ss. (3) amended  
by No. 9575 s. 26  
(a).

(3) Notwithstanding anything in the preceding provisions of this section or in any Act relating to the city of Melbourne or the city of Geelong a rate book may be constituted of a series of cards or loose-leaves in such form or forms as the Governor in Council by Order published in the *Government Gazette* appoints from time to time.

(4) In any proceeding for levying or recovering any rate or interest thereon or for taking possession of land for arrears of rates or interest thereon or for enforcing any charge upon land, or in any proceeding consequent upon any of the foregoing, if the entry in the rate book (where it is constituted of a series of cards or loose-leaves as aforesaid) is on a card or loose-leaf it shall not be received in evidence, unless it is shown by the statutory declaration of or an affidavit by the clerk of the municipality that the card or loose-leaf is part of a series of entries which are covered by a certificate of total rates levied which has been signed by not less than three members of the council and sealed with the seal of the municipality and countersigned by the said clerk.

Evidence.

(5) In this Act or any Act relating to the city of Melbourne or the city of Geelong, references to the rate book shall include, where the case requires, references to a rate book constituted as provided in subsection (3) and this Act and any Act relating to the city of Melbourne or the city of Geelong shall, with such adaptations as are necessary, be read and construed accordingly.

References to rate book.

Ss. (5) amended by No. 9575 s. 26 (b) (i) (ii).

(5A) The provisions of sub-sections (3), (4) and (5) shall extend and apply and be deemed always to have extended and applied to the city of Melbourne and the city of Geelong.

Ss. (5A) inserted by No. 9575 s. 26 (c).

(6) Whenever any general rate extra rate drainage rate or separate rate is made, an entry recording its making shall be made in the book of proceedings of the council.

Making of rate to be recorded in minutes.

Ss. (6) amended by No. 9573 s. 12.

300. (1) Every rate authorized to be made or levied under the provisions of this Act shall be vested in the municipality.

Rates vested in municipality.

(2) Every such rate shall be payable at such times and either in whole or in such parts or instalments as the council shall appoint.

Rates to be payable as the council may appoint.

301. Whenever the name of any owner liable to be rated or charged with payment of a rate under the provisions of this Act is not known to the council or to the person making the valuation, it shall be sufficient to rate such owner by the designation of "The owner" without stating his name.

Owner where name not known to be rated as "owner" only.

302. (1) The estimate hereinbefore referred to, shall be open to the inspection of any person interested at all reasonable times; and any such person may take copies of or extracts from such estimate without paying anything for the same.

Estimate and rate to be open for inspection by the ratepayers who may take copies.

Ss. (1) amended by No. 8291 s. 12 (2) (a) (i) (ii) (iii).

(2) Every person having the custody of such estimate who refuses to permit or does not on request by any person so interested permit him to take copies of or extracts from such estimate, shall for every such offence be liable to a penalty of not more than \$10.

Ss. (2) amended by No. 8291 s. 12 (2) (b) (i) (ii).



Alteration or  
amendment of  
rate.

303. (1) The council may from time to time alter or amend any rate made or to be made by—

- (a) inserting therein the name of any person claiming and entitled to have his name therein as owner or occupier; or
- (b) inserting the name of any person who ought to have been rated or who has since the making of the rate become liable to be rated; or
- (c) striking out the name of any person who ought not to have been rated; or
- (d) raising or reducing the sum at which any person has been rated if it appears to it that owing to any error in entering the rate in the rate book such person has been underrated or overrated; or
- (e) making any alteration or amendment which in the opinion of the council is necessary in consequence of a supplementary valuation being returned during the period for which such rate was made or in consequence of an adjustment by the valuer or determination of a court or board under Part III. of the *Valuation of Land Act* 1960; or
- (f) making such other alterations or amendments therein as will make such rate conformable to any Act under which the same is payable.

(2) No such alteration or amendment shall be held to avoid the rate.

Ss. (3) amended  
by No. 8149 s. 8  
(a).

(3) No alteration or amendment in the rate book shall be valid unless the same is initialed by the municipal clerk or some person authorized by him in writing for the purpose and the date of such alteration or amendment is also inserted, but the council shall not alter the municipal roll after the revision thereof hereinbefore provided for.

(4) Every person aggrieved by any such alteration or amendment shall have the same right of appeal therefrom as he would have had if his name had been originally inserted in such rate and no such alteration or amendment had been made, and as respects such person, the rate shall be considered to have been made at the time when he received notice of such alteration or amendment.

(5) Every person whose rates are altered or amended or who by any such alteration or amendment has become rated in respect of any rateable property shall be entitled to receive seven days' notice of such alteration or amendment before the rate shall be payable by him.

#### DIVISION 7—APPEALS AGAINST RATES

Appeal generally  
to County Court.

304. (1) If any person is aggrieved by any rate made under the authority of this Act or any Act or enactment relating to the city of Melbourne or the city of Geelong or by any matters included in or

omitted from value of the Part III. of the months rate payable the 1st day within two the council Court held made.

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omitted from the same other than in respect of the assessment of the value of the rateable property to which objection might be made under Part III. of the *Valuation of Land Act 1960* he may at any time during the months of February and March next after notice of the amount of rate payable by him is given (or where the notice is given on or after the 1st day of February and before the 1st day of October in any year, within two months after the notice is given) give notice in writing to the council of his intention to appeal to the next sittings of the County Court held nearest to the property in respect of which such appeal is made.

(2) No appeal under this section shall be entertained unless at least fourteen clear days' notice in writing of such appeal, stating the nature and grounds thereof, is given by the aggrieved party to the council of the municipality.

Notice.

(3) Such court shall have jurisdiction to hear and determine the appeal in a summary way at the sittings thereof for which notice of appeal is given, or at the next following sittings when the judge of such court thinks fit to adjourn the appeal to such next following sittings, and the decision of such court shall be final and conclusive on all points but the court before which the appeal is heard and determined shall if so required by any party to such appeal state the facts by way of special case for the determination of the Supreme Court thereon in which case that court may determine the same, and the Supreme Court shall have full power to determine how and by whom the costs of the proceedings in the Supreme Court and in the County Court are to be borne.

County Court to hear and determine appeal.

Stating special case.

(4) No such notice of appeal shall prevent the recovery of any such rate as hereinafter provided.

Notice of appeal not to prevent recovery of rate.

305. (1) Any owner of rateable property shall be deemed to be a person aggrieved within the meaning of the last preceding section notwithstanding that the occupier is the person rated.

Power to owner to appeal where occupier is rated.

(2) But if the owner and occupier both appeal separately neither shall be allowed any costs of his appeal unless he can show that before giving notice of appeal he requested the other in writing to join in the appeal and the other neglected or refused to do so, and in such event the party neglecting or refusing to join shall pay the costs of his own appeal.

Costs where owner and occupier both appeal.

306. (1) Upon any such appeal as aforesaid where there appears to be just cause for giving relief the County Court shall have the power to amend the rate in respect of which the appeal is made by altering the sum at which any person is rated therein and where the rate is amended the municipal clerk shall make and initial the appropriate alterations in the rate-book.

Amendment of rate by County Court.

(2) The County Court shall have the like power of amending the said rate by inserting therein or striking out the name of any person or

in any other manner which such court may think necessary for giving relief and without quashing or wholly setting aside such rate and where the rate is amended the municipal clerk shall make and initial the appropriate alterations in the rate-book.

Quashing of rate  
by County Court.

(3) But if the County Court is of opinion that it is necessary for the purpose of giving relief to the person appealing that the rate should be wholly quashed, then such court may quash the same.

If court so orders  
quashed rate may  
be levied.

(4) If such court quashes such rate then notwithstanding the quashing of such rate all sums of money charged by such rate on any person charged by such rate may, if such court so orders, be levied by such means and in the same manner as if no appeal had been made against such rate; and the money which any person charged on such rate pays or which is recovered from him shall be taken as a payment on account of the next effective rate made upon him.

Costs of appeal.

307. (1) Costs may be awarded to the party for whom such appeal as aforesaid is determined or, upon proof of notice of any appeal having been made under the provisions hereinbefore contained where the party giving such notice has not afterwards prosecuted such appeal, to the council.

(2) Such costs shall be in the discretion of the court and shall be paid respectively by the party against whom such appeal is determined or by the party so giving notice and not prosecuting (as the case may be).

(3) All such costs and charges may be recovered by the like means and in like manner as costs awarded by the County Court.

Appeals against  
rates.

308. The preceding provisions of this Division shall extend and apply to the city of Melbourne and the city of Geelong.

Ss. 309-314  
repealed by  
No. 7835 s. 3.  
Part XI.  
substituted by  
No. 7835 s. 3.

## PART XI—USE OF UNIMPROVED OR SITE VALUES FOR RATING PURPOSES

### DIVISION 1—INTERPRETATION AND USE OF SITE VALUE

Interpretation.  
No. 6299 s. 315.

315. (1) In this Part unless inconsistent with the context of subject-matter—

"Act relating  
to local  
government."

"Act relating to local government" includes this Act and any Act or enactment relating to the city of Melbourne or the city of Geelong.

"Capital  
improved value."

"Capital improved value" has the meaning assigned to it by section 254.

"Council."

"Council" means the council of a municipality.

"Improvements."

"Improvements" has the meaning assigned to it by section 254.

"Mortgage."

"Mortgage" has the meaning assigned to it by section 254.

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