IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA251/2022
[2023] NZCA 398

	BETWEEN	NEW ZEALAND FOREST OWNERS ASSOCIATION INCORPORATED Appellant
	AND	WAIROA DISTRICT COUNCIL Respondent

Hearing:	13 July 2023 (further submissions received 28 July 2023)
Court:	French, Miller and Katz JJ
Counsel:	A S Butler KC and J P Bell-Connell for Appellant M B Lawson for Respondent
Judgment:	25 August 2023 at 11.30 am

JUDGMENT OF THE COURT

A The appeal is dismissed.

B The appellant must pay the respondent costs for a standard appeal on a band A basis with usual disbursements.

REASONS OF THE COURT

(Given by Miller J)

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Introduction

[1] On 12 January 2021 the Wairoa District Council decided, following a special consultation process, to adopt a new rating scheme. The Decision, as we will call it, shifted the rating burden among ratepayers, reducing rates for most residential properties and increasing them for farmers and commercial forest owners. It did so by adopting a new General Rate calculated on capital value, moving certain existing fixed charges to that Rate, and adopting rating differentials for five classes of ratepayers.

[2] Under the new scheme the rating differential for ratepayers who own more than 100 ha of plantation forest is 4, meaning that they will pay the General Rate at a proportion four times that paid by residential ratepayers per dollar of capital value.

[3] The New Zealand Forest Owners Assoc (NZFOA) is an incorporated society which represents the interests of commercial plantation owners. We were told that in this proceeding it represents nine owners who together own 51,839 ha of land in the Wairoa District.

[4] NZFOA sought judicial review, alleging that the Council acted unlawfully or unreasonably in several respects.[1] The Council was said to have erred by acting for the purpose of discouraging forestry as a land use in the District by taking into account the assumed wealth of forest owners, by overlooking the contribution forestry makes to environmental wellbeing and combatting climate change, by assuming incorrectly that forestry "disbenefits" community wellbeing and by imposing a differential far higher than any reasonably necessary to recover any additional roading costs caused by the forestry industry. The High Court was asked to quash the Decision and order the Council to reconsider it.

[5] Grice J dismissed the application for review in a judgment delivered on 28 April 2022.[2] She followed this Court's well-known 1996 decision in *Wellington City Council v Woolworths NZ Ltd (No 2),*[3] and distinguished its recent decision in *C P Group v Auckland Council*,[4] which had been delivered on 10 November 2021. In *C P Group* this Court quashed a targeted rate aimed at certain accommodation providers.[5]

[6] NZFOA brought this appeal on 26 May 2022.

[7] On 12 May 2023 the Supreme Court allowed Auckland Council's appeal in *C P Group*.[6] The Supreme Court affirmed *Woolworths* and held generally that rate-setting is an exercise in participatory democracy,[7] that rating legislation affords local authorities a substantial measure of flexibility,[8] that there need not be a close correlation between an activity and the rate set in respect of it,[9] and that a local authority which has followed proper process enjoys a margin of appreciation on judicial review.[10]

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1 The proceeding commenced on 30 June 2021, and an amended statement of claim was filed on 23 December 2021.
2 *New Zealand Forestry Owners Assoc Inc v Wairoa District Council* [2022] NZHC 761 [High Court decision].
3 At [236] citing *Kidd v Southland District Council* [2019] NZHC 1947 at [13], affirming *Wellington City Council v Woolworths New Zealand Ltd (No 2)* [1996] 2 NZLR 537 (CA) at 552.
4 *C P Group Ltd v Auckland Council* [2021] NZCA 587 [*C P Group* (CA)].
5 At [142] and [145].
6 *Auckland Council v C P Group Ltd* [2023] NZSC 53 [*C P Group* (SC)].
7 At [28].
8 At [31], [33], [62] and [64].
9 At [62] and [65].
10 At [90] and [96].

[8] In argument before us NZFOA sought to recast its arguments below by reference to the Supreme Court decision in *C P Group*, contending that the Council did not sufficiently engage with s 101(3) of the Local Government Act 2002 (the LGA). It contended that the Decision lacks a necessary rational connection between rates levied and Council costs caused by the industry's activity.

The Decision

[9] The process that the Council followed is not now controversial.[11] We may recount it briefly.

The Wairoa District

[10] The Wairoa District spans an area of 4078.45 square kilometres and in the 2018 census reported a population of 8367, making it one of New Zealand's most sparsely populated districts. It is also one of the poorest, with a median household income of $42,700 (the national average is $96,001).[12]

[11] Sheep and beef farming, the principal economic activity in the District, once sustained service businesses in the town of Wairoa and the District's major employer, a meat processing plant which still employs about 700 people locally in the peak season. The contribution made by this form of farming has long been in decline, and with it the central business areas of the town.

[12] The decline in the contribution made by farming has coincided with the conversion of many farms to commercial forest plantations. This has happened at a dramatic pace; in 2019 alone, 17 per cent of rurally zoned land in the District was converted to forestry or sold to forestry companies. The change of use is said to be supported by government incentives and subsidies which have helped to double the market value of farmland. It is said that forestry does not sustain local communities and businesses to anything like the same extent as farming. Further, major processing

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11 The evidence initially filed for NZFOA conveyed a contrary impression and Council witnesses responded accordingly, but NZFOA did not advance claims founded on natural justice or failure to comply with statutory processes.

12 Statistics New Zealand *Average and median annual household gross, disposable, equivalised disposable, and equivalised disposable after-housing-costs income, by region* (Year ended June 2022). The median household income of the Wairoa District was provided by the Council.

plants are located outside the District and planting gangs and other contractors to the industry usually commute from Gisborne or Napier.

[13] NZFOA disputes that forestry is a cause of the District's decline and argues that the industry benefits the District in various ways. Its representative, Keith Dolman, cited a report prepared for a forestry company, Pan Pac Forest Products Ltd, which attributes the decline to over-reliance on the sheep and beef industry, which has been in decline for decades following the removal of agricultural subsidies,[13] and he contended that Wairoa's high unemployment rate is caused by complex socioeconomic factors which the forestry industry cannot influence. He explained that the industry employs the equivalent of 218 full-time staff in Wairoa and would like to employ more but jobs offered locally are not being filled. He portrays an optimistic future for the District based on emerging carbon markets and employment opportunities associated with growing compliance obligations. We consider the relevance of cause and effect at [100] below. The short point made here is that the District's traditional urban and rural rating base has come under increasing pressure and the rating system needed reform. That is uncontentious.

Rates generally

[14] Local authorities fund their activities primarily through rates and charges of various kinds. For present purposes four are relevant:

(a) general rates: these are fixed on property value, according to a "cents in the dollar" formula set annually by the local authority;

(b) differential rates: a differential is applied to a general rate to increase or reduce the amount which ratepayers would otherwise pay based on, for example, the value of their land or the use to which that land is put;

(c) targeted rates: these are charges for groups who may benefit more directly than other ratepayers from a specific council activity; and

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[13] Mark Cox and Hugh Dixon *Economic and Social Profile of Wairoa District: Final report for PanPac* (Business and Economic Research Ltd, June 2021).

(d) uniform annual general charges: these are fixed charges applied to every property, no matter the value of the property.[14]

The former rating system

[15] Gary Borg, the Council's finance manager, explained that the former system comprised a general rate based on land value, a roading rate based on land value, a services rate and a recreation rate (both based on capital value), and a series of fixed charges.

[16] Fixed charges comprised more than 55 per cent of the total rating revenue under the former system. This meant that rates for many low-income residents exceeded a recognised affordability threshold (five per cent of median household income). It generated community concern that low-income residents were subsidising others. The system was also unduly complex.

The 2015 forestry differential

[17] Concern about use of low-volume rural roads by forestry trucks led the Council to add a forestry differential to the roading rate in 2015. The differential was 1.54 for plantations of 100 ha or more. In 2017, the Road Controlling Authorities Forum (NZ) Inc, of which the Council is a member, developed guidelines for equitable funding for low-volume roads.[15] The Council engaged consultants to assess funding requirements within the District by reference to these guidelines. That led to the forestry roading rate differential being increased to 5 in 2018, over vigorous opposition from industry representatives. The theme of their arguments was that rates paid by the industry should be based on the costs, principally roading, that forestry causes the Council to incur. The 2018 change resulted in significant rates increases for affected forestry owners.

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[14] Fixed charges are paid in relation to "rating units" but for our purposes these can be considered synonymous with separately-owned properties: Rating Valuations Act 1998, s 5B(1).

[15] Road Controlling Authorities Forum (NZ) Inc *Guidelines for equitable funding of pavement maintenance for low volume roads* (2017).

The decision to revisit the rating system

[18] In July 2020 the Council resolved, following community engagement, to review the rating system. The Mayor, Craig Little, explained that the review was to consider moving to rating based on capital value, with changes to targeted rates and differentials. Recognising that these were major changes, the Council decided it would follow the special consultative process provided for in s 83 of the LGA. It envisaged that the decision would flow into amendments to its Revenue and Financing Policy and then to the 2021–2031 Long Term Plan, which had to be adopted by 30 June 2021.

Process

[19] The Council then developed a Statement of Proposal, which followed meetings with the community and interested parties, including forestry industry representatives. The Proposal explained that it sought to improve rates affordability by reducing rates for many residential and small commercial properties across the District and increasing them for high-value and rural and forestry properties, in some cases by a large amount. The objectives were that rates would be simple, affordable and appropriate. These would be achieved by moving away from fixed charges and reallocating the rates burden to balance community outcomes, benefits, the effects of the actions or inactions of people or groups, transparency and community wellbeing. It signalled that rates would not be based closely on costs caused by ratepayers, stating that "rates are a tax and not an exchange of money for a service". It described capital value as a wealth tax with a "stronger link to income than other available funding tools".

[20] The Proposal suggested a differential of 1 for rural properties, meaning they would pay the same proportion of the general rate as residential properties per dollar of capital value. The differential proposed for forestry was 3.32. The rationale was:[16]

> ***Forestry 3.32***
>
> As with the other sectors we started with model 1 with no differentials and no [Uniform Annual General Charge]. Under this model the 120 forestry properties would pay $703,000 less than they are now. Forestry rating values

[16] Footnote omitted.

> are low as they have little improvements value and unlike horticulture their trees are not part of the valuation. This rule was set by Government.
>
> We spend a large part of our roading budget maintaining roads to a standard suitable for the forestry industry to thrive. As this cost is caused by the sector and as we did in 2018, we will charge this additional cost to the sector by adjusting the differential up. Forestry will pay the same share of the roading cost as they pay now. Also, in the same way as commercial and rural sectors forestry benefits from commercial tax benefits.
>
> There has been a lot of community discussion about the value of the forestry sector to the district. While exotic forestry has some environmental benefits on difficult erosion prone Wairoa land, most of the benefits of this industry is at a regional or national level rather [than] to Wairoa. It's our job to look after the best interests of our district.
>
> We acknowledge the Governments one billion tree programme and the various reports outlining the benefits to New Zealand. For Wairoa many jobs commute into the district daily and we don't get the downstream benefits of ports and processing, Gisborne and Napier get.
>
> We also know that the growth of forestry is having negative impacts on the wellbeing of our community. Wairoa would lose over $517,502 from the economy every year from an extra 10% of forestry (not accounting for the multiplier effect of the money going around the community). Council is currently rating 74,229 ha of forestry.
>
> The forestry sector is expanding and has moved from marginal land only, to acquiring productive land. Forestry activities are a permitted activity under the Government's National Environmental Standards for Plantation Forestry, which takes land use choice previously controlled in our District Plan out of our hands. The One Billion Tree Fund and carbon credits subsidies are assisting the forestry sector to buy productive land. The industry does not have constraints on ability to pay.
>
> Having considered these negative effects on the well-being of the district, and the business benefits the sector gets from subsidies, non-valuation of the trees, the environmental standards and taxation, we have decided that it is appropriate to adjust the differential for forestry upwards.
>
> Overall, it is our view that forestry can afford this extra cost.

[21] It will be seen that the change to capital value would reduce the share of rates paid by the forestry sector, absent a differential. That is so because trees planted for forestry purposes are not improvements for valuation purposes and they are excluded from capital and land values.[17] The rationale for the proposed differential of 3.32 was that the benefits of the industry were not flowing to the District, the industry had negative effects on community wellbeing and the industry could afford to pay.

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[17] Rating Valuations Act 1998, ss 2 and 20(1).

[22] The Proposal was discussed at the Council meeting of 3 November 2020. The Council resolved to adopt it and follow the special consultative procedure set out in s 83 of the LGA.

[23] The papers for the 3 November meeting included a report commissioned by Beef + Lamb New Zealand Ltd addressing the impact of large-scale afforestation on the Wairoa District.[18] It was prepared by a firm called BakerAg (NZ) Ltd. The report concluded that "carbon farming forestry" generated a higher net present value to landowners than sheep and beef farming, while making a smaller and far less regular contribution to the District. Sheep and beef farms had a direct local annual expenditure of $315,988, and generated an estimated 7.4 jobs, per 1000 ha.[19] The corresponding figures for forestry were $107,283 and 2.2 jobs.[20] The latter figures excluded expenditure and employment related to harvesting on the ground that this is not regular; they happen at the end of a 29-year cycle.

[24] There followed a period of public consultation on the Proposal and public submissions were heard at a Council meeting on 15 December. Forestry industry representatives were among those heard. A Council summary of the submissions records that they argued for forestry's "value add" to New Zealand and contended that economic benefits would be experienced in Wairoa "eventually". They argued for an approach to rating based on the cost to the Council of the industry's use of roads.

[25] On 22 December councillors adopted amendments to the Proposal. Relevantly, they reduced the proposed rural differential to 0.8 and increased the forestry differential to 4.[21]

[26] These changes resulted in the general rates borne by the forestry sector increasing from $1,594,248 to $2,795,097, and those paid by rural sector increasing from $3,364,957 to $4,130,556. The new figures amount respectively to

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18 Ed Harrison and Hannah Bruce *Socio-economic impacts of large-scale afforestation on rural communities in the Wairoa District* (BakerAg (NZ) Ltd, 1 August 2019).

19 At 12.

20 At 15–16.

21 Compared to the original proposed differentials of 1.0 for rural and 3.32 for forestry.

approximately 27 per cent and 39 per cent of the general rates burden respectively.[22] We are told that the total area of properties subject to the forestry and rural differentials is 77,000 ha and 199,980 ha respectively.[23] Expressed as a per-ha measure, the respective rates liabilities are:

Sector	Before the rating decision	Following the rating decision
Forestry	$20.70/ha	$36.30/ha
Rural	$16.82/ha	$20.65/ha

The Decision

[27] The Decision was made at the Council meeting on 12 January 2021. The agenda addressed the amendments made after consultation, explaining the increase in the forestry differential was proposed because the existing differential "concentrated primarily on the allocation of roading costs" and the Proposal sought "to attribute a value to the relative disbenefit on other community well-beings." Mr Little explained in evidence that:

> 59. The statement of proposal for the rating review and the Long Term Plan was not a direct "user pays" approach where forestry or indeed any sector paid rates strictly on the basis of the benefit that the ratepayer perceived they enjoyed. The decisions that Council was required to make, of necessity, took into account the minimal benefit that accrued to the community of Wairoa from forestry activities, the negative impact that forestry had on employment within the district and on the fabric of those communities and the impact of the allocation of liability for rates on the current and future social, economic and environmental and cultural well-being of the community.

[28] The Council adopted the Proposal and directed that further consideration was to be given to an additional differential for high-value rural residential properties. The Chief Executive was instructed to develop the necessary technical policies to enable

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22 Long Term Plan 2021–2031 at 130. The total revenue raised from the general rate was stated to be $10,399.601 (including GST) in 2021/2022.

23 As at 2021.

the new system to take effect on 1 July 2021, and to update the Revenue and Financing Policy for public consultation and inclusion in the Long Term Plan.

The Revenue and Financial Policy and Long Term Plan

[29] On 23 March 2021, the Council adopted amendments to the Revenue and Financing Policy which retained the forestry differential but adjusted differentials for residential rural properties. The decision to adopt the Policy followed another special consultation process.

[30] Finally, and following a third special consultation process, on 30 June 2021 the Council adopted the Long Term Plan 2021–2031 and resolved to set rates for the next financial year.

The legislation

[31] We mention the legislation at this point, to set the argument on appeal in context. We take the opportunity to note amendments which affect this case but post-dated the rating decision under review in *C P Group*.

[32] The Supreme Court surveyed the statutory scheme in *C P Group*, beginning with provisions of the LGA establishing that local authorities operate with a democratic mandate and their role is to give effect to the purpose of local government stated in s 10. To that end they enjoy general powers of competence.[24]

[33] In 2018, when the rating decision in issue in *C P Group* was made, s 10 of the LGA provided that the purpose of local government was:[25]

> (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
>
> (b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

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24 *C P Group* (SC), above n 6, at [25]–[34].
25 Local Government Act 2002, s 10(1) as at 1 July 2017.

[34] Section 10 was amended with effect from 14 May 2019 to replace s 10(1)(b),[26] which now reads:[27]

> (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

At the same time the legislature repealed s 11A, which had provided that a local authority must have "particular regard" to the contribution that certain specified core services, including network infrastructure, make to their communities.[28]

[35] The Supreme Court stated that s 10 envisaged local authorities will provide services to their communities.[29] The section no longer does so expressly following the 2019 amendments, nor does the legislation insist that priority be given to core services. The linkage between services and wellbeing in the LGA purpose provisions is now a little less direct. We do not read much into this. The 2019 amendments merely reverted to the original form of the legislation,[30] suggesting a change of emphasis rather than function. Local authorities continue to promote community wellbeing by providing services,[31] and service provision must be taken into account when budgeting for operating revenue.[32]

[36] The Supreme Court observed that a local authority must act in accordance with principles listed in s 14.[33] That section has also been amended, to reflect the 2019 amendments to s 10. It now provides:

> **14 Principles relating to local authorities**
>
> (1) In performing its role, a local authority must act in accordance with the following principles:
>
> (a) a local authority should—
>
> (i) conduct its business in an open, transparent, and democratically accountable manner; and

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26 Local Government (Community Well-being) Amendment Act 2019, s 6(1).
27 Local Government Act, s 10(1)(b).
28 Local Government Act, s 11A as at 1 July 2017.
29 *C P Group* (SC), above n 6, at [26].
30 See for example, Local Government Act, s 10 as at 3 September 2007.
31 Local Government Act, s 17A.
32 Section 100.
33 *C P Group* (SC), above n 6, at [28].

(ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:

(b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and

(c) when making a decision, a local authority should take account of—

(i) the diversity of the community, and the community's interests, within its district or region; and

(ii) the interests of future as well as current communities; and

(iii) the likely impact of any decision on each aspect of well-being referred to in section 10:

(d) a local authority should provide opportunities for Māori to contribute to its decision-making processes:

(e) a local authority should actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes; and

(f) a local authority should undertake any commercial transactions in accordance with sound business practices; and

(fa) a local authority should periodically—

(i) assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and

(ii) satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and

(g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets; and

(h) in taking a sustainable development approach, a local authority should take into account—

(i) the social, economic, and cultural well-being of people and communities; and

(ii) the need to maintain and enhance the quality of the environment; and

(iii) the reasonably foreseeable needs of future generations.

(2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).

[37] It remains the case, as the Supreme Court remarked, that s 14 emphasises proper process and this is a thread running through the relevant provisions.[34] These provisions underpin a democratic model in which communities are to participate in important decisions.

[38] Turning to funding, the Supreme Court noted that local authorities must generally balance their budgets and s 101 establishes financial management obligations.[35] It too was amended in 2019.[36] It now provides:

101 Financial management

(1) A local authority must manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community.

(2) A local authority must make adequate and effective provision in its long-term plan and in its annual plan (where applicable) to meet the expenditure needs of the local authority identified in that long-term plan and annual plan.

(3) The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—

(a) in relation to each activity to be funded,—

(i) the community outcomes to which the activity primarily contributes; and

(ii) the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and

(iii) the period in or over which those benefits are expected to occur; and

(iv) the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and

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34 At [28].
35 At [29].
36 Local Government (Community Well-being) Amendment Act, s 8.

(v) the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and

(b) the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the community.

Subsection (3)(b) formerly provided that the local authority must consider "the overall impact of any allocation of liability for revenue needs on the community".[37]

[39] We draw attention to several relevant features of s 101. First, it establishes a general obligation to manage revenues and expenses prudently and in a manner that promotes the present and future interests of the community, and it insists that the local authority make adequate and effective provision to meet the expenditure needs identified in its long-term plan and, to the extent applicable, in its annual plans.

[40] Second, the section prescribes that the local authority must determine the sources from which its funding needs are to be met and it allows the authority to decide which sources are "appropriate". The local authority must consider a list of matters before making that determination for any activity which is to be funded.

[41] Third, the list of matters is divided into two parts. The first, s 101(3)(a), focuses on activities to be funded. The second requires that the local authority make an overall assessment of the impact of any allocation of liability for revenue needs on the current and future social, economic, environmental and cultural wellbeing of the community.

[42] Fourth, the considerations in subs (3)(a) address outcomes, the distribution of benefits, the period over which the benefits will occur and the extent to which the actions or inactions of individuals or a group contribute to the need to undertake a given activity. So the local authority must consider, relevantly, who benefits from the activity and who contributed to the need to fund it. It may group activities for this purpose but must consider the costs and benefits (including any consequences for transparency and accountability) of doing so.

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[37] Local Government Act, s 101(3)(b) as at 1 July 2017.

[43] It is implicit in s 101 that Parliament envisaged local authorities would exercise substantial autonomy, deciding where community interests lie, what activities should be undertaken to promote them, how activities will be classified and how expenditure needs will be funded. The obligations are expressed in a very general way and local authorities are to decide what funding sources are appropriate having regard to all the considerations listed in s 101(3), which include the community's social, economic, environmental and cultural wellbeing. These decisions are to be informed by community preferences revealed through process obligations designed to ensure the community is consulted beforehand and can hold decisionmakers accountable afterward, through the ballot box.

[44] Rating powers are found in the Local Government (Rating) Act 2002, which we will call the Rating Act. In *C P Group* the Supreme Court noted that the Rating Act also confers flexibility on local authorities and the corollary is that, like the LGA, it also emphasises community involvement and democratic accountability.[38] Section 3 provides:[39]

> **3 Purpose**
>
> The purpose of this Act is to—
>
> (a) promote the purpose of local government set out in the Local Government Act 2002 by—
>
> (i) providing local authorities with flexible powers to set, assess, and collect rates to fund local government activities:
>
> (ii) ensuring that rates are set in accordance with decisions that are made in a transparent and consultative manner:
>
> (iii) providing for processes and information to enable ratepayers to identify and understand their liability for rates; and
>
> (b) facilitate the administration of rates in a manner that supports the principles set out in the Preamble to Te Ture Whenua Maori Act 1993.

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38 *C P Group* (SC), above n 6, at [31].

39 Subsection (b) was added with effect from 13 April 2021, after the Decision but before rates were set under the new system: Local Government (Rating of Whenua Māori) Amendment Act 2021, s 4. It is not suggested that the amendment affects this appeal. The Council consulted Māori groups and took their (generally supportive) views into account when adopting the new rating system.

[45] We observe that *C P Group* concerned s 16, which confers power to set targeted rates for activities specified by local authorities. Liability must be calculated by reference to factors specified in the legislation.[40] This appeal concerns a general rate, which is provided for in s 13:

> **13 General rate**
>
> (1) A local authority may set a general rate for all rateable land within its district.
>
> (2) A general rate may be set—
>
> (a) at a uniform rate in the dollar of rateable value for all rateable land; or
>
> (b) at different rates in the dollar of rateable value for different categories of rateable land under section 14.
>
> (3) For the purposes of this section, the **rateable value** of the land—
>
> (a) must be—
>
> (i) the annual value of the land; or
>
> (ii) the capital value of the land; or
>
> (iii) the land value of the land; and
>
> (b) must be identified in the local authority's funding impact statement as the value for setting a general rate.

[46] It will be seen that s 13(2) authorises differentials in a general rate. Local authorities may identify categories of rateable land which are liable to pay at different rates in the dollar of rateable value. The categories must be defined in terms of one or more of the matters specified in sch 2.[41] These include the use to which the land is put, the activities permitted there, the provision or availability to the land of a local authority service, the location of the land, and the land's annual, capital and land values.[42]

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40 Local Government (Rating) Act 2002, s 18 and sch 3.
41 Section 14.
42 Schedule 2.

The issues on appeal

[47] NZFOA advanced its appeal before us on five grounds. First, while forestry's contribution towards roading maintenance costs is a relevant consideration capable of sustaining a differential, no rational connection exists between the amount of the total forestry differential and s 101(3)(a). On the contrary, forestry ratepayers are required to pay significantly more for non-roading activities which have no rational connection to costs caused by forestry activities. The Council also made an error of fact when fixing the differential, by carrying over from its 2018 calculations incorrect roading costs; it is said that in 2018 the Council had attributed 40 per cent of non-residential roading costs to forestry when the correct figure was 30 per cent.

[48] Second, s 101(3)(b) is not limited to benefits and costs associated with forestry, but community concern about forestry activity cannot justify a differential. That concern is not related to the impact of allocation of revenue on the community, nor does it allow the Council to circumvent subs (3)(a). To the extent the Council fixed the differential for this reason, it acted for an improper purpose. Further, the size of the differential must remain reasonably related to amenities provided for, or the demands of, the differing classes of property.

[49] Third, the Council apparently took into account the fact that capital value definition for forestry under the Rating Valuations Act 1998 does not include trees. To the extent it did so, the Council acted ultra vires.

[50] Fourth, the Council failed to apply its approach to s 101(3) consistently or even-handedly across different property types, with the result that the Decision was unfair or exceeded the latitude provided to local authorities under the LGA.

[51] Lastly, the Decision was unreasonable.

[52] The Council responded that we were presented with a completely different case from that advanced in the High Court. Specifically, the claim that the decision did not comply with subs 101(3) is new, and the Council is prejudiced because it did not expressly address that claim in evidence. However, the Council also maintains that

the record shows that the Statement of Proposal was framed in terms of s 101 and its analysis of the proposal complied with that provision.

[53] We agree that the case has changed shape and allowances may be made for that when assessing the evidence and the judgment under appeal, but we have dealt with NZFOA's argument on its merits. In our view the appeal turns on the legislation and, specifically, NZFOA's claim that a rating differential must bear a "rational connection" to costs caused by the relevant activity or benefits enjoyed by those engaging in it. We address that issue first. We then examine NZFOA's claims that the forestry differential lacked a rational connection, that the Council acted for the improper purpose of deterring commercial forestry and discriminated unfairly among forestry interests, and that the differential was unreasonable.

The need for a "rational connection" between rates and the costs of services used

[54] NZFOA's argument is founded on its reading of the Supreme Court judgment in *C P Group*. It contends that the Court provided a detailed analysis of how s 101(3) should be applied:

> (a) As a first step the local authority must consider the factors set out in subs (3)(a). It follows that before departing from the standard differential of 1 (that is, the proportion paid by residential ratepayers) the local authority must consider, for example, the extent to which a particular rating group receives a benefit from, or contributes to the cost of, an activity funded by the local authority.
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> (b) As a second step, the local authority must consider under subs (3)(b) the overall impact of the allocation of liability on the community's wellbeing. This subsection allows for some smoothing or modification of allocation under the first step, but the explicit focus is on the allocative impact of the rating liability; that is, of the effect of the "cost of the allocation" on ratepayers.

[55] It is said that the Supreme Court described s 101(3) as effectively capturing what older cases characterised as an underlying fiduciary duty owed by the local

authority to ratepayers, meaning a duty to establish a rational connection between an activity and a ratepayer's contribution to costs of a service or enjoyment of benefits from the service. The Court is said to have emphasised the centrality of the rational connection test by endorsing previous cases recognising the need for a nexus between quantum of rates and factors now particularised in subs 101(3).

[56] We do not find this an accurate reading of *C P Group*.

[57] In our view the principal conclusion reached by the Supreme Court about rating powers was that *Woolworths* remains good law under current legislation. In that case, commercial ratepayers challenged the Wellington City Council's decision to apply a rating differential to commercial ratepayers when setting the general rate. They contended that the differential was not justified by reference to the value of services provided to commercial ratepayers.[43]

[58] The challenge failed. The Court approved a submission that "it is implicit in the scheme of the legislation that a rating system in its diversity remains primarily a taxation system and not a system inherently based on the principle of user-pays".[44] It pointed out that the authority to adopt a differential for the general rate assumes entitlement to discriminate among types or groups of property according to considerations other than relative capital value.[45]

[59] The Court observed that the legislation imposed significant process complications providing for public participation and accountability but did not expressly circumscribe substantive decisions.[46] Rather, elected representatives were to exercise broad political judgement:[47]

> … The legislation proceeds on the premise that the wider substantive judgements are made by the popularly elected representatives exercising a broad political assessment ….

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43 *Woolworths,* above n 3, at 539.
44 At 544.
45 At 544.
46 At 544.
47 At 545.

[60] Nor did the legislation require what the Court described as an elusive search for a direct relationship between services and benefits:[48]

> To confine the acceptable justification for the differentiation to those differences as correspond or are reasonably related to enjoyment of the benefit of services provided by the territorial authority is to ignore the scheme of the legislation and to disregard the breadth of the statutory powers. The legislation permits a territorial authority in making those choices which impact on the incidence of rates to make its own judgment as to what is appropriate and equitable. …
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> …
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> The breadth and generality of the empowering provisions applying to territorial authorities and affecting the general rate and differential rating (in contrast with use charges and special purposes authorities), make it clear that rating was not intended to be a calculation of benefits and allocation of the incidence of rates by reference to the outcome. The very complexity and inherent subjectivity of any benefit allocation for the specified outputs points away from using relative benefit as a definitive criterion. …

[61] In *C P Group* the Supreme Court concluded that *Woolworths* has stood for over 25 years, appears to be well understood and appears to have provided a sufficient standard for local authorities.[49]

[62] The Court did express caution about this Court's conclusion in *Woolworths* that, while local authorities must act within their statutory powers and observe the purposes specified in the legislation, the scope for judicial review on reasonableness grounds was limited; the decision must be so "perverse", "absurd" or "outrageous" that Parliament would not have contemplated it being made by an elected council.[50] The Supreme Court did not find it necessary to debate levels of scrutiny in judicial review,[51] observing rather that the statutory scheme gives the decision-maker latitude:[52]

> … these are complex decisions, often not amenable to right or wrong answers, requiring the resolution of factual issues, the weighing of competing interests, and competing policy considerations.

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48 At 545 and 552.
49 *C P Group* (SC), above n 6, at [63] and [98].
50 *Woolworths,* above n 3, at 552.
51 *C P Group* (SC), above n 6, at [89].
52 At [96].

[63] This is to treat substantive deference in judicial review as less a matter of judicial policy than the natural consequence of the diversity and policy content of considerations affecting rating decisions and the relevance of community preferences, which need not be evidence-based.[53]

[64] These features of the legislation together confirm that the incidence of a general rate need not be settled by cost-benefit calculations. There is nothing to sustain NZFOA's contrary submission that subs (3)(b) is a mere smoothing device which permits only modest adjustments to a cost-benefit calculation under subs (3)(a).

[65] As we have noted, *C P Group* itself concerned a targeted rate. Auckland Council had decided that the activities of a Council-owned economic development entity benefitted accommodation providers and proposed a targeted rate to recover its costs from them. This Court set the decision aside, reasoning that the Council did not adequately consider the benefit of the funded activity to targeted ratepayers, or the distribution of benefits across the community, and had tried to secure an additional source of revenue from non-ratepayers (visitors to Auckland) which was beyond the proper scope of a rating mechanism.[54]

[66] Allowing the Council's appeal, the Supreme Court rejected this Court's view that *Woolworths* could be distinguished on the ground that *C P Group* involved a targeted rate.[55] The decision-making criteria under s 101(3) applied to both general and targeted rates, and *Woolworths* had also involved a "target" group.[56] The Court accepted that the distribution of benefits is a mandatory relevant consideration under s 101(3)(a)(ii).[57] But the Council had considered it and the legislation permits a "broad brush" approach.[58] It followed there was no error of law.

[67] That led more or less directly to the conclusion that the decision was not unreasonable either. This Court's contrary conclusion had rested on a purportedly erroneous assumption that targeted accommodation providers could pass the cost to

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53 *Auckland Council v Woolworths New Zealand Ltd* [2021] NZCA 484 at [32].
54 *C P Group* (CA), above n 4.
55 *C P Group* (SC), above n 6, at [94]–[98].
56 At [97].
57 At [102].
58 At [77].

their customers and a failure to consider adequately the distribution of benefits.[59] In fact, the Council had appreciated that some other ratepayers would also benefit from the promotional activity being funded.[60] There were also practical reasons to target accommodation providers.[61] A targeted rate may cause some apparent unfairness, but more is needed to impeach it on unreasonableness grounds.[62]

[68] Following *C P Group* there would seem to be little scope remaining for the doctrine that a fiduciary duty which local authorities owe to ratepayers extends to the setting of rates. This Court invoked the doctrine in its 1992 decision in *Mackenzie District Council v Electricity Corp of New Zealand* but soon retreated from it.[63] In *Woolworths* the Court explained that *Mackenzie District Council* was a clear and extreme case of a local authority acting without regard to relevant considerations and held that the doctrine does not open up a route for judicial intervention in discretionary local authority decision-making.[64] In its 1997 decision in *Waitakere City Council v Lovelock* the Court recognised that a fiduciary duty sat uneasily with rating decisions: notably, rates are levied on properties by reference to their characteristics, not ratepayers.[65] In *C P Group* the Supreme Court added that it is not generally necessary to rely on the concept of a fiduciary duty when the distribution of benefits is now a mandatory relevant consideration under rating legislation.[66]

[69] This is not an extreme case. It is not in dispute that the Council did consider who benefits from activities and whose actions cause it to incur the costs of those activities. What remains is a challenge to the allocation of liability for funding among ratepayers. To invoke a fiduciary duty here, as NZFOA did somewhat obliquely in argument, would be to modify the statutory objective and criteria for that decision.

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59 At [106].
60 At [109].
61 At [110]–[111].
62 At [116].
63 *Mackenzie District Council v Electricity Corp of New Zealand* [1992] 3 NZLR 41 (CA) at 21. The decision in *Mackenzie District Council* was subsequently doubted in *Woolworths,* above n 3, and *Waitakere City Council v Lovelock* [1997] 2 NZLR 385 (CA). Richardson J wrote all three judgments. See also *C P Group* (SC)*,* above n 6, at [100]–[104] where the Supreme Court notes that they "doubt the ongoing utility of the fiduciary duty concept, at least in relation to decision-making under s 101(3)(a)(ii)."
64 *Woolworths,* above n 3, at 546.
65 *Lovelock*, above n 63, at 396–397.
66 *C P Group* (SC)*,* above n 6, at [102].

[70] NZFOA's appeal ultimately rests on the proposition that the forestry industry takes only one service — roading — from the Council and is being asked to pay much more than the costs that its use of that service causes the Council. Mr Butler KC, for NZFOA, argued that following *C P Group* there must be a rational connection between the benefits enjoyed by ratepayers targeted by a rating differential and the amount they are asked to pay. He accepted that the differential need not be set on a "user pays" basis, but he invited us to find that the amount to be paid must bear a reasonable relationship to costs of the service.

[71] We do not accept this argument.

[72] In its conclusions on reasonableness the Supreme Court in *C P Group* found on the facts that there was a rational connection between rates and benefits.[67] The Court did not define "rational connection". It may have been relying on a concession by Auckland Council in argument that there must be a rational connection between benefits and a targeted rate.[68] Mr Butler conceded that *C P Group* was concerned with s 101(3)(a), not s 101(3)(b).

[73] Rather, the Court held that there need not be a "close correlation" between an activity and its benefits for the targeted group. It further rejected a submission that there must be some closer analysis of actual benefit.[69] We have noted that in *Woolworths* this Court described the search for a direct relationship as elusive. To look for a rational connection, then, is not to require that rates paid by owners of targeted properties bear some particular relationship to benefits they enjoy from a service or the costs which their use of that service causes the local authority. It is to require that the decision be justified by reference to considerations which must or may be taken into account under rating legislation.

[74] One such consideration is the use to which rateable land is put. That may be considered under s 14 and sch 2 of the Rating Act when defining categories of rateable land for the purpose of rating differentials. As noted above, other matters listed in

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67 At [121].
68 At [81].
69 At [62].

sch 2 are the permissible activities in the area in which the land is situated, the area of land within each rating unit, the provision or availability of a service, where the land is situated, and the annual, capital and land values of the land. NZFOA does not dispute that forestry land may form a category for this purpose.

[75] In written submissions NZFOA argued that when setting differentials a local authority must ignore the value of forestry trees, which as noted are not counted in capital value. It was said that it is ultra vires the legislation to take the value of trees into account. In oral argument, Mr Butler did not emphasise this claim. It confronts the considerable difficulty that under the Rating Act capital value is only one matter which may be considered when categorising property for differential rating. The actual use of land is a separate consideration, not tied to the benefits or cost of local authority services supplied to the land. Use of rateable land would seem to be relevant in at least two senses to a local authority when selecting appropriate sources of funding. It will have an economic value to the land's owner which affects their capacity to pay, by which we refer not to the owner's personal resources but the economic value of the use. And it may have downstream benefits[70] or costs for the community concerned, potentially affecting the rating base and the kinds and scale of services which the local authority can or must offer. For this reason, NZFOA's third ground (ultra vires to take the value of trees into account) cannot succeed.

[76] A final difficulty with the argument for NZFOA is that it offers no workable standard against which a court might gauge a ratepayer's claim that a rate bears no reasonable relationship to the benefits or costs of a service. For the local authority, having considered the matters in s 101(3), what remains is a decision about appropriate funding sources in which the objective is community wellbeing in its many forms, the criteria are diverse and subjective, and no single source can be considered in isolation. It is difficult to see how a court could assess the cost-benefit relationship without being drawn into the merits of that decision.

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[70] *Mackenzie District Council,* above n 63, at 47. The Court accepted that downstream benefits for the community should be taken into account.

The absence of a rational connection in this case

[77] We turn to NZFOA's argument that there is no rational connection between roading costs and the forestry rating differential in this case.

[78] We have just explained that as a matter of law there need not be a close connection between the two. It follows almost inevitably that this ground of appeal must fail. NZFOA does not contest the Council's services decisions or challenge its revenue requirement or deny that the rating base is in decline or dispute that rates were unaffordable for many residents. These were all relevant considerations. They led the Council to rebalance funding sources to target the farming and forestry industries, both of which were better able to absorb the cost. NZFOA admits that was a rational response. The differential for the commercial forestry industry reflected the loss of the downstream contribution to the District's well-being formerly made by sheep and beef farming. That too, as NZFOA accepts, was a relevant consideration.

[79] It follows that the Decision cannot be impeached on the ground that the Council relied on an inaccurate estimate of costs caused by the forestry industry's use of low-volume roads. NZFOA points to two reports prepared by consultants, Opus, who were engaged by the Council, arguing an adjusted estimate of costs in the second report was overlooked. The argument rests on the proposition that there must be a direct relationship between costs caused and rates levied. It then assumes, contrary to *C P Group*, that the local authority must undertake a close analysis of the costs.

[80] The argument also assumes that roading is the only Council service from which the forestry industry benefits. NZFOA says that it uses no other service, partly because the land has overseas owners who do not use facilities such as sports fields. The Council has not sought to justify its decision by reference to other services in this case, but we should not be taken to adopt NZFOA's assumption that the only benefits that count are those that involve personal use of a Council facility or service. By way of illustration, the Council might offer services that support the industry by contributing to the availability of a local workforce.

[81] On the facts, the evidence does not appear to confront the alleged failure to consider the adjusted estimate of costs in the second Opus report. However, the

minutes from the 22 December 2020 extraordinary meeting affirms that the Council heard and considered all submissions on the rating review.[71]

Improper purpose: deterring forestry investment

[82] Mr Butler emphasised this argument, seeking to hold the Council to what he described as its illegitimate purpose of using rates to deter forestry investment in the District.

[83] We pause to put the argument in context. It finds a parallel in *Mackenzie District Council*, in which a local authority "mesmerised" by Electricorp's wealth seized on that firm's new liability for rates to demand that it pay some 78 per cent of the total rates yield. But whereas that local authority set the rate without reference to its funding needs, resulting in a massive surplus for the year, the Council in this case merely reallocated liability among funding sources and NZFOA does not contest the need for funding. So the argument focuses on redistribution of liability among funding sources. Further, NZFOA does not dispute the Council's decision to reduce the burden on residential ratepayers, meaning that other ratepayers must pick up the slack. Although we were given to understand that NZFOA is especially concerned about the size of the forestry differential relevant to other Districts, any comparison would need to take account of the characteristics of the Wairoa District, which we noted at [10]–[13] above. No attempt was made to do that before us.

[84] The argument that the Council set the rates differential to deter the commercial forestry industry accordingly focuses on the industry's treatment relative to the farming sector, the only other significant funding source available. It raises considerations of relative affordability and relative downstream benefits for the District.

[85] The farming sector includes farms with plantation forests. Most farm forests do not exceed 100 ha. We were told that is why the threshold for the forestry category

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[71] The summary of the submissions references "the revised WSP report" relied on by industry representatives.

was originally set at that level in 2015. Under the new scheme farmers pay the rural differential of 0.8, compared to the forestry differential of 4.

[86] Returning to the argument, Mr Butler drew attention to language in the draft Statement of Proposal considered at the November meeting. It proposed a rates increase "to discourage the negative community wellbeing impacts" of the forestry industry and lamented the Council's loss of control over land use in the District. The language was amended in the final version which the Council adopted; it stated that the increase was to "reflect" negative wellbeing.

[87] We add that, as noted at [27] above, the papers for the January meeting explained that the forestry differential sought to attribute a value to "the relative disbenefit on other community well-beings". And in the Long Term Plan adopted in June 2021 the Council discussed overall funding considerations and noted that it had made an adjustment under s 101(3)(b) to increase the overall allocation of costs to the forestry industry to cover all activities, rather than just incremental roading costs, and had found that course of action "appropriate because of comparative negative community wellbeing impacts on the Wairoa community".

[88] Counsel also pointed to a letter which the Mayor wrote to other local authorities in September 2021, proposing a new group to oppose the growth of forestry. Mr Little is the only farmer on the Council. He did not deny that these are his views, but he pointed out that the Decision was that of the full Council, which was informed by diverse community views, and he denied that the Decision was intended to deter forestry. Rather, it took into account, of necessity, the minimal benefit that accrued to the Wairoa community from forestry activities and forestry's negative effect on local employment and the fabric of communities. By this he evidently meant loss of population and downstream employment in the District resulting from conversion of farmland to forestry and the out-of-District locations of the major log processing plants.

[89] We did not understand Mr Butler to dispute that the loss of downstream benefits from farming is a relevant consideration. It plainly is, if only because it affects the size and economic wellbeing of the rating base and the demand for Council

services. As we have said, it is not in dispute that rates had become unaffordable for many residential ratepayers and rebalancing was necessary.

[90] Grice J was not persuaded that the Council acted for the purpose of deterring forestry. She accepted Mr Little's evidence to that effect.[72] He pointed out that the decisions did not involve any empirical calculation of benefits accruing from Council activities. The inference is that such assessment would be needed to calculate a rates liability sufficient to deter investment.

[91] We agree with the Judge, for several reasons.

[92] First, the argument about purpose rests in part on the proposition, which we have already rejected, that forestry rates must bear a more or less direct relationship to roading costs. Mr Butler emphasised the difference between the Opus costs estimate of $900,261 and the total rates burden to be borne by the forestry sector in the 2021 financial year, $2,795,097.

[93] Second, when the Statement of Proposal is read as a whole, the Council focused on the District's decline and the unaffordability of rates for many residents. The "disbenefits" of forestry which the Council identified do not take the form of costs positively imposed on the community. They represent loss of downstream benefits formerly provided by the farming sector which is being displaced. The Council's funding needs had not fallen. It might reasonably look to the forestry and farming sectors to make up the difference. On the evidence, it did no more than that; the Decision reflected affordability, use of services, downstream benefits from farming and forestry, and ability to pay.

[94] Third, had rates been set to deter commercial forestry one would expect some attempt to calculate the amount needed to achieve that objective. The Council did not make that attempt. Nor is there a reason to suppose the differential may deter investment in practice. We were told that the total rates liability is now $36.30 per ha per annum. That is a large increase over the sum paid in 2015, when a differential was first introduced, but the record is notable for the absence of evidence that it is

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[72] High Court judgment, above n 2, at [184]–[186].

unaffordable, or that it is economically inefficient, or even that the industry needs time to adjust. There are general predictions to such effect, but our attention was drawn to nothing that substantiates them. Somewhat to the contrary, there is evidence that forestry is a much higher-value use of rural land than sheep and beef farming. The BakerAg report concluded that the net present value of forestry is twice that of the typical Wairoa sheep and beef farm.[73] If the Council sought to deter forestry, one would also expect that it might seek to subsidise farming. There is no evidence of that. Somewhat to the contrary, Mr Borg explained that the Decision resulted in the farming sector also paying an increased share of rates; its burden increased by $740,000 per annum.

Discrimination among forestry interests

[95] NZFOA argued that the Council viewed rural ratepayers through a very different lens when it came to benefits from Council services. Rural ratepayers pay a lower differential than residential ratepayers because they benefit less from services such as sportsgrounds and libraries, but the forestry sector benefits even less, especially when the owners are based offshore, yet pays a much higher differential than residential ratepayers.

[96] NZFOA also pointed to the 100 ha threshold, arguing that it is a telling indicator of the Council's attitude toward large commercial forestry owners. The threshold means that only nine ratepayers will face the forestry differential. And there is no justification for the relative treatment of small and medium-sized foresters. On a per-ha basis smaller forests have the same impact on rural roads as the commercial sector.

[97] We were given to understand, as explained above, that the threshold reflects the fact that forests smaller than 100 ha are usually farm forests, forming part of a diversified farming operation. The Council justified its approach to the rural differential by reference to the downstream benefits of farming and also affordability considerations.

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73 Ed Harrison and Hannah Bruce, above n 18, at 17.

[98] Rating powers expressly envisage that the relative incidence of rates will vary within a rating district. As this Court held in *Woolworths*, the very concept of differential rates involves casting a heavier burden than that justified solely by relative capital values.[74] The Council must consider benefits from its activities and the extent to which those activities were necessary because of the actions of the forestry sector. But having done so, it was required to make a substantive judgement about funding sources based on a broad political assessment of the current and future needs of the community.[75]

[99] A degree of unfairness is to be expected at the margins of rating categories. Although the Supreme Court was addressing a targeted rate in *C P Group*, its observation that unreasonableness requires something more than simple unfairness as among ratepayers who benefit from a service also holds good for a differential in a general rate.[76] Practical administrative considerations may influence the local authority's decision.

[100] As in *C P Group*, there was a logic to the Council's approach here. It had information, in the form of the BakerAg report, that forestry employs many fewer local workers per 1000 ha and the industry's expenditure (excluding harvesting on forest maturity) is a fraction of that of the farming sector. We mentioned the data at [23] above. The Council had heard what forestry industry representatives had to say about that and the wider benefits of forestry for New Zealand. It recognised that affordability was an issue for the farming sector. It nonetheless increased that sector's share of the rates burden to relieve pressure on residential and commercial ratepayers, and to reflect capacity to pay.

[101] These are forward-looking considerations whose relevance does not rely on arguments about whether the forestry industry is to blame for the state of the District's rating base. It may be, as NZFOA posits, that farming's decline is attributable to the removal of farming subsidies in the 1980s and predates forestry's growth, but it may also be that the arrival of a higher-value use (also attributable in part to government

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74 *Woolworths,* above n 3, at 544, approved in *C P Group* (SC)*,* above n 6, at [63].
75 *Woolworths,* above n 3, at 545; and Local Government Act, ss 10 and 101.
76 *C P Group* (SC), above n 6, at [116].

policy settings) for marginal rural land has something to do with it. What matters for our purposes is that the cause of the Council's undoubted need for new funding sources is an issue on which there is room for differences of opinion and the exercise of judgement on the Council's part. We are not persuaded that the Council's decision to discriminate among forestry interests was unfair, still less that it was so unfair as to justify intervention on judicial review.

Unreasonableness

[102] NZFOA contended that the Decision bore the hallmarks of unreasonableness. It reiterated that while a local authority enjoys latitude in rate-setting, there must be a rational connection between the Council's roading activity and the impact of the targeted group's actions on that activity. It will be seen that this ground of appeal also rested on the incorrect premise that there must be a direct relationship between costs caused by the forestry industry and the rates it is required to pay.

Disposition

[103] The appeal is dismissed.

[104] NZFOA must pay the Council costs for a standard appeal on a band A basis with usual disbursements.

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