

SC 158/2021 - Appellant's Outline of Oral Argument

<p>1. Introductory, Themes</p> <p>1.1 Auckland Council (AC) funding requirements, services</p> <p>1.2 Broad, flexible statutory powers re funding (including rating powers)</p> <p>1.3 Transparent, participatory, responsive, evolving decision-making processes</p> <p>1.4 Social, economic, political context, <i>Woolworths</i></p> <p>1.5 Contrast: “visitor levy” concept, “pass through”; very small ratepayer subset; activity/benefit correlation not “meaningfully assessed”; “catch cry of democracy”</p>	<p>Appellant's submissions (AWS) 1.1–1.7</p> <p>Contrast First and third respondents' submissions (13RS) 1-6 Second and fourth respondents' submissions (24RS) 1-7</p>
<p>2. AC Funding Decisions</p> <p>2.1 29 June 2017: AC Governing Body (GB) adopts annual plan/annual budget; revenue and financing policy (RFP); sets rates (including APTR)</p> <p>2.2 1 June 2017: earlier GB meeting, resolution – adoption of Finance and Performance Committee (FPC) recommendations, including APTR</p> <p>2.3 28 June 2018: GB adopted long-term plan 2018-2028, RFP 2018 and set 2018/19 rates (including APTR which included informal sector)</p>	<p>310.2151 at 310.2159; 310.2209; 310.2262; 310.2191 at 310.2193-2200</p> <p>310.2194 (Item 10); AWS 2.1-1.</p> <p>321.4561 (item 13); AWS 2.12</p>
<p>3. Statutory Framework: Rating Powers</p> <p>3.1 Local authorities' services/activities, balanced budget</p> <p>3.2 Local authorities' funding sources, policies</p> <p>3.3 Flexible rating powers, including general and targeted rates</p> <p>3.4 Targeted rates – activities, funding impact statement, land categories, listed factors, prescribed limits</p> <p>3.5 Rates setting – annual resolution, requirements – remission, policy</p>	<p>AWS, 3.1-3.8</p> <p>LGA, ss10–12, s 100</p> <p>LGA, s 101(3), s 103</p> <p>LGRA, ss 3(a)(i), ss 13-14 (Sched 2); ss 16-18 (Sched 3)</p> <p>LGRA, ss 16-21 (Sched 3); LGA s 95(6)(c) (Sched 10)</p> <p>LGRA, s 23(1)(2), s 43 LGRA, s 85, LGA, s 109</p>
<p>4. Statutory Framework: Decision-making</p> <p>4.1 Local government purpose</p> <p>4.2 Local authorities role, powers</p> <p style="padding-left: 20px;">- general principles</p>	<p>LGA ss 3 and 16; Palmer, text, 37.23.8</p> <p>LGA, ss 11, 11A, 12 LGA, s 14</p>

4.3	Governance principles	LGA, s 39
4.4	Governing bodies – responsibilities (Mayoral role)	LGA, ss 21 and 23, ss 41 and 43 (s 39; LG(AC)A, s 9, s 15)
4.5	Engagement, transparency, plans, reporting	LGA, s 40, s 76AA, ss 93-97, ss 98-99A
4.6	Consultation principles	LGA, s 82, 82A-83AA; AWS 4.1-4.4
4.7	Decision-making requirements	LGA, ss 76-81
5.	Statutory Framework: Financial Management	
5.1	Prudence, balanced budget	LGA, ss 100, 101(1)
5.2	Strategies: financial, infrastructure	LGA, ss101A, 101B
5.3	Policies: revenue and financing	LGA, ss 102-103
5.4	Funding sources, determination	LGA, s 103(1)(a) and (2), s 101(3)
6.	Statutory Framework: Democratic Accountability	
6.1	Core theme: Accountability to local communities	LGA, s 3(a), s 10(1)(a), s 12(4), s 14(1)(a), 39(a), (h), s 40(1)(a)-(d), s 43J, s 93(6)(d), s 95(5)(d), s 98(2)(a)
6.2	Democratic underpinning: elections	LGA, s 3, s 10(1)(a), s 39(a), s 40, s 41(2), s 99A; Local Electoral Act 2001, ss 3-4
6.3	Auckland Council	LG(AC)A, s 8, s 10, ss14-16
7.	Processes leading to 2017 Budget, APTR	
7.1	Development over July 2016 – June 2017 proposal	AWS, 2.4 – 2.11; generally, Walker 1 [35] – [206]; 202.0230 303.0543
7.2	August 2016: Mayor’s 2016 re-election campaign: “user pays” idea	
7.3	November 2016: Mayoral proposal for 2017-18 annual plan	304.0748
7.4	February 2017: Development of Consultation materials	AC Chronology
	- Consultation Assessment; Supplementary Material (APTR)	305.0991; 305.1027 (cf 305.1041)
7.5	March 2017: Consultation activities	Walker 1 [107]-[119]; 202.0230
7.6	March – May 2017: AC analysis, workshops	AC Chronology
	- analysis of feedback re APTR	AC Chronology 308.1741 at 308.1769
7.7	30 May 2017: AC “Staff Report”	310.2052
	- Part of revised Mayoral Proposal	309.2040 at 309.2044
7.8	1 June 2017: FPC meeting (resolutions, divided vote on APTR)	309.1817 (310.2070)

7.9	1 June 2017: GB meeting (resolutions, divided vote on APTR)	310.2005 (310.2094)
7.10	29 June 2017: AC funding decisions (see above)	310.2191
8.	Relevant Judicial Review Procedures	
8.1	Generally, four orthodox principles	AWS 5.1-5.10
8.2	Rates as a “tax”	AWS 3.9-3.12
8.3	No direct challenge to <i>Woolworths</i> evident <ul style="list-style-type: none"> - “variable intensity”, “bifurcation” not in issue in rating context 	Joseph (See AWS 5.5) Taggart (2008) Varuhas(2017)
9.	“Error of Law”	
9.1	CA: narrow focus on s 101(3)(a)(ii), disregard of context	AWS 6.1-6.27
9.2	“Pass through” <ul style="list-style-type: none"> - March 2017 feedback - “plainly not correct”? misreads CA [110] - “real world” 	AWS 6.29-6.41 308.1741 at 308.1769 eg 13RS 3, 68 Mellsop [202.0291] [64, 68-70] HCJ [195, 197-202]
9.3	Benefits: <ul style="list-style-type: none"> - ATEED’s activities - “more analysis” - “only 10% of supposed benefit” - “Direct” benefit - “Inequity” - HC Judgment 	AWS 6.42-6.54 Armitage [202.0378] [10, 13-15, 27-32, 74-94] 305.1042, 310.2052, 310.2069.10 Mellsop [202.0291] [25-31] Duncan [202.0414][71-84] HCJ [211-215], [234-244], [265-280], [295-296]
10.	“Unreasonableness”	
10.1	Disproportionality	AWS 7.26-7.41; 24RS 73
10.2	Attempting to distinguish <i>Woolworths</i> <ul style="list-style-type: none"> - targeted v general rate (s 101(3)(b)) - “extreme case”: <i>Mackenzie, South Waikato, Lovelock</i> 	AWS 7.4-7.15
10.3	Discrimination against minority: <ul style="list-style-type: none"> - J/R “only effective check” v consultative, deliberative and electoral LGA factors 	CA [136]; 24RS 6
10.4	Legality, separation of powers <ul style="list-style-type: none"> - and legitimacy 	<i>R (Alconbury)</i> at [47-48], [69-76]; <i>R (SC and others)</i> at [144-145] Geddis, Ryan texts (see AWS 1.6)