HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN: **Redland City Council**
Appellant
and
John Michael Kozik
First Respondent
Simon John Akero
Second Respondent
Sarah Akero
Third Respondent
Neil Robert Collier
Fourth Respondent

RESPONDENTS' OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

This outline is in a form suitable for publication on the internet.

Part II: Propositions to be advanced in oral argument

Relevant facts, matters and circumstances

1. The Appeal should be resolved on the basis of the following:
   (a) The Appellant imposed the special levies in disregard of statutory requirements such that its demand was *ultra vires*: RS [7]; RRepI [4].
   (b) The Respondents (and all Group Members) paid the special levies under the mistaken belief that they were legally obliged to do so: RS [12].
   (c) The Appellant was legally obliged to undertake the works and would have done so even if it had not imposed the special levies: RS [24].
   (d) The works were carried out for the benefit of, and benefitted, the general public in the Redland City local government area, not just the Respondents and Group Members: RRepI [3].
   (e) There is no finding in the record – nor available inference – that the Respondents (or any Group Members) *requested* the Appellant to carry out

the works or *freely accepted* such works or paid the special levies *in exchange for, or to obtain the benefit of*, the Appellant's works: RRepI [5].

(f) Rates under the statutory scheme – whether special or general – constitute taxation rather than a fee for service: RRepI [14].

***Prima facie* right to restitution**

2. *Payment under mistake:* There is, it seems, no challenge by the Appellant to the finding that the Respondents, and all group members, paid the levies under an operative mistake of law so as to found a *prima facie* right to restitution: RS [12].

3. *Woolwich principle:* In addition, this Court should recognise as part of Australian law the general principle that tax paid pursuant to an *ultra vires* demand is *prima facie* recoverable from the taxing authority without the need to show operative mistake: RS [43]-[65]; RRepI [9]-[16].

4. The *Woolwich* principle:

(a) is either an instance of, or closely analogous to, the recognised grounds of restitution for failure of consideration or payment under compulsion: RS [47], [57], RRepI [9].

(b) coheres and gives effect to the principle of "no taxation without Parliament", and the constitutional framework at federal, state and local level requiring payments whether into or out of the Revenue to be authorised by valid statute: RS [59]-[62]; RRepI [10].

(c) is already recognised in *obiter* in this Court, in *ratio* in lower courts, and has persuasive support in the balance of academic writings: RS [55]-[56]; and

(d) has utility as a separate ground of restitution: RS [53], [58].

Defences to restitution

5. *No good consideration defence:* There was no error in the Court of Appeal's rejection of the "good consideration" defence advanced below. The state of affairs which formed the basis for the payments, whether viewed subjectively or objectively, was the Appellant's assertion of a legal obligation to pay the special levies (as opposed to the payment being made in exchange for, or to obtain the benefit of, the works): RS [12]-[15], [40]-[41]; RRepI [5].

6. *No "value received" defence:* The good consideration defence, as traditionally understood, can accommodate restitutionary claims whether there is a contract or not. "Value received", as some broader defence in cases where the benefit conferred has

not been requested, freely accepted or incontrovertibly established, has not been recognised in Australian law to date: RS [16]-[25].

7. No such defence should now be recognised by this Court:

(a) There is no applicable analogy between "consideration" as applied in the law of restitution and "value received": RS [26]-[32].

(b) The few authorities said to support it are distinguishable: RS [33]-[35].

(c) It would be incoherent with the principle that conferral of an unrequested benefit does not generally create a right to remuneration for the expenditure in providing the benefit: RS [36]-[39]; RRepI [7].

10 (d) It would subvert the fundamental principle of public law that no tax can be levied by the executive government without statutory authority: RS [36], [59]-[62] and thus particularly inapposite if the *Woolwich* principle is adopted: RS [63]-[64].

(e) It would undermine the statutory object to promote the responsible use of the special levy power: RRepI [4].

8. While not the true question, here there is no "windfall" for the Respondents and Group Members amounting to unjust enrichment: RRepI [3].

Cross-Appeal

9. If reached, special leave to cross-appeal should be granted: RS [69]-[70].

20 10. The construction adopted by the majority of the Court of Appeal of s 32 of the 2010 Regulation and s 98 of the 2012 Regulation:

(a) does not accord with the ordinary meaning of the text and wrongly reads in the word "valid": RS [71]-[73], RRepCA [3]-[8];

(b) is not supported by extrinsic materials: RRepCA [9];

(c) does not best achieve the statutory purpose: RS [74], [77]; and

(d) would have the absurd result of invalidating *in toto* the rates notices by which the special levies were imposed: RRepCA [10].

Dated: 13 September 2023

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Justin Gleeson SC

Counsel for the Respondents