



(i)

IN THE PRIVY COUNCIL

NO. 22 of 1972

ON APPEAL  
FROM THE SUPREME COURT OF NEW SOUTH WALES

B E T W E E N :-

WESTERN STORES LIMITED

Appellant (Plaintiff)

- and -

THE COUNCIL OF THE CITY  
OF ORANGE

Respondent (Defendant)

TRANSCRIPT RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 22 of 1972

ON APPEAL  
FROM THE SUPREME COURT OF NEW SOUTH WALES

BETWEEN :-

WESTERN STORES LIMITED

Plaintiff

- and -

THE COUNCIL OF THE CITY  
OF ORANGE

Defendant

RECORD OF PROCEEDINGS

No. 1

ORIGINATING SUMMONS NO. 395 of 1970  
BETWEEN WESTERN STORES LIMITED  
(PLAINTIFF) AND THE COUNCIL OF THE  
CITY OF ORANGE (DEFENDANT) FILED 3rd  
April, 1970

In the Supreme  
Court of New  
South Wales

No. 1  
Originating  
Summons  
3rd April 1970

IN THE SUPREME COURT  
OF NEW SOUTH WALES

IN EQUITY

No. 395 of 1970

BETWEEN:

WESTERN STORES LIMITED  
Plaintiff

AND:

THE COUNCIL OF THE CITY  
OF ORANGE

Defendant

10

LET THE COUNCIL OF THE CITY OF ORANGE within  
16 days after service of this Summons upon it  
inclusive of the day of such service cause an  
appearance to be entered for it to this Summons  
which is issued upon the application of WESTERN  
STORES LIMITED of Summer Street, Orange the owner  
of the land more particularly described in the  
First Schedule hereto for the making of the  
following declarations and orders:-

In the Supreme  
Court of New  
South Wales

No. 1

Originating  
Summons  
3rd April 1970  
(continued)

1. That it may be declared that the Orange Town Improvement Local Rate purported to be made and levied on the 24th day of December, 1969 upon the Plaintiff as owner of the parcels of land more particularly described in the First Schedule hereto in respect of the year commencing 1st January, 1969 and covered by the Assessment Notices set forth in the Second Schedule hereto is invalid and contrary to law.

2. That the works and/or services covered by the aforesaid Orange Town Improvement Local Rate are not of special benefit to the whole of the area upon which the rate has been levied. 10

3. That it may be declared that the Defendant did not form the opinion that the works and/or services covered by the said Town Improvement Local Rate would be of special benefit to the whole of the area upon which the said Rate has been levied.

4. That there was no material upon which the Defendant could validly form an opinion that the works and/or services covered by the said Rate were of special benefit to the Orange Town Improvement District. 20

5. That the Defendant may be restrained by order of this Honourable Court from proceeding or attempting to recover from the Plaintiff the said Rate or any part thereof.

6. That the Defendant may be ordered to pay the costs of and incidental to these proceedings.

7. That the Plaintiff may have such further or other order as the nature of the case may require. 30

#### FIRST SCHEDULE

ALL THAT piece or parcel of land containing an area of approximately 2 acres 1 rood 8 $\frac{1}{4}$  perches situate in the County of Wellington City and Parish of Orange being land referred to in Orange City Council Rate Assessment No. 6269.

ALL THAT piece or parcel of land containing an area of approximately 1 rood 5 $\frac{3}{4}$  perches or thereabouts situate in the County of Wellington City and Parish of Orange being land referred to in Orange City Council Rate Assessment No. 5531. 40

ALL THAT piece or parcel of land containing an area of approximately 26 $\frac{1}{4}$  perches or thereabouts situate in the County of Wellington City and Parish of Orange being land referred to in Orange City Council Rate Assessment No. 5533.

In the Supreme  
Court of New  
South Wales

No. 1

Originating  
Summons  
3rd April 1970  
(continued)

10 ALL THAT piece or parcel of land containing an area of approximately 1 rood 3 $\frac{1}{4}$  perches or thereabouts situate in the County of Wellington City and Parish of Orange being land referred to in Orange City Council Rate Assessment No. 5539.

SECOND SCHEDULE

Assessment of the Council of the City of Orange,  
Number 6269

Assessment by the Council of the City of Orange,  
Number 5531

Assessment by the Council of the City of Orange,  
Number 5533

Assessment by the Council of the City of Orange,  
Number 5539

20 Appearances may be entered at the Office of the  
Master in Equity, Elizabeth Street, Sydney.

DATED the third day of April, One thousand nine  
hundred and seventy.

Chief Clerk in Equity

30 This summons is taken out by T. A. Whiteley, O'Neal  
and Rheinberger of 209 Lord's Place, Orange,  
Solicitors for the abovenamed Plaintiff by the  
Agents Maurice J. McGrath and McGrath, Solicitors,  
56 Hunter Street, Sydney, for the Plaintiff,  
Western Stores Limited, of Summer Street, Orange.

NOTE: If the Defendant does not enter an appearance  
within the time and at the place mentioned such  
Order will be made and proceedings taken as the  
Judge thinks fit and expedient.

In the Supreme Court of New South Wales

No. 2

Transcript of Evidence taken before His Honour Mr. Justice Hardie

1st & 2nd April 1970

TRANSCRIPT OF EVIDENCE TAKEN BEFORE HIS HONOUR MR. JUSTICE HARDIE - 1st 2nd and 3rd April, 1970.

IN THE LAND AND VALUATION COURT

CORAM: HARDIE J.

Wednesday, 1st April, 1970

WESTERN STORES LIMITED v. ORANGE CITY COUNCIL  
(Four Appeals)

K. W. McCALLUM v. ORANGE CITY COUNCIL  
(One Appeal)

B. G. DEIN PTY. LIMITED v. ORANGE CITY COUNCIL  
(Two Appeals)

RUGBY PROPERTIES PTY. LTD. v. ORANGE CITY COUNCIL  
(one Appeal)

10

NEWMAY PTY. LIMITED v. ORANGE CITY COUNCIL  
(Two Appeals)

GALLAGHERS PROPERTIES PTY. LTD. v. ORANGE CITY COUNCIL  
(Two Appeals)

(Orange City Council Rating appeals)

MR. McALARY, Q.C., with MR. CRIPPS appeared for the appellants.

20

MR. MORLING, Q.C., with MR. WILCOX appeared for the respondent.

HIS HONOUR: How many matters are you suggesting I take now, Mr. McAlary? One or more?

Mr. McALARY: There are three rates which we are concerned with in these various appeals. Most of the appeals concern a rate which was imposed upon an area known as the Orange Town Improvement District, but in addition there are two special parking rates. In relation to the Orange Town Improvement District it is our suggestion Your Honour proceed with four appeals. The first one

30

is by Western Stores, who occupy a large emporium in the main street of Orange.

HIS HONOUR: That is Nos. 7057, 7058, 7059 and 7060?

MR. McALARY: Yes. They are four contiguous blocks. Then it is our suggestion Your Honour proceed with an appeal by a Mr. McCallum.

HIS HONOUR: That is No. 7074.

10 MR. McALARY: Yes. Then you would proceed with an appeal by B.G. Dein Pty. Limited.

HIS HONOUR: No. 7064 and No. 7065.

MR. McALARY: Yes, and also an appeal by Rugby Properties Pty. Limited, No. 7076. They occupy the Rugby Hotel.

HIS HONOUR: Are they all concerned with the rates imposed upon properties within the Orange Town Improvement District?

20 MR. McALARY: Yes. I tender a document made available by my friend, which is a map of the City of Orange Planning Scheme, and I believe the central blue portion which has been edged in deep black indicates the area rated, or the area which has been declared to be the Orange Town Improvement District.

(Abovementioned map tendered and marked Ex. A.)

It takes in some industrial areas, but it gives an outline of the Orange Town Improvement District.

30 HIS HONOUR: Is there any other map that shows precisely the land in the Orange Town Improvement District, and no other land?

MR. McALARY: Unfortunately I have not got one. On a prior occasion when there was litigation between the present appellants and this Council maps were prepared, but on that occasion they covered the area which was alleged to be benefited, and was somewhat different. We have not gone to the expense of having plans prepared to show the areas covered here.

HIS HONOUR: Mr. Wilcox, do you concur in the proposal that I take these four objections?

In the Supreme Court of New South Wales

No. 2

Transcript of Evidence taken before His Honour Mr. Justice Hardie.

1st & 2nd April 1970

(continued)

In the Supreme  
Court of New  
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No. 2

Transcript of  
Evidence taken  
before His  
Honour Mr.  
Justice Hardie  
1st & 2nd April  
1970

(continued)

MR. WILCOX: Yes. One would think the determination of those questions would determine the matters in issue between the parties.

HIS HONOUR: Will I have a map before me that will show the precise situation as to shape and boundaries of these four plaintiffs, Mr. McAlary?

MR. McALARY: I was going to have those four plaintiffs indicate on an appropriate plan which I have prepared the location of their particular areas. On some of them it has already been marked, but on others it has not. 10

HIS HONOUR: This will be on a much bigger scale than the one I have?

MR. McALARY: Yes. I tender this plan.

(Plan tendered and marked Ex. B.)

MR. WILCOX: The only comment I make is that my instructions are that the parking area which fronts Sale Street, Sale and Anson Streets - there is a building there, and the curtilage of the building is used for parking. In that respect we say it is not quite accurate. 20

MR. McALARY: We can probably have that corrected.

HIS HONOUR: Didn't I deal with some parking area in Orange some years ago?

MR. McALARY: Yes, in Baldwin's case. I will say something about that in a moment.

HIS HONOUR: The land you mentioned belonging to the four objectors is all in this area, is it?

MR. McALARY: Not the Rugby Hotel. On the right hand side of that plan you can see the railway line and Summer Street runs down the centre of it. On the left hand side, proceeding in a westerly direction, in the second block, are the Myers Western Stores. The appellant Mr. McCallum, whom I have referred to, whose area is not yet delineated, is located in the fourth block on the left hand side fronting Summer Street; that is the section of Summer Street between Hill Street and Sale Street on the left hand side. Orange comes to a dip around the Lords Place area, and there is 30 40

a hill which runs up in a westerly direction. The appellant Dein has certain land which fronts Piesley Street near the railway station. His land is in Piesley Street between Summer Street and Byng Street. It fronts Piesley Streetland is used as a hardware store. Portion of it is on the other side of the street. The Rugby Hotel is just off that map. It is in the extension of Lords Place in a southerly direction. I am told on the large map it is diagonally opposite the corner of Wade Park, on the extension of Lords Place.

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HIS HONOUR: Three of the objectors' land is shown in the more detailed map, Ex. B, and the fourth is just off it?

MR. McALARY: Yes.

HIS HONOUR: Would I be right in inferring from what you have said that substantially the Orange Town Improvement District is the land that is zoned Business on the map?

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MR. McALARY: Yes, with some additions. Near the appellant Dein's area in northern Piesley Street there does appear to be some industrial zoning. In relation to each of those four appellants I tender the rate notices which have been arranged in the order in which I announced the appellants.

HIS HONOUR: Is there anything in these notices that indicates the section or sections under which this local rate was imposed?

30

MR. McALARY: Not as far as I am aware. The section is s.121 (1) and (2). I am not sure exactly how my friend seeks to prove it. I will say s.121, and that will cover everything.

HIS HONOUR: Is that the same section as Else-Mitchell J. dealt with about a year ago?

40

Mr. McALARY: Yes. That section has been dealt with by Your Honour in Baldwin v. Orange City Council, and by Else-Mitchell J. in K.C.R. v. Orange City Council, and last year by Else-Mitchell J. in a matter involving all the present appellants, endorsed under the name Tucker v. Orange City Council.

In the Supreme  
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No. 2

Transcript of  
Evidence taken  
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1st & 2nd April  
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(continued)



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1st & 2nd April  
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(continued)

HIS HONOUR: Was K.C.R. some time between Baldwin's decision and Tucker's decision?

MR. McALARY: Yes. I can give Your Honour the references in due course.

HIS HONOUR: Are there any other decisions in any other States of the Commonwealth, or the High Court or in England relative to this matter?

MR. McALARY: Yes. There are decisions of the High Court and in this State that throw light on it, mainly referred to in the judgment of His Honour in Tucker's case. This was the lineal predecessor of the present litigation.

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HIS HONOUR: I will find all the case law in Tucker's case, will I?

MR. McALARY: I believe there are some considerations that arise in the present case in addition to those that arose in Tucker's case.

(Abovementioned rate notices tendered and marked Ex. C.)

I should mention that in addition to the rate which was imposed upon the Town Improvement District there were two further rates imposed: local parking rates. They are imposed upon more strictly defined areas.

20

HIS HONOUR: What is the section of the Local Government Act?

MR. McALARY: Section 121. There are two appellants in relation to each of those parking rates. The first appellant is Mr. Baldwin.

HIS HONOUR: Is this the same Mr. Baldwin?

30

MR. McALARY: It is the same Mr. Baldwin, but I believe now it is a company known as Newmay Pty. Limited.

HIS HONOUR: They seem to have two appeals, Nos. 7053 and 7054. Are they the ones you are now speaking of?

MR. McALARY: Yes.

HIS HONOUR: Are there any others besides Newmay?

MR. McALARY: Not in relation to what I call the first parking rate. There are two parking rates.

HIS HONOUR: It is not first in time?

MR. McALARY: No. I believe it was in the history of Orange, it was the first parking rate imposed in Orange, and it was the one Your Honour considered in Baldwin v. Orange City Council.

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10 HIS HONOUR: Will you be asking me to do something different from what I did in Baldwin's case?

(continued)

Mr. McALARY: Yes, but for different reasons. Looking at the smaller plan Your Honour will see in area coloured yellow in the block bounded by Summer Street on the northern side between Anson Street and Lords Place. That is the parking area near the courthouse. That is a Council car park. There is a walkway, a covered walkway a few feet wide, which gives an exit from that car park to Summer Street. Baldwin's property or the Newmay property fronts Summer Street and adjoins that covered walkway.

HIS HONOUR: Is that not something like the case I dealt with?

30 MR. McALARY: This is the identical property. After your Honour's decision in Baldwin's case a rate was levied in relation to that car park, and had been levied for some years. I will leave the history of that for a moment, because it is tied up with the Town Improvement rate. On the same map, to the left of the area I have indicated, in the block south of Anson Street and between Sale Street and Anson Street there is another Council car park. There is an appellant, Gallagher's Properties Pty. Limited. This is the second parking rate.

HIS HONOUR: They have two appeals, Nos. 7055 and 7056.

40 MR. McALARY: Yes. Gallagher's Properties occupy a portion of land which fronts Summer Street and runs back to that car park. I will get it in due course, and have these areas hatched in.

HIS HONOUR: In Summer Street, and it goes down ...?

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No. 2

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Evidence taken  
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(continued)

MR. MCALARY: ... and reaches the car park. My recollection is that it is a general store. A local service rate was imposed upon certain property in the immediate vicinity of that car park. That local service rate was considered by Else-Mitchell J. in K.C.R. v. Orange City Council. His Honour decided that the rate was properly imposed.

HIS HONOUR: So you will be asking me to distinguish the decisions in Baldwin's case and the K.C.R. case?

MR. McALARY: Yes.

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HIS HONOUR: Because of what? Because of facts ...

MR. McALARY: ... which will emerge in due course. Which I will outline.

HIS HONOUR: Which did not emerge in those cases?

MR. McALARY: Yes. Those cases were back in the early sixties, and certain areas contiguous to the car park were examined, and the Council decided there was special benefit to those areas arising from their location, and as a result of that they imposed special rates on them under s. 121. That situation continued for a number of years.

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HIS HONOUR: The rate being imposed and paid?

MR. McALARY: The rate being imposed and paid. The problem which gives rise to the present litigation arose late in 1968 when the Valuer-General carried out valuations in the Orange area. What happened was that the value of residential land and the value of rural land increased enormously; I think by 100 per cent in some cases; but the value of the business section increased by approximately thirteen per cent. The result of this was if one struck rates on the normal basis the residential area of Orange would have had a very considerable increased rate burden placed upon it, while the business section would in fact have had less rates. According to a minute of the Council residential land increased by 176 per cent but the business premises by only thirteen per cent.

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HIS HONOUR: I thought you mentioned 100 per cent a minute ago. I think you lumped residential and rural land when you gave that figure, didn't you? Would I be right in thinking rural land went up by a certain figure?

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MR. McALARY: Even more. His Honour said in Tucker's case, "Because values of urban farm lands ... rate levels".

In the Supreme Court of New South Wales

No. 2

Transcript of Evidence taken before his Honour Mr. Justice Hardie

1st & 2nd April 1970

(continued)

10 What the Council decided to do in late 1968 and what they subsequently carried out in 1969 was to attempt a fiscal operation under which they tried to maintain the general rate at a level which would impose no greater burden upon residential areas than had previously fallen upon them. Under the general rate that would have meant there was a reduction in the amount that was to be paid by the business areas. They sought to pick up that amount by imposing a local service rate upon the business areas.

HIS HONOUR: Without the local service rate the business areas would have had a substantial reduction in the amount of their rates?

20 MR. McALARY: Except for the local service rate the business areas would have had a substantial reduction. If the residential land has gone up by 176 per cent, and you decide to raise no more from that area than you previously raised, and the other area has remained static, and you are obliged by law to impose a single rate for general purposes over the whole area, the static area must necessarily be substantially less by way of rates.

HIS HONOUR: Aren't there such things as wards or ridings in this municipality?

MR. McALARY: I do not know.

30 HIS HONOUR: Does the Local Government Act contemplate or permit of different general rates being imposed in different wards and ridings, do you know?

40 MR. McALARY: There are four types of rates that can be imposed under the Local Government Act. The main one is the general rate. That must be struck on the unimproved capital value of the whole of the land within the municipality or shire. No discrimination or differentiation is permitted. A prime principle in my submission of our law of rating is that it must be non-discriminatory. There are rates which can be raised for special purposes, for example the provision of water and sewerage. They primarily are placed on the area benefited.

HIS HONOUR: They are the sort of rates in question in Simpson's case and the other case at Wingecarribee?

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No. 2

Transcript of  
Evidence taken  
before his  
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(continued)

MR. McALARY: Yes. Reynolds v. Wingecarribee Shire. There is also the possibility under s. 121, if the Council forms the view that a portion only of its area will receive a special benefit from works and services, it can rate the whole of the area so specially benefited. By carrying out a work, the provision of water, or car parks, special benefit is conferred upon special lands over and above the benefit which goes to the municipality generally, it is permissible for the Council to impose a local rate, and to catch those areas which have been specially benefited, and to impose to that extent a discriminatory rate. The criterion of rateability is the existence of special benefit. 10

HIS HONOUR: What is the fourth one?

MR. McALARY: Loan rates. These are for the purpose of making a repayment of a borrowing that has been made by a council.

HIS HONOUR: Supposing a council borrowed money to put in a swimming pool, would you cover that by a loan rate? 20

MR. McALARY: I do not know about that. One would need to look at the Act. What can be done under each section seems to be not only esoteric, but a science in itself.

HIS HONOUR: I am not sure of the distinction between special purpose rates and the local rates. Don't they seem to overlap a bit?

MR. McALARY: They do to some extent.

HIS HONOUR: Am I concerned in this case with special purpose rates? 30

MR. McALARY: No.

HIS HONOUR: I am concerned with local rates and general rates?

MR. McALARY: Yes. The local rate is levied under s. 121. (Read). Section 120 reads - (read).

HIS HONOUR: That is the whole area?

Mr. McALARY: Yes.

HIS HONOUR: The special rate is more like the general rate?

MR. McALARY: Yes.

HIS HONOUR: It is to be spread over the whole area of the municipality, but the Council has a little more room to move because they can charge it on an improved value or unimproved value?

MR. McALARY: Yes. (1 (a) read).

10 HIS HONOUR: An interesting question might arise one day whether s. 120 (1) (a) by implication forbids a council charging for books. That is a topical question at the moment. When I dealt with Baldwin's case some years ago what was I dealing with? Section 121?

20 MR. McALARY: Section 121 (1). After Your Honour had dealt with and decided Baldwin's case, which upheld the validity of a local rate under s. 121(1), on the basis that the areas contiguous to the car park, the Anson Street car park, the first car park to which I referred Your Honour - that was upheld on the basis those areas received special benefit. That rate was then made and levied for a number of years, until after Else-Mitchell J. dealt with the K.C.R. case. A local parking rate was made and levied for two or three years on the properties contiguous to the car park in the Anson Street and Sale Street areas. That is the second one I have referred to.

HIS HONOUR: K.C.R. was referred to that one?

30 MR. McALARY: Yes. The first one is normally referred to as the Anson Street car park and the second one the Anson Street and Sale Street car park. The whole of this pattern was thrown out by the increase in values arising from the Valuer-General's activities at the end of 1968. The increase in values tended to be heaviest in the urban farm areas, followed by the residential, and least in the business areas. As a result of that a lower general rate over the whole of Orange was struck, but a special rate under s. 121 called a Local Area Service Rate was purported to be struck.

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HIS HONOUR: Am I concerned with that?

MR. McALARY: It is part of the history, and colours everything that has happened.

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Court of New  
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No. 2

Transcript of  
Evidence taken  
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Honour Mr.  
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1st & 2nd April  
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(continued)

In the Supreme  
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1st & 2nd April  
1970

(continued)

HIS HONOUR: I assume there were no appeals against the Valuer-General's valuations in 1968?

MR. McALARY: I do not know of it.

HIS HONOUR: I think I heard some appeal against valuation in Orange some ten or twelve years ago. Was it at Orange Else-Mitchell J. dealt with an appeal in which the Valuer-General's valuation of a big parcel of city land was cut in half, or was that Bathurst?

MR. McALARY: Bathurst. 10

MR. WILCOX: Hustlers Pty. Ltd.

MR. McALARY: The local service rate was purported to be made under s. 121. It was a more confined area than the present Town Improvement District, and it was subject to litigation in this Court, all the present appellants being parties to that litigation. His Honour's decision, given on 31st October, 1969, was that that rate was invalid. In that rate a sum of approximately \$150,000 was sought to be raised to cover a multiplicity of works to be carried out within the central area of Orange. A great variety of matters, one of which was the provision of capital repayment in relation to the parking area, were involved, and because the parking areas had been included in this new local area service rate the old parking rates were not made or levied. They purported to pick up the revenue they would otherwise have received from those local rates by including them in the local area service rate. 20 30

HIS HONOUR: His Honour held that rate was invalid?

MR. McALARY: Yes.

HIS HONOUR: That meant in that year the Council got no revenue from a parking rate at all?

MR. McALARY: Yes. The local area service rate was levied about 15th April, 1969. The litigation came before the Court on 31st October, 1969. The basis upon which His Honour held that the rate was invalid was that there was no identity of benefit from the various works and services with the land rated. He also held that the decision of the Council to impose that rate was vitiated because 40

it had been induced by improper and irrelevant considerations. In other words, they were not applying themselves to the formation of the requisite ... (interrupted).

HIS HONOUR: His Honour based that conclusion upon what he got from the minutes and documents, or upon oral evidence?

10 MR. McALARY: On what he got from the minutes and documents. There were reports that indicated quite plainly this was a device and nothing more to avoid the consequences of the Valuer-General's change in valuation. That having been given on 31st October the Council imposed or purported to impose the present rates.

HIS HONOUR: In 1969?

MR. McALARY: 1969. These arise in consequence of a Council meeting held on Christmas Eve.

HIS HONOUR: It had to be done in the calendar year 1969, I take it?

20 MR. McALARY: That is right. What happened then was that on that evening three rates were imposed. The Council I should say had previously declared the area I have indicated to Your Honour as a Town Improvement District, and imposed a rate upon that purporting to act under s. 121, and it also purported to impose two parking rates. I have not checked this, but probably being on precisely the same areas on which the old parking areas had been consequent upon the decisions in Baldwin's case and the K.C.R. case.

30 MR. WILCOX: They were.

MR. McALARY: I believe that is so. I was not able to check it.

HIS HONOUR: Your contention is that the Council cannot even impose a rate for parking facilities now.

MR. McALARY: No. There are other contentions. I will have to take Your Honour to the documentation to explain these contentions in more detail.

40 HIS HONOUR: You would say or be contending on one branch of your argument that the outcome of the litigation decided in October 1969 colours this decision?

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MR. McALARY: Yes.

HIS HONOUR: And affects its validity?

MR. McALARY: Yes. That will be one of my primary submissions, but there are other submissions in addition which will arise and be clear when I have been able to place before Your Honour all the relevant material.

HIS HONOUR: This difficulty the Orange Council is in about these valuations - you would say it cannot be imposed on this legislation?

10

MR. McALARY: Yes. The factual situation is that the Local Government Act has certain requirements, and one is that the general purposes of the municipality are to be met out of its general revenue, and its general revenue raised on its general rate, and the requirement to prevent discrimination is that that rate shall be levied uniformly on the whole of the unimproved capital value in the area.

HIS HONOUR: If that view is right that would seem to indicate all council can do is seek to get legislation passed.

20

MR. McALARY: Or face up to the fact of what is probably an irrelevant consideration for the purposes of this litigation.

HIS HONOUR: The owners of residences and rural lands will have to pay more, unpopular as it may be?

MR. McALARY: Yes. The background to this is that the businessmen contend that what happened was their areas in Orange rose in value prior to the residences rising in value. If you go back twelve years the big increase was to the business area, and they had to pick up the bill. The unimproved capital value of Summer Street had risen. In 1968 the residences rose to catch up with the business area, but the Council is not prepared to face up to the fact.

30

That gives Your Honour some outline of the material which will be placed before you. I will attempt to place before Your Honour the various documents which gave rise to this litigation.

40

HIS HONOUR: Do you propose to tender evidence in all three different classes of appeal simultaneously?

MR. McALARY: Yes.

HIS HONOUR: They overlap, do they?

MR. McALARY: They all overlap. Indeed you cannot tender minutes without those minutes covering each of the appeals. The estimates were considered at the one Council meeting.

10 HIS HONOUR: I take it counsel are agreed all these appeals you have mentioned falling into the three categories are to be heard together?

MR. McALARY: Yes. I think my friend requires that the litigation in relation to the two local parking rates should be decided at this point of time. We did not intend to proceed with them, but we received information from him yesterday requiring them to proceed.

HIS HONOUR: Desiring, not requiring, I suppose you mean?

20 MR. MORLING: I told my friend the Council was anxious that its rights to its rates should be determined in the course of the next week or so. I would think it unlikely it would be desirable to determine the other two rates concurrently with these proceedings. I suggest they should be determined at the end of the present appeals, without embarrassing anybody as to time and dates. We do not want them to go over for many months and have the position uncertain.

30 MR. McALARY: I thought each of the six cases before Your Honour were to be determined on the one set of evidence.

HIS HONOUR: I am not very clear whether you and Mr. McAlary are thinking along the same lines, Mr. Morling. I had the impression Mr. McAlary thought your client desired the challenge to the validity of the parking rates to be determined simultaneously with the challenge to this Improvement Rate.

40 MR. MORLING: This was our understanding, that my friends did not appear for the two appellants who have appealed against the imposition of the parking rates.

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Indeed I was told and Mr. Paton was told this was the fact, and for this reason it was desired to stand them out of today's list.

MR. McALARY: That is true, but in view of what has passed we have instructions to appear for them since then.

MR. MORLING: There is no problem. We are anxious to avoid a situation where we have two or three days' litigation on the Town Improvement Rate and the other appeals are stood over into limbo, and the Council has a situation where it has imposed two other rates where there are two stood-over appeals. 10

HIS HONOUR: What your client wants is this, a decision on the parking rates either simultaneously with the decision on the Improvement Rate or very soon thereafter?

MR. MORLING: Yes.

HIS HONOUR: Therefore you are agreeable to the hearing of all these appeals going on together? 20

MR. MORLING: I think so, except so far as the paper work is concerned; I am not sure we have in Court all the documents relating to the two other rates.

MR. McALARY: I can understand that. Are we going on with them on the same evidence?

HIS HONOUR: Mr. Morling, you would be protected on the last point by being at liberty to apply for some adjournment.

MR. MORLING: We are content to proceed. 30

HIS HONOUR: All the appeals in the three different classes are to be heard together.

MR. McALARY: The other thing I should tell Your Honour is this; there have been originating summonses taken out in the four appeals against the Town Improvement Rate. Unfortunately no originating summonses have been taken out in the two appeals against the local parking rates. The reason for the failure to do so is that until yesterday I did not appear for those people. This was done with 40

my friend's concurrence; indeed I think almost at his request. It was proposed that those originating summonses be heard by Your Honour simultaneously with the appeals, so that all the material given in evidence would be available not only on the originating summonses but also on the rating appeals. The reason was, as I understand it, on the last occasion when we were before the Court in Tucker v. Orange City Council, heard in October last year, an argument was advanced that the Court had no jurisdiction to hear this type of matter under an appeal lodged under s. 133. To avoid any problem of that nature arising, after discussion with my friend it was decided we would take out originating summonses in all the test cases. As I have indicated four have been taken out in the four appeals directed to the Town Improvement Rate. I can arrange to have originating summonses taken out in the two appeals directed to the two local parking rates. If that course is followed any problem of the jurisdiction of the Court to deal with this sort of matter in consequence of certain suggested limitations in s. 133 of the Act would be obviated.

HIS HONOUR: Didn't Else-Mitchell J. hold in the last case he heard he had jurisdiction under s. 133?

MR. McALARY: He did so hold, and Your Honour has also so held in Baldwin's case, and there is dicta to that effect. I do not recall all the cases.

HIS HONOUR: Mr. Morling I suppose would say he would want to have his right of appeal.

MR. MORLING. Yes.

HIS HONOR: If I go ahead and deal with this question in the Land and Valuation Court and the Equity Court, what do I do in my judgment? I suppose I have to decide it in one matter. I cannot decide it in both matters, can I? Is it a cumulative jurisdiction or an alternative one?

MR. McALARY: I would have thought Your Honour had a cumulative jurisdiction. Once Your Honour has jurisdiction under s. 133, additionally Your Honour has inherent jurisdiction, sitting in Equity, and I take it taken together Your Honour has complete jurisdiction to cover the whole position.

HIS HONOUR: What stage have these originating summonses

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reached? Have appearances been filed or have they been set down?

MR. McALARY: I do not know how far my friend has gone with them.

MR. MORLING: They were handed to counsel yesterday afternoon. We take no exception to the short notice. Mr. Paton has not seen them.

HIS HONOUR: What has happened in the machinery stage?

MR. McALARY: The four originating summonses have been filed. That is as far as it has gone from our side. I gather no appearances have been filed by my friend, but from what he said I take it he will undertake to file appearances. I will undertake to take out two further originating summonses in Baldwin's matter and Gallagher's matter.

10

MR. MORLING: To put the point quite clearly, my friend has indicated the point we would make on jurisdiction. It may be proper to announce our appearance under protest, having regard to the grounds taken in the notice of appeal. I would of course freely concede an appeal can be brought under s. 133, but I do not concede, and dispute, that it can be brought on the ground set out in the notice of appeal filed.

20

HIS HONOUR: That will be noted. Is there anything further, Mr. McAlary, in opening?

MR. McALARY: No, I doubt there is anything that would be of assistance to Your Honour.

HIS HONOUR: What sort of evidence will you be calling? Documentary or oral?

30

MR. McALARY: The evidence will be largely but not exclusively documentary. I propose to place before Your Honour the various minutes and reports made by the Council, commencing about November 1968, and leading up to the making of the local area service rate in May 1969. That is the rate that was considered by Else-Mitchell J. There are some half a dozen meetings, and three or four reports which throw some light upon that.

40

In addition I propose to place before Your

Honour the minutes of Council meetings which occurred in December 1969 and the reports of the mayor and the engineer which led up to and culminated in the gazettal of the Town Improvement District, and the making of the town improvement rate and the two parking rates. In addition to that I propose to place before Your Honour some general evidence as to the nature of the Orange commercial centre.

10 HIS HONOUR: This is going to be oral, I take it?

MR. McALARY: Yes. That is to give a basis for the view which I understand Your Honour will have in the matter on Friday. I propose to call the various appellants. Not necessarily all of them, but certain of them, to give evidence as to where their property is located, and the use to which it is put, and the effect of the car park upon them. I think substantially that would be the evidentiary picture.

20 HIS HONOUR: Will you be calling any expert evidence?

MR. McALARY: No, not expert in the sense ... (interrupted).

HIS HONOUR: Town planners or engineers?

30 MR. McALARY: I am going to call Mr. Moore, but I think the evidence he is to give is almost non-expert. On the prior occasion he was called, but on that occasion the local service rate was concerned with a number of different services and works. I think there were some ten in number. They covered quite a wide field of activity. Lighting, street cleaning, replacement of kerb and gutter, drainage, maintenance of car parks. I cannot recollect them all off hand.

40 On this occasion the Town Improvement District is concerned only with three different works or services. Substantially the rate has been imposed to meet capital charges and interest on capital charges arising from acquisition and establishment of three parking areas, being those parking areas shown on the second plan I have tendered this morning. That is one feature of the Town Improvement Rate.

In addition the rate has been imposed to obtain reimbursement for certain kerbing and guttering work

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which was carried out I think about August 1969, prior to the decision of Else-Mitchell J. In addition it is sought to obtain some sum to meet preliminary costs which have been incurred in connection with the establishment of a women's rest centre.

HIS HONOUR: Has the centre been established? Is it there now?

MR. McALARY: No. These are purely preliminary plans for the rest centre.

10

HIS HONOUR: Those works and services would not add up to anything like the rate that was upset in the last proceedings, would they?

MR. McALARY: No. The Town Improvement Rate adds up only to \$20,000 in total.

HIS HONOUR: And the amount involved in the last one was what?

MR. McALARY: \$170,000. In addition there are the two parking rates that add up to some \$8,000 in the aggregate. There is an indication, a press release made by the mayor, that 1970 may see a rate of \$140,000 but probably that depends upon how this litigation proceeds.

20

HIS HONOUR: I am a little puzzled about capital charges and interest on acquisitions for the three parking areas coming into this picture. Isn't that caught up in the parking rate?

MR. McALARY: It used to be. Prior to the development in 1968 of the new approach adopted by the Council, charges by way of interest on capital sinking fund payments were caught up with the parking rate, and it is one of our contentions these parking rates are invalid for two reasons; either they are discriminatory or alternatively the Council never formed the relevant opinion to justify them. That will become more apparent once the relevant documents are before Your Honour.

30

HIS HONOUR: Do you think you are likely to complete your documentary and oral evidence today?

40

MR. McALARY: Perhaps not today, but I do not believe there is much conflict in the nature of the oral evidence I will be presenting. Largely the material on which I am relying is to be found

in the reports of the Council, and the acts of the Council about which I presume there will be no doubt. They are there. The oral evidence is largely by way of amplification and explanation of what is to be found in these maps, and putting Your Honour in possession of indisputable facts as to the nature of the development of Orange and what sort of commercial development is here and there; what I will call incontestable facts.

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10 HIS HONOUR: You think the evidence will conclude tomorrow?

MR. McALARY: Yes.

HIS HONOUR: Mr. Morling, as you see it at the moment, do you see the evidence concluding some time tomorrow?

MR. MORLING: Yes. My evidence, if called, will be quite short. It is the same sort of evidence.

20 MR. McALARY: I call for the minutes of the Council meeting on 23rd December, 1968, and the report of the Town Clerk of 18th November, 1968.

MR. MORLING: There is no problem about this, but may be there is some confusion. On the last occasion we gave to his instructing solicitor a complete set of these documents. Mr. McDowell cannot produce these this morning. He has not got them here. My understanding was if there were any originals required we would produce them in Orange, which we will do. This morning we have only copies of minutes relating to rates the subject of these appeals.

30 HIS HONOUR: Have you copies, Mr. McAlary?

MR. McALARY: Most of the material we had was tendered.

HIS HONOUR: Were the exhibits handed out?

MR. McALARY: No, I think only one exhibit was returned. I think only the original map which the Orange City Council used for declaring the rate was returned. All the other exhibits to my knowledge were kept.

40 HIS HONOUR: No inquiries were made by or on behalf of your instructing solicitor or his city agent?



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MR. McALARY: No.

HIS HONOUR: Is your instructing solicitor a local solicitor?

MR. McALARY: Yes. My junior was under the impression Mr. Morling said they would have available all this material today. Apparently there was some misunderstanding about it.

HIS HONOUR: If these documents do not turn up have you got something in the way of copies you can use?

MR. McALARY: I am thinking about that. Most of the copies have been written over many times. 10

MR. MORLING: I want to assist. We will have all documents we are requested to produce brought down by plane not later than tonight. I told Mr. Cripps we would not want subpoenas, we just wanted to be told what documents would be required. We will produce any documents without a subpoena and have them down here certainly no later than tonight.

HIS HONOUR: I think it is important to find out whether the exhibits tendered in the previous proceedings are readily available. 20

MR. McALARY: Yes. We could probably use those. It is the same material. At the end of His Honour's judgment is "The exhibits will remain in Court except for a plan which is part of Ex. B, which should be returned to the Council's custody."

HIS HONOUR: I will give you an adjournment in a moment. There is another point. I think you had better get the other two originating summonses filed pretty soon. I think you had better make sure appearances are filed also, and I think you and Mr. Morling or your respective juniors had better see McLelland C.J. in Eq., because it is not as simple having matters transferred from equity to here as it was heretofore. You may find that the originating summonses will be listed before one of the regular Equity Judges. 30

MR. McALARY: Mr. Morling suggests I could call one witness, which I might be able to do, and perhaps the other material will be forthcoming. If it is not, perhaps we could adjourn early for lunch. 40

HIS HONOUR: Yes. The other point should be determined as soon as possible.

GEORGE EDWARD MOORE

Sworn, examined, deposed:

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Plaintiff's Case

George Edward  
Moore

Examined

MR. McALARY: Q. What is your full name?

A. George Edward Moore.

Q. Do you reside at 43 Mary Street, Longueville?

A. Yes.

Q. What is your occupation? A. Registered  
surveyor and civil engineer.

Q. You carry on practice under the firm name of  
Wallis & Moore, surveyors and engineers, do you  
not? A. Yes.

10 Q. And you have been doing that for some years?

A. Yes.

Q. You were asked to investigate and report upon  
the Orange City Council's proposal for levying a  
local area service rate in an area in Orange  
bounded by Hill Street, Byng Street, Piesley  
Street and Kite Street, Orange, were you not?

A. Yes.

20 Q. I believe in fact you went to Orange, did you not,  
and examined the area for the purpose of giving a  
report and placing yourself in a position to give  
evidence in connection herewith? A. I did.

Q. In fact you gave evidence in the last proceedings,  
did you not? A. Yes.

Q. At that time did you prepare certain plans?

A. Yes.

Q. Did you use those plans as the basis for preparing  
further plans in the last few days? A. Yes.

30 Q. Look at Ex. B. Has that plan been prepared by  
you? A. It has been prepared in my office under  
my immediate supervision.

Q. That plan does not show the Orange Town Improve-  
ment District, does it? A. No.

Q. It simply shows the business centre of Orange,  
is that right? A. The major part of it.

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Q. And the Town Improvement District is somewhat larger? A. That is right.

Q. On that plan have you marked in yellow certain parking areas which exist in Orange? A. Yes, I have.

HIS HONOUR: I understand the exhibits tendered in the previous litigation are in the Land and Valuation Court office, and they can be produced later.

MR. McALARY: Q. Coming to the parking areas, and starting from the left hand side of the plan, the Little Summer Street area, there is a parking area off Little Summer Street, is there not? A. Yes.

10

Q. Do you recall that parking area? A. Yes.

Q. If I recall correctly it is unmade in the sense there is no bitumen seal, is that right? A. It was at that time.

Q. When was that time? A. October 1969.

Q. And it contained approximately a parking area for 120 vehicles? A. I assessed it at that, yes.

20

Q. The access to it is via that lane designated there as Little Summer Street, is it not? A. That is right, leading off Hill Street.

HIS HONOUR: Q. Did that appear to have been a lane that had been there for some time or a lane recently provided? A. It appeared to me to be a lane that had been there for some time.

MR. McALARY: Q. I think it would be fair to say a physical examination suggests little parking takes place in the area? A. Very little.

30

HIS HONOUR: Q. Very little took place in October 1969? A. Yes.

Q. You have not seen it since, have you?  
A. No.

MR. McALARY: I will have evidence from people living nearly opposite about this.

Q. This area is somewhat out of the main business section of the city, is it not? A. It is that,

and the lack of any paving on it would also deter people from willingly going there.

Q. Can you recollect the nature of the businesses which are on either side of Summer Street in that section of Summer Street which runs from Sale Street to Hill Street? A. There is a service station on the corner of Hill Street, the northern side of Summer Street.

10 Q. There are several service stations along there, aren't there? A. Yes, that is mainly what was located in that area.

Q. And on the other side? A. There is a service station on the other corner, and some houses, and a car dealer's place.

Q. Very few shops? A. There is a row of shops down near Sale Street.

HIS HONOUR: Q. A row of shops in Summer Street near Sale Street? A. Yes.

MR. McALARY: Q. On the corner? A. Yes, on the corner.

20 Q. Coming down Summer Street proceeding in an easterly direction the next parking station is located between Sale Street and Anson Street, is it not? A. Yes.

Q. And that has room for approximately 174 car parking areas? A. Yes, approximately 174.

Q. Did you actually count them? A. They are marked on the ground.

Q. And the ground is covered with bitumen?  
A. It is a sealed pavement.

30 Q. Access to that parking area can be obtained from Sale Street and also from Anson Street, is that right? A. Yes.

Q. You can drive right through? A. Yes.

HIS HONOUR: Q. Are there more retail businesses in this area than in the other area you told us about?  
A. Yes, there is a complete row of commercial premises along Summer Street.

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Q. Both sides? A. Yes.

Q. What about Anson Street near this area?  
A. There are some, as they return into each street.

Q. Both in Anson Street and Sale Street?  
A. Yes.

MR. McALARY: Q. Speaking of the Orange commercial area, would it be a reasonably accurate generalisation to say that the commercial area is built along Summer Street? The shops are built along Summer Street, with some return around each of the cross streets? A. That is correct.

10

Q. But the very centre of the commercial area is probably between Anson Street and Lords Place?  
A. This is the focal point.

Q. Nearest Myers store? A. Yes.

Q. On either side of Summer Street? A. There is the post office on the other side, and Post Office Lane.

Q. This seems to be the heart of the area, is it?  
A. Yes, this seems to be the focal point of the area.

20

Q. Moving west it is still a reasonable commercial area, is it not? A. Yes.

Q. Moving east into the other blocks between Lords Place and Piesley Street, it is still a good commercial area, is it not? A. Yes. Smaller businesses.

Q. Smaller premises? A. Yes.

Q. And tending to be not as well-kept? Tending to be more rundown? A. Not of the same standard.

30

Q. Not of the same standard as are located at the heart? A. That is right.

Q. The Kite Street area, that is the street parallel with Summer Street and to the south, that appears to be more a service type area, does it not? A. Yes, service type between Anson Street and Piesley Street. The area west of Anson Street is mainly residential.

Q. Between Anson Street and Piesley Street there are a number of headquarters for different government purposes are there not? A. Public utilities.

Q. The County Council? A. Yes. This is mainly what is concentrated there.

Q. The Shire? A. Yes, things like that.

10 Q. Coming to Byng Street, that is the area to the north of Summer Street, once again you have a basically residential section, in the far west of Byng Street, between Hill Street and Anson Street, have you not? A. Yes.

Q. Coming to the area between Anson Street and Piesley Street, what do you have in Byng Street on that side? A. On the southern side there is the courthouse and at the rear of that the police station. There are a couple of residential dwellings. On the corner of Anson Street there is a secondhand dealer's premises.

20 Q. There is an existing park shown in the whole of the block comprised by Summer Street, Lords Place, McNamara Street and Byng Street, is there not? A. Yes, that is a park.

Q. Subject to the C.W.A. rest rooms? A. Yes, at the north-western corner.

30 Q. Coming to the block to the immediate right of that, or to the immediate east, what type of development has occurred there? A. You have got in McNamara Street - there is a library, some public premises there, and the area fronting Piesley Street would be more termed light industrial than anything.

Q. Builders hardware? A. Yes.

Q. And Dunlops have a depot there? A. Yes.

Q. And that sort of thing? A. Yes.

Q. The other parking area I wanted you to speak about is the parking area which is shown north of Summer Street known as the Anson Street Parking Area. That is a sealed parking area, is it not? A. Yes.

40 Q. And has approximately 213 car spaces? A. It is marked, and they are defined parking areas.

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Q. And access to that area can be obtained from Summer Street by way of a small covered walkway?

A. Yes, I think it is underneath Woolworths or one of these stores.

Q. In addition there is another parking area shown on that plan. That is Myers car park. Do you see that? A. Yes.

Q. Hatched on the plan? A. Yes.

Q. South of the main Myers store? A. Yes.

Q. And is broken into two parking areas? The main one on the west of Post Office Lane and a smaller one on the east of Post Office Lane?

10

A. That is correct.

Q. Portion of that area is sealed and portion is unsealed, is it not? A. Yes. The western side of Post Office Lane and the larger area which is adjacent to the store is sealed. The area south of where the step is is just in its natural state.

Q. And the parking area to the east of Post Office Lane? A. That is just natural dirt.

20

HIS HONOUR: Q. How many cars would those two areas take approximately? A. Approximately thirty-five in the small section which serves mainly their major hardware store.

MR. McALARY: Q. On the last occasion you said the sealed area of Western Stores contains 122 cars. The unsealed area to the south would take eighty cars, and the small parking station to the east of Post Office Lane forty cars? A. Yes, that would be close.

30

Q. Making about 242? A. Yes.

Q. Do you recall there is an R.S.L. parking station? A. Yes.

HIS HONOUR: Q. Is that shown on the map? A. No.

HIS HONOUR: Is it in the area comprised in this map?

MR. McALARY: Yes.

WITNESS: I know where it is.

MR. McALARY: Q. It is located in that block shown on the map between Summer Street on the south and Byng Street on the north and Anson Street on the east and Sale Street on the west, is that correct?

A. That is correct.

Q. It is an irregular shape, is it not?

A. Yes.

Q. And fits into about the centre of the block?

10 A. It would be the centre of that block.

HIS HONOUR: About how many cars would it take?

MR. McALARY: Q. About 120? A. Yes.

Q. There are two bowling greens constructed above the parking areas, are there not? A. Yes, the parking is underneath the elevated bowling green.

Q. There is a small private car park at the Canobolas Hotel, is there not? A. Yes.

Q. And that contains about twelve or something like that? A. Yes.

20 Q. And there are some service stations which have car parking facilities? A. Yes, there are a number of them.

Q. You also had pointed out to you on the last occasion that site of the proposed women's rest centre, did you not? A. Yes.

Q. Which is located in the place you have indicated on the plan as "Proposed Rest Rooms"? A. Yes, facing Ansons Street.

30 Q. Is that currently vacant? A. It was in October. It was used as a car park.

Q. You also inspected the area for the purpose of making observations in connection with drainage and kerbing and guttering and matters of that nature, did you not? A. Yes.

Q. Did you in fact examine certain new kerb and gutter work which had occurred quite recently? A. Yes, I did.

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Q. Was that pointed out to you by a Mr. Raffin?

A. Yes.

Q. One of the appellants in the last proceedings?

A. Yes.

Q. As having been undertaken a few weeks before your visit? A. It was quite evident. It was very new.

Q. Recent kerb and gutter? A. Yes.

HIS HONOUR: Q. All the way along McNamara Street between Kite Street and Summer Street? A. Yes, on the eastern side.

10

MR. McALARY: Q. Is there one little bit of that that has been missed? A. It was generally done. The full length of it had not been constructed. It was done in what is probably called a hit-and-miss type construction. Where the kerb was in bad condition, new kerb had been constructed. Where the pavement had been in bad condition, new pavement had been constructed.

Q. There was also a piece of completed kerb and gutter in Byng Street, wasn't there? A. Yes.

20

Q. On this map you have shown the area of completed kerb and gutter by broken green lines, have you not? A. Yes, in McNamara Street.

Q. And by unbroken green lines in Byng Street? A. Yes.

Q. The area being immediately to the north of the existing courthouse? A. That is correct.

HIS HONOUR: Q. Was it apparent that work had been done recently? A. Yes, the concrete was almost wet.

30

MR. McALARY: I understand the exhibits from the last court proceedings are to hand.

HIS HONOUR: Yes.

(By consent Exhibits from the last proceedings handed down to counsel.)

(Luncheon adjournment.)

HIS HONOUR: I will make the order now for the handing out of the exhibits, by consent.

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MR. McALARY: WE have been unable to see His Honour the Chief Justice in Equity because he is not available at the moment. Since the adjournment I have been through the different exhibits that were tendered in Tucker Pty. Limited v. Orange City Council, and I tender three exhibits taken from that case. The first is minutes of Council and committee meetings and reports between 27th November, 1968, and 10th April, 1969.

10

HIS HONOUR: Relating to this matter?

MR. McALARY: Yes.

HIS HONOUR: It does not cover all the minutes of Council?

MR. McALARY: No. It relates to the valuations and the rates that arose out of them. That was Ex. F in Tucker's case.

(Abovementioned minutes and reports tendered.  
Tender objected to on the ground of relevancy.)

20

HIS HONOUR: I cannot rule on this point at this stage. I gather from your opening how you would seek to make this relevant. You would say these minutes of Council and the committee, and reports, together with the judgment in the previous case created a local government situation or difficulty or emergency which this present rate was sought to deal with, and therefore you say it is relevant to validity.

MR. McALARY: The validity of the rate.

30

HIS HONOUR: I cannot rule on that. I will admit the documents subject to relevancy. I would have to decide the issues in this case before I could decide its relevancy.

MR. McALARY: That is what Else-Mitchell J. did.

HIS HONOUR: I could not rule on that till I have made up my mind on a lot of points.

MR. McALARY: I would not expect it.

(Abovementioned minutes and reports marked Ex.D.)

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I tender the minutes of the ordinary meeting of the Orange City Council held on 15th April, 1969, together with the estimates attached thereto for the then proposed service area local rate.

HIS HONOUR: Were these in in the last case?

MR. McALARY: Yes.

(Tender objected to. Admitted subject to relevancy and marked Ex. E.)

MR. WILCOX: There is in the estimates a definition of the area of the local rate. I think it is not necessary for Your Honour to go to the details of that except perhaps to remind Your Honour of what my friend said earlier, it is a much smaller area than the area the subject of the Town Improvement Rate. 10

HIS HONOUR: The earlier small area would have been within the present larger area?

MR. WILCOX: Yes.

HIS HONOUR: More like the central business area? 20

MR. WILCOX: The Council took in certain additional land, and in particular land which though zoned commercial was not yet used commercially, which it had excluded earlier, and that was a point of some criticism of Council.

HIS HONOUR: The boundaries of this area follow substantially the zoning boundaries?

MR. WILCOX: Yes, although some of the land is not used for commercial purposes in this Town Improvement District Area. 30

MR. McALARY: I tender the minutes of the Council meeting of 1st May, 1969, together with a mayoral minute of the same date annexed thereto.

HIS HONOUR: I take it this is objected to on the same basis, Mr. Wilcox?

MR. WILCOX: Yes.

HIS HONOUR: I take it you are tendering it on the same basis, Mr. McAlary?

MR. McALARY: Yes.

(Abovementioned minutes admitted subject to relevancy and marked Ex. F.)

(Judgment of Else-Mitchell, J. tendered - objected to - admitted subject to relevancy and marked Ex. J.)

MR. McALARY: Q. The only other matter I want to ask you about is if you are familiar with the Rugby Hotel yourself? A. No.

10 Q. That was not involved in the area the subject of the rate on the last occasion and you made no investigation of it? A. No.

Q. You know the Orange area fairly well?  
A. Yes.

Q. And the business area which is situate along Summer Street does continue for some distance to the east of the railway line? A. Yes.

20 Q. And there is another area zoned Commercial, still further to the east, and that is shown on the map? A. A considerable distance to the east.

HIS HONOUR: Q. Is it a level crossing over the railway line? A. Yes, a level crossing.

#### CROSS-EXAMINATION

MR. WILCOX: Q. You would agree, of course, that the City of Orange would be the largest city west of the Blue Mountains until one comes to Broken Hill? A. Yes.

Q. It is a major provincial city and a very rapidly growing city? A. Very much so.

30 Q. Indeed, probably, one of the two or three fastest growing provincial cities in New South Wales away from Newcastle - Sydney - Wollongong area? A. I would agree with that,

Q. You will agree that Orange is a business and professional base for a great number of residents of smaller towns within the vicinity? A. Yes.

Q. And it would be within your knowledge that some

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thousands of people would regard Orange as their major centre for shopping or for professional visits? A. Yes, it would be that.

Q. And of course you would agree that it is to the advantage of any commercial area in a city such as that to continue and, if possible, to improve its attraction for residents of surrounding areas? A. Yes.

Q. And, I suppose, to the extent that it is possible in the interests of the commercial area, for the City of Orange to prosper and grow so as to attract new residents and possibly new industry? A. Yes.

10

Q. And attract a greater number of tourists to the area? A. Yes.

Q. You would agree that the tourist industry would be one of the fastest growing industries in this State at the present time? A. It is fast growing, but not profitable. I would not say it is profitable to that extent.

20

Q. From the point of view of a place like Orange, to improve its tourist-drawing power is something in the interest of the city and, in particular, the business people in the city? A. Yes.

Q. By and large you would agree, would you not, that the business people of the city are contained in the area which is made the subject of this town improvement rate? A. Yes.

Q. That is the area west of Orange? A. Yes.

Q. So, in drawing the tourist trade of the State or industries to the city, or the surrounding residents, it is of importance to improve the attractiveness and interest of the commercial heart of Orange? A. Yes.

30

Q. That is something you would regard as a legitimate aspiration for the City of Orange? A. Yes, definitely.

Q. And it would be something you would be in favour of if you were asked to consider what was desirable and for the benefit of Orange as a whole? A. Yes, it would be.

40

Q. If one is considering the commercial area of Orange one has to consider not simply Summer Street but also the streets that run off Summer Street?

A. Everything adjacent, and that includes it.

Q. You have seen this; there is a lot of blue stone kerbing in the City of Orange? A. Yes.

Q. Within the area which was made the subject to the town improvement rate? A. Yes.

10 Q. You would agree, would you not, that concrete kerbing is generally regarded as being more efficient and easier to maintain than bluestone kerbing? A. Yes, I would agree with that.

Q. Generally speaking, bluestone kerbing that is visible in the commercial area of Orange is old and has been there a long time? A. Yes, worn well.

Q. Worn well, but well worn; is that right?  
A. Yes.

20 Q. With quite a lot of weeds in some places?  
A. Yes, in some areas there are weeds.

Q. And weeds is one of the problems you find with bluestone kerbing? A. You find that with most kerb as that have any joint with them. You will often find that in the concrete kerbing that is not continuous.

Q. This bluestone has reached the stage where, desirably, it should be replaced by concrete kerbing?  
A. In some sections of it.

30 Q. It is a matter of working out the less and the more urgent jobs? A. In some sections the question of kerbing is in good order and condition and it has been kept clean and is quite satisfactory and it has lasted a long time.

Q. In other areas in the commercial area it needs to be replaced? A. It is long-lasting. Where it has been disturbed by weeds and things like that ---

40 Q. I show you a bundle of photographs which I think were before Mr. Justice Else-Mitchell as Ex. 2 (Shown to witness). Would you agree that that exhibit shows various phases of the bluestone kerbing

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and giving a fair picture of the condition as it is to be found in some sections of the commercial area?  
A. There are some photos of concrete kerbing.

Q. Yes, but I think the contrast can be seen between the two in those. I am sure His Honour will be able to pick out which is the concrete and which is the bluestone? A. Yes, there are sections there shown which are not favourable.

Q. Would you keep the exhibits for a moment and also look at the other two photographs (handed to witness) - which were Ex. 3 - for some reasons - in the other proceedings, and would you agree that they show two more views of the bluestone kerbing?

A. The first photograph virtually shows water. Yes, it shows some concrete and some bluestone kerb.

(Photographs of kerbing in some parts of the commercial area of Orange tendered and marked Ex. 1.)

(Two photographs tendered and marked Ex. 2.)

MR. WILCOX: Q. I think the point is that you would agree all of those photographs are taken within the town improvement area? A. I agree, yes.

HIS HONOUR: Q. Where the bluestone is used, the gutter is usually a bit wider than concrete?

A. Yes, it is mostly about two feet wide, whereas the concrete is 18 inches.

MR. WILCOX: Q. I think you will agree that the difference between the bluestone kerbing and the concrete kerbing is the size of the kerb which is normally found. The bluestone is about 12 inches, is it not? A. It varies. Again it is determined by the depth of the gutter that the constructing authority would wish to put there. The stone in the kerb section is usually imbedded down below the gutter level.

Q. Do you agree that there is in the town improvement district a very considerable amount of kerbing which is rather higher than is generally found in the commercial area in other places?

A. Yes.

Q. I think that quite frequently one finds the

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kerbing is about 12 inches, as against the desirable height of eight inches? A. I did measure some of them, and it varied from eight inches to twelve inches.

Q. For modern day shopping purposes, kerbs should be eight inches? A. Yes.

10 HIS HONOUR: Q. Does not this depend a lot on the rainfall and the sort of rain you get and the way it comes down? A. With higher rainfall the greater the need is to supply relief for the gutter and to allow it to go underground rather than just remaining in the gutter.

MR. WILCOX: I think you were aware that Council had plans to provide additional relief drains for Summer Street to enable the gutter depth to be reduced? A. Yes.

Q. You have seen Summer Street in heavy rainfall? A. Yes.

Q. And also Anson Street? A. Yes.

20 Q. Will you agree that there are real problems there at the present time? A. There are problems.

Q. Once again, I think you have seen this bundle of six photographs that show Anson Street and Murray Street following heavy rain? (Shown to witness). A. Yes.

(Above photographs tendered - objected to as irrelevant - admitted subject to relevancy and marked Ex. 3.)

30 HIS HONOUR: Q. I would think that some of these photographs indicate that there would be more need for a 12-inch than an 8-inch kerb. What do you say to that? A. I think the kerbs that are there are adequate for the falls that are experienced, but there are problems that do occur with occasional flooding and there are some areas where there is relief drainage necessary, but not in all these cases.

40 Q. Do not you find in towns where there is very heavy rainfall a tendency for the kerbs to be higher than in other towns? A. Generally they are kept at eight inches in most of the main areas

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and if they do need a greater flow width than eight feet, the idea is to relieve the flow in the gutter by underground pipes. In those cases there the flows are not in excess of eight feet in width.

MR. WILCOX: Q. The engineering solution to this problem where you have concentrated rainfall is to maintain a depth of about eight inches for the benefit of the shoppers and to take off the excess water by underground drainage? A. Yes.

Q. You would agree, however one approaches the solution of the problem, it would be desirable in a commercial area such as Orange for attention to be concentrated on improving the drainage situation shown in those photographs? A. Yes.

10

Q. I suppose you would agree that the provision of public car parking areas is essential these days for the benefit of a commercial area?  
A. Yes, they are.

Q. For instance, in Orange, if one was limited to the kerb-side parking there would be grave problems for shoppers finding parking space within a convenient distance of the shops during heavy shopping periods? A. Yes.

20

Q. And the Anson Street parking station is heavily used? A. Yes.

Q. And the Anson-Sale Street station is heavily used? A. Yes, it is probably not so greatly used as the Anson Street station.

Q. And the shops which immediately abut each of those parking areas, of course have, in many cases, designed their premises as to give access directly from them? A. They have taken advantage of it.

30

Q. Take Mr. Baldwin; he is having a walk-way running to his shop from the Anson Street to Summer Street? A. Yes.

Q. Running the complete depth of his shop. And he has so modelled his premises to have plate glass windows running along the walkway and thus get the benefit of displaying his goods for the whole length of the walkway? A. Yes.

40

Q. I suppose you would agree that, particularly

in a growing community, it is desirable to plan public facilities and acquire land in advance of the actual critical demand? A. Yes.

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Q. And, in particular, parking areas; where it is necessary to reserve them to prevent them from being developed for other purposes? A. Yes.

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Q. But little of the Summer Street parking area is in fact trafficable and able to be used for parking?

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10 A. In dry weather, but there would be some problem in wet weather.

Q. You would like to see it improved to provide an adequate parking area? A. When the occasion arises for the use of it.

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Q. I suppose the comments you have made regarding the position of proper kerbing and guttering within the commercial centre, as a whole would apply equally to the provision of footpaths and the like?

Cross-Examined  
(continued)

20 A. With the exception that I do not construe that as concrete footpaths, but rather footpaths that should be placed in that area, because the majority of the commercial and business areas in the metropolis of Sydney and the surrounding municipalities are asphaltic-concrete-bitumen.

Q. I do not want to go into the detail of just what precisely would be used by an engineer --- ?

A. They are similar to the photos ---

HIS HONOUR: Q. The concrete is hard on the feet?

A. That is one thing.

30 Q. What is the other? A. The other is sound, as well as the ease of repair or maintenance - the ease of repairing and maintaining asphaltic concrete.

MR. WILCOX: Q. I do not want to go into detail, but as a proposition you will agree with me that when one considers commercial centres such as this, in a town or a district, it is quite impossible to fragment them? You have got to keep on advancing and improving the whole of the commercial centre, having regard to the trade and the place? A. In a progressive manner.

40 Q. And in doing it, not in fits and starts but over a period of years, working by a programme and trying to stick to it? A. Yes.

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Re-Examined

RE-EXAMINATION

MR. McALARY: Q. You remember my friend asked you a number of questions about the factors which would arise in the commercial area of Orange, such as the drawing power because of the efficiency and effectiveness, and probably beauty and matters of that nature? On the basis, I gather, that these factors would lead to more tourists, or might bring more tourists to the area? A. Yes.

Q. I presume these factors would equally favour the residential area of Orange, whether people work in the business centre or work in the commercial area, who would take advantage of the tourist coming to Orange? (Objected to - rejected.)

10

Q. Have you any view as to the effect those factors to which my friend referred would have upon the residential section? A. It benefits the whole community.

Q. And, I gather, in your view, not merely the business community? A. No.

20

Q. You were asked some questions by my friend also about the use of concrete in a business centre such as at Orange? A. Yes.

Q. I gather from what you have told us that you yourself take the view it ought to be bitumen? A. Yes.

Q. And you have seen bitumen laid out in the commercial centre of Summer Street? A. Yes.

Q. What would you say as to the condition of that bitumen? A. Generally it is in good order and condition.

30

(Witness retired and excused)

(Mr. McAlary tenders Minutes of the Council Meeting of 4th December, 1969, together with a Mayoral Minute of same date, a report of the Acting City Engineer of 2nd December, and the Minutes of Council Meeting of 24th December, 1969.

Mr. Morling objected to the Mayoral Minute and report of Acting City Engineer, admitted subject to relevancy.

40

All documents marked Ex. H.)

GERALD SIMPSON  
Sworn, examined as under:

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Gerald Simpson

Examined

MR. McALARY: Q. What is your full name?

A. Gerald Simpson. I live at 34 Green Lane, Orange.

Q. You are the Regional Manager of Myers Western Stores? A. Yes.

Q. I believe you manage the Western Store Emporium in Orange? A. Yes.

Q. You have held that position for some years?

A. That is so.

10 Q. That is a fairly large store which fronts Summer Street and is on the corner of Post Office Lane?

A. That is so.

Q. You have, I believe, seen the plan which is Ex. B. (Shown). A. Yes.

Q. Does that plan accurately delineate the area occupied by Western Stores? A. Yes, it does.

20 Q. Apart from fronting Summer Street, has your store a frontage to Summer Street and a small frontage to Anson Street, and that portion which has not been coloured yellow but is endorsed on the plan as "Myers Western Stores" is the developed section of your site? A. The trading area.

Q. To the rear I believe the two areas marked yellow and hatched are your parking areas?

A. They are.

Q. I understand you also own a small portion of land at the corner of Post Office Lane, which is shown in white there - the corner of Kite Street and Post Office Lane? A. Yes.

30 Q. I believe you own another corner section on the corner of Post Office Lane and Colvin Lane?

A. Yes, we do.

Q. That adjoins the parking area but there are other trading business in between? A. Yes, of that parking area.

Q. You own a piece in there (indicating)?

A. That is right.

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Q. What range of goods do you supply at Myers?  
A. General goods. It is a general store. That covers food, soft goods, home wares, hardware, clothing, machinery.

Q. We know that you have this parking area at the back. I believe portion is sealed, the portion close to your store? A. Yes.

Q. And a portion is unsealed? A. That is right.

Q. And you provide this for the assistance of shoppers who desire to use your store? A. We do. 10

HIS HONOUR: Q. Do you provide it or is it provided by the Council? A. No, it is provided by ourselves, Western Stores.

MR. McALARY: Q. You own the land? A. Yes, we own the land.

HIS HONOUR: Q. The whole of the area, where the store is? A. Yes.

MR. McALARY: Q. What about the little yellow patch across there, is that owned by you? A. Yes.

Q. Have you any arrangement made between your company and the Council as to the use of this? 20  
A. No. It was purchased by us for our own use for customers coming to our store.

HIS HONOUR: Q. Have you got any system of control, to keep other people out or dissuade customers of opposition firms from using it? A. No, Your Honour. It is open at five-past-nine in the morning and closed in the evening but it is open to all people who wish to park their car.

Q. They do not have to get a docket from your store to get into it? A. No. 30

Q. You rely upon geographical factors and considerations to ensure that the bulk of the people using it are customers of your store or likely to buy something in your store? A. We hope so, Your Honour.

MR. McALARY: Q. It is a question of hope, with people using the car park, that they will shop with you? A. Yes.

Q. In fact you own the freehold of it?

A. Yes.

Q. And whatever its unimproved capital value, it is included in that portion on which you pay rates?

A. Yes.

Q. So you pay ordinary rates on that land?

A. Yes.

Q. Now I would like to ask you some questions about three different matters. You know, of course, that certain kerb-and-gutter work has been carried out in McNamara Street, shown on this plan?

10

A. Yes.

Q. Can you give us any idea approximately how far it is from your store down to McNamara Street?

A. A block and a half.

Q. What would that be, 200 or 300 yards?

A. Yes, easily.

Q. And you have also seen some kerb and gutter work done in Byng Street opposite the Court House?

20

A. Yes.

Q. So far as you can see, is the replacement of that old kerb and guttering at that place, in those two points, in any way of any benefit to you?

A. None whatever. (Objected to.)

Q. I would like to ask your opinion about those two parking areas which the Council provides, one called Anson Street parking station and the other called the Sale Street and Anson Street parking station? A. Yes.

30

Q. Coming to the Anson Street parking station alone, is that parking area connected to Summer Street by a covered walk-way which runs at right angles to Summer Street? A. Yes, it is.

Q. I believe Mr. Baldwin's chemist shop is on one side of the walkway; the eastern or western?

A. It is on the western side.

Q. Is it correct to say that one of the chain stores also occupies premises which connect directly with that parking area? A. Yes.

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Q. Is it Coles or Woolworths? Do you remember which? I remember walking through it. A. It is Woolworths.

Q. Woolworths occupy land on the opposite side of Summer Street to your store? A. That is correct.

Q. And that land runs back and backs on to the parking station? A. Yes.

Q. And there are steps allowing one to go from the parking station down into Woolworths store? A. Yes.

Q. There are of course other shops in addition to those two I have mentioned fronting Summer Street and running back to the station? A. Yes, there are.

Q. Have you noticed that the people who have presumably parked vehicles in the Anson Street parking station leave the parking station by means of the covered walk-way?

MR. MORLING: I object to all this evidence on the basis that what is in issue, if anything is in issue, is the opinion of the Council and not factual matters as seen by this witness.

HIS HONOUR: I will admit all this evidence, subject to relevancy.

MR. McALARY: Q. Have you noticed people coming out of the walk-way who appear to have left their vehicles in the parking station? A. Yes, there would be people coming through there.

Q. From the point of view of Myers as a trading entity does the existence of the Anson Street area assist or detract from your shop? (Objected to; admitted subject to relevancy.) A. It would attract people to our competitors.

Q. You, of course, have your own parking station at the back? A. We have this.

HIS HONOUR: Q. Which parking station was established first, yours or the Council one? A. Ours, Your Honour. The actual walk-way referred to was part of our land. We owned the

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land on the opposite side of the street, now owned by Baldwin, and in that sale there was a proviso for the walk-way to be put there, so there was an access. This was done for the Council to run access to the car park.

Q. You owned the land that Mr. Baldwin's shop is on? A. Yes.

Q. Did you have a store over there? A. No, it was a hotel.

10 MR. McALARY: Q. The hotel was pulled down, was it? A. That is right.

Q. This third car parking area, Sale Street - you can see the plan I am holding up? There are shops fronting Summer Street which back on to that parking area? A. Quite a number.

Q. I believe Mr. Gallagher, the major shareholder in that company, known as Gallagher Properties occupies one of those shops? A. Yes, he does.

20 Q. And that shop has an entrance from the parking area, is that right? A. Yes.

Q. In other words you can park your car in the parking area and go into Mr. Gallagher's shop from the parking area? A. Yes.

30 MR. MORLING: I do not want to take repeated objections but I would object to all this evidence on the basis that it is not for the Court or for the witness to examine the relative degrees of benefit or lack of benefit from the existence of any of the works referred to. If that objection is made clear I could perhaps desist from objecting to this line of evidence. I do not want to be put in the situation where later it could be said that I did not object to it.

HIS HONOUR: It is admitted subject to relevancy.

MR. McALARY: I think you told us that Mr. Gallagher's shop has a rear entrance which enters the car parking area? A. Yes.

Q. Is that one of your competitors? A. Yes, he is.

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Q. What does he sell? Women's apparel,  
manchester; mainly women's apparel, and accessories.

Q. So he would be in direct competition with you?

A. Yes.

Q. Are there any other shops that you can recall  
which have a rear access on to that parking area,  
and which front Summer Street? A. Yes, Findlay's  
Furniture Store, which is again in direct competi-  
tion, opens directly on to it. Also Pritchard's  
Menswear store. I am not quite sure of any others  
that actually open on to it. 10

Q. There are three of them, and they are all in  
direct competition with you? A. Yes.

Q. How do you view the existence of this car park  
in connection with your store? Is it a benefit to  
you or a disadvantage or irrelevant? A. It  
would be more a disadvantage, if we look at it  
businesswise. It would be more advantageous not  
to be there, which would mean that more people  
would come around to our parking area. 20

Q. In other words, once again it tends to attract  
people to enter stores where your competitors are?

A. Yes.

HIS HONOUR: Is that car park filled most days?

A. On Fridays and Saturdays it is. It is fairly  
full. During the week there is plenty of room to  
park there.

Q. Do you employ a man to see that it is?

A. Yes. We have a man coming in on Wednesday,  
Thursday, Friday and Saturday. 30

Q. That is, to make full use of the area?

A. Yes.

Q. It is not to ensure that use is only made by  
people going to or returning from your shop?

A. No, we could not do that.

MR. McALARY: Q. There is another car parking  
area I have not referred to; that is the little  
Summer Street - do you know that one? A. Yes.

Q. Have you ever seen any cars parked in it?

A. I have not taken particular note. 40

HIS HONOUR: Q. When were you last there?

A. A few months ago.

MR. McALARY: Q. Can you see it as you drive up Summer Street? A. Yes, I think you can. I do not take this route normally.

Q. I believe it is correct to say that this Hill Street, as its name indicates, is the top of a hill or the end of a rise; is that right?

A. Yes.

10 Q. Summer Street rises there, somewhere in the vicinity of your store, is that correct? A. Yes.

Q. It rises from a point in the vicinity of your store? A. Yes.

Q. Up a gradual incline to Hill Street? A. Yes.

Q. How far would you think that would be from your premises? A. About 2½ blocks.

Q. Can you give us some idea in distance, or do you feel that you cannot estimate? A. I might lead you astray.

20 Q. We will see it on Friday, so we will not worry you. It is considerable walking distance? A. It is considerable walking distance.

Q. So far as you are concerned, what would you say about that car parking area? A. It would have no effect on our trade.

Q. It is too far for people to walk either way? A. That is so.

30 Q. The other proposal which is involved in the town improvement rate, as you perhaps know is the payment of architects' fees, those who have drawn the preliminary plans for the improvements. I want you to assume that this centre is to be located in the area at the mouth of the Anson Street - Sale Street parking station area - the plan Exhibit B - which is endorsed with "Proposed Rest Rooms". It has to have a women's rest centre and a child-minding centre.

Have you any view as to any benefit or detriment or any effect that this proposal would have

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upon your trading? A. We provide our own facilities but we do not have a child-minding centre. We do provide facilities for women in the store.

HIS HONOUR: Q. You don't provide facilities for child-minding? A. Not for child-minding. Women's rest rooms and facilities, wash rooms, toilets, etc.

Q. You appreciate or understand that with the proposed rest room Council is contemplating providing some facilities for child-minding?

10

A. Yes, I believe so.

MR. McALARY: Q. Do you see any special benefit flowing from your store to that? A. Not a special benefit.

HIS HONOUR: Q. Any benefit? A. There would be benefit, but not a special benefit.

Q. Do you draw a distinction between a benefit to your store and a special benefit to your store?

20

A. Yes, Your Honour. If it is applied to moneys paid out for a special benefit, yes. If one is rated on a special benefit it must have some significant value to you, if you are to pay the extra rate; as the question here is today. It is a benefit, most of the things that are mentioned here have a benefit to Orange as a whole, but if we as a group are going to pay for it, it must be a special benefit.

Q. That means you must be able to see or point in some direction or to some respect in which it increases the revenue coming to your store?

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A. Exactly, Your Honour.

Q. In other words, you are thinking in terms of direct financial benefit, are you?

A. Yes, Your Honour.

HIS HONOUR: These are all interesting points which the lawyers will debate at length later.

MR. McALARY: Q. I think you gave evidence on the last occasion, did you? A. Yes.

Q. You were present when it was being debated, I gather? A. That is right.

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MR. McALARY: I would think everybody is fairly familiar with the operation of the section.

## CROSS-EXAMINATION

MR. MORLING: Q. Does your company have the largest retailing establishment in Orange?

A. We would.

Q. Do you have an extensive business in out-of-town customers? A. Yes, we do.

Q. You would draw your customers from perhaps twenty or thirty miles away, some of them?

A. Yes, some of them.

10 Q. I suppose you indulge in advertising through the various media? A. Yes.

Q. And you would endeavour to reach people at Molong, to get people to your store? A. We do have a store at Molong.

Q. Over what area would you extend with your advertising? A. The immediate Orange area and the surrounding district.

Q. Do you advertise over radio stations which broadcast to a large area outside the City of Orange? A. 2GZ would do this.

20 HIS HONOUR: Q. I suppose their message would reach the public in Bathurst, would it? A. In Bathurst, and about Wellington, Your Honour.

MR. MORLING: Q. Of course, your store in Molong is vastly inferior to the store you have in Orange?

A. It is for the size of the population in that area.

Q. Molong, may I say without disrespect, is rather a sleepy little town? A. Yes.

30 Q. And your store there does not carry the range of goods which your Orange store carries? A. For the amount of people it satisfies I think it carries a fairly big range.

Q. But it is only a fraction of the size of the Orange establishment is it not? A. Yes, it is.

Q. Would it be true to say that your business depends for the purpose of customer viability - commercial viability - on their being a thriving business centre in Orange? A. Yes, it does.

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Q. You would agree with me, would you not, that the town of Orange, and I mean by that the area in and about Summer Street - has public facilities in the way of street trees and parks which make the city a very attractive city? A. Yes, it has.

Q. For instance, it is a vastly more attractive township than the township of Molong? A. It would have to be because of its size, naturally.

Q. Would you not agree with me from your experience as manager of a large commercial establishment that one reason for your trading activities being extensive, is that the township of Orange has an attraction for people living in and about it? A. We would like to think we are part of this attraction, a major part of it.

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Q. Would you agree that other things are also part of it? A. Yes.

Q. Would you think, for instance, if there were no kerbing and guttering in the streets where your store is the town would be less attractive? ---

20

MR. McALARY: Perhaps my friend can make clear where he means.

MR. MORLING: Q. I am referring to the other side of Summer Street, in Summer Street itself, outside your frontage. Do you think the existence of kerbing and guttering, good road surfaces and good footpaths would be a factor, amongst other things, which would attract people generally to the commercial heart of Orange? A. Yes, it would.

Q. Indeed, your company is part of the Myers' group? A. That is correct.

30

Q. And your company has had experience, extensive experience elsewhere in establishing large retail stores? A. Yes.

Q. And one of its techniques has been to surround itself with a number of small shops, not controlled by it, when establishing a major store of its own? A. A shopping complex, yes.

Q. That is right, because the company recognises that it is to the company's benefit that there should be attractive commercial trading undertakings in the vicinity of it? A. Yes.

40

Q. Would you agree that the motor car has had a great influence on retaining techniques in post-war years? A. Yes, it has.

Q. And companies such as yours have been at great expense to provide facilities for motor cars?  
A. Yes, we have.

Q. Would you think it unusual that a housewife living somewhere in Orange should walk a couple of street blocks to your store to shop? Does that occur to you as being something unusual?

10 A. There would be people walking a couple of walks, but most of the traffic would be by car.

Q. Mr. Simpson, there would be many thousands of people living within the three or four streets to the south of your store? A. Yes.

Q. You would not have the slightest doubt, would you, that there would be very many people who would walk, say, from the Moulder Street area to shop at your store? A. Would you rephrase that question, please?

20

Q. You would not have any doubt at all that during the course of a week very many men and women who might live in an area such as Moulder Street might walk down to Summer Street and to your store?

A. There would be a proportion but it is not a great proportion; if that is what you are getting at.

Q. It would be a longer walk from Moulder Street than it would be from Little Summer Street, to your store, would it not? A. Yes, it would be

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Q. When did your company acquire the Western Stores business in Orange, approximately? A. Some fifty years ago I believe it was Western Stores.

Q. So your company dedicated the land in the Anson Street parking area to the Council after it had been trading for many years? A. I am sorry, did that lead on from the other questions?

Q. Yes. A. Could I have that again?

Q. I just want to get this first: The dedication of land in the Anson Street parking area to the

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Council was made by your company at a time when it was actively trading across the road, on the southern side of Summer Street? A. Yes.

Q. Were you with the company when the dedication was made? A. Yes, but not with that particular store.

Q. Would you agree with me that to have a walk-way coming on to Summer Street, directly opposite your main store, would be likely to lead to some people crossing the road into your store? A. It could be.

10

Q. Is that why you dedicated it? A. I could not say this, not being at the store at the time.

Q. As an experienced retailer, you would agree that to have a parking area established with a walk-way leading on to the main street directly opposite your store might well be a good thing for trade in your store? A. It could be of some advantage.

20

Q. Your store, of course, has a commercial frontage to Anson Street? A. A small frontage.

Q. It uses that land for commercial purposes because it seeks to tap, to an extent, pedestrians and other customers who might pass along Anson Street? A. Yes, mainly it was an investment, to attract people going for professional services. It was envisaged for that - going to doctors, etc., along that particular street.

HIS HONOUR: Q. Where are the doctors? A. In Anson Street.

30

Q. On which side, the east or the west?  
A. Both sides in that particular block.

MR. MORLING: Q. It is a centre where many professional people are found? A. Yes.

Q. It would be very common for a man who was perhaps ten miles out of town to come and see his doctor or dentist at Orange? A. Yes.

HIS HONOUR: Q. Are there other professional people there as well, doctors, dentists, solicitors; or only doctors? A. No, there are all professions.

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MR. MORLING: Q. A man who might come to town for any professional purposes might find his way into your shop, no matter where his professional adviser was? A. From where?

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10 Q. Assume there were professional advisers in Sale Street, and a man came in to see his professional adviser in Sale Street, you would think it might be quite possible for him or his wife to meet for some purpose and come to your store? A. We would hope so.

Q. The man who goes to Mr. Gallagher's, across the road, to buy a particular item might well come to your store to buy the item that Mr. Gallagher did not stock? A. If they come from Sale Street, they would merely go to Mr. Gallagher's first.

Q. There would be no firm in Orange that carries the range of goods that your company carries? A. No, there would not.

20 Q. And the mere fact that you have a competitor in a particular line does not mean that that competitor competes with you in all lines? A. No, it does not; but nevertheless he makes a living out of this.

Q. And you are aware, are you not, that the Anson-Sale Street parking area was provided shortly after your predecessor had pressed the Council to provide it? A. I am not aware of this.

30 Q. Did you know that your company had asked the Council to provide a parking area between Sale Street and Anson Street? A. No.

Q. Would you agree that the fact that there is a parking area is of advantage to your store? A. It is of some advantage. It is one of the lesser used traffic areas. The particular inference takes in far less traffic than any other entrance to the store.

Q. Of course the pedestrian exit from that parking area comes almost opposite your Anson Street frontage? A. Yes.

40 Q. And the reason why you go to the expense of providing the parking attendant in your own car park is to increase the number of cars which can be parked? A. For our own benefit, yes.



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Q. The areas cannot hold all the would-be parkers on Fridays and Saturdays? A. It would be very difficult, with a lot of women drivers at any time, because they could park all over the place.

Q. Whatever the reason, the fact is that all your customers who are driving cars cannot find parking space in your parking area? A. At certain times.

Q. At the times when your trading is at its peak?  
A. Yes.

Q. And you are now to the stage where you are providing a parking attendant how many days a week?  
A. Three days.

10

Q. And Orange is building up in its operations all the time? A. Yes.

Q. I suppose it used to be less than three days a week? A. No, it has been three days for some time.

Q. I suppose you would depend mostly on female customers to make the actual purchases in this store? A. Yes, the bigger percentage.

20

Q. Would you not think that the rest centre of the kind contemplated by the Council would be a distinct attraction? ---

MR. McALARY: Perhaps you might tell us what the Rest Centre contemplated is. We have never been able to find out.

MR. MORLING: Q. Do you know? A. No.

Q. Then you are not in a position to express an opinion about it, are you? Is that so? You would not be, would you? A. No. I would want to know more about it.

30

Q. So you are simply just not in a position to express any opinion about that, as to whether it might or might not be an attraction to people who might come to your store? A. I would have to see the plan, perhaps, and have a look at it.

Q. When you talk about providing facilities in your store, you really mean toilets and a place to wash their hands? A. And a lounge and so forth.

MR. McALARY: No question.

(Witness retired and excused)

(Further hearing adjourned until Thursday, 2nd April, 1970).

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SECOND DAY: THURSDAY, 2ND APRIL, 1970

GORDON DOUGLAS HAWKES  
Sworn, examined deposed:

MR. McALARY: Q. What is your full name?  
A. Gordon Douglas Hawkes.

10 Q. Where do you reside? A. 69 Hill Street, Orange.

Q. You are the managing director of the company B.G. Dein Pty. Limited, are you not? A. Yes.

Q. You and your wife being the sole shareholders in that company? A. Yes.

Q. That is one of the present appellants, is it not? A. That is so.

Q. Would you have a look at the plan, Ex. B? (Shown). A. Yes.

20 HIS HONOUR: Q. What is the business of your company? A. Builders suppliers. Timber and hardware.

Q. You have been there for how long? A. 52 years.

Q. Have you been in it all that time? Or your father? A. Our family.

MR. McALARY: Q. Do you recognise the plan?  
A. Yes.

Q. You can see Summer Street there, can't you?  
A. Yes.

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Q. I believe your property is in Piesley Street, is it not? A. Yes.

Q. Would you sketch in the location of your land?  
A. Yes.

Q. Have you another piece on the other side?  
A. Yes. (Both properties marked by witness on Ex. B.)

HIS HONOUR: Q. Have you got premises on each side, or is one side vacant land? A. This is a marketing area. (Indicating property on western side.)

10

Q. On the western side it is a marketing area?  
A. Yes, and this is a saw mill and storage area, with a railway siding coming in there.

MR. McALARY: Q. On the marketing side what do you sell? A. Timber. Hardware. Kitchenware. Gardening utensils and plants.

HIS HONOUR: Q. Seedlings and things like that?  
A. Yes.

MR. McALARY: Q. Have you about 37,000 square feet in that area? A. Yes.

20

HIS HONOUR: Q. Is that the two areas or one only?  
A. The marketing area only.

MR. McALARY: Q. I believe you have quite a lot of competition in Orange have you not? A. Yes.

Q. Where are your competitors? A. There are five other major suppliers of our type of goods. There is Western Stores.

Q. They are in Summer Street, aren't they?  
A. Yes. There is Permewans at the top end of Summer Street. The Western end.

30

Q. The Hill Street end? A. Yes. Ted Harper.

Q. Where is he? A. In Lords Place,

Q. Between Kite Street and Moulder Street?  
A. Yes.

Q. On the outskirts? A. Yes, to the south. Pacific Building Supplies in Piesley Street to the south of us in the next block. Glenroi Builders Supplies. They are east of the railway line and quite some distance away from us.

Q. Not all of those are in competition with all your lines, are they? A. That is right.

Q. But people who are building suppliers are competitors in building lines? A. Yes.

10 Q. What is the parking, if any, in your vicinity?  
A. In our locality we do not have a parking problem. There is ample parking in the street. We have provision at the back of our place for eight to ten of our customers' vehicles which can be brought in under cover. For customer service.

20 Q. Loading can take place there? A. Yes. We advertised in our advertisements that parking is no problem in our area. We stress this because we feel it is an advantage to us.

Q. People can come and park in the street or in your area? A. Yes.

HIS HONOUR: Q. Are there private homes along Piesley Street? A. None in that block.

MR. McALARY: Q. In the town map this is an industrial area, is it not? A. Yes.

30 Q. What else is in your area? What are the other premises near you? A. The neighbour on the north is Dunlop Tyres. Quite a large installation. To the south of us we have a machinery agent and another tyre place. McLeods.

40 Q. I would like to ask you something about the kerb and gutter situation outside your own premises. What do you say about that? A. We have a broken kerb, which is broken by four, I think, non-usable vehicles entrances, which comes straight into our shop frontage, which extends for 157 feet. The footpath is half-grassed and dirt and the other half asphalt. In wet weather, of course, it is just mud.

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Q. You know some new paving and some new kerb and gutter has been placed in McNamara Street, don't you? A. Yes.

Q. Could that be of any advantage to your land and business? (Objected to - allowed subject to relevancy.) A. No.

Q. I suppose a similar comment would apply in relation to the new kerb and gutter and pavement near the court house? A. That is so.

Q. These blocks that are shown in that plan that is before you, is it correct that each block is 220 yards? A. Yes. They are half blocks, and the other blocks I understand are 440. These would be 220 plus the road.

10

Q. So this kerb and gutter work is some hundreds of yards away from you? A. Yes, in both instances it is a block and a half away.

Q. You have heard my friend suggest it is of advantage to the business area of Orange generally to have good kerb and gutter. If good kerb and gutter is placed in front of your competitors - I will withdraw the question. It is argumentative matter. Coming to the car parks in Anson Street, and Anson and Sale Streets, are these located near certain of your competitors? A. Yes, both of them are much closer to our competitors than they are to us.

20

Q. How do you believe they affect your business and land, if at all? A. They would probably be of advantage to our competitors. Not to us, certainly.

30

Q. What about the car park in Little Summer Street? A. That is far too far away to be of any advantage to us.

Q. I believe you live almost opposite that car park, do you not? A. Yes, I live on the corner of Summer and Hill Streets, which is almost opposite the entrance to it.

Q. Have you ever seen that car park in use? A. No, I have not. I walk to work frequently, and I have never noticed anybody there.

40

HIS HONOUR: Q. How long was it acquired, do you know? A. About two years ago. Quite some time ago.

MR. McALARY: Q. Do you know the womens' rest centre to be located in the mouth of the car park between Anson and Sale Streets? A. Yes.

Q. Would that be of any advantage to you?

10 A. No, I cannot see it would be of any advantage to us whatsoever. I should imagine if a woman went into that area and left her children in that area, she would be much closer to our competitors than to us by quite some distance.

Q. You mean if she left her car parked thereto she would shop there, do you? A. Yes.

CROSS-EXAMINATION

MR. MORLING: Q. You would have now a very valuable parcel of land in your 37,000 square feet, wouldn't you? A. Yes.

20 Q. Worth approximately \$100,000? A. I just could not remember the V.G. of it.

Q. It would be many tens of thousands of dollars, wouldn't it? A. Yes it has considerable improvements on it.

Q. The land itself would be worth in your opinion a large sum of money, wouldn't it? A. Yes.

30 Q. I suppose you paid a fraction of the existing - I will withdraw that. I suppose when you bought the land you paid a fraction of its present value? (Objected to.) A. My family possibly did.

HIS HONOUR: Q. You said you have been there 52 years, did you not? A. Yes.

MR. MORLING: Q. You said on the last occasion your business has grown with Orange, didn't you? A. Yes, we like to think we have helped Orange grow.

Q. You take the view your business down there where you are has helped other businesses grow in Orange, don't you? A. That is possible.

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South Wales

No. 2

Transcript of  
Evidence taken  
before his  
Honour Mr.  
Justice Hardie

1st & 2nd April  
1970

Plaintiff's Case

Gordon Douglas  
Hawkes

Cross-  
Examined

(continued)

Q. You would be the first to admit the fact that Western Stores is up the road has in an indirect way helped your business to progress, wouldn't you? A. Yes, as near as a competitor can.

Q. Your business has risen in prosperity over the years just as the Orange business centre as a whole has risen in prosperity and in activity, hasn't it? A. Yes, I think we have contributed something to it.

Q. You take the view, do you not, it is quite impossible to isolate your particular growth in prosperity and activity from the growth generally of the town? A. Yes, we have grown with the town.

Q. And one reason which in your opinion would explain the presently high valuation of your land is the fact that you happen to be in a town which is prosperous? A. Yes, it is a very prosperous town.

Q. And in a town which you would say is an attractive town? A. The whole countryside is attractive.

Q. The town itself is a drawcard to bring people from quite a substantial area, isn't it? A. No, I could not quite agree with that. The countryside is attractive. I would not say Summer Street is in particular attractive. It is a nice wide street and the shops are all right but it is not an attraction. People would not come to Orange to visit Summer Street. They come perhaps because of a combination of things.

Q. They come to Orange mainly to shop in Orange, don't they? A. No. They come possibly because of professional people. They come because of the shops. The shopping centre is good. We have no doubt about that. Also it is a very pleasant climate.

Q. Do you think they come to Orange for one reason or other, using a very general expression, because they want to carry out some form of business activity in the business area lying generally between Byng Street and going down as far as Moulder Street? A. Some people do.

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Q. Most people would, wouldn't they? A. A lot of people visit Orange for other reasons, but there is business done in that area, considerable business.

Q. Your business is principally in the builders hardware field, is it not? A. Builders supplies.

10 Q. Have you over the years and presently sold a lot of your products to people erecting buildings, cottages, and carrying out repairs to buildings and shops, and erecting shops in the Orange city district? A. Yes.

Q. To the extent people might perhaps want to improve their shops or build new shops in the centre of Orange, this could well lead to business coming your way, couldn't it? A. Yes, us or our competitors.

20 Q. Will you agree as a resident of Orange that one reason which might attract a person to live in the residential areas of Orange would be the fact that there is a large and busy shopping centre down in the Summer St. vicinity? (Objected to - allowed.)  
A. It could be one reason that would bring people to Orange. I do not agree it is the reason they come. There are many reasons for people coming to live in Orange. I myself went to live in Orange 25 years ago after a long stay in Sydney. I went back. It was not the Summer Street shopping centre that attracted me.

HIS HONOUR: Q. Your family business was there?  
A. Yes.

30 MR. MORLING: Q. It would be one reason for a person seeking to come to Orange rather than to, say, Molong? A. No. I would not agree with you there. We have fine schools and hospitals and doctors. All of these add to Orange. I cannot agree the shopping centre is the be-all-and-end-all of it.

40 Q. I am not putting that. I am putting to you it is one reason why people would go to live in Orange, namely there is a busy and substantial and attractive shopping centre in the Summer Street area?  
A. There is that.

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Q. If a person went to Orange and built a house, there is once again a prospect you would get some business from the fact of his building his house, isn't there? A. Yes.

Q. Would you agree that your business could be conducted in an industrial area? A. It is in an industrial area.

Q. It could be conducted in an industrial area more remote from the city than is your present location, couldn't it? A. That is possible.

10

Q. I suppose if somebody came along and offered you a sufficient inducement with a purchase price you would consider selling your land?

A. I have not given it a great deal of thought.

Q. If the price was attractive enough you would consider selling, I suppose? A. It could be.

HIS HONOUR: Q. Are you the managing director?

A. Yes.

Q. And it is a family company? A. Yes.

Q. No outside capital? A. No.

20

Q. Is your position close to the railway station and line there of some importance? A. We have our own rail siding. This is of considerable advantage to us.

Q. You would rail out quite an amount of goods, would you? A. No, it is mostly railed in, not out.

Q. Your outgoing supplies would go by road, would they? A. By road, by our own trucks.

Q. The bulk of your supplies coming in come by train, do they? A. Yes.

30

MR. MORLING: Q. You would agree on occasions people come to your store, do business with you, and then go to other parts of the commercial centre of Orange and do business there, wouldn't you? A. Yes.

Q. And vice versa? A. Yes.

Q. You would agree a person perhaps might come to town to transact some form of business in another part of town, and having done that might come to your store for another purpose, wouldn't you?

A. Yes, although our business is not an impulse business. They mostly come to see us. They do not come and buy the groceries and then pop down and buy a sheet of iron on impulse.

10 HIS HONOUR: Q. The bulk of your large customers would run accounts, would they? A. Yes, unfortunately.

Q. Approximately how many? A. Customer?

Q. Yes. Hundred? Fifty? A. Our accounts or several thousand. It is quite a large business. We have 27 employees.

Q. That includes the people that work in all sections, does it? A. In the saw mill.

Q. And truck drivers, and everybody? A. Yes.

20 MR. MORLING: Q. Within what radius of Orange would you draw your customers? A. We have customers in Sydney. As far afield as Newport, where a delivery was made last week. Two more this coming week.

HIS HONOUR: Q. That would mean the goods would have gone from Sydney to your place by train, and back to Newport, would it? A. No, this is timber which we mill further west and process in Orange, and send to Sydney. We would have a sphere of influence of possibly 100 miles around Orange.

Q. Even into Bathurst? A. Yes. We have a branch business in Bathurst.

30 MR. MORLING: Q. So far as your Orange business is concerned, would you think it would buy and large attract customers out to Molong? A. Yes. Further than that.

Q. That is further west than Molong? A. Yes.

Q. In effect you would draw people who would otherwise be drawn to Wellington, would you?

A. Yes.

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(continued)

Q. Do you think Orange is a busier and more attractive town than Wellington? A. I would not be alone in that opinion.

Q. So that it is a positive benefit to your business and your turnover that people are attracted to the commercial heart of Orange?

A. We set out to do this.

Q. And it is a positive benefit to your business that people who might otherwise be attracted to Wellington come to Orange? A. Yes, we do this. 10

Q. Why do you think a person equidistant between Wellington and Orange would come to Orange rather than go to Wellington? A. I would like to think we gave them better service.

Q. When you say "we", do you mean your business?

A. My business.

Q. Do you think they might also come to Orange because it is a bigger and brighter shopping centre?

A. Perhaps, but not as far as we are concerned.

I have frequently noted that people do come and shop with us when they have found they have other business to transact, possibly of a professional nature. People who come to see the doctors. The eye specialist. The pathologist. They come round and see us. 20

Q. I suppose they frequently come and bring their wives with them? A. Yes, and children.

Q. And might have travelled 30 or 40 or 50 miles from home? A. Yes, quite so.

Q. They would be the sort of people who would find a women's rest centre of particular benefit wouldn't they? A. Yes. We have thought of this and provided facilities in the business. We have a ladies room with toilet facilities and hot and cold water, and a separate room upstairs where they can rest quietly. The A.B.C. room we call it. Architects, builders and customers. If a woman came to us with a child, we would look after them. I would not want them going up the road. They might go to the opposition. 30 40

Q. Would you think the town of Orange generally - and by that I mean the commercial centre - I am

talking about the commercial centre which lies generally between the two streets I gave you before Byng Street and Moulder Street - would you think that that area has a greater commercial drawing power than say Wellington? A. Yes, it would have. It must have for a number of reasons.

Q. There is a good deal of commercial competition in your own class of business in Orange, is there not? A. Yes.

10 Q. Do you think the element of competition would bring people to Orange in your line of business?  
A. This could be so. We think that possibly in a way we control this competition because of our location in the area and the facilities we provide, and the size and volume of the business we do. In the building trade, though, apart from the local competition, which is local, we do receive a lot of competition from Sydney for the supply of goods to the Orange area.

20 Q. One reason why a person living in a situation where he could as easily go to the town of Wellington as well as Orange, might come to Orange, one reason that would bring him to Orange would be that if he comes to Orange he knows he can shop around in four or five places for builders hardware, isn't that so?  
A. Yes.

Q. And you would hope such a person, once he has come to Orange to do business, would continue to do so? A. We would set out to attract him to us.  
30 Not necessarily the town, but to us.

Q. The fact that you have four competitors, while putting you in competition with them, means that the customer in the first place is drawn to Orange where you have a good chance of getting his custom?  
A. I would not agree he is drawn to Orange. If he is after building materials we like to think he is drawn to us because of the service we provide, because in a lot of cases it is a service our competitors do not provide. We mould all our own  
40 mouldings in Orange. None of our competitors do. We make them ourselves.

Q. Do you sell bags of cement? A. Yes, and our competitors do.

Q. And paint? A. Yes.

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Re-Examined

Q. And you keep an eye on other people's prices, do you not? A. There is a list price that goes on.

Q. There would be many things that would be a straight out matter of commercial merchandise, isn't that so? A. They could buy in Wellington just as well.

HIS HONOUR: Q. The prices are fixed by the suppliers? A. Yes.

MR. MORLING: Q. Is everything you sell according to a fixed price? A. No. We make our own mouldings. There is no fixed prices on these. 10

RE-EXAMINATION

MR. McALARY: Q. I gather from what you have said to my friend you conduct a relatively efficient and cheap operation. An efficient operation? A. Yes. We have the reputation in the trade of being efficient.

Q. Am I to understand, when you said people do not buy sheets of iron on impulse, that you believe people come to you to buy goods? A. I believe they come to our organisation because of the merchandise we carry, the service we give them, and our efficiency. 20

Q. Do you advertise? A. Yes.

Q. So you set out to attract people to you yourself? A. Yes, we must do this to survive.

(Witness retired)

KEITH DONALDSON McCALLUM  
Sworn, examined deposed:

30

Keith Donaldson McCallum  
Examined

MR. McALARY: Q. What is your full name? A. Keith Donaldson McCallum.

Q. Where do you reside? A. 6B March Road, Orange.

Q. You are the owner of premises 76-80 Summer Street, Orange, are you not? A. That is right.

Q. In those premises you conduct an agency for the sale and servicing of British Leyland motor vehicles, do you not? A. That is correct.

Q. Would you mark on the plan Ex. B. the area which indicates the approximate location of your property, and shade it in and write "McCallum"?  
A. Yes.

HIS HONOUR: Q. Have you a service station too?  
A. Yes. Not petrol. Servicing and maintenance of the motor vehicles.

10

MR. McALARY: Q. You do not sell petrol? A. That is correct.

Q. You do not do smash repairs? A. No.

Q. But you do sell new motor vehicles? A. Yes.

Q. You doubtlessly accept trade-ins in those?  
A. Yes.

Q. That is almost a necessity, is it not? A. Yes.

Q. You would do service work on the vehicles you sell, wouldn't you? A. Yes.

20

Q. Or vehicles of the same manufacture?  
A. Yes, or general service.

Q. But you are not a petrol dealer? A. No.

Q. Have you a parking area for your clients?  
A. Yes, we have our own parking area for customers at the rear of the premises.

30

Q. Is there any parking problem in Summer Street in your area? A. Well it is restricted, but the nature of our business is we have to park our customers' cars on every occasion, so we have taken care of our own parking both front and rear, and inside.

Q. So anyone coming to you can put his car on your land? A. That is right.

Q. What are the premises or businesses to the east and west of you in Summer Street? A. The premises to the east of me in Summer Street is an undertaker, and to the west it is a petrol service station next-door to us.

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Examined  
(continued)

HIS HONOUR: Q. Does that go right to the corner?  
A. Right to the corner.

MR. McALARY: Q. Coming further east from the  
undertaker what businesses do you encounter?  
A. There is a small shop, a pie and cake shop.  
A couple of flats.

Q. Blocks of flats? A. Yes, and then the Roman  
Catholic school. Then it comes into another group  
of shops which run down to the corner. Sale  
Street. 10

Q. On the other side, opposite you in Summer  
Street, what is there along there? A. Starting  
from the corner there is a service station and  
then the Goodyear Tyre Company, then the fire  
station, then we have a butcher's shop, and from  
there to the next corner are two more service  
stations.

Q. So you have a lot of service stations up  
there? A. Yes.

Q. As to the car park in Little Summer Street,  
you are almost directly opposite it, aren't you?  
A. Yes, with no access directly. 20

Q. You have no direct access to us? A. No.

Q. But it is across the other side of the street  
from you, and from your premises you can see it?  
A. Yes.

Q. How frequently, if at all, have you seen  
vehicles parked in it? A. To be frank I have  
not seen any cars, and to be frank I am not real  
sure on where it is. It is not generally used or  
known at this stage. 30

Q. What effect, if any, do the two parking areas,  
the two council parking areas, the one off Anson  
Street and the other one off Anson and Sale Streets,  
have on your business? (Objected to - allowed).  
A. As I stated before we provide our own parking.  
Anybody wanting his vehicle serviced, or mainten-  
ance work done, or anyone wanting to purchase a  
vehicle brings his trade-in, and the car park has  
no advantage whatsoever. 40

Q. To you? A. To us.

Q. What do you think about the kerb and gutter down in McNamara Street and opposite the court house? A. It could have no value to us.

Q. And the child minding centre and proposed ladies rest rooms? A. Again people drive into our premises. It would have no value to us.

CROSS-EXAMINATION

MR. MORLING: Q. Your premises are on the main street of Orange, aren't they? A. Yes.

10 Q. Why are you there? A. It is of value to have as many cars passing us as we can, and see our products.

Q. You have chosen that situation because you like to be where people can see your business, and therefore are likely to come to it? A. That is correct.

Q. And the success or failure of your business depends on people coming to Orange to do business with you? A. That is correct.

20 Q. So that anything which might attract people to do business in Orange is of benefit to you?  
A. Yes, in proportion. We must keep in mind 99 per cent of the business would be done with people living in Orange. Already living in Orange.

30 Q. But anything which will bring people either in cars or on foot down to Summer Street at least puts you in the position where a small proportion of them may find their way up Summer Street to your frontage? A. Yes, keeping in mind again that people do not have cars repairs or buy them on impulse. When they want either of those things they come specially to us. We are not really dependent ... (interrupted).

Q. You have a franchise to sell B.M.C. products, do you not? A. Yes.

Q. And persons who do business with you may spend thousands of dollars in one transaction? A. Yes.

Q. You have a competitor in Bathurst who has a similar franchise, haven't you? A. Yes.

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(Continued)

Q. And you have a competitor in Wellington who has a similar franchise? A. Yes.

Q. You are in strong competition with the other franchise holders, aren't you? A. Yes.

Q. Therefore, as you said before, anything which might draw people to the Orange centre is a distinct commercial advantage to you? A. Yes.

Q. Of course, once a person buys a vehicle from you this might well determine him to keep coming back to your premises to have that vehicle serviced? 10  
A. Yes, that is a very strong influence for coming to us instead of going to Bathurst, for instance. The purchaser of a vehicle does require it to be serviced under guarantee, and this keeps them coming.

Q. You have had a lot to do with customers over the years, haven't you? A. Yes.

Q. A person, in your experience, would be reluctant to bring his family to Orange to have his car serviced and just wait at your premises for two or three hours whilst the service work was being done? 20  
A. Service work necessarily takes time and their practice is to leave the vehicle and go and do their shopping and then return and pick up the vehicle.

Q. Supposing instead of there being the existing town down towards the railway line there was a run down unattractive town down there; this would have an adverse effect on your business, wouldn't it? (Objected to - allowed.) A. I could not quite follow that question. 30

Q. You have just told me as we all know a person who wants his car serviced would bring it to your premises, and if he had two or three hours to wait would go somewhere else. Is that right?  
A. That is right.

Q. In your situation it would be highly likely he would go down town, isn't it? A. Yes.

Q. Don't you think one reason why a person might bring his car to your place to be serviced would be his knowledge that in the two or three hours he had to wait he could go down to an attractive town? A. Yes. 40

Q. He would be less likely to bring his car to your premises to be serviced if he did not have that facility near at hand, wouldn't he? A. That is right. It is the general facilities that brings him.

Q. By the way, there are parking restrictions limiting the parking to one hour in a great bulk of Summer Street, aren't there? A. That is correct.

10 Q. Is it your experience when a man comes to buy a car he will frequently bring his wife with him?  
A. Yes. It could be the whole family.

Q. And these people might come from many miles out of Orange? A. Yes, They would drive right on to the premises. It is a family show to buy a motor car, I feel.

20 Q. From your observations of your customers when they bring their cars to be serviced, do they frequently come to the premises with their wife and family and leave as a family and go down town and then come back later? A. Generally that is so. You can have occasions when they split up and go their different ways, but generally they leave together and come back together.

30 Q. Would there be occasions when there might be a whole day that was required to repair or service a vehicle? A. Yes. Most of the services are a routine service of our vehicles carried out at intervals of 6,000 miles, and this does normally take three-quarters of a day.

Q. Supposing a woman was down near the post office. Do you know that area of Orange? A. Yes.

Q. That is a very busy area, is it not? A. Yes.

Q. It would be much more convenient to her, particularly if she had young children - I will withdraw that. Do you know where it is proposed to locate the women's rest centre? A. Yes.

40 Q. Will you agree that proposed position would be much more convenient to women with young children than would be your premises if she wished to attend to her children? A. Yes, I would agree it is a desirable thing ... (interrupted)

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(continued)

Q. To the extent that a woman might see more advantage to her in having such a facility in Orange, there also would be an advantage to you because it might be one factor which would bring her to Orange, isn't that so? A. Yes, it would be again I would say of general benefit to me. Not special benefit but general benefit.

Q. Take the folk who live a few doors from you in the residential zone. Compared with those, the women's rest facility would be of much greater advantage to you than to them, wouldn't it? 10

A. You can get two answers to that. For instance, if you say it is of more value to the people behind me, the people who live opposite and across the road, there is no difference to the value of those two people, except they live one within this area and one out of the area. If you asked that question you are told you should not look at it individually, but as to what effect it has on your property. If we look at it, what effect a rest room would have in Orange, increasing the value in Orange, compared with our properties, it would only have equal value to my property as it would to the residential property. 20

Q. You are in business in Orange, aren't you?

A. Yes.

Q. And you are in an area which is zoned for commercial purposes? A. Yes.

Q. Just a little way from you there are people living in houses in areas zoned for living purposes, aren't there? A. Yes, both living there and people in the zoned area also. 30

Q. I am talking of people living in the area zoned for living purposes? A. Yes.

Q. There are many people living in those areas who carry on no form of trading whatsoever, aren't there? A. Yes.

Q. The fact that a woman from 20 miles out of town might be induced to come to Orange for a number of reasons, one of which is it happens to be an attractive town with a rest centre, is of some benefit to you, isn't it? A. Yes, that is correct. 40

Q. But no possible benefit to a person a block away in a living area? A. No, I think it could have value to them too. This amenity is making Orange more valuable. It is putting up all property rates. Apparently the Valuer-General thinks it is putting up residential rates quicker than it is putting up business rates.

10 Q. If it is of some benefit to them it is of more benefit to a person trading like you are in a commercial zone, isn't it? A. In proportion, yes.

HIS HONOUR: Q. You said to Mr. Morling a moment ago to something he asked you, about being of general benefit to you but that it was not of special benefit to you. Do you remember that? A. Yes.

20 Q. What distinction do you draw between those two notions? A. Of general benefit, I view it as of equal benefit to me whether I am in business or resident in the residential area. In other words, to put a rest centre in, this caters I feel for Orange as a whole, and is of general benefit to Orange as a whole, and not any more to me than if I was living there as a resident. Special benefit, if I was in business I would say "this is a good thing to do. I will get a return from doing this. I will improve my property". I am not getting a return by trading, but improving my property in value in things like that.

30 Q. You would expect a direct financial benefit, would you? A. Yes, I would feel if I was committed to pay for this thing I would see my way clear for gaining from what I was spending.

Q. Gaining not in a general sort of way from Orange becoming more prosperous, but gaining more directly? A. Yes.

Q. In the way of more customers? A. Yes.

Q. More revenue? A. Yes.

Q. Or less expenditure? A. Yes.

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## RE-EXAMINATION

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MR. McALARY: Q. You were asked a number of questions about people living in residences in your vicinity, whether those people would get less or more advantage than you from a women's rest centre, with toilet facilities, located somewhere down the town. Could you envisage situations where people have left their homes and gone down town and desired suddenly to use the rest centre?  
A. It could happen.

Q. I suppose in those circumstances they would get a definite advantage from it? A. Yes. 10

Q. In exactly the same way as anyone who happened to be on your premises and subsequently left them and went down town and used the rest centre would give you an advantage to the extent to which they were able to do it? A. Yes.

Q. You said people do not buy cars on impulse?  
A. Yes.

Q. I gather you mean they normally buy them because they feel they need them? A. Yes, they give it a lot of consideration. 20

Q. From your experience what sort of search or examination do they make before they make a particular choice? In other words, do they only go to one dealer or to others as well? A. They usually have a preconceived idea of the type of car they prefer, and then do a search around the town usually comparing trade-in values and getting various deals to consider.

Q. If you wished to increase your competition edge in selling new cars, what is the method you adopt in doing it? A. Well advertise mainly to draw attention to our cars. 30

Q. You want people to know you are there, do you?  
A. That is right.

Q. Once they have learned you are there, you anticipate if they are looking for a car, particularly a B.M.C. type car, they will come to you?  
A. Yes.

Q. Do you vary your trade-in prices? A. They are determined by what we consider is the local market value of them.

Q. If you want to increase your custom do you tend to lower them? (Objected to - rejected).

(Witness retired)

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Plaintiff's Case

Anthony Peter  
O'Malley

Examined

ANTHONY PETER O'MALLEY  
Sworn, examined, deposed:

MR. McALARY: Q. What is your full name?

10 A. Anthony Peter O'Malley.

Q. Where do you reside? A. Maple Street, Orange.

Q. What is your occupation? A. Estate agent.

HIS HONOUR: Q. You gave evidence in the resump-  
tion case, did you not? A. My father.

Q. Did you not give evidence too? A. I assisted.

MR. McALARY: Q. Do you know the Rugby Hotel.

A. I do.

Q. It is owned by a company known as Rugby  
Properties Pty. Limited, is it not? A. Yes.

20 Q. What is its location? A. It is located at the  
intersection of Lords Place and Moulder Street. The  
north-west intersection. It is at the southern end  
of the area.

Q. Look at Ex. A. Will you mark with a cross the  
location of it? A. Yes.

30 Q. Can you tell us something about the properties  
in the area? A. Yes, proceeding north along  
Lords Place the zoning in that area is all  
commercial, but immediately adjoining the hotel  
there are I think three dwellings from there on  
proceeding north towards the main part of the town  
they are all commercial properties, offices, motor  
garages; that type of concern.

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HIS HONOUR: Q. This property is right on the extremity of the commercial zone, is it? A. Yes.

MR. McALARY: Q. Can you tell us something about the other side? A. Opposite the hotel in Lords Place it consists for half a block, a distance of about 100 yards, of dwellings, entirely, proceeding north again. From there on there are properties of a commercial nature. State government offices. A motor garage, a council depot for the shire and an old Army drill hall on the corner used for other purposes now. 10

Q. Can you tell us something about the hotel itself? A. The hotel, the building, does not occupy much of the land. There is a reasonable amount of surplus land there. There is parking. I have counted, and I think the car parking area within the hotel was at its maximum at this time, 106 cars parked in that area.

Q. Are there ten garages? A. Yes, ten garages. and no parking restrictions, hourly restrictions, in the area around the hotel, and street parking is quite readily available. 20

Q. Is the street parking alongside the kerb or rear to the kerb. A. It is rear to kerb parking there. The hotel is quite a flourishing business. It is reasonably remote from the main commercial area of the town. It is on the edge of the commercial zoning. Beyond it proceeding outwards from the commercial zonings, it is all residential except that diagonally opposite there is a park, playing fields, and dog racing track. 30

Q. From your knowledge there is adequate parking both in the hotel grounds and in the immediate street, is that right? A. Yes.

Q. Without restriction? A. Without restriction.

Q. I believe the blocks in Orange, the town blocks are 220 yards. Is that right? A. Yes, ten chains to a block, 220 yards, that is correct.

Q. That would place this hotel from Summer Street approximately .. A ... from Summer Street it would be one quarter of a mile to the intersection with Lords Place. Eight blocks to the mile. 40

Q. That would mean it would be quite some distance over a quarter of a mile, from those two parking areas? A. Yes.

Q. Anson Street and Anson and Sale Streets?  
A. Yes. It is nearly half a mile. It is three-eighths of a mile from the Anson Street parking area.

Q. What do you say about the size of the hotel?  
A. It is mainly a bar trade hotel. There is limited accommodation, five doubles and four single rooms. There are three baths. A games room. The hotel does provide particularly for sporting people, and there is a shower room that is encouraged to be used by football teams. I presume it helps the bar trade.

10

HIS HONOUR: Q. That is conveniently situated to Wade Park, is it? A. Yes.

Q. Is there a football field on Wade Park?  
A. It is the main oval.

20

MR. McALARY: Q. People play on the football field ... A. ... and adjourn.

Q. Adjourn to the hotel? A. Yes.

HIS HONOUR: Q. Tennis is played too on Wade Park, is it not? A. Yes, there are tennis courts on the southern end of Wade Park.

MR. McALARY: Q. Have you the rate notice for this property? A. Yes. I have not them myself. I understand they are available.

30

Q. Is that the one? (Shown.) A. Yes, that is the property, 133 Lords Place.

#### CROSS-EXAMINATION

MR. MORLING: Q. Is the hotel leased? A. The hotel is conducted by Rugby Properties Pty. Ltd.

Q. Its financial success turns substantially on its turnover from the bar and also to a more limited extent from its turnover in the dining room and the accommodation, is that right? A. Substantially from the bar trade, yes.

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Q. Which means it depends for its success on people doing business at the hotel? A. That is correct.

Q. You yourself I think are an estate agent?  
A. That is correct.

Q. You have had something to do with the rentals in Orange, have you not? A. I do.

Q. And you are also a trustee of some properties which are leased? A. Yes.

Q. You would agree with me that the value of commercial premises depends substantially on what rental can be obtained for them, wouldn't you?  
A. Yes.

10

Q. And the rental which can be obtained for them depends in turn to a large extent on the turnover of the business being conducted on a particular site? A. The type of business on the site, yes.

Q. If it be a barber's shop or a cake shop or an hotel in any section of the commercial centre, the value of the property is to a large extent tied to the element of people resorting to the premises, isn't that so? A. Yes.

20

Q. And of course you would agree with me, wouldn't you it is quite impossible to break up a shopping centre in such a way as to isolate the activities being conducted in one section of it from the activities being conducted in another section of it? A. I do not think I would agree, no.

Q. Do you disagree with it? A. I disagree, yes.

30

Q. Let me take a barber's shop say in a side street, I put this to you as an experienced estate agent with knowledge of rental matters in Orange. Do you think it is possible to value such a business and the land upon which it is conducted without regard to what goes on in the surrounding Streets? A. No, I do not. If I could expand on what I mean by not agreeing with you. You propose you would not sectionalise the business area. I think that there are types of businesses that are graded in the various parts of a business area. Some require high pedestrian turnover past them,

40

and I do not think a barber's shop does.  
Specifically that is, a barber in that case.

Q. Do you remember being asked this question on the last occasion?

10 "Indeed, as an estate agent you would readily agree with me that it is quite impossible to break up any shopping centre, let alone Orange, into isolated blocks. You must look at it in a larger scale than that in order to determine what effect an activity in one block might have on another? A. I think that one flows from or to the other."

That would be still your opinion, would it?

A. Yes, I think it is graded through.

Q. Take the hotel; I suppose its prosperity depends substantially on the bar trade? A. Yes.

Q. And the customers might come from near and far?

A. Yes.

20 Q. A person who lives a block away would be living there for any one of a number of reasons, wouldn't he? A. Yes.

Q. Maybe because his employment is nearby? That could be one reason? A. Yes.

Q. It may be one reason amongst others, that he was attracted to where he is because there is a busy active shopping centre not very far away, isn't that so? A. Yes.

30 Q. And Orange is the biggest commercial centre west of Penrith until you get to Broken Hill, isn't it? A. Yes.

Q. Bigger than Wellington or Bathurst? A. Yes.

Q. And is a city which has in your experience grown rapidly in business activity in the last ten or fifteen years? A. Yes.

HIS HONOUR: Q. What about the rural properties around Orange? Are they all fairly prosperous, would you say? A. I would say so, yes.

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Q. The set back in many rural industries has not affected Orange? A. No, because of the type of rural industries there.

Q. Not many wheat growing activities? A. No, small farms and orchards and fat lamb raising.

MR. MORLING: Q. As an estate agent would you agree the greatest drawing factor in the commercial centre of Orange taken as a whole would be the Summer Street frontage? -

MR. McALARY: Would you explain what you mean? 10

MR. MORLING: Q. Would you agree with me if you went to Orange on any given day, particularly Fridays and Saturdays, you would find the greatest concentration of people in Summer Street? A. Yes.

Q. And the greatest number of shops are in Summer Street? A. Yes.

Q. And the greatest amount of trading activity, the busiest trading area is Summer Street? A. The agents sometimes maintain there is more turnover in Lords Place, but I think Summer Street would win. 20

Q. And you would agree that the provision of facilities for people who for any reason may be in Summer Street would add to the drawing power of Summer Street, wouldn't you? A. I would expect so, yes.

Q. To the extent people are drawn to Summer Street, some of them may also be drawn to businesses in side streets or back streets off Summer Street, do you agree? A. What I actually think is a lot of people that come in from outer areas - and I am not meaning the Summer Street shopper within town - the people who come from outer areas I think are equally interested in commercial areas of the town other than Summer Street, such as rural supply firms and produce firms. That type of thing. 30

Q. The great proportion of people who find themselves in Summer Street have come there from other streets or passed along streets in the commercially zoned lands of Orange, haven't they? A. Yes. 40

Q. And it is the fact in your experience that the physical presence of people in a street tends to give it a commercial value? A. Yes.

Q. So that, to take an example, the fact that Anson Street connects with Summer Street will in your experience mean many people will pass along Anson Street to Summer Street? A. Yes.

Q. For that reason it gives a commercial value to the Anson St. frontages, doesn't it? A. Yes.

10 Q. I suppose an exemplification of that is the fact that Western Stores have given themselves a trading frontage to Anson Street? A. Yes.

Q. So what is good for Summer Street commercially tends to be good for streets leading on to Summer Street? A. Yes.

HIS HONOUR: Q. All the main traffic coming west through Orange and coming from the west through Orange comes along Summer Street, doesn't it?  
A.. Mostly.

20 Q. There has been no diversion of the main highway? A. Not at this stage. There is a proposal.

Q. Have you served on the council? A. I have.

Q. How long ago? A. 1958 - 1961.

Q. Do you recall whether any appeals against valuations of properties in the commercial shopping area have been heard say since 1960 or thereabouts?  
A. I do not recall.

30 Q. You or your father could have been in them, probably, wouldn't you, if they had gone to court?  
A. That could be. I would know about them anyway.

Q. You do not think there have been any? A. I do not recall any appeals. Yes, when Mr. Body was there, when Orange was substantially re-valued, there were general appeals. I think it might have been prior to 1960. I think it might have been slightly before 1960.

Q. About 1958 or 1959? A. Yes.

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MR. MORLING: Q. Has it been your experience that commercial lands in Orange have been consistently selling at values above those placed by the Valuer-General? A. Yes.

Q. This would tend to affirm your view, the opinion you expressed earlier, that Orange is a very busy centre which is a great drawback, wouldn't it? A. Yes.

Q. What I asked you about was what is good for Summer Street being as good for Anson Street, and that would also apply to Sale Street, wouldn't it? A. Yes. I also hold the view the reverse applies.

10

Q. Sale Street and the other streets which connect with Summer Street? A. Yes.

Q. Going from Hill Street on the west to Piesley Street on the east? A. Yes.

Q. To a more limited extent the streets running parallel to Summer Street, and in the business zone, would also tend to have reflected in the value of lands in those streets the beneficial influence flowing from the prosperity of Summer Street, isn't that right? A. I think the benefit in those streets would be reflected from the overcrowding, the unavailability of sites in Summer Street.

20

Q. The position being that values rise to such an extent in Summer Street that people are pushed out to the side streets? A. It is tending to happen, yes.

Q. So that a person who happened to have a parcel of land zoned for commercial purposes, but not in Summer Street, has an asset which tends to be appreciated in value by the Summer Street activity? A. I think that being a commercial zoning does give the property an added value, yes, above a residential zoning.

30

Q. And the fact that Summer Street values become so high and land is unavailable leads to the commercial development going north and south? A. There would be a flow out, I feel, from Summer Street, yes.

Q. Take the Lords Place example; when development

does take place in the side street, this again has a reflex action on the Summer Street activities in the same vicinity, isn't that so? A. Yes.

Q. So to the extent commercial development takes place in Anson Street, this reflects back on the value of Summer Street nearby? A. I feel that if there is a lot of commercial development in these outer streets it will have a downward effect on values in Summer Street.

10 Q. You have got the element of competition all the time, I suppose, affecting values? A. Yes. It is limited though.

Q. Would you agree that trading activity in Summer Street is increased by the fact that there are the car parks nearby to Summer Street?  
A. No, I would not.

20 Q. Would you agree many people come to shop in their motor cars? A. Yes, I think it is much more convenient with the parking areas, but I do not think trading activities would have increased because of it.

Q. Do you know the Western Stores? A. Yes.

Q. They are a very experienced retailer, aren't they? A. Yes.

Q. They have a valuable parcel of land just off the main street, haven't they? A. Yes.

Q. For which they made provision for parking?  
A. Yes.

30 Q. Do you regard that as being of advantage to their stores? A. Yes, it would be.

Q. Do you think the other parking areas off Summer Street have an enhancing effect on business turnover in Summer Street? A. Yes, I see your point. Yes, I agree.

40 Q. Would you agree that if you had a situation where there were in the side streets and in the streets running parallel to Summer Street, streets which had poor footpaths and a rundown appearance and bad kerb and gutters, this would tend to break down the drawing power of the main street? A. Yes it would make it look a run-down town, I think.

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MR. McALARY: Q. You said previously in connection with the presence of people in Summer Street giving rise to additional people in the side streets, the reverse applies? A. Yes.

Q. What did you mean by that? A. I think if there is, and there probably will be, in Orange, considerable commercial development as time goes by in these side streets, I think that naturally the values in those areas will increase. The activity generally will be on the rise. I think that the improvement in a commercial area in a side street adjacent to or near to Summer Street, will help the areas in Summer Street nearby.

10

Q. You also said that a commercial zone gives an additional value to the land? A. Yes, it is an advantage to the land, I feel.

Q. This is whether it is used commercially or not? A. Yes, because of the fact that it is available for commercial use if needed.

Q. So it reflects itself in a higher value ... A. ... than the adjoining residential zoning or some other zoning.

20

HIS HONOUR: Q. How long ago was this local scheme adopted in Orange, approximately?

A. I think it was adopted about -

MR. MORLING: February 1967.

WITNESS: I thought it was earlier than that.

MR. McALARY: Q. You were talking about two different types of purchasing; two different retail situations. One where you have a lot of people who are buying, and you used Summer Street as the exemplification for this. In what way are the types of purchases they make different from those of people who are going to the outer areas to make purchases? A. I feel to be specific Myers, Woolworths and Coles would require to be in the heart of the commercial centre much more than a rural supply firm, or a produce merchant or somebody like that. The latter businesses do not require to be in the heart of the commercial area or have the same pedestrian traffic past them.

30

40

Q. That is because the people who go to the rural supply depots have a specific purpose in mind, is it? A. Yes, and because the pedestrian turnover through the other stores is much greater than that type of business.

Q. So far as the parking areas are concerned, you said you could see that the parking area attached to Myers was an advantage to Myers? A. Yes.

10 Q. And the Anson Street parking area would be of advantage of Woolworths because you could go from that into Woolworths? A. Yes.

Q. Do the same considerations apply when the areas are not contiguous? When you get some distance from them? A. I feel if there were no parking areas in Orange at all the turnover probably would not be quite as great. The walking that was done by motorists would be considerably greater, because they would have to park further away from these stores.

20 Q. A parking area tends to give a competitor an advantage on a piece of land contiguous to it? A. Yes, that is correct.

(Short adjournment.)

(Rate notice in respect of Gallaghers Properties Pty. Limited arising out of the Anson - Sale Streets parking area tendered and marked Ex. J.)

30 Q. Look at Ex. B. Can you mark in approximately where Gallaghers are? A. Gallagher store is there.

Q. Would you now mark in the Newmay Properties? Baldwin or Newmay? A. Yes.

Q. Baldwins shop is beside the middle laneway, is it not? A. The pedestrian access to the parking lot on the western side of it.

Q. Are there two separate properties for Gallaghers? A. I think there are two objections for Gallaghers.

Q. MR. McALARY: Yes, there are.

40 HIS HONOUR: Q. Street numbers 180 and 188? A. Yes. The 180 property is up here. (Indicating on Ex. B.)

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MR. McALARY: There is another property up here,  
is there not? A. Yes.

HIS HONOUR: Q. Have Gallaghers two properties  
which are not adjacent? A. Yes.

Q. What do Gallaghers do? A. 180 was a men's  
wear shop that he had leased, and 188, Mr.  
Gallagher conducts that business himself. A  
ladies wear shop.

HIS HONOUR: The witness has marked on Ex. B.  
Gallaghers' properties and what else? 10

MR. McALARY: Newmay and Baldwin.

FURTHER CROSS-EXAMINATION

MR. MORLING: Q. A large number of people would  
leave the Anson Street parking lot and proceed  
down to Summer Street past Mr. Baldwin's shop,  
wouldn't they? A. Yes. Along the walkway?

Q. Yes. A. Yes.

Q. This would be a distinct commercial advantage  
to that land, wouldn't it? A. It would be

Q. And would enhance its value? A. It would. 20

Q. So far as Gallaghers properties are concerned,  
they could if redesigned be so constructed as to  
allow direct access from the Anson and Sale Streets  
parking area into the shops, wouldn't they?  
A. Through to Summer Street, yes, with re-  
designing of the shop.

HIS HONOUR: Q. In each case? A. Yes.

MR. MORLING: Q. This again would be a distinct  
commercial advantage to each of those properties,  
wouldn't it? A. Yes. 30

Q. And would enhance the values thereof?  
A. Yes.

(Witness retired).

MR. McALARY: I have not available the rate  
notice of Newmay. I will tender that tomorrow  
morning at Orange, if I may.

I call for the two maps that are on exhibition in Orange which indicate the precise delineation of the local parking rated areas. Your Honour will recall in the minutes of the council of 4th December, 1969, by which the local area parking rates for Anson Street and Anson and Sale Streets are made and levied, the area which is charged with the rate is defined as being shown on a map which is on exhibition at the council chambers. My friend has not got those maps available but I would call for them, and I would seek leave to tender them in Orange tomorrow.

10

MR. MORLING: We will produce them and also copies,

MR. McALARY: All I really want to do is define the area on which the rate has been levied. Subject to that, that is the case for the appellant.

(Case for the appellants closed.)

CASE FOR THE RESPONDENT

ALAN BERNARD McDOWELL  
Sworn, examined as under:

20

MR. MORLING: Q. Is your full name Alan Bernard McDowell? A. Yes.

Q. Where do you live? A. 27 National Avenue, Orange.

Q. Are you the Town Clerk of the City of Orange? A. Yes.

Q. Have you held that position since 1956? A. Yes.

30

Q. I think on 25th November a meeting was held of the council, of which meeting I think some minutes are already in evidence? A. Yes.

Q. Were you present at that meeting? A. Yes.

Q. Was it a meeting of the full council? A. Yes.

Q. And the minutes - I am reading from them - say that the committee of the whole gave consideration to the carrying out of works and services; have you a copy of the minutes in front of you? A. No.

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(Minutes of special meeting of the Orange  
City Council held on 25th November, 1969  
tendered. Admitted without objection and  
marked Exhibit 4.)

Q. That is a minute of the special meeting held  
that day? A. Yes.

Q. To just explain this document, go to item 3  
on the first page headed "Improvements of part of  
the area"? A. Yes.

Q. Was that the third item of a recommendation to  
the council meeting which had been formulated by  
the committee of the whole? A. Yes. 10

Q. Were you present when that recommendation of  
the committee of the whole was discussed on 25th  
November, 1969? A. Yes.

Q. Do you have in Court the details and costs which  
are referred to in the minute? A. No.

Q. Was it in the form of a written document or an  
oral report, or what was it? A. A combination  
of both. 20

Q. Do you have it in Orange? A. Probably the  
Deputy Town Clerk's notes. They were not copied.  
and distributed as a formal report. He read from  
prepared notes of his own.

Q. Can you tell His Honour as best you can the  
matters which were discussed at that meeting?

HIS HONOUR: Do you mean "matters" in the sense  
of works and services? (Question objected to.)

HIS HONOUR: Your question was framed a little  
ambiguously. 30

MR. MORLING: Q. Can you recall the substance of  
what the Deputy Town Clerk's oral report was to  
the meeting? A. Yes, I think so. He talked about  
the costs of parking areas; the costs of kerbing  
and guttering works; there was a map of Orange on  
a board in the council chambers, which the aldermen  
discussed in relation to areas which would specially  
benefit parking areas and kerbing and guttering  
works. (Objected to.)

HIS HONOUR: Q. You have moved off the Deputy Town Clerk's report, Mr. McDowell. Try and confine yourself to that.

MR. MORLING: Q. Did he from time to time refer to a map on the wall? A. Yes.

Q. Can you recall what he said when referring to that map? A. Yes. He referred to the map and he referred to these works of kerbing and guttering, and the parking areas which were in existence, and a parking area which was proposed to be built.

10

Q. Did he indicate where that was proposed to be built? A. Yes.

Q. Where was that? A. Behind the City library.

Q. Where is that?

HIS HONOUR: Q. Is that one shown on Exhibit B? A. No, sir.

MR. MORLING: Q. I think it is somewhere down near Mr. Dean's premises? A. Yes.

20

Q. That is in Piesley Street? A. That is between Piesley Street and McNamara Lane, off the northern end of Summer Street; and there was a discussion of that proposed parking area, the existing parking area -

HIS HONOUR: Q. No. Try and confine yourself to the Deputy Town Clerk's report. A. I beg your pardon, yes.

Q. Not what other aldermen said about it. A. Yes.

30

MR. MORLING: Q. Did he say anything as to areas which might be rated? A. Yes. He said the council could decide or should decide which area or which areas obtained special benefits from any of these works; and, for the present, that is as far as I can recall the discussion.

Q. Can you recall if anything was said about a women's rest centre at that meeting? A. Yes, the women's rest centre was mentioned in relation to incorporating a child minding centre.

Q. Was this mentioned by the Deputy Town Clerk? A. No, that was mentioned by myself.

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HIS HONOUR: I suppose anything Mr. McDowell reported there is admissible.

MR. MORLING: Q. Was there discussion by and amongst the aldermen on the matters raised by the Deputy Town Clerk - A. Yes.

Q. - and by you? A. Yes.

Q. And then, as the meeting recommendation shows, was it resolved to call a special meeting of the council for 2nd December? A. Yes.

HIS HONOUR: Q. Before you leave the Deputy Town Clerk's report, Mr. McDowell, the minute says that he submitted details and costs of such works and services that had been carried out in the central business zone of the city in 1969; and similar details in respect of improvements which could be carried out in 1970? A. Yes, sir.

10

Q. What about these improvements that could be carried out in 1970? What did the Deputy Town Clerk report on that, under that heading?

A. Under that heading, Your Honour, the further kerbing and guttering works and footpath construction works, and the additional parking area. Those two I can recall.

20

Q. Those are the only ones you recall? A. At the moment, yes, sir.

MR. MORLING: Q. Was there any mention made by you or the Deputy Town Clerk at that meeting of a town improvement rate? A. Yes.

Q. Who mentioned that? A. The Deputy Town Clerk.

Q. What did he say in relation to that?

A. He said he had made inquiries to the Local Government Department on the works and services - (Objected to as hearsay and irrelevant.)

30

HIS HONOUR: Mr. McAlary, I understand one ground on which you were taking the decision of 24th December was that it was coloured by and grew out of the decision of the Land and Valuation Court upsetting the rating, the local rate imposed by the council, sought to be imposed by the council earlier that year. Surely, if you are going to invite me to say that this decision on 24th December

40

was prompted by, actuated by, rose out of that rebuff the council had received in that litigation, in fairness the council must be permitted to put before me other material that so appears that would tend to or might be relied upon to negative the inference you seek to draw.

10 MR. McALARY: As I understand the position, it has been held on frequent occasions by this Court that I seek to adopt a rate but cannot call aldermen to say what they think about it, nor can I call witnesses as to conversations with aldermen. Else-Mitchell, J. so held.

HIS HONOUR: I admit this subject to relevancy. It is tied up with a lot of other things which I do not wish to go into now.

(Last question and part of answer read.)

20 Q. Go on from there? A. And the works or services which were ordinarily carried out by the financing of the town improvement local rate and he gave instances of these works and services to the council. (Objected to.)

MR. MORLING: Q. As best as you can recall, can you tell His Honour what instances he gave, what he said? (Objected to.)

HIS HONOUR: I think you have got to get Mr. McDowell to stick as closely as he can to what was said by the Deputy Town Clerk on this subject.

30 MR. MORLING: Q. What did he say about the question of the town improvement rates? A. He said that he had been advised by the inspectors' branch of the Local Government department that town improvement funds may be administered to the department's satisfaction if the moneys were spent on improvements, and he gave examples.

40 Q. What did he say? A. Yes, sorry. Kerbing, guttering, footpath construction works and drainage works as had been proposed to be carried out by the council were works which the Department regarded as proper works for the use of town improvement rate moneys. The cleaning of streets was doubtful, street sweeping was doubtful. Street Lighting was regarded as a proper expense within a town improvement

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fund. The provision of parking areas was regarded as a proper exercise of town improvement moneys. The provision of toilet blocks was similarly regarded as acceptable. The provision of a women's rest centre would be regarded as satisfactory. The maintenance of roadworks would not be regarded as acceptable but works of construction or reconstruction would be regarded as acceptable.

HIS HONOUR: Q. Construction or reconstruction?  
A. Yes, sir. The re-building or reconstruction.

10

MR. MORLING: Q. Did you say anything about town improvement rates at that meeting, if you can recall? If you cannot, just say you can't remember? A. I don't think so, I think. I can't recall.

HIS HONOUR: Q. Am I right in understanding what you have said to date as being what the Deputy Town Clerk said he had ascertained from the Local Government department? A. Yes.

20

Q. And he was expressing what had been conveyed to him as the view of the inspector with whom he had discussed the matter? A. Yes.

Q. Did he indicate to the council meeting whether this had been a telephone conversation or whether it had been an actual interview? A. Visit. He said to the council he had been instructed to go to the Local Government department and he had spent a day with the inspectors of the Local Government Department inspectors on this matter.

30

Q. With the inspector or inspectors?  
A. Inspectors.

Q. A day? A. A day.

Q. In the course of that, when he was making that report to the council, did he say anything of the fact that he had checked it with the council's solicitor or had obtained any legal advice on it other than what advice he had received from the inspectors? A. No, sir.

MR. MORLING: Q. This discussion at this meeting, of course, was after the decision given by Else-Mitchell, J.? A. Yes.

40

Q. Was there in fact a meeting held on 2nd December? A. No.

Q. Was there a meeting held on 4th December? A. Yes.

HIS HONOUR: Q. Before you go to that meeting, was the Deputy Town Clerk's visit to the Local Government Department something that had been resolved upon by the Council or a committee of the Council? A. No, sir.

10 Q. Was it something you had directed him or instructed him to make? A. Yes, sir.

MR. MORLING: Q. Had you had any communication with the council's legal advisers before giving him that instruction? A. No.

Q. So far as the town improvement rate was concerned, was there any written report by any officer of council before the meeting on that matter? A. No.

20 Q. Was there any oral report made by any officer of council relative to the proposal to impose a town improvement rate? A. Prior to this meeting?

Q. At the meeting of 4th December? A. Would you tell me again what you asked?

Q. My previous question was this: was there any written report by any council officer before council at its meeting of 4th December? A. I beg your pardon? 4th December?

30 Q. Yes? A. I am sorry. Yes, there was a written report to the meeting of 4th December

Q. Do you have that there? A. By the Acting City Engineer.

Q. Was that the only written report? A. Yes.

Q. That is the one that is headed "confidential"? A. Yes.

HIS HONOUR: That is already in evidence as part of Exhibit H.

MR. MORLING: Q. Were you at that meeting? A. Yes.

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Q. Can you recall whether you said anything at that meeting on the subject of town improvement rate? (Objected to; allowed.)

Q. Can you recall whether you said anything about a local improvement rate, firstly? A. At the meeting of 4th December?

Q. Yes. A. Yes, I did.

Q. What did you say? A. There was a lot of discussion on this subject.

HIS HONOUR: Q. How long did this discussion take? 10  
Approximately. Ten minutes? Half an hour? An hour? Couple of hours? All night? What was it, in daytime or night time? When? A. It was night time, Your Honour, and this matter of the local rates took the best part of an hour and a half.

MR. MORLING: Q. May I withdraw the question. Was there discussion - and, Your Honour, I include in the question discussion by the aldermen as well as by officers, relative to the question of the council fixing a town improvement rate? A. Yes. 20

Q. Was there a discussion relative to the question of the council fixing an Anson Street parking local rate and an Anson-Sale Street parking local rate?  
A. Yes.

Q. Was there a discussion as to what, if any, areas should be included within either of those rates? A. Yes.

Q. Was there any discussion at all as to the question of evening up the rating portion arising out of revaluations previously made by the Valuer General? A. Never mentioned. 30

Q. Was that last subject ever mentioned at the meeting of 25th November? A. No.

Q. Was it mentioned at any meeting subsequent to 4th December? A. No.

Q. What was the total amount levied by the council under its general rate levy for 1969 - to the nearest hundred-thousand will be sufficient? May I assist you? Was it \$1,055,000 approximately? A. Yes. I was about to say ten-fifty-five thousand. 40

Q. That is the general rate levied? A. Yes.

Q. What was the total income of the council from all sources budgetted for in 1969? A. Do you include loan money in that, too? If you do, it was over - it was about two-million.

Q. Excluding loan moneys? A. Excluding loan moneys, which were about four-hundred-thousand, about \$1.5-million.

10 Q. And the rate, what was the total amount of the rate income to the council from the area comprised within the town improvement district, that is including the general rate levied?  
A. From this present town improvement district?

Q. No. We know it is the present town improvement district.

MR. McALARY: I don't really understand what you are asking.

HIS HONOUR: I am not clear. Ask it again, Mr. Morling.

20 MR. MORLING: Q. There is an amount of \$20,000-odd?  
A. Yes.

Q. Sought to be levied by the council in respect of the town improvement rate, is that so? A. Yes.

Q. What is the total amount of rates, that is including the general rate levy together with the town improvement rate and the two parking rates sought to be levied by the council on lands which are within the town improvement district, for 1969?  
A. \$308,500.

30 Q. And does that include these local rates?  
A. It includes the three rates before the Court.

Q. So that we get, from that, there was about something like \$280,000 under the general rate levy, is that right? A. Yes.

Q. Excluding the rates the subject of the present litigation? A. Yes.

HIS HONOUR: Q. When the Deputy Town Clerk went down to Sydney to spend a day with the inspectors -  
A. Yes.

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Q. - did he to your knowledge take with him a copy of Else-Mitchell, J.'s judgment? A. I would say that he did but I don't remember.

MR. MORLING: Q. Can I take you back to the meeting of 25th November for a moment. You have said earlier in evidence that the Deputy Town Clerk gave instances, and I cut you off and asked you to say what instances he gave; will you tell His Honour whether the Deputy Town Clerk referred to any other areas and, if so, what he said about them, any other local government areas? A. Yes. In his report back to the council? 10

Q. No. Well, firstly, on 25th November did he say to council anything about other local government areas of this State? A. No, he did not but I did.

Q. Did you say something? A. Yes.

Q. What did you say? A. I said that a town improvement rate of this sort that was mentioned by the Deputy Town Clerk was levied at Liverpool, that was one area we knew about; at Liverpool there had been a town improvement - (Objected to.) 20

HIS HONOUR: Q. No. Is this what you said to him? A. Yes, this is what I said. At Liverpool there had been a town improvement district defined, that had been defined several years earlier, which comprised the shopping commercial centre and a small part of industrial zoned land; and within that district, town improvement district, Liverpool Council had been levying a town improvement rate for several years; and I said I had phoned the Town Clerk at Liverpool and had asked him what purposes of expenditure the rate was used for and he said "Well, for 1969 there is a women's toilet block which is estimated, I think, at £40,000, our main expenditure in this year -" that was 1969 "- will be in the provision of services, rear service areas." I asked him what that meant and it meant "lanes giving service access to the rear of shops; and in the provision of parking areas and in festoon street lighting and in the provision of these standard flower pots you see in Hyde Park for the embellishment of the main road, of the main street": and I told the Council that. That was on 25th November. 30 40

Q. Had you known - did you make contact with the Liverpool Council, do you recall, before the Deputy Town Clerk went down to see the inspectors, or after? Do you remember the order of events?

A. No, I contacted the Liverpool Town Clerk after the Deputy Town Clerk came back from the Local Government department visit.

10 Q. Was that because - you had contacted them because of something the Deputy Town Clerk had said to them? A. It must have been, Your Honour, I think it was.

Q. You had no knowledge that they had done this, until you heard it from the Deputy Town Clerk, is that right? A. I had known Liverpool had levied a town improvement rate for some time earlier. I don't know how long but only vaguely.

Q. Did you put any of that material, that you have just mentioned to us, in any document at all? A. No, sir.

20 Q. You did not furnish any report to the Mayor or to any committee of council on this topic? Any written report? A. No written report, Your Honour, no.

MR. MORLING: Q. I think the council had in previous years levied an Anson Street parking local rate and an Anson-Sale Street parking local rate? A. Yes.

30 Q. And those levies have been the subject of the litigation in Baldwin's case and the K.C.R. case? A. Yes.

Q. In the resolution of 24th December in relation to the Anson Street parking area local rate, a reference is made to an advertisement in the Central Western Daily newspaper of 5th April, 1963. Do you produce a copy of the relevant sheet of that newspaper? A. No.

MR. MORLING: May I defer the tender of that until after lunch or tomorrow morning?

40 Mr. McALARY: Is it anything more than that? If it is, I would like to see it now, of course.

HIS HONOUR: Q. That is an area that this Court dealt with in Baldwin's case? A. Yes, Your Honour.

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MR. MORLING: May I defer until tomorrow morning the tender of the resolution of 1st February 1968, which needs to go in to make the whole resolution intelligible?

HIS HONOUR: Is that referred to in this minute?

MR. MORLING: The page is headed "55/69".

(Extract of Government Gazette dated 12th December, 1969 defining the Orange town improvement district tendered. Admitted without objection and marked Exhibit 5.)

10

Q. Can you recall whether at the meeting on 24th December there was any further discussion as to the areas to be made the subject of the parking local rates as distinct from the town improvement local rate? A. There was no more detailed discussion on the matter on 24th December.

Q. At any of the council meetings held in December, and we are dealing now only with the parking rates, was reference made to the fact that in past years parking rates had been levied in respect of the Anson Street parking area and the Anson-Sale Street parking area? A. Yes, there was.

20

Q. Was reference at all made to the fact that there had been litigation about those rates? A. Yes.

Q. Was any reference made to the outcome of that litigation? A. Yes.

Q. That the council had been successful? A. Yes.

Q. Was any reference made as to whether the areas to be rated should be enlarged or contracted?

30

MR. McALARY: Perhaps what we should have is what was said.

MR. MORLING: Q. Was anything said as to whether the areas to be rated should be changed and, if so, what was said? A. I can remember the aldermen who moved the motion that resulted in the council deciding to re-levy these two parking area rates, said "I believe that we should levy the rates on these two parking areas, on the same areas as were previously rated".

40

Q. And in fact are the two parking area rating areas the same as those which had been imposed in past years? A. Yes.

Q. Is there any difference between the town improvement district and the area sought to be rated in the litigation before Else-Mitchell, J.? A. Yes.

10 Q. What is the difference? A. The difference is that the whole of the commercial area - oh, I am sorry - the difference is that the service area proposed to be rated is less in area than the town improvement district, specifically the service area district excluded lands which, although zoned commercial, were occupied by residences, dwellings.

20 HIS HONOUR: Q. What was sought to do was to charge the rate that was the subject of the litigation before Else-Mitchell, J. on property, on an area that was commercial and retail in fact? A. In fact.

Q. Whereas your present approach to the matter is rather an area which is in fact so used or, if not so used, is so zoned? A. Yes, sir.

MR. MORLING: Q. I think the area subject to the rate before His Honour did not go south of Kite Street, is that right - I beg your pardon, the area which was proposed to be rated in the litigation before His Honour did not extend south of Kite Street? A. Yes, that is right.

30 Q. This has been included in the present town improvement district, is that right? A. Yes.

Q. May I now come to a couple of other matters. You, of course, know Orange very well, do you not? A. Yes.

Q. In your opinion, does the property of Gallaghers derive any special benefit from the parking area located to the south of it? A. Yes.

Q. Does the property of Baldwin's derive any special benefit from the parking area - (Objected to. Not pressed.)

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MR. MORLING: I will accept the answers given by Mr. O'Malley. I will not press this question.

Q. I want to direct your attention, Mr. McDowell, to the properties now within the town improvement district. In your view, do the properties within the town improvement district derive any advantage or benefit from the establishment or maintenance of the - establishment of the Sale Street and Anson Street parking areas, being a benefit greater than that obtained by properties outside the town improvement district? (Objected to. Allowed subject to relevancy.) 10

Q. So far as the Anson Street parking area is concerned, in your opinion do all the properties within the town improvement district receive a benefit from that parking area, over and above that which may be received by properties outside such district? A. Yes.

Q. Why do you say that? A. I say that because without the parking areas businesses will stultify; and this has been proven in the case of the Anson Street parking area, which was the matter concerned with the Baldwin appeal. That side of Summer Street, which is the northern side of Summer Street between Lord's Place, and Anson Street, prior to the building of the parking area, had relatively few people using the pedestrian way, using the footpath, even on the busy shopping days; and it was a matter of general comment in Orange and it was attributed at the time - (Objected to.) 20 30

HIS HONOUR: Q. You cannot give general comment. Your views? A. All right. Then the parking area was built and it is now one of the busiest footpaths in Orange; and, of course, following the parking area, came Coles and Woolworths.

Q. On that side? A. Yes, sir.

MR. MORLING: Q. Do you think the presence of firms like Coles and Woolworths has any consequential effect in other areas zoned commercial? A. Yes, there is an interchanging of customers from shop to shop. 40

HIS HONOUR: Q. Were not Coles and Woolworths there before? Were they not in Orange before? A. They were in Orange before, Your Honour -

Q. But they moved? A. - but they got next to the parking area.

MR. MORLING: Q. I ask you the same question as before, now in relation to the Anson-Sale Street parking area. Do you hold any view whether the properties within the whole of the town improvement district obtain an improvement from that area over and above the benefit obtained by properties outside such district? A. Yes. Why do I say that?

10 HIS HONOUR: Q. For much the same reason.  
A. For much the same reason.

Q. What about the other one? What about the parking area in Little Summer Street? A. Little Summer Street, this falls under a different concept. Council bought this land -

20 Q. You have to tell us at the moment why you say what significance it has to this area? A. At the time the land was bought five or six years ago, Your Honour, it was accepted at that time that there would be egress from the land - (Objected to.)

Q. I would like to know whether Mr. McDowell regards this area or the existence of a parking area, actual or potential, there, as affording a benefit upon land in the area we are discussing, over and above that conferred upon other portions of the municipality. A. Yes, sir.

Q. What is your answer to that? A. My answer is that it does have that advantage.

30 Q. In What way? A. Because if it becomes used as it is proposed to become used, for all day parking - the council gets complaints and has had complaints from large numbers - from shop owners with employees -

40 Q. You cannot tell us about complaints. I take it this is the point you want to make: that employees working in Summer Street and in the other commercial areas of Orange are inclined to take up valuable parking spots in areas that you think ought to be made available for a reserve for shoppers and the like? A. Yes, sir.

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Q. That parking area up off Little Summer Street will ultimately, is now or will in the future be valuable to take motor vehicles driven in by employees? A. Yes, sir.

Q. Is that the point you want to make? A. Yes, Your Honour. An additional, if I may, was this: at the present time access to this land is difficult but the council has negotiated a right of way over a B.P. service station in Summer Street so that people can park in this Little Summer Street area and walk over the right of way across the B.P. service station direct into Summer Street. At the present moment they have to walk back through Little Summer Street, into Hill Street and then back into Summer Street.

10

Q. Will that mean some of the vehicles go into the parking area and out of it through the service station? A. No, not the vehicles but they can drive vehicles down Little Summer Street, park them, and then walk across the B.P. service station.

20

Q. Is that a factor you mentioned, the lack of a shortcut for pedestrians, one of the reasons why it is used very little at the present time? A. Yes.

Q. Do you agree it is used practically not at all now? A. Yes, sir.

Q. You agree that is so? A. Yes.

Q. You have not put any surface down on it as yet? A. No. It has been stripped. That is to say, the vegetative matter has been stripped off and what is left has been compacted into a reasonably hard standard but it would not be an all-weather surface. It has to be properly surfaced.

30

Q. Did you acquire this land from one owner or from a number of owners? A. From two owners, I think, Your Honour.

MR. MORLING: Q. There are a couple of matters in connection with that. Is the women's rest centre proposed to be established in Anson Street? A. Yes.

40

Q. That is between the parking area that comes down from Sale Street, is that right, and Anson Street? A. Yes.

Q. And it is proposed to furnish facilities for mothers with children, children and their mothers, is that so? A. Yes.

10 Q. In your view would that benefit the whole of the town improvement district? A. Indeed; and as distinct from facilities provided in the shops themselves, this particular facility is proposed to include a children's enclosed play area, a feed and change room -

HIS HONOUR: Q. For children? A. For mothers and babies; a tea room, that is a room where tea can be made; a women's lounge rest room; a pram parking area and, amongst the ablutions, there is foot baths provided.

Q. A foot bath? A. Foot baths, foot bathing.

20 MR. MORLING: Q. How would you compare that advantage to the area zoned commercial and within the town improvement district, with the advantage of such a facility to the areas outside that district? A. I think almost - I think the preponderant use of this facility will be by people visiting Orange, travelling into Orange from outside.

HIS HONOUR: Q. Tourists rather than shoppers? A. Shoppers, but shoppers from the country.

30 MR. MORLING: Q. Finally, so far as the kerbing and guttering is concerned, may I ask you some questions about that? A. I am sorry, if I may go back and additionally, the child minding centre, which I had forgotten to mention.

Q. Finally, about kerbing and guttering, would you express a view as to the relative advantage of that to the town improvement district and the area outside such district? A. Well, these are basic essential works if the commercial centre is to remain efficient and attractive.

40 HIS HONOUR: Q. Is not this work really repairs and renewals, though? A. It is construction in many cases.

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If it were classified as repairs and renewals -  
A. No, sir. There is a distinction there. If I might be quite clear on this, there are three categories which are in point. The first is construction, that is entirely new. The next is reconstruction, that is re-building absolutely; and there is maintenance; the works we propose to do are not maintenance.

MR. MORLING: Q. I think His Honour will see that the gutters consist of, substantially, very large bluestone blocks. 10

HIS HONOUR: I have seen those in the photographs.

Q. You say it is not repair and renewal? A. No, sir.

Q. You say it is reconstruction? It has more a resemblance to a performance more with the qualities of original construction than repairing and renewing something that has become deficient?

A. Yes, sir. We have to take these bluestone sets out altogether and replace them with concrete works.

MR. MORLING: Q. Do you say that with bluestone you get more rennelling and mortar marking and weeds growing within the grooves, and the like? 20

HIS HONOUR: Q. We have had that already. One short question before I adjourn; I notice the Mayoral minute of 4th December, 1969, which is quite a shortone. Do you know the text of it? Have you a copy of it in front of you? A. No, I have not a copy but I know it.

Q. That seems to draw a distinction between the improvement works on the one hand and works and services which would be of special benefit to that portion of the area, I think. Is that the view? Is that an interpretation of that document that you subscribe to? (Objected to.) I will not press it if counsel find some difficulty about it. I will ask another question. Don't answer this for a moment until counsel have had an opportunity to object. Did you take a part at all in the preparation of that Mayoral minute or did you contribute at all to the thinking that went into it or the wording of it? A. To that one that is referred to the council of 4th December? 30 40

Q. Yes. A. Yes, sir I did.

Q. You prepared it for the Mayor, did you? A. Yes.

(Luncheon adjournment.)

UPON RESUMPTION:CROSS-EXAMINATION

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A. B. McDowell

Cross-  
examination

MR. McALARY: Q. Have you a copy of the report of Mr. Clements dated 2nd December before you? A. Yes.

Q. Would you turn to p.5 of that? It is part of Exhibit H, the engineer's report. If I understand that correctly, Mr. McAlary, the figure there of \$41,903 - do you see that? A. Yes.

10 Q. That is the sum total of the kerbing, guttering and pavement work set out in the preceding four and a half pages? A. Yes.

Q. In April or in the rate which was struck in April, the figure which was proposed to be expended on that type of work was \$15,860 - you can take that as correct? A. Yes.

20 Q. Did you know how the extra came about?  
A. I think the programme of \$15,000-odd was a partial programme in the same way that the \$3,309 mentioned in the estimates of the Orange town improvement rate is a partial programme.

Q. Drainage, storm water drainage, is the next amount, the next main item there on that page of the report, isn't it? A. Yes.

Q. That is \$72,500? A. Yes.

Q. Whereas in April it was about \$32,000. If you look at the April estimates you will see it is \$32,300? A. Yes.

Q. So that is a \$40,000 increase.

HIS HONOUR: More than double. What is the question?

30 MR. McALARY: Q. Perhaps I can ask you to do this: if you add those three figures - by the way, in April there was no figure for road reconstruction, was there, which you see is \$30,000 there in Mr. Clements' report? A. No, I don't think there was.

HIS HONOUR: Mr. McAlary, I am not clear about these items we are now looking at. I have not looked at this report for some time. Is this work sought to have been done in 1969?

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A. B. McDowell

Cross-  
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MR. McALARY: No, it is said to be done - it is part of a programme, as I understand the report.

Q. Mr. McDowell, if you add those three items together you will see they come to \$145,000?

A. Yes.

Q. If you add to that the items which are said to be recovered by these rates of \$28,000, the resultant figure is \$173,000? A. Yes.

Q. Do you think it is sheer coincidence that as a result of this report plus these rates, exactly the same sum will be levied on the business area as would have been levied in the earlier rate?

A. I don't think there is any connection at all.

10

HIS HONOUR: It was to be levied over two years or in one?

MR. McALARY: Basically in one, because \$28,000 in 1969 and the balance for 1970.

Q. You do not think that the fact that the adding of these figures comes to the precise figure of the local area improvement rate is precisely in question - is precisely coincidence? A. In the first place it is -

20

Q. Firstly, do you think it is coincidence it came out that way? A. In the first place it is not a precise comparison and, in the second place, if there is any similarity in totals, it is purely coincidental. They are different classes of things, perhaps, under the two different headings.

Q. I gather, Mr. McDowell, you are familiar with His Honour's judgment, that is Else-Mitchell J.'s judgment? A. Yes.

30

Q. I gather you had studied that before you embarked upon this second course of rates? A. Yes.

Q. I gather you gave careful consideration to it?

A. Yes.

Q. You appreciate from reading it that one of the reasons that His Honour decided the council had been motivated by relevant considerations was the material which appeared in some of the earlier Mayoral minutes? (Objected to.)

40

MR. McALARY: I will read the whole of the section, Exhibit G, halfway down p.4:

"As the challenge to this rate was based in part upon the pursuit by the Orange City Council of an irrelevant purpose or the consideration by it of extraneous factors - "

A. Excuse me, I have a different print. I am looking at the third last paragraph. Is that where you mean?

10 Q. I will show you where I am working from. (Approaches) You have a copy of it in type?

A. Yes.

"As the challenge to this rate was based in part upon the pursuit by the Orange City Council of an irrelevant purpose or the consideration by it of extraneous factors, it is necessary to look at some of the events which preceded the passing of the resolution making the rate in May 1969 and which appear from minutes and records of proceedings of the council which were  
20 tendered in evidence".

You would appreciate there His Honour is using the minutes and reports which were tendered in evidence. Then he goes on to the objection point:

"As I have said, objection was taken to the relevance of these minutes and records of proceedings, but they are clearly admissible in view of the grounds upon which the  
30 appellants assert the invalidity of the resolution making the rate (cf. Tooth & Co. Limited v. Lane Cove Municipal Council, (1965) N.S.W.R. 628. at p.631.) It appears from this material that at some time in November 1968 the Valuer General had completed the sex-tenennial revaluation of lands in the City of Orange and was about to furnish to the Council a valuation list revealing considerable  
40 increases in the unimproved values of residential lands but small and even minimal increases in the unimproved values of lands in the business centre of the city. The finance committee of the council in a report to the council expressed concern at these new valuations and recommended that objections

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should be lodged by the council 'against the values in the business area so that on adjusted values there would be no reduction of rates in the business area at the expense of rate payers in other areas';"

That, of course, is a quote from the finance committee's report, isn't it?

"it was also recommended that the council should seek to postpone the use of the new valuations, and to levy rates for 1969 on the footing of the old valuations, a course which runs counter to Part V of the Valuation of Land Act."

10

That, of course, is taken from the minutes, isn't it? A. Yes, that is not correct, anyway.

Q. "Early in January 1969, after negotiations and discussions with officers of the Department of Local Government and the Deputy Premier, the Hon. C.V. Cutler, about the effect of the valuations, the Mayor, in a minute which was adopted by the council, referred to the effect of the new valuations and drew attention to 'the problems of mitigating the fluctuation of rates which must follow as a consequence of fluctuating land values'."

20

That is another quote from the Mayoral minute, isn't it? A. Yes.

Q. "This minute stated that because values of urban farm lands had increased by 246-per cent, those of residential lands by 176-per cent, and those of the principal business premises by only thirteen-per cent, it was 'obviously impossible to levy these rates in 1969 so that any movement in rates - either by way of increase or decrease - would be consistent with previous rating levels'."

30

That is another quote from the minute, isn't it? A. Yes.

Q. "The minute then referred to the fact that the estimates had been severely pruned and the rate in the dollar reduced in order to

give relief to the residential areas and the urban farm lands but 'the reduced rate applied also, as an operation of law, to the business area where in most cases valuations remained relatively static'."

That is another quotation from that minute, isn't it? A. Yes.

Q. This is the minute of 9th January? A. Yes.

10 Q. "It went on to regret that rating had to be an arithmetical procedure of taking the rateable value and multiplying it by a common rate in the dollar, a procedure which it criticised because - "

I do not think I need read more. I suppose you will agree that since cessation of the action of the council and the factors which influenced it were substantially governed by reference to the reports and minutes which had been placed before him? (Objected to.)

20 HIS HONOUR: You can ask the witness is that the interpretation he places upon it.

MR. McALARY: Q. What do you say to that?  
A. Yes, I agree.

Q. Tell me, you had no reports prepared, no written reports, prepared prior to the making of this rate; that is correct, isn't it?  
A. Mr. Clements' report is the only written one.

Q. There was no report by yourself dealing with the making of the rate at all? A. No.

30 Q. The whole of this material was done by oral report? A. Yes.

Q. I suppose you will agree it was a fairly important matter? A. Indeed.

Q. It was not normally your practice to proceed by oral report in relation to important matters, was it? A. Yes, in circumstances where I am not the only one advising.

Q. Would it be that the reason for proceeding by oral report on this occasion was to ensure that there was no other material available? A. No.

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Q. Did you have any legal advice in November?  
A. Yes.

Q. Did you have a meeting of the council at which  
Mr. Morling was present in November? A. Yes.

Q. And obtained advice? A. Yes.

HIS HONOUR: Q. Oral advice, I take it? A. Yes,  
Your Honour.

MR. McALARY: Q. So you were not in any difficulty  
as to the advice; you were not without adequate  
advice, were you? A. No. (Disallowed.)

10

Q. As you saw it, you were not without adequate  
advice? A. Yes.

Q. You did not seek to embody the advice given, in  
any reports? (Objected to; allowed. Not pressed.)

HIS HONOUR: I do not think it will assist me to  
decide the legal issues in this case.

MR. McALARY: Q. The fact is, of course, that  
there was no agreement at the council about this  
matter? A. About which matter? The town  
improvement rate?

20

Q. About the town improvement district, certain  
aldermen had their dissent recorded? A. Yes.  
(Objected to; allowed.)

Q. That is right, isn't it? A. Yes.

Q. It appears on the minutes? A. Yes.

Q. I gather the discussion about the matter took  
some hours? A. In the aggregate.

Q. Then, Mr. McDowell, there is another matter I  
would like to ask you about: when you were con-  
sidering dealing with this town improvement rate,  
you have indicated you had already considered this  
judgment of His Honour's? A. Yes.

30

Q. And you decided to proceed by passing a rate  
which embodied a conglomerate of different items?  
(Objected to.) A. Yes.

HIS HONOUR: The decision was made. That puts it more precisely.

MR. McALARY: Q. A decision was made to proceed by passing a rate which combined the conglomerative items? A. A number of items.

Q. Three disparate items? A. Three separate items.

Q. And quite disparate, aren't they?

HIS HONOUR: Separate is enough.

10 WITNESS: I do not think "disparate" is right. They are not the same thing.

MR. McALARY: Q. Did you give any thought as to what His Honour had meant - (Objected to.)

Q. Was any thought given at the council meeting - (disallowed.)

HIS HONOUR: You can ask what was said, if you like.

MR. McALARY: Q. Did you raise at the council meeting what His Honour had said about this matter?  
 20 A. No, I did not, but his Honour's judgment had been copied and copies sent to each alderman and - let me finish if I may - and each alderman had been made aware of the exact wording of s.121 in its entirety; each alderman had been invited to discussion of the report earlier which was mentioned, direct with its council; that was prior to them getting down to this meeting of 25th November, some time earlier; and so I think all the relevant information was in the possession of each alderman.

30 Q. Did you point out to them - A. And, further, it was at the meeting, as I have mentioned before, of the council, that the council was informed - I will repeat it in case you are in doubt about it - that the council was informed by the Deputy Town Clerk's verbal report, having gone to the Local Government department, of the items which the Department -

HIS HONOUR: Q. Mr. McDowell, you have told us this before, so you cannot bring this in again.

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MR. McALARY: It is not an answer to the question.

HIS HONOUR: Q. You are not an advocate. Mr. Morling will be making these points in due course.

MR. McALARY: Q. Did you point out to the council or was it at any stage pointed out to the council that His Honour has said in reference to the objection raised at the conglomeration of works in a single rate, that there is no reason why the objection could not be overcome by a series of successive resolutions being passed, each authorising a separate work or service and defining the area to benefit from that work or service?  
A. That had been pointed out to the council when the copies of His Honour's judgment, in the distribution of the copies.

10

Q. Was it specifically pointed out at that meeting? A. It was mentioned at one of the meetings.

Q. Anyhow, that course was not followed? A. No.

HIS HONOUR: What page is this?

20

MR. McALARY: The page I was reading from in the photostat is p.10 and it is the middle of the second paragraph there.

Q. You see then His Honour's judgment continues to deal with different matters that appear to be significant to him in relation to - you can't find the place? (Approaches.) A. No. This is at the end of it, is it?

Q. Towards the end, yes? A. This bit here?

Q. You see His Honour then dealt with a number of matters that appeared to him to be significant, Mr. McDowell? A. Yes.

30

Q. And one of them was - I draw your attention to fifthly:

"Fifthly, some of the works by their nature are not calculated to serve or benefit the whole of the defined area because similar works have already been provided in parts of that area,"

and then he gives an illustration of the women's rest centre in Robertson Park near Byng Street and Lord's Place,

"which is of benefit to the lands in that part of the defined area so that a new women's rest centre in Anson Street could hardly be of any benefit to that locality;"

that is the Robertson portion? A. Yes, I see that.

10 Q. You knew that portion of the judgment at the time this was being dealt with? A. Yes.

Q. You appreciate that in His Honour's finding there, he had clearly and distinctly said that the Robertson area where the existing rest centre was could not benefit from the rest centre which was proposed? (Objected to.)

HIS HONOUR: You can ask whether that was specifically put.

20 MR. McALARY: Q. You appreciate that is what His Honour did? A. Yes.

Q. Did you put that to the council? A. Yes.

Q. You appreciated of course that you are still seeking in the town improvement rate to recover part of the cost which has been incurred in relation to the rest centre? A. Yes.

30 Q. And you are seeking to impose it, that is that portion of the cost which has been incurred in relation to the rest centre, upon the whole of the area including, for example, the area near Robertson Park? A. Yes.

Q. You appreciate from the same paragraph in His Honour's judgment that he took the view that shops in the vicinity of Anson Street car park could not possibly benefit from a proposed car park in the Piesley Street area at the back of Mr. Dean's premises? A. Whereabouts is that? (Objected to.)

MR. McALARY: Perhaps it can be read:

"in illustration, there is a women's rest centre in Robertson Park near Byng Street

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and Lord's Place which is of benefit to the lands in that part of the defined area so that a new women's rest centre in Anson Street could hardly be of any benefit to that locality; and there are two parking areas off Anson Street, north and south respectively of Summer Street, which were financed by the levy of local rates on adjoining properties, and those properties are not likely to benefit from the new parking area proposed near Piesley Street and McNamara Street".

10

HIS HONOUR: (Disallowed.) I think it is getting into an area where Mr. McDowell might be at some disadvantage in debating the subtle legal point that you are on now.

MR. McALARY: Q. Anyhow, Mr. McDowell, it comes down to this, that you deliberately, or the council deliberately decided to adopt the method of seeking to lump together a number of works and services and to raise a rate over the whole area?  
A. Yes.

20

Q. You did say in your earlier evidence that the Deputy Town Clerk submitted details of costs of such works and services that had been carried out in the central business zone of the city in 1969; that appears in the minutes of 25th November?  
A. Yes.

Q. Could I just ask you some questions about that. Firstly, during 1969, some work had been done in McNamara Street and also in Byng Street? A. Yes.

30

HIS HONOUR: What work are you talking about now? What sort of work?

MR. McALARY: Kerbing and guttering and pavement.

HIS HONOUR: These are the two sections that are marked with the green markings in Exhibit B?

MR. McALARY: Q. Yes. When was that work done?  
A. I think August.

Q. About August? A. Yes.

Q. It was carried out by the council? A. Yes.

40

Q. And charged to the general rate fund?

A. Yes.

Q. And the work that was done by way of maintenance of the car parking areas, on what fund was that charged? A. General fund but -

HIS HONOUR: Q. Do you want to qualify that?

A. I just want to add that these were provisional places for where those works were to be charged to, (a) until the service rate had been decided or (b) whatever other action the council took about this rating for 1969 had been resolved.

10

MR. McALARY: Q. You have to pay the men's wages as they go along? A. Yes, but it is normal practice, you see.

Q. Did you in fact draw your cheques on the general rate fund? A. Yes.

Q. For the maintenance of the car park and for the carrying out of the work of kerbing and guttering? A. Yes.

20

Q. I was going to ask you also: there are certain charges made for rates on parking areas; against what fund was that charged? A. In 1969 it was charged against these local funds.

Q. What, were there established credits in the local funds? A. Yes, the local funds were there at the end of December 1969, that they owed these amounts to the general fund or the water fund or the sewerage fund or whatever the constituents of the rates were.

30

Q. As I understand it, these are simple debits which are made for the guidance of the council, debiting one fund and crediting another?

A. In the end there must be a cheque transfer.

Q. Is that the way you have done this, by debit and credit entry? A. Yes.

Q. When you say "There must be a cheque transfer", I gather that means that you do not draw a cheque for the specific sum in question but you draw a cheque for a balance? A. You draw a cheque for a supplement of a number of sums, say a quarter, as between that and another fund, transfers, whatever funds we have got.

40

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Q. You make a series of debits and credits?

A. Yes.

Q. You might have a number of credit items in favour of the general fund and a number of debit items; debit those items to the local fund? A. Yes.

Q. And then you have the other side, credits to the local fund and debit to the general fund? A. Yes.

Q. You add the two owed, is that right?

A. Something like that.

Q. And get a balance; and you draw a cheque?

A. Yes.

10

MR. McALARY: Q. Is it correct that the footpath was replaced in McNamara Street? A. The term we use is "reconstructed".

Q. There was an existing bitumen footpath?

A. Yes.

Q. You pulled up the bitumen and put down -

A. Concrete.

Q. In lieu of it you put down concrete? A. Yes.

Q. And you did the same with the kerbing? A. Yes.

20

Q. You pulled out the kerb and you put concrete kerbing in lieu of it? A. Yes.

Q. You did say to my friend that on the evening of 4th December, 1969, when the councils considered the Town improvement rate there was no discussion of any attempt to even up the ratings which were imposed on the different types of areas in the city of Orange? A. Yes.

Q. There had been discussion on that before of course? A. No.

30

Q. Never any discussion about it following the mayor's earlier reports? A. No.

Q. You say there was never any discussion about it at any time? A. No, and I can give you a reason for it. It would be illogical because the -

Q. I was not asking for a reason for it. You have told Mr. Morling that the total amount which you seek to recover from the town improvement district, including, being the summation of the general rate, the two parking rates and the town improvement rate, is \$308,000? A. From the business area; with all rates together 308,500 I think I said.

Q. And you said that includes 28,000 being the rates currently - A. Yes.

10 Q. I gather therefore the general rate is 208,000 of this district? A. I have not worked that out.

Q. I have taken off 28,000 from - A. General, water, sewerage, gas loan, special rates, all combined together is about \$280,000.

Q. You had previously sought to add to that a local area service rate of 170,000? A. Yes.

Q. Making \$450,000? A. Yes.

HIS HONOUR: Q. You call it a local area service rate? A. No, a service area local rate.

20 Q. This phrase "service area" is not one you got out of the Local Government Act, is it? A. No. It is used in another area where they levy a similar rate and we use the same terminology; that is Parramatta Council and they levy five of them.

MR. McALARY: Q. The point is originally for the year 1969 you were seeking to raise 450,000 from this area? A. Yes.

30 Q. You have expressed some views to Mr. Morling about the advantages which kerb and gutter in Orange confer upon what you have described as "business centre", you remember expressing those views just before lunch? A. Yes.

Q. I would like to ask you a little bit more about that matter. You appreciate that in this litigation we are not concerned with kerb and gutter generally but kerb and gutter in McNamara Street and in Byng Street, you understand that? A. Yes.

Q. Is it your view the piece of kerb and gutter which has been done in McNamara Street confers a

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distinct recognisable benefit on every piece  
of land within the town improvement rate?

A. Yes, if it is the forerunner of a programme.

Q. What I am trying to find out, you say for the  
year 1969 the work in McNamara Street conferred a  
distinct benefit on every piece of land in the  
town improvement area? A. If it is the  
forerunner of a programme.

Q. If you take that qualification out, you agree  
it does not confer - A. If there is no more  
work to be done it would be a futile piece of  
fragmented work. 10

Q. It amounts to this, take Mr. McCallum or the  
Rugby Hotel, it could not be said that they get  
any benefit from the piece of work which has been  
done to date? A. Not standing alone.

Q. Because both of them are probably half a mile  
away, a quarter of a mile to half a mile away?  
A. I do not know how far they are away.

HIS HONOUR: Q. Is that the reason you expressed  
that view? A. What is that, Sir? 20

Q. The distance away? A. Yes.

MR. McALARY: Q. If you look at that piece of  
land in Byng Street, that piece of work put here  
in Byng Street, it is three-eighths of a mile  
from the Rugby Hotel, is it not? A. Yes.

Q. Just dealt with as it stands, it could confer  
no benefit on anything except the piece of land  
in the immediate vicinity? A. It does not  
confer benefit of the Rugby Hotel which we are  
talking about. 30

Q. The only area it confers any benefit to would  
be the land adjoining that kerb and gutter?  
A. I think I have to say it is a commencement  
of a programme.

Q. Putting that qualification aside - A. But  
I cannot do that, it is integral to the whole  
question.

Q. Put that qualification aside and consider the situation on the basis that there is a piece of work carried out in Byng Street, does that confer in your view any benefit on the Rugby Hotel as at this moment? Surely the answer must be - A. It must be NO.

10 HIS HONOUR: Q. Is there some power in the Local Government Act to recover the whole or part of the cost of kerbing and guttering from the adjacent owner? A. Yes, section 242 I think it is.

Q. Has that been used by your Council on occasions? A. Yes, but you cannot use it for renewal; you can only use it for the original work up to one-half of the cost.

Q. But not for renewals? A. No.

MR. McALARY: Q. Up to half the cost? A. Yes, up to half the cost. S. 243 it is.

Q. Is this not new work? A. No, there was kerb there before, there was blue set work there.

20 HIS HONOUR: Q. You described it before as "reconstruction"? A. Yes. It has to be total new work, no kerb and gutter before.

MR. McALARY: Q. Asking you about the women's centre, would you think that that was of assistance or advantage to the whole of the Orange city? Would you not think that would be of assistance or advantage to the whole of the Orange city? A. Yes, but a special advantage to the business area.

30 Q. If there were a library there, would you think that would be of equal advantage to the business area? A. A library.

Q. As the Women's Rest Centre? A. No, I would not think so. With the library it would be impracticable. We deliver books to the whole district, the whole surrounding countryside by bookmobiles; we take the books out to the children.

Q. If you do not do that but you build a library there, do you not think that would have the same significance commercially as the Rest Centre, namely it would bring people to that site? A. No, they are different concepts altogether.

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Q. The only commercial significance of a Rest Centre is that people may rest there in the course of their shopping? A. And do the same thing as they do at Roselands, that is leave their children under expert care while they shop.

Q. That means that the shops in the vicinity of the rest centre may gain patronage because people are concentrated to that point? A. No. If a person comes in to Orange to do business it does not necessarily mean that he makes one port of call and returns home again. He can and probably will go to more than one business house or professional centre.

10

Q. That would suggest therefore the Rest Centre is of significance to the whole of the Orange city? A. To the whole of the commercial area.

Q. It would also suggest it is of significance to the people in the commercial area over the railway line, the east? A. This is a thing the council discussed at considerable length and they decided, the Council's resolution was the rateable area should be the commercial area west of the railway line.

20

Q. But the area east of the railway line would get equal advantage? A. There is a physical barrier between the two areas.

HIS HONOUR: Q. There is a small commercial area to the east of the railway line, is there not?  
A. Yes.

MR. McALARY: Q. Do you take the view the general upgrading of Orange so that it becomes a more beautiful, more efficient and more attractive business centre is the advantage that the whole of the commercial area derives from the doing of this sort of work, kerb and gutter work, rest centres, car parks? A. Yes, definitely.

30

Q. In other words is it a general improvement?  
A. To the business area.

Q. Asking you about the car parking areas, you know where the Anson Street car park is located?  
A. Yes.

40

Q. Would you agree that the area or the car park there is of no benefit whatsoever to the people who are going to the Rugby Hotel to drink and park their cars in the Rugby's 100 place car park? A. I would say it would not be of major importance to the Rugby Hotel.

10 Q. It would not be of any? A. I would not say that. Car parking places are at a premium on the days on which the Rugby Hotel would be doing roaring trade and I do not think it beyond feasibility for people to park cars there and find themselves later in the morning or in the afternoon at the Rugby Hotel - but here again.

Q. There are no parking restrictions in the area of the Rugby? A. Not at present.

Q. There are none at the moment? A. Yes.

Q. The Rugby itself has a car park of over 100 places? A. I do not know that.

20 Q. You do not disagree with Mr. O'Malley's account? A. I keep an open mind on it.

Q. Do you suggest he is inaccurate when he says he has counted 106 there? A. 106 cars parked behind the Rugby Hotel, in the Rugby Hotel premises?

Q. In the land, yes? A. I doubt it.

Q. You do not wish to reconsider that, do you? A. No. You see -

30 Q. You do not wish to reconsider your doubt about the accuracy of his evidence on that point? A. I am not saying, I do not want to say I doubt the accuracy of his evidence but I prefer to keep an open mind and check it for myself.

Q. In the Rugby, it is something like 3/8ths of a mile from their car park, can you imagine anyone leaving their car in the car park and walking 3/8ths of a mile to the Rugby? A. It depends on what they do en route.

40 Q. Can you imagine anyone putting their car in the car park and then, because they have left it there, walking to the Rugby? A. Because they left it there walking to the Rugby?

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examined

(continued)

Q. Yes? A. If they wanted to go to the Rugby Hotel it would be unlikely they would park in this parking area; I prefer to put it that way,

Q. Most improbable? A. Most improbable but -

Q. And a similar consideration applies to a Sale Street car parking area? A. The Sale Street one?

Q. Yes. A. Yes.

Q. I suppose you will agree that the existence of a car parking area in Sale St. and Anson St. is a positive detriment to Mr. Dean's trade?

A. No.

10

Q. Would you agree people can park in his area without difficulty? A. Well, I heard that evidence.

Q. Do you agree he has car parking spaces within his own premises where loads can be put on vehicles? A. Yes, that is probably correct.

Q. You do not doubt it, do you? A. No, I do not doubt the space in some cases but I doubt the efficiency of the operation really.

Q. The efficiency of his operation? A. Not his operation but the efficiency of the facilities for permanent parking.

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Q. I suppose you will agree that the fact that car parks exist elsewhere in the vicinity of his competitors advantages his competitors and not him? A. I doubt that.

Q. Is not the whole hypothesis of the car park that you have land contiguous to it, it is of assistance to you because the car parking allows customers to park there and go straight to your premises? A. Yes.

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Q. Rather than parking a long distance away and having to walk? A. That is the best advantage.

Q. And that is the whole advantage? A. No, not the whole advantage.

Q. What other advantage? A. There are degrees of advantage, aren't there?

Q. What other advantage? A. If you have a public car park next to your premises I suppose you would have the best advantage. If you are a block away you have a lesser advantage but still an advantage.

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Q. If your competitor has a car park beside his premises and you are three-eighths of a mile away, I would have thought you were under a positive disadvantage, would you not? A. Not necessarily. It is not unfeasible that a person would go along to Mr. Dean's competitors even if he were next to a car parking area and look at the quality of paint or timber or nails that he sells and go and have a look at what Mr. Dean sells and compare it.

Transcript of  
Evidence  
2nd April, 1970  
Defendant's Case

A. B. McDowell

Cross-  
examined

(continued)

Q. And he would drive around to Mr. Dean's place? A. He might do that but at least the car park would have initiated inquiries.

Q. In a field like hardware you do not buy on impulse, you buy because you need them? A. No, but you have more people coming in to buy.

Q. That depends on a general upgrading of the area? A. Yes.

Q. Would you think a fountain in Robertson Street ought to be regarded as a special benefit to the people of the area, in Robertson Park, is that a commercial area? A. Of special benefit to the commercial area, in the Liverpool case they say it is.

Q. And you think the same, do you? A. Not that fountain, I would like to see a better one.

HIS HONOUR: Q. When you say "the Liverpool case" you are not referring to any case that came on before the courts? A. No, the Liverpool town improvement.

Q. As reported on by the Deputy Town Clerk? A. No; as information I got from the Liverpool Town Clerk but also mentioned in the Deputy Town Clerk's reports. I have got some other notes here.

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Transcript of  
Evidence  
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A. B. McDowell  
Re-examination

RE-EXAMINATION

MR. MORLING: Q. My friend asked you some questions about the rate which was the subject of the litigation before Mr. Justice Else-Mitchell? A. Yes.

Q. And he put to you some questions to suggest that the amount sought to be recovered under the rate was \$170-odd thousand? A. Yes.

Q. It was a rate which sought to wrap up a number of disparate items? A. Yes.

Q. And you said that you had at some stage ascertained that a service area local rate was imposed in Parramatta? A. Yes. 10

Q. Can you tell us when it was that you ascertained that such a service area local rate was imposed in Parramatta - was it years ago or recently or when? A. Recently.

HIS HONOUR: Q. How recent was it - before the decision given by Mr. Justice Else-Mitchell? A. No; within the last week.

MR. MORLING: Q. You were asked whether you had not made any written reports to the Council. Was there a full attendance of councillors at the meeting held in December? A. Yes. 20

Q. You were asked whether there were not some dissident aldermen? A. Yes.

Q. Were there dissident aldermen present at the meeting at which you made your oral reports? A. Yes.

Q. Is there some organisation in Orange of business men or Chamber of Commerce which has been active in prosecuting litigation before Mr. Justice Else-Mitchell and this litigation? A. Yes. 30

Q. Do you know whether any aldermen of your council are members of that organisation? A. No.

HIS HONOUR: Q. How many members of your council are there altogether? A. Twelve aldermen.

Q. Do they have ridings or wards up there?  
A. No; there is just one area.

MR. MORLING: Q. Was the whole of the discussion which was held at any time in relation to the imposition of these rates or the rates before His Honour held in the presence of a dissident alderman?  
A. Yes.

10 HIS HONOUR: Q. About how far out do your boundaries go, out from the central city area? A. We have eight square miles in all, that is the total area, that is 5,120 acres.

Q. In terms of distance, taken from the central point of your shopping area? A. From the central point it is two miles to the northern boundary it is about, I would say, a mile to the southern boundary from the central point, the central point in my mind being the post office; to the western boundary a mile, and perhaps a mile to the east. That is roughly it.

20 Q. You would have a lot of ordinary suburban residential area in that would you not? A. In which?

Q. The city area would include the shopping and commercial centres? A. Yes.

Q. And closely settled residential area around that? A. Yes.

30 Q. I am anxious to learn a bit about the periphery of it, the rural area, have you got much rural land in your area? A. No, not in relative terms we have not. Most of the rural land is just across the border, the boundary, in the shire of Canobolas.

Q. There is power under the Local Government Act to rate rural properties at a lower rate? A. Yes.

Q. Do you do that? A. Yes.

Q. Are you bound to do that? A. We are bound to do it. It is called an Urban Farm Land rate and it limits the amount of the general rate which may be levied; it limits it to one-half of the general rate you are levying your town or in the neighbouring -

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Evidence  
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A. B. McDowell  
Re-examination  
(continued)



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Evidence  
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Re-examination  
(continued)

Q. Have you many of your ratepayers falling in that category - hundreds? A. No, not a lot; they are minimal really in number. There are no wards and no ridings.

MR. MORLING: Q. The population is about 22,000 in the city? A. 22,000, I think the Bureau of Census and Statistics population estimate given as at last June, June 1969, was 22,400.

Q. You said there was some physical barrier between the east and west sections of the Orange Zonings and that is the railway line? A. Yes. 10

Q. There were some problems as to development of the eastern side of the railway line?  
A. Yes. The road narrows, Summer Street is wide, you cross the railway line and you are into a relatively narrow section of the main street, probably the busiest traffic point in Orange and with no provision along there for off-street parking; the only access to the shops is by parallel parking and parallel parking is mandatory by police regulation and that means if you have two or three cars outside a shop it is the maximum number of people who can get at that shop. 20

Q. At the discussions in the Council when fixing the area of the town improvement district, was consideration given to including the area east of the railway line? A. Yes.

Q. And was a decision come to to include it?  
A. Yes. 30

(Witness retired)

MR. MORLING: That is my case, Your Honour, subject to tendering the two or three documents which I do not have here today.

HIS HONOUR: You will tender them at Orange tomorrow morning?

MR. MORLING: Yes, Your Honour.

(Counsel addressed).

(Further hearing adjourned to Orange on Friday, 3rd April, 1970.) 40

WESTERN STORES LIMITED v. ORANGE CITY COUNCIL  
(Four appeals)

K. W. McCALLUM v. ORANGE CITY COUNCIL  
(One appeal)

B.G. DEIN PTY. LIMITED v. ORANGE CITY COUNCIL  
(Two appeals)

RUGBY PROPERTIES PTY. LTD. v. ORANGE CITY COUNCIL  
(One appeal)

10 NEWMAY PTY. LIMITED v. ORANGE CITY COUNCIL  
(Two appeals)

GALLAGHERS PROPERTIES PTY. LTD. v. ORANGE CITY COUNCIL  
(Two appeals)

(Orange City Council rating appeals)

ORANGE. THIRD DAY: FRIDAY, 3rd APRIL, 1970  
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HIS HONOUR: It will be noted in the transcript I had a view of the areas referred to in the evidence, in the company of counsel for the parties.

20 Mr. Morling, in Sydney yesterday you said you would be tendering some further document. Have you those now?

MR. MORLING: I have in Court the original of the Anson Street parking rate area and the other rate area, and copies. I will tender the copies.

(Plan of Anson Street parking rate area tendered and marked Exhibit "6".)

(Plan of Anson Street-Sale Street parking rate area tendered and marked Exhibit "7".)

30 (Copy of relevant page of Central Western Daily of 5th April 1963, being the document referred to in the Anson Street parking area local rate recommendation of 24th December 1969 tendered and marked Exhibit "8".)

(Copy of extract from Council minutes of 1st February 1968, being the other document referred to in the same resolution of 24th December 1969, tendered and marked Exhibit "9".)

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Transcript of Evidence taken before His Honour Mr. Justice Hardie 3rd April, 1970

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(Copy of extract from Central Western Daily  
of 22nd June 1967, tendered and marked  
Exhibit "10".)

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(Case for the Respondent closed.)

Transcript of  
Evidence taken  
before His  
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Justice Hardie  
3rd April, 1970  
(continued)

CASE IN REPLY

(Rate notice of Newmay Pty. Limited  
tendered and marked Exhibit "k".)

HIS HONOUR: The additional documentary evidence  
that has been tendered by Mr. Morling this morning,  
you do not wish to call any evidence in reply to  
that, Mr. McAlary? 10

MR. McALARY: No.

(Case in-reply closed.)

(Counsel addressed.)

(Luncheon adjournment.)

(Counsel addressed. His Honour directed that  
certain portions of the addresses, and dis-  
cussion between His Honour and counsel be  
reported.)

HIS HONOUR: You put three grounds on which the  
parking rates were bad, Mr. McAlary. Would you  
state those again please? 20

MR. McALARY: Yes. The reimbursement by the Council  
of one fund from another is not of acceptance within  
the meaning of s. 121(1). That arose out of the  
rates. The second ground I put was it was  
discriminatory.

HIS HONOUR: And the third ground was that the  
Council did not form the appropriate opinion that  
the parking rate would be of benefit to the  
particular area? 30

MR. McALARY: Yes. Rateability was dependent upon  
the formation of the opinion, and the opinion was  
not shown to be formed, or was not formed.

HIS HONOUR: You there contrasted the language of  
the two resolutions imposing this rate, with the  
resolution imposing the Town Improvement rate.

MR. McALARY: Yes.

HIS HONOUR: Did you not put this in answer to what I said that Council could not rely upon continuance of an opinion formed in 1963 or 1965?

MR. McALARY: Yes. I would add for each year liability is dependent upon the formation of an opinion for that year, and therefore an opinion formed in 1963 is relevant to 1963. When you came to a liability for rates in 1969 you must form an opinion for that year. As the whole statute depends upon the formation of an opinion, the opinion is the very essence of rateability. You cannot impose the rate unless the opinion is formed. It is not to the point to say if the Council had thought about it they probably would have formed an opinion. It is not to the point to say, "In fact I am satisfied certain lands get special benefit." The question is, did the Council form the opinion. If they did, so long as there is material on which they can act the lands are rateable; if they failed to form it, they are not rateable.

HIS HONOUR: Did you not on this branch of the argument put in effect if there were opinions formed, by implication they were inconsistent?

MR. McALARY: That is right.

HIS HONOUR: This was dealing differently with different parts of the rating expenses?

MR. McALARY: Yes.

(Counsel addressed.)

HIS HONOUR: Am I right in assuming that to support the parking rates you rely upon s.121 (1), Mr. Morling?

MR. MORLING: That is so.

HIS HONOUR: And you do not seek to obtain any assistance from subsection (2) in relation to the parking rates?

MR. MORLING: That is right.

HIS HONOUR: They stand on or off on the meaning of the power conferred by s. 121?

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Transcript of  
Evidence taken  
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(continued)

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MR. MORLING: Yes.

(Counsel addressed.)

No. 2

Transcript of  
Evidence taken  
before His Honour  
Honour Mr.  
Justice Hardie  
3rd April, 1970  
(continued)

HIS HONOUR: Might this shorten matters: Does this indicate the point you are going to make? Ownership of parking areas as distinct from present use is for the benefit of the whole of the commercial area, because they might in future years be used in different ways, or as their immediate use is related more to the people who have premises next door, such as retail premises?

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MR. MORLING: That is one way of putting it. I will give this example. Let me assume the Sydney Council decided to spend \$1 million in effecting the running of Martin Place up to Macquarie Street, and said "This adds benefit to the people in Macquarie Street and on quite a number of buildings on both sides of Macquarie Street; we will strike a local rate for defraying the cost of acquisition of that section and the construction of that work". Then it says, "Having done that we will go further. This is a prestige part of Sydney, we will put flower boxes there and light it at night, and send our street sweeping machine down there three times a day, and we will have lighting and so on. But we won't charge for that. That is a service to the people only, in our view, with frontages to the extension. We won't charge that to the people near Sydney Hospital, in front of whose premises that won't be done." That is this case here. Council many years ago spent money on construction costs and lighting the buildings every night, which gives benefit to more persons. It employs men to clean up litter. Either you can say that the capital cost of construction is one work, and that is a fair description of it, and the day-to-day maintenance, cleaning, lighting, and running of it is a service of a different kind, and that would, we would think, be the more logical approach, or say "There is nothing in s.121 which prohibits Council from coming to the view that it will say there are varying areas which receive differing special benefits."

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We say it is almost impossible to think of any local government purpose on which you can say it confers the same type of special benefit to more than one parcel of land. We say it is the

greatest commonsense and fairness for a Council to say "We think the parking areas and the capital cost of them is of advantage to the whole of the business centre of Orange, but we think there is a different class and more valuable type of special benefit which people like Mr. Baldwin get".

10 HIS HONOUR: Would it be open on that set of facts for a Council to take the view that the cost of acquisition and clearing and levelling and surfacing was for the benefit of the whole of the municipal area, and throw it on to the general ratepayer, and that the day-to-day management and control was for the benefit of the people with retail shops nearby?

20 MR. MORLING: Yes. Supposing Council decided to spend \$1 million in widening Summer Street, because traffic conditions were chaotic, and not only in Summer Street but in the side streets; it says, "This is not only of benefit to the Summer Street people, but to the side street people too. We are going to put lights along Summer Street, and not in the side streets, and we are going to have a man permanently engaged in Summer Street doing certain things, and we think the people of Summer Street should pay for that". That is a different service. (Section 146 read).

HIS HONOUR: You say that makes it a notional payment?

MR. MORLING: Yes.

30 HIS HONOUR: Or a payment for the purpose of this Act?

MR. MORLING: Yes.

HIS HONOUR: A statutory payment?

MR. MORLING: Yes. So far as the fund is concerned, supposing Council decided to lease an area of land for a car park, the land would not be exempt from rates. That would show the Council a profit.

(Counsel addressed.)

40 HIS HONOUR: Do you rely upon subsection (1) or subsection (2) or both?

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Transcript of Evidence taken before His Honour Mr. Justice Hardie  
3rd April, 1970

(continued)

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Transcript of  
Evidence taken  
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(continued)

MR. MORLING: For this rate?

HIS HONOUR: Yes.

MR. MORLING: What I say is this; (2) cannot be looked at in isolation, I do not say that. I do say it gives rise to a new rate, a different rate, because it is so described by the Act itself. It is called the Town Improvement Local Rate, which must be dealt with under the earlier sections of the Act as a separate fund, and treated as a separate fund.

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HIS HONOUR: What earlier sections of the Act do you have in mind there?

MR. MORLING: Section 109. It is a local fund. Its funds have to be kept separate, and its expenditures met from the fund. Section 113 says - (read). It is a separate fund raised by a separate rate and in that sense it is a new or different rate authorised by the Act, and in that sense it has an independent source of power to levy a rate. That is not to say that in looking at the qualities of the rate you do not go outside the terms of the subsection. What one has to do is say, "Here you have a section which has in effect two parts, one which creates a particular class of local rate under(1), and a second part which creates a different rate, another type of local rate." I would not want to argue that (2) is read in conjunction with (1).

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HIS HONOUR: It is read in conjunction with it, but that does not answer the problem. Nobody disputes that, but how conjunct is it?

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MR. MORLING: In respect of the defined area what is sought to be raised is money for town improvements as distinct from the words which are used "work or service of special benefit". If one does not give it that construction, in our submission there is no point having it in the section.

sic (Clause 28½ of Ordinance 5 read.)

The Act contemplates you can have local rates as you have here.

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HIS HONOUR: That is to ensure your metes and bounds description does not have to get out of hand.

MR. MORLING: Yes. It does indicate you have a different rating entity in the form of a Town Improvement district than an area to be specially benefitted under (1), because you can have a specially benefitted area being part of a Town Improvement district, and they are part of an area subject to a Town Improvement rate.

10 HIS HONOUR: The language of the Ordinance does not help much. It only indicates the view of the meaning of the section taken by the draughtsmen of the Ordinance.

MR. MORLING: That may be so.

HIS HONOUR: The critical thing is whether the phrase, "Town Improvement Local Rate" means in effect a local rate to be used and applied for town improvement, or whether it means a local rate to be used and applied to the benefit of areas for their special benefit.

20 MR. MORLING: I can go further than that, and I submit this is not the right approach, and say that a Town Improvement Local Rate must be for improvement and special benefit to the Town Improvement District, All I really need the subsection for at all is for the word "Improvement" as distinct from "Work or service" in the singular. That is in this case the only real ultimate relevance of this argument about subsection (2). We submit "work or service" should be read in the plural. You set up a Town Improvement District and levy the rate in accordance with the section on the improved value or the unimproved value, and it must be for an expenditure executing improvement for the special benefit of the area. The word "improvement" being in its very nature a word covering a multitude - the phrase "town improvement" is not limited to one particular municipal facility. I do not submit that to be the correct construction, because it seems to me to go further than I need, but it does not embarrass my argument to go that far. The only real step I need to take from (2) is that it does on any basis, we say, authorise things which can be comprehended within the word "improvement".

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(continued)

(Mr. Morling referred His Honour to Lindsay's case, 1940, 1 Ch. 119, at the top of page 126.)



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(continued)

HIS HONOUR: Isn't one of your difficulties that all this work in this particular year was done before you declared it to be a Town Improvement District?

MR. MORLING: No, for the same reason as I put in respect of 118 and 120. There is no requirement they be for future things. You just levy a rate as you levy a special rate under s.120 (1).

HIS HONOUR: If you treat subsection (2) as in effect authorising the levying of rates to finance improvements for the town in a general sort of way, it seems to me you have great difficulty financing improvements that have already been carried out, even before you decided to invoke subsection (2). 10

MR. MORLING: That is the very matter that was dealt with by the Chief Justice in Reynold's case?

(Counsel addressed.)

(Mr. Morling asked that His Honour give a ruling in his judgment that the documents and evidence and material in the previous litigation, which were tendered in this case, be treated as irrelevant.) 20

(His Honour stated he would have some difficulty in treating it as irrelevant.)

MR. MORLING: I would invite Your Honour to consider - as I am sure Your Honour will - the different view which we did not put to His Honour but which we put to Your Honour. This is perhaps in some way a very basic matter. There are facilities of special benefit to the shopping centres which at one point of time because of the valuation structure the Council determines in this way: "It is true they are of special benefit; we do have power to rate them; we are not going to do it". The next year they say "It is still true to say there is special benefit, this year we will". 30

(Counsel addressed.)

There is one matter we should correct. This morning an indication was given to Your Honour that the commercial area in Hill Street extended somewhat further back than it in fact does. 40

MR. McALARY: Yes.

(Counsel referred to the above mentioned area on Exhibit B.)

HIS HONOUR: Yes. It is fairly narrow there, but it widens out when it gets to Byng Street. It widens out on the other side too.

MR. MORLING: Yes.

(In response to His Honour's enquiry Mr. McAlary stated the Chief Judge in Equity had been seen concerning the Equity litigation, which has been remitted to His Honour. His Honour stated he would give his decision in due course and he would confer with counsel as to whether such decision would be given in the Equity or the Land and Valuation litigation. Counsel stated they were happy with this arrangement.)

HIS HONOUR: The evidence and argument given is to be treated as evidence in the Equity matters as well as the Land and Valuation appeals.

MR. McALARY: Yes.

MR. MORLING: Yes.

(His Honour reserved his decision.)

No. 3

JUDGMENT OF HIS HONOUR MR. JUSTICE HARDIE  
DELIVERED ON 7th MAY, 1970

WESTERN STORES LIMITED & OTHERS v.  
ORANGE CITY COUNCIL

(Orange City Council Rating Appeals)

JUDGMENT

HIS HONOUR: A number of owners of properties in the main retail and business section of Orange have challenged the validity of rates sought to be levied by the Council in December last for the year then just about to conclude. The rates in question purport to be made and levied as "local rates" pursuant to S. 121 of the Local Government Act 1919 as amended. They were made by three different

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Transcript of Evidence taken before His Honour Mr. Justice Hardie  
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No. 3

Judgment of His Honour Mr. Justice Hardie

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Judgment of  
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Hardie

7th May 1970

resolutions, two being for parking area local rates and the third being for a town improvement rate.

On 31st October 1969 the Land and Valuation Court gave judgment in a number of appeals against rates for the year 1969 by some or all of the property owners who are parties to these proceedings. That decision held to be invalid a rate, levied under S.121 of the Act, of 2.572 cents in the dollar upon the unimproved value of all lands in a defined area comprising the main retail and business section of the city. The area in that case was somewhat similar to the main area with which these appeals are concerned, but was slightly less in extent. The rate held to be invalid was designated and referred to in the Council's resolutions and rate notices as a "Service Area Local Rate". It is to be observed that S.121 does not in terms authorise the imposition of a service area local rate.

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The rate challenged in the earlier litigation was held to be invalid on two grounds: one was that there was "such an absence of similar or common benefit from the several categories of works and services that there can be no basis upon which the Council could reasonably form the opinion that all the lands in the defined area would be likely to derive special benefit from each and every one of the proposed works and services." The works and services referred to were detailed in the estimates submitted to and adopted by the Council when imposing the rate; they comprised some twelve items of expenditure ranging in amount from \$1,253 to \$32,300 and totalling in the aggregate \$173,194. The other ground of invalidity found was that "the Council pursued a foreign purpose and was influenced by extraneous considerations in the making of that rate"; the finding on this point was that the Council was actuated by a desire "to produce some different incidence of the rate burden from that which the Local Government Act envisages" and that it "sought to adopt the levy of the Service Area Local Rate as a device to shift a major part of the rate burden from residential lands on to lands in the business area". The Court was satisfied, on the evidence before it, that "the Council's main, dominant or substantial purpose in defining the service area as it did was not to provide for the financing of works and services which would

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be of special benefit to the central business area but to achieve an altered incidence in the rating burden".

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Judgment of  
His Honour  
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(continued)

10 In November 1969, shortly after the decision  
in the earlier litigation, the Deputy Town Clerk  
visited senior officers of the Local Government  
Department in Sydney and sought their assistance  
on the problems facing the Council because of the  
invalidation of the Service Area Local Rate for  
the calendar year 1969. The Deputy Town Clerk was  
not called as a witness, but Mr. McDowell, the  
Town Clerk, gave evidence as to the information  
and advice received by his deputy from the Local  
Government Department and in due course reported  
to Mr. McDowell and subsequently to the Council.  
It is reasonably clear from Mr. McDowell's evidence  
that the departmental officers suggested as a  
possible way out of the Council's difficulties the  
levy of a Town Improvement Local Rate under  
20 S.121(2) of the Act.

30 On his return the Deputy Town Clerk reported  
verbally to the Town Clerk on the matters dis-  
cussed by him with the officers of the Local  
Government Department; the Town Clerk thereupon  
made some enquiries as to the Town Improvement  
Local Rate which was being levied by the Liverpool  
Council. The relevant information and material  
was the subject of verbal reports by the Town Clerk  
and his deputy to the Council meeting of 25th  
November. It was then decided to call a special  
meeting of the Council on 2nd December 1969 "at  
which all necessary information should be available  
to permit due consideration of the question of the  
levy of Local Rates (including Parking Area Local  
Rates) for the financing of works and services  
which would be calculated to benefit or improve the  
zoned central business area of the city."

40 Following the Council meeting of 25th November  
the Town Clerk and Mayor prepared a short Mayoral  
Minute for submission to the special meeting, which  
was held on 4th December and not on 2nd December.  
The text of the Minute, which was dated 2nd  
December, was as follows:-

"Further information is coming to hand which  
gives a clearer picture of works or services  
necessary for an upgrading of portion of the  
area, and I anticipate that this fuller

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(continued)

information will be available for the above Council Meeting for better clarification of the various courses of procedure open to the Council.

I think there is general agreement that within the commercial centre improvement works are necessary, or alternatively, works or services which would be of special benefit to that portion of the area, and I have therefore called for a more comprehensive report on these matters.

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The Council may resolve to sit as a Committee of the Whole to consider these items, and to consider its capacity to perform them or some of them, and later the Committee may submit a report to the Council."

The special meeting held on 4th December had before it the Mayoral Minute and a lengthy report from the Acting City Engineer. The report from the Acting City Engineer to the Mayor dated 4th December 1969 stated that "the Municipal facilities - drainage, kerbing and guttering, foot-paving and roads" in the zoned commercial area west of the railway line were "in many instances below the standard one would expect in a progressive and commercial area such as Orange." It went on to state that "the execution of the works as detailed below would constitute a marked improvement to the existing municipal facilities" and that it was necessary for these works "to be carried out now." It was stated that the list did not include less urgent works which would "require to be done after this first programme." Then followed an itemised and costed list of "kerbing, guttering, concrete paving works and shoulder raising" at twenty four different places totalling in aggregate the sum of \$41,903. Two other items were included, "stormwater drainage" in four sections of Summer Street and in four sections of Byng Street totalling \$72,500 and "road reconstruction" at three places totalling \$30,300.

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None of the work set out in the Acting City Engineer's report was included in the estimates for the 1969 Orange Town Improvement Local Rate, but it is reasonable to anticipate that the items,

or a substantial part of them, would form the basis of any Orange Town Improvement Local Rate that may be levied in and for 1970.

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(continued)

10 The special meeting held on 4th December resolved to define and constitute the zoned central business area of Orange as a Town Improvement District pursuant to S.121(2) and to levy a Town Improvement Local Rate "for the purpose of effecting improvements to works and services within the proposed district." It also resolved to adopt the estimates as set out in the Minutes, for such local rate and to publish in the local newspaper the estimates, the metes and bounds description of the proposed Town Improvement District and notice of the proposal to make and levy on Orange Town Improvement Local Rate for 1969.

20 The estimates adopted consisted of three items; the largest was \$15,410 described as "principal and interest on loans raised by Council for or towards the provision of public parking areas", three in number and identified by their street location; the amount of \$3,309 described as "kerb and gutter and footpath improvements in McNamara Street and Byng Street"; and the amount of \$1,557 as representing preliminary expenses in connection with the proposed Women's Rest Centre and Child-minding Centre in Anson Street.

30 At a special meeting of the Council held on 24th December a resolution was passed reciting the notification in the Gazette of 12th December 1969 of the area defined as the "Orange Town Improvement District", the adoption of the estimates of income and expenditure of the Orange Town Improvement Local Fund for the year 1969, and the publication of the estimates, etc. in the local paper of 13th December 1969; the resolution went on to make and levy in and for the year 1969 an Orange Town Improvement Local Rate of .27 cents in the dollar on the unimproved capital value of the rateable land within  
40 the district "for the purpose of improvements to works and services within and in the opinion of the Council for the special benefit of the Orange Town Improvement District."

At the same meeting the Council passed a resolution to make and levy an Anson Street Parking Area Local Rate of .737 cents in the dollar on land within

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a small defined area, and another resolution to make and levy an Anson-Sale Streets Parking Area Local Rate of .661 cents in the dollar on the unimproved capital value of land within another small defined area. The estimates for these two parking area local rates had also been adopted at the special meeting of 4th December. Each of those estimates consisted of three items, namely, rates on parking area, maintenance of parking area and proportion of administrative expenses. Rates were in each case the largest item.

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Counsel for the objectors has submitted that the relevant decisions of the Council made in December 1969 and the rates purported to be imposed thereby were invalidated by the same defects and the same extraneous considerations as were held in the previous litigation to be fatal to the Service Area Local Rate imposed earlier in the year. To provide a basis for this attack, counsel for the objectors tendered the judgment in the previous litigation and the documentary evidence then before the Court embodying the relevant reports to the Minutes of the Council for the period from November 1968, when revised valuations by the Valuer General were about to issue, up to early May 1969 when the resolution imposing the Service Area Local Rate was passed. I admitted these documents subject to relevancy. Counsel for the respondent contended that on no view of the matter could they be relevant to the issues for determination in these proceedings. I am satisfied this material is properly admissible; however, I do not accede to the submission of counsel for the objectors that the proper inference to draw from that material and from the evidence before me as to more recent events and incidents leading up to the Council's rate resolutions of 24th December last is that the whole of those resolutions are invalid on substantially the same grounds as were found to be fatal to the validity of the rates challenged in the earlier proceedings. It follows that the validity of the three rates now under challenge must be determined separately and on their own particular facts and merits.

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It is convenient to deal at the outset with

the two parking area local rates. These are governed by similar considerations. In each case the Council had in the years immediately prior to 1969 imposed parking area local rates on land contiguous to the parking areas involved. In each case a challenge to the validity of the rate was rejected by the Court. (Baldwin's case (10L.G.R. (10L.G.R.A.356) and the K.C.R. case (1968) 2N.S.W.R.470.) The parking area local rates was now under challenge, though levied on the same area as in previous years, are at a substantially lower figure, being confined to the running and maintenance costs of the respective parking areas.

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It was claimed on behalf of the objectors that the parking area local rates were not authorised by the language of the S.121 (1). It was contended that the items proposed to be financed by the local rates in question were not "expenses" of executing any work or providing a service within the meaning of the opening words of the sub-section; sic in particular, it was said that the main item, namely, rates chargeable under the Act on the parking area land owned by the Council, did not constitute expenses within the meaning of the sub-section, but were merely book entries. I do not accede to the proposition that "expenses" referred to in S.121(1) are, as a matter of law, limited in the manner contended for by counsel for the objectors. The phrase in the setting and context in which it appears in the sub-section should be given a wide rather than a narrow construction; in my opinion, it is apt and adequate to embrace the cost or expense items specified in the material resolutions, including the rates item.

It was also contended that there was no formation or expression of opinion by the Council that the service in question "would be of special benefit" to the defined section or area, as required by S.121(1). I am of the opinion that there was no obligation on the part of the Council to record expressly its opinion as to the particular area which enjoyed the special benefit. The making of the rate on the properties in the particular area in the circumstances of the case constituted in my view prima facie evidence that the Council formed the requisite opinion as to special benefit. The fact that the same two areas had been made the subject of a parking area local



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rate in the years immediately prior to 1969  
strengthens the respondent's case on this issue.

It was also contended in support of the challenge to these rates that there could not be an opinion or conclusion of the Council that the parking areas were of special benefit to the particular areas defined in the relevant resolutions, because the Council in its resolution imposing the Town Improvement Local Rate and passed at the same meeting made an express finding that capital expenditure incurred in the acquisition of the parking areas was of special benefit to the much larger area comprised in the Orange Town Improvement District. I am of the opinion that it was open to the Council to treat the acquisition and improvement of the land set aside for car parking and the capital expenditure thereon as related to and benefiting the whole zoned commercial area and to treat the maintenance and operation of the car parking areas as a separate service of particular benefit to the smaller area consisting of the retail properties contiguous or adjacent to it. For the reasons indicated, I am of the opinion that the challenge to the validity of the parking area local rates has not been made out.

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The question as to the validity of the Town Improvement Local Rate raises quite different considerations. The Council's decision to impose the rate was preceded by a resolution defining the zoned commercial area as the "Orange Town Improvement District". This decision to constitute a Town Improvement District was made at the meeting held on 4th December, and the notification in the Government Gazette of the setting up of the district required by S.121(2) appeared in that publication of 12th December 1969. The decision to impose the rate was made at the Council meeting of 24th December 1969; the relevant portion of the resolution provided for the levy of an Orange Town Improvement Local Rate in the specified amount "in and for the year 1969 on the unimproved capital value of all rateable land within the Orange Town Improvement District ..... for the purpose of improvements to works and services within and in the opinion of the Council for the special benefit of the Orange Town Improvement District."

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10 It appears from the evidence that the Council had the benefit not only of the views of senior officers in the Local Government Department obtained by the Deputy Town Clerk on his visit to the Department, but also of advice from counsel. The language of the concluding portion of the resolution cited, particularly the reference to improvements to works and services and the super-imposed reference to the Council's opinion as to special benefit, indicates some lack of certainty in the mind of the Council and/or of the Council's advisers as to the meaning and effect of the language of S.121(2) and its precise relationship to S.121(1). This is not surprising, as the language of S.121(2) is cryptic in the extreme, leaving much room for differences of opinion as to what is to be read into it from S.121(1) and as to the meaning of the phrase "town improvement".

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20 The ascertainment of the true meaning and effect of sub.-s.2 requires a close consideration of the language used in the sub-section and a determination of the preliminary question as to how much of the language of sub-s.121(1) has been imported into sub.-.2 by the concluding words "under the provisions of this section." It is convenient to set out the precise terms of S.121, as it now stands.

30 121. (1) For or towards defraying the expenses of executing any work or service or for or towards repaying with interest any advance made by the Minister or debt incurred or loan raised in connection with the execution of any work or service where, in either case, such work or service in the opinion of the council would be of special benefit to a portion of its area to be defined as prescribed, the council of a municipality or shire may make and levy a local rate on the unimproved capital value or on the improved capital value of rateable land within such portion.

40 (1A) For or towards meeting any liability transferred to a council of a municipality or shire consequently upon the alteration of the boundaries of the area, the council may make and levy a local rate on the unimproved capital value or on the improved capital value of the rateable land added to the area.

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(2) The council of a municipality or shire may by notice in the Gazette from time to time define part of the area to be known as a "town improvement district" within which a "town improvement local rate" may be levied under the provisions of this section.

As originally enacted, it contained sub-ss. (3) to (7) providing machinery for a poll of rate-payers on the issue as to whether the local rate was to be assessed on improved or unimproved capital value. These sub-sections were deleted in 1952.

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It is reasonably clear that the concluding words of sub-s.2 introduce into it the portion of sub-s.1 which permits of the local rate being levied either on the unimproved capital value or the improved capital value of all rateable land within the particular area; also that the monies raised by the rate are to be applied in or towards defraying the expenses of executing the work and/or providing the services involved.

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In the previous proceedings one of the grounds on which the Service Area Local Rate was invalidated was that it was sought to be levied to meet the cost of a number of unrelated works which the Court was satisfied could not form the basis of a valid opinion of the Council that they were all of special benefit to the same portion of the Council's area.

In these proceedings one question for decision is whether a rate made and levied on rateable land in a properly constituted and proclaimed town improvement area is in any stronger position when attacked on the ground that the special beneficial effects of the various works and services being financed by the rate do not occur in precisely identical areas.

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The question as to the relationship between the two sub-sections is by no means clear. Counsel for the respondent submitted that the word "improvement" in the phrase "town improvement local rate" was something more than a label or badge; it was concerned with the making and levying a local rate to meet the cost of improvements to existing works or services.

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Counsel for the objectors contended that the concluding words of sub-s.2 "under the provisions of this section" introduced into the sub-section the whole of the substance of sub-s.(1), including the requirement that different items of works and/or services proposed to be financed by the rate should be such that the Council could form a proper and real opinion that special benefit is conferred by each of the items on precisely the same portion of the Council's total area, i.e. on all the properties in the improvement district. I do not accept that contention. In my view, Parliament was in sub-s.(2) providing for a somewhat different situation from that in which sub-s.(1) would normally be invoked. Sub-section (2) was intended primarily for use where the Council had in mind a number of items of works or a programme of work having at least one common element or feature - the improvement of a particular part of its area. The Council was empowered to define that section, constitute it as a district under the sub-section and levy a local rate to finance works and/or services executed and/or provided in the district for its benefit or improvement. The fact that the various items of work, etc. were unrelated except in the sense that they improved the thus benefited the district, considered as one area or entity, did not render the rate invalid. The constitution of the district as one in which town improvement was desirable and would be undertaken provided the link or nexus between the various items of work etc. undertaken. In this way the need to look closely at each such item for the purpose of forming an opinion as to the boundaries of the area specially benefited by it disappeared; the task of the Council, having set up the district, was to charge to the relevant fund such items of expenditure as could be said on a broad approach to improve the district selected. The concept of special benefit did not disappear altogether; rather it gave way to a related but somewhat different enquiry, i.e. did the item add to or extend or expand the public works and facilities available in the district, i.e. was it an improvement to the district. Such an improvement might be an addition to or extension of some existing work or facility, or it might be something completely new not previously provided. It could not be merely a running or operational expense associated with an existing work or facility, such as effecting repairs to and/or renewals of existing works or services.

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(continued)

The interpretation of sub-s.(2) of S.121 adopted above, means that once the town improvement district has been validly constituted, Council is able by one resolution, to impose a local rate to finance unrelated improvement works and/or services. Such a resolution is not subject to the risk of being fragmented into sections and then struck down because the works envisaged do not have precisely the same areas of special benefit. The area to be benefited is determined in advance by the Council's adoption of the procedure set out in S.121(2).

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I turn now to the question as to whether the Council's decision constituting the town improvement district was a valid and effective one. I see nothing in the material before me, including the reports and minutes leading up to the making of the Service Area Local Rate previously held to be invalid, to cast doubt on the validity of the decision setting up the town improvement district. On the contrary, I am of the opinion, from the evidence tendered and from what I observed of the area when I had a view in the presence of counsel, that the Council was justified in treating the subject area as one entity or district for the purposes of S.121(2); this receives support from the fact that the area selected follows the boundaries of the area zoned under the Local Town Planning Scheme as commercial, in so far as that area lies to the west of the railway line.

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The next point requiring consideration is the attack on the validity of the rate because of the indication contained in the estimates of the type of items proposed to be financed by the monies to be produced by the rate. Counsel for the objectors placed much reliance upon the two items of new kerbing and guttering included in the estimates. It was claimed that this work could only be of benefit to the properties in the immediate vicinity and not to the whole district. The answer to this point was given by the Town Clerk in cross-examination when he conceded that it could not, standing alone, amount to improvement work, but that it did assume that quality because it was "the forerunner of a programme".

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The Town Clerk, in referring to a programme, obviously had in mind the programme of work

particularised in the report of the acting City Engineer which was before the Council Meeting of 4th December. The material matters in that report have already been summarised. Before leaving this aspect of the case, I would observe that the question as to whether kerbing and guttering work of the type included in the estimates is a new work or an addition and as such constitutes an improvement, or whether it properly falls into the category of a renewal, is a debatable one. In such a field the Council must of necessity have a fairly wide choice as to its classification of the particular work.

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Notwithstanding what was put by counsel for the objectors in support of his contention that the subject rate was invalid because of the nature of the work proposed to be financed thereby, I am of the opinion that the decision imposing the rate escapes this attack on its validity.

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Another point relied upon on behalf of the objectors was that the rate was levied, as appears from the estimates, to finance expenditure on unrelated items of work commenced and completed before the constitution of the Town Improvement District. The answer to this question depends upon which implications are to be found in the S.121(2). It is clear that the rate cannot be made or levied before the district has been constituted. There is no express requirement that the improvement works are limited to those undertaken or completed after the constitution of the district. However, there is much to be said for the view that the constitution of the district can only have a prospective operation and accordingly that any particular work can only be treated and classified as an improvement work if carried out in a then district, in other words, if it were a town improvement in law and in fact when affected.

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The above point is a very arguable one. The reported decisions as to the rate-making powers of Councils under the Local Government Act tend to favour a generous and liberal approach to the legislation rather than a strict and narrow one. (Fripps case 26 CLR 385 Reynolds' case 12L.G.R.A. 290). Approaching the section in this light I have reached the conclusion that a Council can impose rates on land in a validly constituted Town

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(continued)

Improvement District to finance expenditure incurred in the current year on works commenced and completed in the area before the constitution of the district. However, when a Town Improvement Local Rate is imposed to meet expenditure already incurred on completed works, it is necessary to look closely at such works for the purpose of being satisfied that the works are in the true sense of the term improvement works related to the particular district and as such properly chargeable by the Council to a Town Improvement Local Rate. In the instant case, looking at the expenditure incurred by the Council on completed works and brought into the relevant estimates, the items which raise some element of doubt are the two items of kerbing and guttering carried out and completed in the previous August. As to these I accept the view expressed by the Town Clerk that, although standing alone they could not be said to be town improvement works in any real sense, they are capable of being so classified and treated by the Council if viewed as a forerunner of the programme of such works outlined and detailed in the acting City Engineer's report of 4th December. I am of the opinion that it was open to the Council to classify and treat them in that way and that the Council's decision to charge these items of completed work to the Orange Town Improvement Fund should not be held to be colourable or otherwise invalid.

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One question remains for consideration; that is whether the Town Improvement Rate is invalid by reason of the second ground relied upon in the previous litigation, that is to say, that the Council's motivation was to throw upon a section of its area a substantial portion of its expenditure which under the Act was required to be borne by the whole area. The effect of the imposition of the Town Improvement Rate is of necessity to lessen the burden on the general rate fund, in other words, the burden on the ratepayers generally. The existence of that effect does not invalidate the rate. To bring about invalidity it must appear that the Council did not address its mind to town improvement problems and rating, but went through the form of imposing such a rate for an ulterior purpose such as was found to exist in the previous

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proceedings. On the material before me I am satisfied that the Council did in fact address its mind to the question as to whether it should exercise its power under S.121(2) and proceeded to exercise that power. It is apparent that care was taken, on advice, not to include in the relevant estimates any items of expenditure except those related to the provisions of new or additional works or services qualifying as town improvements within the meaning of S.121(2).

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7th May 1970

(continued)

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For the reasons indicated, I am of the opinion that the objectors have not sustained their attack upon the Town Improvement Rate. It follows that the objections to all three rates are disallowed.

No. 4

No. 4

DISCRETAL ORDER DATED THE 21ST DAY OF SEPTEMBER, 1970 IN MATTER NO. 395 OF 1970

Discretal Order

21st September 1970

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IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
IN EQUITY )

No. 395 of 1970

BETWEEN: WESTERN STORES LIMITED  
Plaintiff

AND: THE COUNCIL OF THE  
CITY OF ORANGE  
Defendant

THURSDAY the eighteenth day of June One thousand nine hundred and seventy

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THIS SUIT instituted by Originating Summons coming on to be heard before the Honourable Martin Francis Hardie a Judge of the Supreme Court sitting in Equity on the first and second days of April last WHEREUPON AND UPON HEARING READ the said Originating Summons AND UPON HEARING the oral evidence of George Edward Moore, Gerald Simpson, Gordon Douglas Hawkes, Keith Donaldson McCallum and Anthony Peter O'Malley called on behalf of the Plaintiff and Alan Bernard McDowell called on behalf of the Defendant AND UPON READING AND EXAMINING the exhibits put in evidence on behalf of the Plaintiff and marked with the letters "A", "B", "C", "D", "E",

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In the Supreme Court of New South Wales

No. 4

Discretal Order

21st September 1970

(continued)

"F", "G", "H", "J" and "K" respectively and the exhibits put in evidence on behalf of the Defendant numbered "1", "2", "3", "4", "5", "6", "7", "8", "9" and "10" respectively AND UPON HEARING what was alleged by Mr. McAlary of Queens Counsel with whom was Mr. Cripps of Counsel for the Plaintiff and by Mr. Morling of Queens Counsel with whom was Mr. Wilcox of Counsel for the Defendant THIS COURT DID ORDER that this suit should stand for judgment AND the same standing in the paper on the seventh day of May last and this day for judgment accordingly THIS COURT DOTH ORDER that this suit be and the same is hereby dismissed out of this court AND THIS COURT DOTH MAKE NO ORDER as to costs.

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DATED this Twenty-first day of September, 1970.

ENTERED same day.  
RC

(Sgd.) G. Whalan (L.S.)  
DEPUTY REGISTRAR IN EQUITY

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In the Supreme Court of New South Wales Court of Appeal

No. 5

Notice of Appeal

9th July 1970

No. 5

NOTICE OF APPEAL (RE 395 of 1970)  
FILED 9TH DAY OF JULY, 1970

IN THE SUPREME COURT )  
OF NEW SOUTH WALES ) No. 407 of 1970  
COURT OF APPEAL )

BETWEEN: WESTERN STORES LIMITED  
(Plaintiff) Appellant

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AND: THE COUNCIL OF THE CITY OF ORANGE  
(Defendant) Respondent

NOTICE OF APPEAL

Name of Appellant: Western Stores Limited.

Name of Respondent: The Council of the City of Orange.

Court from which the Appeal is brought:

The Supreme Court of New South Wales in Equity.

In the Supreme Court of New South Wales Court of Appeal

Name of the Judge of the Court from which the Appeal is brought:

The Honourable Martin Francis Hardie.

          
Notice of Appeal

Day or days of hearing at first instance:

April 1, 2 and 3, May 7 and June 18, 1970

9th July 1970

(continued)

10 Whether appeal is against the whole or part only of the order decree judgment or verdict:

The whole.

Order decree judgment or verdict sought to be set aside:

Suit dismissed with costs.

Order sought in lieu thereof:

20 A declaration that the Orange Town Improvement Local Rate purported to be made and levied on the 24th December, 1969 upon the Plaintiff as owner of the parcels of land set forth in the first schedule to the originating summons in respect of the year commencing 1st January 1969 is invalid and contrary to law.

30 Grounds of Appeal:

1. That His Honour was in error in refusing to declare that the Orange Town Improvement Local Rate purported to be made and levied on the 24th December, 1969 upon the Plaintiff as owner of certain lands within the City of Orange was invalid and contrary to law.

40 2. That His Honour was in error in holding that Section 121(2) of the Local Government Act, 1919

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(as amended) authorises the levy of a local rate to finance the cost of a conglomeration of works and services.

3. That His Honour ought to have held that Section 121(2) of the Local Government Act, 1919 (as amended) only authorises the levy of a local rate to finance one work or one service.

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4. That His Honour ought to have held that the Town Improvement Local Rate levied pursuant to the provisions of the Local Government Act, 1919 (as amended) was invalid because it was sought to be levied to meet the cost of a number of unrelated works and services.

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5. That His Honour ought to have held that the concluding words of subparagraph (2) of Section 121 namely "under the provisions of this section" introduced into Section 121(2) the whole of the substance of Section 121(1) including the requirement that the different works and/or services proposed to be financed by the rate should be such that the Council could form a real opinion that "special benefit" was conferred by each of such works and/or services on all the properties in the Town Improvement District.

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10      6. That His Honour was in error in holding that Section 121(2) of the Local Government Act, 1919 (as amended) is to be construed as meaning that once the Town Improvement District has been validly constituted, the Council is able by one resolution to impose a local rate to finance unrelated works and/or services.

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(continued)

20      7. That His Honour ought to have held that the Council of the City of Orange did not address its mind to the criteria justifying a Town Improvement Rate but went through the form of imposing such a rate for the purpose of throwing upon a section of its area a substantial portion of its expenditure, which the Local Government Act required to be borne by the whole area.

30      8. That His Honour was in error in holding that the decision of the Council of the City of Orange constituting the Town Improvement District was a valid and effective one.

40      9. That His Honour was in error in holding that the replacing of existing kerb and gutter in one section of the Town Improvement District constituted an improvement of the whole Town Improvement District.

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(continued)

10. That His Honour was in error in holding that the cost of works undertaken completed and paid for prior to the constitution of a Town Improvement District could be the subject matter of a local rate levied under Section 121(2) if such works were located within the Town Improvement District when subsequently proclaimed.

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11. That His Honour ought to have held that the Town Improvement Local Rate was invalid because of:

(i) The Defendant's admission that in the absence of a programme of works for the Town Improvement District the replacement of the existing kerb and gutter did not benefit the whole of that District; and

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(ii) The failure of the Council to adopt a legally binding or any programme of works for that District.

12. That His Honour was in error in holding that the capital expense involved in the acquisition and improvement of land set aside for car parking was of "special benefit" to the land occupied by the Plaintiff.

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Date of filing  
Notice of Appeal:

9th July, 1970.

J.S. Cripps (Sgd.)  
Counsel for the Appellant.

157.

No. 6

IN THE SUPREME COURT) Term Nos. 406, 407, 408, 409,  
OF NEW SOUTH WALES ) 410 and 411 of 1970

COURT OF APPEAL

CORAM: ASPREY, J.A.  
MOFFITT, J.A.  
TAYLOR, A-J.A.

Tuesday, 28th September, 1971

K.D. McCALLUM & ORS. v. THE COUNCIL OF THE CITY OF  
ORANGE

In the Supreme  
Court of New  
South Wales  
Court of Appeal

No. 6

Judgment of His  
Honour Mr.  
Justice  
Asprey  
28th September  
1971

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JUDGMENT

ASPREY, J.A.: In these appeals the Court was con-  
stituted by my brother Taylor, my brother Moffitt  
and myself. My brother Moffitt has prepared a  
judgment with which I agree and with which my  
brother Taylor also agrees. In the opinion of  
each of the members of the Court the appeals  
should be dismissed with costs.

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I publish my statement to that effect and the  
judgment prepared by my brother Moffitt and a  
statement of my brother Taylor.

The order of the Court is that the appeals are  
dismissed with costs.

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In the Supreme  
Court of New  
South Wales  
Court of Appeal

No. 6

Judgment of  
His Honour  
Mr. Justice  
Asprey  
28th September  
1971

(continued)

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
COURT OF APPEAL )

Term Nos. 406, 407, 408, 409,  
410 and 411 of 1970

CORAM: ASPREY, J.A.  
MOFFITT, J.A.  
TAYLOR, A-J.A.

28th September 1971

K.D. McCALLUM v. THE COUNCIL OF THE CITY OF ORANGE  
WESTERN STORES PTY. LIMITED v. THE COUNCIL OF THE  
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GALLAGHER PROPERTIES PTY. LIMITED v. THE COUNCIL  
OF THE CITY OF ORANGE  
NEWMAY PTY. LIMITED v. THE COUNCIL OF THE CITY OF  
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RUGBY PROPERTIES PTY. LIMITED v. THE COUNCIL OF THE  
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B.G. DEIN PTY. LIMITED v. THE COUNCIL OF THE CITY  
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JUDGMENT

ASPREY, J.A.: These appeals were heard by consent  
together and I have had the advantage of reading  
the judgment of Moffitt, J.A. and in my opinion  
each of the appeals should be dismissed with costs.

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No. 7

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
COURT OF APPEAL )

Term Nos. 406 to 411 of 1970

CORAM: ASPREY, J.A.  
MOFFITT, J.A.  
TAYLOR, A-J.A.

28th September 1971

K.D. McCALLUM & ORS. v. THE COUNCIL OF THE CITY OF  
ORANGE

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JUDGMENT

MOFFITT, J.A.: These are six appeals from the dis-  
missal by Hardie J. of six equity suits instituted

by originating summons seeking declarations under the Equity Act 1901-68 s.10, that certain local rates, made and levied in 1969 by the Council of the City of Orange, were invalid.

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10 In that year three local rates were made under s.121 of the Local Government Act. Two made and levied under subsection (1), were in respect of the servicing of two separate car parks owned by the Council in the business section of the City. One was referred to as the Anson Street Parking Area Local Rate and the other as the Anson-Sale Streets Parking Area Local Rate. In each instance the rate was made and levied for the year 1969 on the unimproved capital value of all rateable land within an area described by metes and bounds, but which in substance consisted of all land immediately adjoining the parking area in question. The third rate was a rate termed the Orange Town Improvement Local Rate, which was made and levied for the year 1969 on the unimproved capital value of all rateable land within the Orange Town Improvement District and was expressed to be "for the purpose of improvements to works and services within and in the opinion of the Council for the special benefit of the Orange Town Improvement District." This rate was made and levied under s.121(2). Four of the suits relate to the latter rate and each of the remaining two to one of the parking rates. The same considerations apply to each of the parking rates. Apparently there were numerous objections to these local rates and the legal advisers to the objectors considered the six proceedings and six appeals raised all relevant questions. All the appeals were argued together without reference to special considerations particular to each, except that some submissions related only to the parking rates and some only to the Town Improvement Rate.

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40 S.121 of the Local Government Act has been amended a number of times, but since 1952 has been in the following terms:-

"S.121(1) For or towards defraying the expenses of executing any work or service or for or towards repaying with interest any advance made by the Minister or debt incurred or loan raised in connection with the execution of any work or service where, in either case, such work or service in the opinion of



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the Council would be of special benefit to a portion of its area to be defined as prescribed, the council of a municipality or shire may make and levy a local rate on the unimproved capital value or on the improved capital value of rateable land within such portion.

(1A) For or towards meeting any liability transferred to the council of a municipality or shire consequently upon the alteration of the boundaries of the area, the council may make and levy a local rate on the unimproved capital value or on the improved capital value of the rateable land added to the area. 10

(2) The Council of a municipality or shire may by notice in the Gazette from time to time define part of the area to be known as a 'town improvement district' within which a 'town improvement local rate' may be levied under the provisions of this section." 20

The three rates were made by resolutions of the Council on 24th December 1969. This belated action stemmed from some contests, both political and legal, in relation to the making and levy of rates earlier in the year. On 31st October 1969 the Land and Valuation Court (Else-Mitchell J.), (Alan E. Tucker Pty. Ltd. v. Orange City Council 90 W.N. (Pt.1) 477) gave judgment, which held 30  
invalid a rate, levied under s.121(1), termed a "Service Area Local Rate" upon the unimproved value of all lands in a defined area comprising the main retail and business section of the City being somewhat similar to the area covered by the third rate in question before us but being a little smaller and omitting some areas. Hardie J. summed up that decision as follows:-

"The rate challenged in the earlier litigation was held to be invalid on two grounds; 40  
one was that there was 'such an absence of similar or common benefit from the several categories of works and services that there can be no basis upon which the Council could reasonably form the opinion that all the lands in the defined area would be likely to derive special benefit

from each and every one of the proposed works and services.' The works and services referred to were detailed in the estimates submitted to and adopted by the Council when imposing the rate; they comprised some twelve items of expenditure ranging in amount from \$1,253 to \$32,300 and totalling in the aggregate \$173,194. The other ground of invalidity found was that 'the Council pursued a foreign purpose and was influenced by extraneous considerations in the making of that rate'; the finding on this point was that the Council was actuated by a desire 'to produce some different incidence of the rate burden from that which the Local Government Act envisages' and that it 'sought to adopt the leavy of the Service Area Local Rate as a device to shift a major part of the rate burden from residential lands on to lands in the business area'. The Court was satisfied, on the evidence before it, that 'the Council's main, dominant or substantial purpose in defining the service area as it did was not to provide for the financing of works and services which would be of special benefit to the central business area but to achieve an altered incidence in the rating burden."

In November 1969 the Council's officers sought advice from the Local Government Department in Sydney and from counsel. Discussions were also had with officers of Liverpool Council which had levied a Town Improvement Local Rate. The course of events thereafter are set out in the judgment of Hardie J. and it is sufficient to say that Council meetings were held on 25th November, 4th and 24th December 1969, that there was before the meeting of 4th December a minute prepared by the Town Clerk and Mayor as follows:-

"Further information is coming to hand which gives a clearer picture of works or services necessary for an upgrading of portion of the area, and I anticipate that this fuller information will be available for the above Council Meeting for better clarification of the various courses of procedure open to the Council.

I think there is general agreement that within the commercial centre improvement works are

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necessary, or alternatively, works or services which would be of special benefit to that portion of the area, and I have therefore called for a more comprehensive report on these matters.

The Council may resolve to sit as a Committee of the whole to consider these items, and to consider its capacity to perform them or some of them, and later the Committee may submit a report to the Council." 10

and there was also before that meeting a lengthy report of the Acting City Engineer. The meeting resolved to define and constitute the zoned central business area of Orange as a Town Improvement District pursuant to s.121(2) and to take steps to implement this resolution, which was done, the resolution being published in the Government Gazette on 12th December 1969. This area follows the boundaries of the area zoned under the Local Town Planning Scheme as commercial so far as it lies on the west of the railway line. 20

At a meeting of 24th December 1969 the following rates were made and levied in respect of estimates as follows:-

(1) Anson Street Parking Area Local Rate  
Estimates for year 1969.

Maintenance of parking area including attendant's wages, lighting and cleaning	1,140	
Rates on parking area	2,654	
Proportion of administrative expenses	100	30
	<u>          </u>	
	\$3,894	

Levy of local rate of 0.737c in \$  
on U.C.V. of \$527,550 - \$3,888

(2) Anson-Sale Streets Parking Area Local Rate  
Estimate for year 1969

Maintenance of parking area, including lighting and cleaning	640	
Rates on parking area	3,300	
Proportion of administrative expenses	150	
	<u>          </u>	
	\$4,090	

Levy of local rate of 0.661c in \$  
 on U.C.V. of \$572,670 - \$3,785  
 Ex gratia contribution  
 U.C.V. of \$46,200 305  
\$4,090

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(3) Orange Town Improvement Local Rate Estimates  
 for year 1969

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10 Principal and interest on loans raised  
 by Council for or toward the provision  
 public parking areas known as Anson  
 Street parking area, Anson-Sale parking  
 area and Little Summer Street parking  
 area \$15,410  
 Kerb and gutter and footpath improve-  
 ments in McNamara Street and Byng  
 Street 3,309  
 Preliminary expense including Archi-  
 tect's fees in connection with proposed  
 construction of Women's Rest Centre and  
 20 Child-minding centre in Anson Street 1,557  
\$20,276

(continued)

Levy of Town improvement rate of 0.27c  
 per \$ on U.C.V. \$7,289,035 - \$19,680  
 Ex gratia contributions 580  
\$20,260.

30 The appellants unsuccessfully submitted to  
 Hardie J. that each of the rates in question were  
 invalid, being the subject of an improper exercise  
 of power as found by Else-Mitchell J. This matter  
 formed a ground of appeal before us and can more  
 conveniently be dealt with later. The appellants'  
 principal and numercus submissions concerned parti-  
 cular objections to the parking area rates on the  
 one hand and the Town Improvement Rate on the other.

40 The first objection to the parking area rates  
 was that the resolutions, which made these rates,  
 did not recite that in the opinion of the Council  
 the works or services, the subject of the estimates,  
 would be of special benefit to the areas rated. The  
 formation of such an opinion, it is clear, is a pre-  
 requisite to the valid exercise of the power to make  
 a local rate under s.121(1). Subject to alternate

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submissions, yet to be referred to, counsel for the appellants did not contest that the provision and servicing of a parking area provides a special benefit to owners of adjoining premises used for business purposes. In Baldwin v. Orange City Council (10 L.G.R.A. 356) the question of the validity of an earlier local rate, made in 1964 in respect of the Anson Street Parking Area, was considered by Hardie J. The land of Baldwin in that case is the same land as that of the appellant before us Newmay Pty. Limited. Hardie J. in Baldwin's case rejected a submission that the provision of and the maintaining of a parking area could not provide a special benefit to the owners of adjoining commercial premises in that the same were of benefit to the public generally. He said:

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"A car park in close proximity to retail shops and in particular one from which drivers and passengers pass as pedestrians immediately into adjacent streets was, it was contended, of special benefit within the meaning of the section to the land on which those shops were erected. The point is a somewhat novel one on which there is room for difference of opinion. The conclusion I have reached, however, is that the parking area can in a real and substantial sense be said to be of special benefit to adjoining properties used for retail purposes." (359-60)

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Counsel for the appellants expressly indicated to us that he did not challenge those views. Thus the submission is merely directed to the form of the resolution which made the rate.

Counsel for the respondent Council relied on omnia praesumuntur rite esse acta. He contended, in the alternative, that it could be inferred from the course of events, including the imposition of similar local rates in the past, that the Council was aware of the requirement that such an opinion be formed as a condition to the making of a local rate, that the validity of such an opinion in relation to adjoining commercial premises had been upheld in 1964 in Baldwin v. Orange City Council (supra), that the resolution in the present instance imposing the rate referred

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to the area upon which the rate was to be levied by reference to a prior advertisement of the 5th April 1963 which itself referred to the then opinion of the Council appropriate to compliance with s.121(1); and that the areas in the present instance rated were all adjacent to the parking areas and therefore were those selected as obviously having a special benefit from the moneys expended in relation to the parking areas.

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10 I do not think it is necessary to go to the  
alternate argument and that, as the case is one  
where the opinion required by s.121(1) was open to  
be held, it is to be presumed in default of reason  
to conclude to the contrary, that the rate was  
regularly made and therefore was made upon the pre-  
requisite opinion having been formed. (Jones v.  
Robson 1901 1 K.B. 673 at 679,681; McLean Bros &  
Rigg Ltd. v. Grice 4 C.L.R. 835 at 849-50 and see  
20 Shire, of Lillydale v. Gainsy 1930 V.L.R. 73 at 80  
and Hebburn Ltd. v. Kearsley Shire Council 11 L.G.R.A.  
116 at 130). In applying the presumption I do not  
think any distinction should be drawn between the  
exercise of a power by an individual and the exer-  
cise of such power by a body or group which acts  
by way of resolution, or vote.

30 It was then submitted that a major part of the  
moneys, for which the local rate was made, was to  
meet the general rate levied upon the parking area.  
It was submitted that this was really only a device  
used to throw part of the burden of the general  
rate on to a section of the commercial area of the  
City. Alternatively it was submitted that this was  
not an "expense" within the meaning of s.121(1).  
Subject to the later consideration of the general  
question of the alleged improper exercise of the  
rating powers under s.121(1) and (2), the question  
at issue must in the end depend upon the latter  
submission.

40 Land owned by the Council is rateable under  
s.132(1), as it does not fall with any exception  
from rating in that subsection. S.146(1) provides  
that "Where the land is owned by the Council the  
rate shall ..... be paid by transfers from and to  
the appropriate fund under this Act" (and see  
s.106(1)). These sections contemplate that rates  
levied upon Council land may be met by a transfer

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of funds from a fund derived from a local rate to a general fund entitled to the benefit of the rate upon the Council land. This presupposes that it may be appropriate that a local rate be made and levied inter alia to meet the rates upon a particular area of land owned by the Council itself, where there is some special benefit to a part of the Council area in relation to that land. It is in this setting that it must be considered whether the rate is an "expense" within the meaning of s.121(1). The general rate has to be an "expense" the incurring of which is capable of being of special benefit to a portion of the Council area. If, having acquired the land, the Council, then makes it available as a parking area and, by doing so expends money in lighting and cleaning and otherwise servicing it, and also in paying rates as a necessary consequence of continuing to hold and use it for that purpose, then I think these are all expenses of providing the service which is capable of being regarded of special benefit to the owners of property used or available to be used as commercial premises adjoining such parking area. If private enterprise had provided for public use, on payment of a fee, a parking area owned by it, one ingredient in its expense of so doing would be the rates it was obliged to pay upon the land in order to continue to hold it. If it were the lessee then the rent would be such an expense and indirectly the rate ingredient in such rent. The Council being in law a ratepayer its position is no different. Accordingly I think that the general rate payable on the parking area was an "expense" within the meaning of s.121(1), the proper subject of the local rate or part of it.

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Counsel for the appellants further submitted that it was not open to the Council to treat capital expenditure in acquiring and improving land, set aside as parking areas, as a special benefit to the larger town improvement area and at the same time to treat the maintenance and operation of the car parking areas as providing special benefit to the smaller areas, namely those contiguous with the parking areas. Although directed to all three local rates, this submission cannot well be a challenge other than to the Town Improvement rate. This follows from the concessions, I think necessarily made,

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in respect of Baldwin v. Orange City Council (supra) and in particular that the provision of the parking area provides or can be considered to provide a special benefit to owners of adjoining commercial premises. It was argued that, as the maintenance of the parking areas was considered by the Council to provide special benefit to the adjoining land, it was not open to the Council at the same time to form the opinion that capital expenditure (including interest in respect of such expenditure) in relation to such parking areas was a special benefit to a larger area but still less than the Council's general area. The capital expenditure related to the acquisition of the parking area lands and to part of the capital expenditure (i.e. Architect's fees) of constructing a Women's Rest Centre and Child-minding Centre on part of the Anson Street Parking Area. As in my view it can only have relevance to the Town Improvement Local Rate, it is preferable first to consider the submissions concerning that rate.

It was submitted that on the true construction of s.121 (2) that its purpose was to provide a means of prescribing an area under s.121(1) and that otherwise a "Town Improvement Local Rate" had to comply in every respect with s.121(1). It was argued that the words in s.121(2) "may be levied under the provisions of this section" had the effect of importing the whole of s.121(1) into s.121(2). In particular it was submitted that the rate must be levied to defray expenses or make repayments which answer the description of such in s.121(1) and that in respect of each such ingredient of a rate, for example in respect of each item of work the expense of which was to be met by the rate, the council must, as a condition of the validity of the rate, form an opinion that the execution of that work would be of special benefit to all of the land within the town improvement district. The effect of this submission is that the making of the rate under s.121(2) could validly achieve nothing beyond what could be achieved by the earlier "Service Area Local Rate" made under s.121(1), which had been held invalid by Elsie-Mitchell J. in terms referred to by Hardie J., earlier quoted. It was then submitted in the present case that there was no basis on which the Council could reasonably form the opinion that all the lands in the area would derive special benefit from each and

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every particular item of the proposed works or services. In the present case the area was different in the respects already referred to from that considered by Else-Mitchell J. and the items of expenditure in the present case were less diverse and less numerous. However, in support of the submission referred to each of the items which were included were separately analysed in relation to special benefit to all lands and particular lands within the district. Thus it was said the acquisition of each of the three parking areas could not be said individually to provide a special benefit to each and all of the land within the proclaimed district. A similar argument was advanced in respect of the Women's Rest Centre and Child-minding Centre. Then it was separately submitted that the kerbing and guttering related to a very limited area within the district and at best could only provide a special benefit to a very limited part of the district.

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I cannot agree with the construction sought to be placed upon s.121(2) and therefore with the approach which was basic to the appellants' submission. The effect of the submission is that s.121(2) adds nothing to s.121(1) other than providing a convenient and permanent means of prescribing in advance an area which is to be the subject of a local rate. The term town improvement district suggests some permanent and substantial area. If each item of expenditure to be covered by the rate were to be subject to the analyses and tests suggested very few items of expense could be made the subject of a rate on this preselected district so its preselection would serve little purpose. The suggested construction ignores the word "improvement" and its conjunction with the word "town". While ignoring the word "improvement" it gives full effect to "works" or "services" referred to in s.121(1) but at the same time circumscribes each with the test of special benefit to the area. S.121(2) provides an important rate making power. The power is not defined expressly. Such limitations as there are upon the power, regrettably, are left to be inferred from its limited and ill-drawn terms. These limitations depend upon the effect given to the words "improvement" and "town", the provision for declaring a district and the reference to S.121(1).

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The purpose of s.121(2) and the expense for which the rate may be made is indicated by the words "town" and "improvement". The area is defined for the purpose of levying a rate upon it. It is not any area that can be defined. It is an area that can appropriately answer the description of a "town improvement district." The purpose of defining this area is so that improvements can be made to and within it and the cost cast by a local rate upon it. For example it would be foreign to the powers given in s.121(2) to define a rural district as a "town improvement district" otherwise properly defined, to meet the cost of maintaining existing works or the cost of making an improvement that was a rural and not a town improvement. There may be some difficulties in giving precise definition to the limitations on the power to define an area which arise from the words "town improvement district" or to the limitations on the power to make a rate under s.121(2) which arise from the use of the words "town improvement local rate" or even to define in practice what answers the description "town" and what answers the description "improvement". These difficulties, however, do not prevent the conclusion, which I think should be come to, that these words provide the limitation upon the powers and therefore the definition of them. Such difficulties do not prevent it being said, for example in the instances referred to, as to what is outside the power. Such cases which are clearly outside the power demonstrate that the whole substance of s.121(1) could not be intended to be introduced into s.121(2) by reason of its concluding words "may be levied under the provisions of this section." Thus under s.121(1) a local rate may be made and levied to meet the expense of "any work or service" which in the opinion of the council is of special benefit to the defined area. If, as submitted, all of s.121(1) were introduced into s.121(2), so that the power in subsection (2) was exactly as defined in subsection (1) then the test of the subject matter of the rate in subsection(2) would not be improvement or town improvement or improvement to the town area, but would be any work or service, even mere maintenance services, provided only the Council considered it was of special benefit to the area. Either "town improvement" or "any work or service" must be the

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appropriate subject matter for which the rate is made and hence the factor which defines the power, for their fields do not co-incide. In my view the former is the factor.

The question then arises whether there should be engrafted from s.121(1) a requirement that the "town improvement" be such town improvement as is of special benefit to the defined area. Literally there is no justification for this course. The provision of s.121(1) is "where . . . . such work or service in the opinion of the Council would be of special benefit . . . ." This limitation was necessary in s.121(1) because the works or services were otherwise unlimited by use of the word "any". S.121(2), by implication, however, provides its own limitations, which in the end have a concept somewhat parallel to special benefit to the area. The powers of defining an area and of making a rate under s.121(2) although exercisable at different times are complimentary. In selecting and defining a "town improvement district," a Council would have in contemplation the effecting of improvements and charging the cost or some of the cost to that district by way of a local rate. In the proper exercise of the power to define the area the Council would need to select that town area which it could be said as a whole is the subject of proposed improvements. Improvements to be the subject of a rate have to be town improvements made in respect of an area, namely the town improvement district. It follows that the concept of special benefit exists in the sense that improvements made to and within the area will provide benefit to that area as a whole and because they are town improvements the benefit will be one special to the selected area. The selection of the area may be a matter of some difficulty and difference of opinion. A commercial and business area may have lying on its outskirts or even separated from it, local business areas which might properly be omitted from the defined area, if, for example, the intended improvement proposals were improvements to the central area with little or no benefit to the excluded areas. The proper exercise of the powers under s.121(2) is fairly to cast the burden, or some of it, in respect of town improvements on the town area which is the area improved. Thus although not imported directly from s.121(1), the

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concept of special benefit or some equivalent, is to a degree inherent in the definition of the district and the selection of the improvements the subject of a town improvement local rate. As in the case of special benefit, where there may co-exist some benefit to other land outside the area rated or to the public generally, so a town improvement may provide benefit to such other land or the public generally. The concept introduced by s.121(2) is such that exercise of the power does not necessarily involve an examination of whether each improvement provides special benefit to every part of the town improvement district. The question for the Council to determine is whether the proposed town improvement district defined is the area appropriate to bear the expense of town improvements and whether the improvements the subject of the proposed rate constitute in themselves, or as part of a programme, improvements to and within the district defined. I think that the substance of the views of Hardie J. as to the nature of the powers under s.121(2) and their distinction from those under s.121(1) coincide with the conclusions I have indicated (but see *Hebburn Ltd. v. Kearsley Shire Council* supra at 129).

It follows in my view that the powers provided in s.121(2) are distinct powers into which the provisions as to special benefit in s.121(1) are not directly introduced. I think that the words "may be levied under the provisions of this section" mean that the rate, defined as I have indicated, may be levied "on the unimproved capital value or on the improved capital value of rateable land" within the defined area as provided in subsection (1) and (1A) of s.121.

In the present case capital expenditure on the three parking areas within the town improvement district was in respect of improvements. They were improvements to the town and in particular to the town improvement district and within it and were town improvements. More correctly it is sufficient to say these views were open to be formed by the Council. It is not to the point that other rate-payers outside the district in rural or residential areas and members of the public might enjoy some benefit from such expenditure. It is not in point that some land owner within the town improvement

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district can say his land is remote from a particular car parking area or that it provided no benefit or at least no direct benefit to his land as he or his patrons have other parking facilities available.

In respect of some classes of expenditure an initial question may be posed for the Council decision as to whether the expenditure is upon an improvement within the meaning of s.121(2) or whether on the other hand it consists rather of providing a service not an improvement or is in the nature of the maintenance of an existing improvement. Such questions could well arise in respect of work such as kerbing and guttering particularly when it is not initial work but replacement work. If it is part of a town reconstruction programme directed to the improvement and modernisation of the town streets it could appropriately be the subject of a rate under s.121(2). A rate apparently so made would not be held invalid if it might reasonably have been directed to this purpose. The view of Hardie J. on the facts was that such view was open and that therefore it was valid. I find no reason to disagree with this conclusion.

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It follows from what I have said that the provision of capital (and this would include payment of interest to a sinking fund) to meet the cost of acquisition of the car parks and to build the Women's Rest Centre and Child Minding Centre were permissible subjects of a town improvement rate. It is no answer to the making of such a rate that the Council is said to have acted inconsistently in making the local rates in relation to the maintenance of the car park areas. The servicing of the car parks were of special benefit to the adjoining properties and expense on that account appropriately fell within the terms of s.121(1) but not within s.121(2). The acquisition of the land for car parks or the construction of buildings upon it for example to provide amenities for women and children were improvements and town improvements and within s.121(2).

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Although some submission was made to Hardie J. challenging the declaration of the town improvement district no similar submission was really pressed

before us. In any event having regard to the boundaries of this area and having regard to there being not arbitrarily excluded from it any town area which it could be argued ought reasonably to have been included as was the case of in the rate before Else-Mitchell J. there is no ground to conclude that this area was other than validly declared.

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South Wales  
Court of Appeal

—  
No. 7

Judgment of  
His Honour  
Mr. Justice  
Moffitt  
28th September  
1971

(continued)

10 It was then submitted that the rate was invalid because it related to expenditure commenced and completed before the constitution of the town improvement district. Particular reliance in this regard was placed on the circumstances that the kerbing and guttering work had been so performed and completed prior to the declaration of that district. However the expenditure was incurred in the year which was current when the rate was made. I agree with Hardie J. that there is no warrant in s.121 or elsewhere to find a rate so made invalid.

20 I turn now to the remaining submission earlier referred to which was dealt with by Hardie J. as follows:-

30 "One question remains for consideration: that is whether the Town Improvement Rate is invalid by reason of the second ground relied upon in the previous litigation, that is to say, that the Council's motivation was to throw upon a section of its area a substantial portion of its expenditure which under the Act was required to be borne by the whole area. The effect of the imposition of the Town Improvement Rate is of necessity to lessen the burden on the general rate fund, in other words, the burden on the ratepayers generally. The existence of that effect does not invalidate the rate. To bring about invalidity it must appear that the Council did not address its mind to town improvement problems and rating, but went through the form of imposing such a rate for an ulterior purpose such as was found to exist in the previous proceedings. On the material before me I am satisfied that the Council did in fact address its mind to the question as to whether it should exercise its power under s.121(2) and proceeded to exercise that power. It is apparent that care was taken, on advice, not to include in the relevant estimates any items of expenditure

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In the Supreme  
Court of New  
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Court of Appeal

except those related to the provision of new or additional works or services qualifying as town improvements within the meaning of s.121(2)."

No. 7

Judgment of  
His Honour  
Mr. Justice  
Moffitt  
28th September  
1971

(continued)

The circumstances concerning the present rates covering limited items of expense totalling just over \$28,000 were very different from those concerning the earlier rate made in respect of a larger number of items quite diverse in quality and relationship to the area on which they were imposed and to land within such area and totalling just over \$173,000. The area was different and there were indications in the earlier instance of discrimination in excluding particular lands from the area prescribed. Moreover prior to the making of the present rates there were a number of meetings of the council and a considerable number of investigations, interviews and reporting by Council officers in respect of which there was a considerable body of evidence both documentary and oral before Hardie J. I find no reason to conclude that he was in error in the conclusions to which he came and which I have quoted.

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One submission made on this aspect of the case needs some reference. This submission was that although outwardly the items of expenditure totalling about \$28,000 may not be subject to the criticisms open in respect of some items of expense included in the earlier total of \$173,000, that it should be inferred that the making of the rates now under consideration were part of a design on the part of the Council to raise the \$173,000, which in turn had been designed to shift the burden of rates from rural to town ratepayers to meet a change in the incidence of the burden of rates due to a revision of values in the Council area by the Valuer General. In support of this contention reliance was placed on the report of the Acting City Engineer to the Mayor referred to in the Minutes of the Meeting of the Council held on the 4th December 1969. This report inter alia was that recommended work on the drainage, kerbing, guttering, footpaving and roads detailed in the report would constitute a marked improvement to the existing municipal facilities and would cost \$144,703. It was argued that this added to the \$28,000 approximately covered by the three local rates in

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question amounted to \$173,000 already referred to. On analysis this argument is not as forceful as might at first appear and does not in my view provide ground to displace the overall conclusion of Hardie J. based on all the evidence before him. It will suffice to refer to some of the weaknesses of this submission. As a matter of arithmetic the total of \$173,000 cannot be derived from the report. There is common to both the local rates and the report the kerbing and guttering item of \$3,300. Further the assumption in the argument is that the balance between \$28,000 and \$173,000 will be made up in future years as local rates. The mere report and the current local rates do not warrant this conclusion. The major part of the \$28,000 is quite unrelated to the subject matter of the Acting City Engineer's Report and covers other than kerbing, guttering and drainage works and the major items themselves which constitute the local rates totaling \$28,000 are likely to have their own equivalents in future local rates. As the local rates are to meet expenses for which they can be legitimately made within power, the mere report itself therefore falls far short of establishing the misuse alleged against the Council in the exercise of such power. In the result therefore I find no ground to interfere with the finding of the learned trial judge on this submission.

In my view each of the six appeals should be dismissed with costs.

In the Supreme  
Court of New  
South Wales  
Court of Appeal

\_\_\_\_\_  
No.7

Judgment of  
His Honour  
Mr, Justice  
Moffitt  
28th September  
1971

(continued)

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In the Supreme  
Court of New  
South Wales  
Court of Appeal

No. 8

Judgment of  
His Honour  
Mr. Justice  
Taylor  
28th September  
1971

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
COURT OF APPEAL )

Term Nos. 406/7/8/9/10/11  
of 1970

CORAM: ASPREY, J.A.  
MOFFITT, J.A.  
TAYLOR, A-J.A.

28th September 1971

K.D. McCALLUM & ORS. v.

THE COUNCIL OF THE CITY OF ORANGE

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JUDGMENT

TAYLOR, A-J.A.: In this matter I agree with the  
judgment of my brother Moffitt and the orders  
proposed.

No. 9

Rule of Court  
of Appeal  
28th September  
1971

No. 9

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
COURT OF APPEAL )

Term No. 407 of 1970

BETWEEN: WESTERN STORES LIMITED  
(Plaintiff) Appellant

20

and: THE COUNCIL OF THE CITY  
OF ORANGE  
(Defendant) Respondent

RULE DISMISSING APPEAL

THE 28th day of September 1971

UPON MOTION made the 13th, 14th and 17th May, 1971  
WHEREUPON AND UPON READING the notice of Appeal  
herein dated the 9th day of July, 1970 and the  
Appeal Book filed herein AND UPON HEARING Mr. F.S.  
McClary of Queen's Counsel with whom was Mr. J.S.  
Cripps of Counsel for the Appellant and Mr. T.M.  
Morling of Queen's Counsel with whom was Mr. M.  
Wilcox of Counsel for the Respondent IT WAS ORDERED  
that the matter stand for Judgment and the same

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standing in the list this day for Judgment accordingly IT IS ORDERED that the Appeal herein be and is hereby dismissed and IT IS FURTHER ORDERED that the costs of the Respondent of and incidental to this Appeal be paid by the Appellant to the Respondent or to its Solicitor.

In the Supreme Court of New South Wales Court of Appeal

No. 9

Rule of Court of Appeal  
28th September 1971

(continued)

By the Court,

(Sgd.) J.E. NOONAN (L.S.)

REGISTRAR.

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No. 10

No. 10

IN THE SUPREME COURT )  
                                  )  
OF NEW SOUTH WALES )  
                                  )  
COURT OF APPEAL )

No. 407 of 1970

Notice of Motion for Leave to Appeal to Her Majesty in Council  
12th October 1971

BETWEEN: WESTERN STORES LIMITED

Plaintiff

AND THE COUNCIL OF THE CITY OF ORANGE

Defendant

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TAKE NOTICE that on the first day on which the business of the Court permits after the expiration of fourteen (14) days from this date the abovenamed WESTERN STORES LIMITED will move the Court for an Order granting leave to appeal to Her Majesty in Council from the judgment of the Court of Appeal of the Supreme Court of New South Wales upon the following grounds:

30

1. That Their Honours were in error in holding that Section 121(2) of the Local Government Act, 1919 conferred upon the Respondent power to make and levy a local rate for the purposes of town improvement.
2. That Their Honours ought to have held that the only power to make a local rate was to be found in Section 121(1) of the Local Government Act, 1919.

In the Supreme Court of New South Wales Court of Appeal

No.10

Notice of Motion for Leave to Appeal to Her Majesty in Council  
12th October 1971

(continued)

3. That Their Honours ought to have held that the power of the Respondent to make a local rate depended upon the Respondent forming the opinion that such local rate would be of special benefit to each and every parcel of land within the area rated.

4. That Their Honours ought to have held that the works and/or services covered by the town improvement local rate which the Respondent purported to levy upon the Appellant were not of special benefit for the whole of the area upon which the Respondent purported to levy the said rate.

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5. That Their Honours ought to have declared that the town improvement local rate which the Respondent purported to make and levy on 24th December, 1969 in respect of the lands of the Plaintiff was invalid and contrary to law.

DATED the 12th day of OCTOBER, 1971

20

(Sgd.) FRANK McCLARY  
.....  
Counsel for the Appellant

No. 11

Affidavit of Paul McGrath  
12th October 1971

No.11

IN THE SUPREME COURT )  
OF NEW SOUTH WALES ) No. 407 of 1970  
COURT OF APPEAL )

BETWEEN WESTERN STORES LIMITED  
Plaintiff

AND THE COUNCIL OF THE CITY  
OF ORANGE  
Defendant

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ON this 12th day of October, One thousand nine hundred and seventy-one PAUL McGRATH of Number 363 Pitt Street, Sydney in the State of New South Wales, Solicitor, being duly sworn makes oath and says as follows:-

1. I am the city agent for Messrs. Whiteley O'Neal & Co. of 209 Lords Place, Orange, the Solicitors for Western Stores Limited the abovenamed Plaintiff.

In the Supreme  
Court of New  
South Wales  
Court of Appeal

2. The present suit was commenced by an Originating Summons dated 3rd April, 1970 wherein the Plaintiff sought (inter alia) the following declarations and orders in relation to the Orange Town Improvement Local Rate namely:-

No.11

Affidavit of  
Paul McGrath  
12th October  
1971

(continued)

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"1. That it may be declared that the Orange Town Improvement Local Rate purported to be made and levied on the 24th day of December, 1969 upon the Plaintiff as owner of the parcels of land more particularly described in the First Schedule hereto in respect of the year commencing 1st January, 1969 and covered by the Assessment Notices set forth in the Second Schedule hereto is invalid and contrary to law.

20

2. That the works and/or services covered by the aforesaid Orange Town Improvement Local Rate are not of special benefit to the whole of the area upon which the rate has been levied.

3. That it may be declared that the Defendant did not form the opinion that the works and/or services covered by the said Town Improvement Local Rate would be of special benefit to the whole of the area upon which the said Rate has been levied.

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4. That there was no material upon which the Defendant could validly form an opinion that the works and/or services covered by the said Rate were of special benefit to the Orange Town Improvement District.

5. That the Defendant may be restrained by order of this Honourable Court from proceeding or attempting to recover from the Plaintiff the said Rate or any part thereof."

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3. I am instructed and verily believe that the said Plaintiff was and still is the owner of the four parcels of land set forth in the First Schedule to the said Originating Summons and that the four rate assessment notices set forth in the Second Schedule have been levied upon the said Plaintiff in respect of its ownership of such lands.

In the Supreme  
Court of New  
South Wales  
Court of Appeal

No.11

Affidavit of  
Paul McGrath  
12th October  
1971

(continued)

4. I am further informed and verily believe that the amounts payable by the Plaintiff to the Defendant under the said rate assessment notices are as follows:-

Council of City of Orange Assessment No. 6269	-	£1589.22	
Council of City of Orange Assessment No. 5531	-	£ 33.48	
Council of City of Orange Assessment No. 5533	-	£ 40.10	10
Council of City of Orange Assessment No. 5539	-	£ 49.08	

5. This suit was heard by His Honour Mr. Justice Hardie on 1st, 2nd and 3rd April, 1970 when judgment was reserved. On the 7th day of May 1970 His Honour gave judgment and dismissed the Plaintiff's suit.

6. An appeal brought from that decision was heard by this Honourable Court and judgment was given by the Honourable Court on the 28th day of September 1971 when this Honourable Court ordered that the said appeal be dismissed with costs.

7. In consequence of the dismissal of the said appeal the Plaintiff will be obliged to pay a sum in excess of five hundred pounds sterling (£500. 0. 0.) to the Defendant.

8. The subject matter of the present appeal is a matter of great public importance as it concerns the power of a local council to make and levy a rate, known as a "town improvement local rate" under Section 121(2) of the Local Government Act, 1919.

9. I humbly request that this Honourable Court will grant leave to appeal to Her Majesty in Council from the judgment and order made herein on the 28th September, 1971.

SWORN by the Deponent on the day }  
and year first hereinbefore } P. P. McGRATH  
written, before me: }

(Sgd.)

A Justice of the Peace

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Plaintiff's  
Exhibits

          
No.13(A)

Map of the  
City of Orange  
Planning Scheme

Exhibit reproduced separately

183.

Plaintiff's  
Exhibits

No.13(B)

Exhibit reproduced separately

Map showing  
Plaintiff's  
areas



Plaintiff's  
Exhibits

          
No.13(0)

Rate Notices  
of Plaintiff

Exhibit reproduced separately

EXHIBIT D -- MINUTES OF COUNCIL AND COMMITTEE MEETINGS AND REPORTS BETWEEN 27.11.68 and 10.4.69

Plaintiff's Exhibits

No.13(D)

MINUTES OF THE SPECIAL MEETING OF THE FINANCE COMMITTEE HELD AT THE TOWN HALL, ORANGE ON WEDNESDAY, 27th NOVEMBER, 1968 COMMENCING AT 7.30 P.M.

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

10 ATTENDANCE: The Mayor (Alderman R.J. Cutcliffe), Alderman R.O. Thomas (Vice-Chairman), Alderman N.E. Green, R.J. Hill, K.S. McCarron, J.N. Payten, D.H. Perry, J.M. Provost and A.M. Reed; Town Clerk, Deputy Town Clerk, Accountant and Rates Clerk.

AN APOLOGY FOR ABSENCE was accepted from Alderman K.E. Brown.

NEW VALUATIONS AND RATES.

The Mayor submitted the following <sup>^^</sup>MINUTE:

After considering new valuations and their likely effect on rating I recommend -

20 (1) That the attention of ratepayers be drawn by means of a published statement (a) that an increase of valuation does not necessarily mean a corresponding increase in rates. For example a rise in valuations in Wakeford Street by 361% does not mean a rise in rates of 361% (b) that a variation in the rating in the  $\pounds$  will be made to distribute the rating according to the new valuations as equitably as possible and that the Town Clerk set out this fact with the necessary illustrations.

30 (2) That the Council object to the valuations on examples to be chosen by the Town Clerk on the grounds that some valuations are too high and some too low particularly in the business area, as the rise in values between different sections of ratable land is disproportionate and unrealistic, and that for this purpose engage the services of a competent valuer and in particular lodge objections against the values in the business area so that on adjusted values there would be no reduction in rates in the business area at the expense of ratepayers in other areas.

40

Alderman Hill said he would second the first part of the Minute.

Plaintiff's  
Exhibits

No.13(D)

Minutes of  
Council and  
committee  
meetings and  
reports between  
27/11/68 and  
10/4/1969

(continued)

Alderman Thomas asked for a ruling by the Chairman on whether members only of the Finance Committee could move or second motions, or vote on motions before the Chair.

The Mayor and Alderman Hill said that the Finance Committee had invited all Aldermen to attend the meeting. Alderman Perry said the case was no different from the conduct of meetings of the Saleyards Committee at which Aldermen, who were not members of that Committee, had on occasions been invited to attend meetings but as observers only. He believed that Aldermen should be entitled to speak whether they were members of the Finance Committee or not but that the making of Finance Committee resolutions should be confined to members of the Finance Committee.

10

Alderman Reed said the procedure had been explained to him when he first became an Alderman: An Alderman could attend any meeting of a Council Committee whether he was a member of that Committee or not, but if he was not a member he would not have the right of moving a motion but may be permitted to speak on it.

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Alderman Hill said that if he was not to be allowed to take full part in the proceedings he would prefer to withdraw from the meeting, and asked for a ruling by the Mayor on the matter.

The Mayor said the meeting was a special meeting of the Finance Committee to which all Aldermen had been invited to attend, but he was not empowered to appoint Aldermen to any Committee; appointments to Committees were made by the Council.

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Alderman Hill withdrew from the meeting.

The meeting gave attention to reports from the Town Clerk dated 31/10/68, 21/11/68 and 25/11/68 (copies attached). The Town Clerk drew attention to alterations in the report dated 21/11/68, the alterations being noted in the attached copy. He reported that a preliminary examination had

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This is Page No. One of Minutes of the Meeting of the Special Finance Committee held on 27th November, 1968.

..... TOWN CLERK R. CUTCLIFFE VICE-  
CHAIRMAN

Plaintiff's  
Exhibits

2.

No. 13(D)

10 been made of the new valuations in relation to water and sewerage rates for 1969, subject to estimates of the water and sewerage funds for 1969 being in due course examined by the Council. The estimated additional rate income required in the sewerage fund in 1969 was .75%, and in the water fund 9.2%, or \$2,000 and \$22,000 respectively.

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

Dealing with the general rate, special gas loan rate, water rate and sewerage rate for 1969 the preliminary estimates indicated a total additional requirement of rate income of \$95,500 made up of \$71,500 as referred to in the Town Clerk's report of 25/11/68, plus \$24,000 in water and sewerage rates.

20 The Town Clerk added that the general effect of the new valuations and the anticipated rating for 1969 indicated a reduction in rates (excluding parking area local rates) of \$104,300 on the business area generally bounded by Sale Street, Byng Street, Railway line and Kite Street, and an increase of about \$200,000 on the rest of the City.

30 Addendum to Mayoral Minute: Alderman Perry suggested that the Mayoral Minute include the provision that Council engage the services of a competent valuer particularly to assist the Council in lodging objections against valuations in the business area with the view to having such valuations adjusted so that there would be no reduction in rates in the business area at the expense of ratepayers in other areas. The Mayor accepted the addendum for incorporation in his Mayoral Minute. (The copy of the Mayoral Minute attached hereto includes the addendum).

40 RESOLVED, in relation to part 1 of the Mayoral Minute, that the Town Clerk issue a statement demonstrating that any increase in rates would not necessarily be of the same proportions as the increase in valuations.

Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/69

(continued)

RESOLVED in relation to Part 2 of the Mayoral Minute, that the Town Clerk make enquiries - and report back to the Committee - on the engagement of a valuer, including information of fees and expenses, and including also suggestions on how such valuer's services may be made available to ratepayers generally to assist them with their individual objections against valuations.

10

RECOMMENDATION That Part 2 of the Mayoral Minute be adopted.

THE MAYOR DECLARED THE MEETING CLOSED.

This is Page Number Two and final page of the Minutes of the Special Meeting of the FINANCE COMMITTEE held on 27th November, 1968.

TOWN CLERK \_\_\_\_\_ R. CUTCLIFFE  
MAYOR

These Minutes confirmed 2-12-68

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\_\_\_\_\_  
R. CUTCLIFFE  
MAYOR

MINUTES OF THE SPECIAL MEETING OF ORANGE CITY COUNCIL HELD AT THE TOWN HALL, ORANGE ON MONDAY, 2ND DECEMBER, 1968 COMMENCING AT 7.35 P.M.

ATTENDANCE: The Mayor (Alderman R.J. Cutcliffe), Aldermen K.E. Brown, M.D. Connaghan, N.E.Green, R.J. Hill, J.N. Payten, D.H. Perry, J.M. Provost, A.M. Reed, R.O. Thomas and P.J. Whiteley; Town Clerk, and Deputy Town Clerk.

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AN APOLOGY FOR ABSENCE was accepted from Alderman K.S. McCarron.

RESOLVED That the Minutes of the Special Meeting of the Finance Committee held on 27th November, 1968 be confirmed with amendment of a sentence on Page One of the Minutes to read "Alderman Hill said he would second the first part of the Minute".

1. BUSH FIRE APPEAL.

The Mayor announced that he had promised, on behalf of Council a donation of \$100 to the Appeal.

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434 RESOLVED That the action of the Mayor be endorsed

2. MAYORAL MINUTE.

The Mayor submitted a Minute on the degree of progress within the boundaries of the City of Orange over the past year.

Plaintiff's Exhibits

No.13(D)

435 RESOLVED That the Minute from the Mayor dated 2/12/68 (copy attached) be adopted.

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/69

3. NEW VALUATIONS AND RATES.

The Special Meeting of the Finance Committee held on Wednesday, 27th November, 1968 had recommended:

(continued)

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That the Council object to the valuations on examples to be chosen by the Town Clerk on the grounds that some valuations are too high and some too low particularly in the business area, as the rise in values between different sections of ratable land is disproportionate and unrealistic, and that for this purpose engage the services of a competent valuer and in particular lodge objections against the values in the business area so that on adjusted values there would be no reduction in rates in the business area at the expense of ratepayers in other areas.

20

The Mayor said that to obtain the services of an independent valuer would have the effect of delaying adoption of the 1969 Estimates of Expenditure and Income. He said that the Town Clerk was quite familiar with valuations and rating and that he had given the problem some thought along the lines of approaching the Valuer-General to ascertain if the effect of the new valuations could be delayed.

30

The Town Clerk outlined the provisions of Sections 48 and 62 of the Valuation of Land Act. He pointed out that a valuation list must be furnished by the Valuer-General at least once in every six years, and that on receipt of the list it was mandatory upon Council to give effect to it for the purpose of rating.. He said that at that date the valuation list had not been received but that it was expected to arrive prior to 1st January, 1969 and would become effective for the rating year 1969.

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This is Page No. One of Minutes of the Special Meeting of the Orange City Council held on 2nd December, 1968

TOWN CLERK

R. THOMAS  
MAYOR

Plaintiff's  
Exhibits

No.13(D)

Minutes of  
Council and  
Committee  
meetings and  
reports between  
27/11/68 and  
10/4/69

(continued)

The Town Clerk said that December was the month in which the 1969 Estimates (and the fixing of the rates for the new year) would have to be considered by Council. At least two new Aldermen would be elected to Council on 7th December who would know nothing of Council's finances and they would be asked to decide immediately on this important matter.

Council would want to know the incidence of the rates levied on the new valuations, that is, in what proportions would the rates fall on pensioners, wage earners and business houses. Another important unknown factor would be the number and extent of the successful objectors to the new valuations. A large number of reductions in valuations on appeal could send the Council's whole financial budget awry. The only solution would be to defer the fixing of a rate for 1969 and to operate on a Bank Overdraft until such time as these questions could be answered, and that position would be absurd.

10

The Town Clerk recommended that it be proposed to the Valuer-General that where a Council is furnished with a new valuation list after the 1st July in any year, then the Council may opt to use the old valuations.

20

If the Valuer-General would recommend to the State Government that there should be such an optional deferment:

- a) The Council should levy 1969 rates on the old valuations,
- b) People who wish to object to the new valuations could ascertain the basis on which the new valuations have been made and either withdraw or proceed with the objection (it may take six months for the full effect of any objections to become known).

30

The Town Clerk stated that no taxing authority should be called upon to raise taxes without knowing the true basis on which the tax would be levied.

He also pointed out that Council cannot legally spend money on engaging a valuer for individual objectors but that it could assist by making a valuer available for interview by potential objectors who would have to meet their respective costs if they engaged the valuer to act for them

40

RESOLVED That the Town Clerk consider the grounds for any objection that may be made by Council to the new valuations and report on the matter to Council, and

That the Town Clerk be empowered to interview the Valuer-General and pursue a proposal for optional postponement of the application of valuations.

Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

This is Page No. Two of Minutes of the Special meeting of the Orange City Council held on 2nd December, 1968.

(continued)

10 TOWN CLERK R. THOMAS  
MAYOR

REPORT TO: SPECIAL MEETING OF FINANCE COMMITTEE TO BE HELD WEDNESDAY, 27th November, 1968 at 7.30 p.m.

FROM: TOWN CLERK

ON: NEW VALUATIONS.

NOTE: ALL ALDERMEN ARE INVITED BY THE COMMITTEE TO ATTEND THE ABOVE MEETING.

20 New Valuations have been issued by the Valuer-General. The new valuations will apply for a term of at least three years but not more than six years. With the new valuations the Valuer-General has issued an information booklet, copies of which have already been issued to Aldermen. Attached is a copy of a report issued on the subject on 31/10/68.

30 At the time of writing this report it has not been possible to carry out all of the procedures listed in the attached report, but for present purposes, the following comparisons between existing and new valuations are given. The new valuations will of course apply to rates levied for 1969.

	<u>Existing</u> <u>Valuations</u>	<u>New</u> <u>Valuations</u>	<u>Increase</u> <u>%</u>
Total U.C.V. of all Lands in Orange (Ratable and Non-Ratable)	14,959,203	25,867,481	73%



Plaintiff's  
Exhibits

\*U.C.V. of  
Ratable land -

No.13(D) Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969 (continued)	(a) Non-Urban Farm lands	205,966	713,365	246%	
	(b) Central Commercial Area	5,522,939	6,267,995	13%	
	(c) All other areas	6,456,178	16,901,150	161%	
		<u>12,185,083</u>	<u>23,882,510</u>	96%	10
	(d) Non-Ratable	1,314,045	1,934,616		
	(e) Allowances (Sec. 58)	1,460,075	50,335	- 97%	
	Random Comparisons in Selected Areas -				
	(a) Larela Circuit	5,565	13,600	144%	
	(b) Green Lane	4,500	16,200	260%	20
	(c) Carroll Street	5,680	19,920	250%	
(d) Collwood Crescent	4,090	13,800	237%		
(e) Tynan Street	3,084	7,855	155%		
(f) Icely Road	7,010	17,030	143%		
(g) Lucas Street	370	3,250	778%		
(h) Wakeford Street	1,930	8,900	361%		
(i) Peisley Street	9,850	35,650	262%		
(j) Matthews Avenue	4,083	10,750	163%	30	
(k) Dora Street	5,210	9,200	77%		

193.

(1)Edward Street 3,914 9,000 130%

Plaintiff's Exhibits

\* Lands subject to General Rate.

No.13(D)

This is Report Referred to on Page No. One of Minutes of the Meeting of the Special Finance Committee held on 27th November, 1968.

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

TOWN CLERK \_\_\_\_\_ R. CUTCLIFFE \_\_\_\_\_ VICE-CHAIRMAN

(continued)

- 2 -

10 Excluding Parking Area Local Rates, the approximate overall effect of increases in rates (General Gas Loan Water and Sewerage) is expected to be 11% for 1969.

Because of the effect of minimum charges for water and sewerage rates it has not been possible, in the time available, to make comparisons on rates other than General Rates. These are estimated to increase by 11.53% and the effect of the new values allied with these increases would be:

% Variation from 1968 Rates

- 20 (a) Urban Farm Lands Increase of 230%
- (b) Central Commercial Area Increase of 35.8%
- (c) All other areas Increase of 48.2%

AND in relation to the Random Lands mentioned above, the approximate % variation from 1968 rates would be:

- (a) Larela Circuit Increase of 43%
- (b) Green Lane 108%
- (c) Carroll Street 103%
- 30 (d) Collwood Crescent 87%
- (e) Tynan Street 48%

Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

(f) Icely Road	46%
(g) Lucas Street	375%
(h) Wakeford Street	174%
(i) Peisley Street	110%
(j) Matthews Avenue	47%
(k) Dora Street	2%
(l) Edward Street	30%

A.B. McDowell  
TOWN CLERK  
 21/11/68.

10

This is Report Referred to on Page No. One of Minutes of the Meeting of the Special Finance Committee held on 27th November, 1968

TOWN CLERK

VICE-CHAIRMAN

MINUTES OF THE MEETING OF THE ESTIMATES SUB-COMMITTEE HELD AT THE TOWN HALL, ORANGE ON MONDAY, 16TH DECEMBER, 1968 AT 4.10 P.M.

ATTENDANCE: Alderman A.E. Tucker (Chairman), Aldermen K.L. Selwood, H.D. Lapham, H. McMaster; Deputy Town Clerk, Accountant.

20

AN APOLOGY FOR ABSENCE was received from Alderman L.P. McFarlane.

IN COMMITTEE.

The following items were examined:-

GENERAL FUND EXPENDITURE:

General Purposes  
 Miscellaneous 5

GENERAL FUND INCOME

General Purposes  
 Miscellaneous

30

THE CHAIRMAN DECLARED THE MEETING CLOSED.

This is Page No. One and the only page of the Minutes of the Meeting of the ESTIMATES SUB-COMMITTEE held on 16th December, 1968.

Alan E. Tucker  
 Chairman

These Minutes Confirmed 9-1-69

Alan E. Tucker  
 Chairman

MINUTES OF THE MEETING OF THE ESTIMATES SUB-COMMITTEE HELD AT THE TOWN HALL, ORANGE ON TUESDAY, 17TH DECEMBER, 1968 AT 4.00 P.M.

Plaintiff's Exhibits

No.13(D)

ATTENDANCE: Alderman A.E. Tucker (Chairman), Aldermen K.L. Selwood, H.D. Lapham, H. McMaster: Deputy Town Clerk, Accountant, City Engineer and City Health Surveyor.

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

IN COMMITTEE.

The following items were examined:

10           GENERAL FUND EXPENDITURE

- Public Works
- Health Administration
- Public Services
- Municipal Property                   6
- Capital

GENERAL FUND INCOME

- Public Works
- Health Administration
- Public Services
- 20           Municipal Property

THE CHAIRMAN DECLARED THE MEETING CLOSED.

This is Page No. One and the only page of the Minutes of the Meeting of the ESTIMATES SUB-COMMITTEE held on 17th December, 1968.

	ALAN E. TUCKER
TOWN CLERK	CHAIRMAN

These Minutes Confirmed 9-1-69

	ALAN E. TUCKER
	CHAIRMAN

196.

Plaintiff's  
Exhibits

REPORT TO: COUNCIL

IN COMMITTEE

No.13(D)

FROM: TOWN CLERK

ON: PROPOSAL TO ENGAGE A VALUER.

Minutes of  
Council and  
committee  
meetings and  
reports between  
27/11/68 and  
10/4/1969

18/12/68.

(continued)

At its meeting of 17/12/68 the Council resolved that information be supplied on arrangements which may be made to engage a valuer to advise the Council on objections to the ratable valuation of properties in the business area.

When a similar suggestion was under consideration by the Council a few weeks ago a short list of names of valuers experienced in this particular field was obtained from the Commonwealth Institute of Valuers, of whom Mr. R.V. Diamond of R.V. Diamond Pty. Ltd., Sydney, was available.

10

Contact was made with Mr. Diamond by phone today and the position was explained to him concerning the wide variation between valuation increases on properties in the business area and those in the residential areas.

20

Mr. Diamond acts on one of the Boards of Review appointed to hear valuation objections. He has been engaged in the past by various firms concerned with the purchase of land in Orange, and has a fairly good knowledge of the area. He gave an off-the-cuff opinion that a few years ago when the larger stores of Coles, Woolworths, etc. were becoming established in Orange they provided evidence of commercial land values valid for the time. In the succeeding years, as their business developed, they would probably have created a dampening effect on the business of smaller shops in the vicinity, halting upward pressures on those land values. He thought this position would continue until other large firms move into Orange when commercial property values could be expected to take on an upward trend.

30

However, these were preliminary, untested opinions, and Mr. Diamond said the facts would have to be carefully examined before the Council could be advised on its likely success in any appeals against the recent valuations.

40

I expressed the view that for the Council to succeed in objections against valuations of the business area new ground would need to be broken in the preparation of its case; no doubt the Valuer-General had carefully followed principles and precedents of valuation law and practice, and the Council's case would require to be argued from a fresh viewpoint.

Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

10 Mr. Diamond agreed with this. He said he had a member of the firm, Mr. Woodley, who could come to Orange for a two day survey, examining property sales and related data, on January 8th and 9th. Mr. Diamond would examine the information collected and would then advise the Council whether in his opinion it had a good case.

20 His fees for these services would be \$200 per day plus expenses, probably \$500 for the investigation and his conclusions. If the case went on to Appeal the preliminary fees would be absorbed in the total fee.

This is Report Referred to on Page No. One: Item 1 of Minutes of the Special meeting of the Orange City Council held on 23rd December, 1968.

TOWN CLERK R. THOMAS  
MAYOR

2. IN COMMITTEE

30 As a further effort towards obtaining amending legislation to enable the Council to levy its 1969 rates on the 1968 values the Mayor and Town Clerk have appointments tomorrow with the Under Secretary for Local Government and Mr. C.B. Cutler in Sydney, and a further report on this course of action will be issued.

A.B. McDowell  
TOWN CLERK.

This is Report Referred to on Page No. One, Item 1 of Minutes of the Special Meeting of the Orange City Council held on 23rd December, 1968.

40 TOWN CLERK R. THOMAS  
MAYOR

Plaintiff's  
Exhibits

24/68

No. 13(D)

Minutes of  
Council and  
committee  
meetings and  
reports between  
27/11/68 and  
10/4/1969

(continued)

MINUTES OF THE SPECIAL MEETING OF ORANGE CITY  
COUNCIL HELD AT THE TOWN HALL ON MONDAY, 23RD  
DECEMBER, 1968 COMMENCING AT 7.30 P.M.

ATTENDANCE: The Mayor, Alderman R.O. Thomas;  
Aldermen H.D. Lapham, K.L. Selwood, W.K.  
Jefferson, K.S. McCarron, A.E. Tucker,  
H. McMaster, L.P. McFarlane, F.S. Dobbin and  
K.E. Brown; Town Clerk, Deputy Town Clerk,  
City Engineer.

10

APOLOGIES FOR ABSENCE were accepted from  
Aldermen D.H. Perry and R.J. Cutcliffe.

COMMITTEE OF THE WHOLE

RESOLVED That the Council sit as a  
Committee of the Whole.

Upon RESUMPTION OF THE COUNCIL MEETING the  
Deputy Town Clerk reported as follows:

1. NEW VALUATIONS AND RATES.

Attention had been given to a preliminary  
report dated 18/12/1968 from the Town Clerk (copy  
attached). The Mayor reported that following a  
visit to Sydney by the Mayor and Town Clerk on  
19th December, during which Mr. C.B. Cutler, M.L.A.  
and the Under Secretary for the Department of  
Local Government were interviewed, a letter had  
been issued by the Minister for Local Government  
but unfortunately it was not available for the  
meeting. It had been issued from the Minister's  
office that day (23rd December) and had been  
included with official papers sent by special  
delivery to Mr. Cutler at Orange, and would not  
arrive at the Town Hall until the following day.  
The Mayor said it would be premature to speculate  
on the contents of the Minister's letter and  
suggested, therefore, that the matter generally  
be left in abeyance until the letter had been  
received and examined, and that in the meantime  
the Town Clerk's report of 18/12/68 be noted.

20

30

The Mayor proceeded to say that he thought  
that ratepayers generally should be advised to  
lodge their appeals against valuations in those  
cases where they believed their new valuations

40

to be wrong. The time in which ratepayers can object would expire very shortly in many cases, and any ratepayer whose case would be served by lodging an objection should certainly do so. A statement to this effect would be given through the local press on 24th December.

Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/69

(continued)

The Committee of the Whole recommended:

10

458A That the Town Clerk's report dated 18/12/68 and the verbal report by the Mayor be noted: that consideration of the letter from the Minister be left in abeyance (but not for any specific period of time); that a copy of the Minister's letter be issued for the confidential information of Aldermen; that, if the Minister's letter is favourable, the Mayor and Town Clerk be empowered to request the Minister to proceed with the enactment of any necessary legislation; and that, if the Minister's letter is unfavourable, the Mayor and Town Clerk be empowered to press the representations to obtain the right for Council to levy the 1969 rates on the 1968 valuation list.

20

2. SALEYARDS: CONTRACT WITH J.S. McNAMARA AND D. CRUMP & CO.

30

The Mayor reported that a conference without prejudice was held with the Contractors on 18th December, 1968. The Town Clerk read the file notes made on the conference proceedings, and the conclusions that had been reached by the Council representatives following the conference, including a proposal that the City Engineer should issue a work order to the contractors for the execution of the drainage item of the contract, amounting in cost to about \$2,400.

This is Page No. One of Minutes of the Special meeting of the Orange City Council held on 23rd December, 1968

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

MINUTES OF THE MEETING OF THE ESTIMATES SUB-COMMITTEE HELD AT THE TOWN HALL, ORANGE ON MONDAY 6TH JANUARY 1969 AT 7.40 P.M.

ATTENDANCE: The Mayor, Alderman R.O. Thomas, Aldermen K.E. Brown, W.K. Jefferson, H.D. Lapham, L.P. McFarlene, H. McMaster, D.H. Perry, K.L. Selwood, A.E. Tucker, Town Clerk, Deputy Town Clerk, Accountant, City Engineer, City Health Surveyor, Rates Clerk, Mr. Clements.

AN APOLOGY FOR ABSENCE was received from Alderman F.S. Dobbin.



Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

IN COMMITTEE.

The Town Clerk gave brief outline of Estimates of Expenditure and Income for:

- Water Supply Local Fund
- Sewer Local Fund
- Parking Area Local Fund
- Service Area Local Fund
- 7 General Fund

The Town Clerk spoke generally on the effect that the new valuations would have on the incidence of rates levied in the City, and of the possibility that cases of hardship would result in the lower income groups. He stated that enquiries would be pursued in an effort to overcome this problem.

10

The Accountant gave a number of examples of variations in valuations and rating in the City based on the new valuations and the new proposed rate levies.

Alderman Perry requested that Rankine & Hill be asked when work on the North West Sewerage Scheme will be completed (answer for Meeting of 8.1.69).

20

Alderman Perry asked for checks on valuation and rating comparisons for:

- 19 Kearney's Drive
- Hourigan - Spring Street

Alderman Perry requested that a check be carried out in respect of Wontama Homes to ascertain if the organisation was in fact a charity for the purposes of rating under the Local Government Act.

CORRESPONDENCE:

MINISTER FOR LOCAL GOVERNMENT. Letter No. 10520.

30

Advised that Council's request to levy 1969 rates based on the old valuations could not be granted.

RESOLVED That the letter be noted.



Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

SEWERAGE LOCAL FUND

North West Sewerage Scheme.

The Town Clerk read a report from Rankine and Hill (dated 8.1.69) on the number of properties to which sewer lines had been constructed to date.

The Town Clerk reported that ratepayers were experiencing difficulty in obtaining the services of plumbers to make house connections to the new sewer lines and said that delays of up to 3 months would not be uncommon. 10

The Town Clerk suggested that, at an appropriate time, Council might consider the question of levying sewerage rates on properties so affected for 9 months only in the year 1969.

RECOMMENDATION That Estimates of Expenditure and Income for the year 1969 be adopted in respect of:

	Estimated Expenditure	Estimated Income (other than Rates)	Nett amount proposed to be raised from Rates	Rate in \$ on U.C.V. (cents)	Ratable U.C.V.	
General Fund	1,117,790	580,277	537,513	2.374	23,551,775	
Urban Farm Land				1.738	<u>713,365</u>	30
					24,265,140	
Water Supply Local Fund	551,229	306,236	244,993	.855	24,709,225	
(Minimum Rates - Connected to water				\$24.20		
- Not connected				\$16.00)		
Sewer Local Fund	278,739	105,540	173,199	.507	23,000,000	
(Minimum Rates - Connected to sewer				\$22.00		
- Not connected				\$12.00)		40
Gas Trading Fund Loan Rate	37,568	8,808	28,760	.124	24,265,000	
Parking Area Local Fund	28,344	1,124	27,220	.523	5,201,700	
Service Area Local Fund	156,800	4,949	151,851	2.302	6,599,080	

This is Page No. Two of Minutes of the Meeting of the Estimates Sub-Committee held on 8th January, 1969.

Plaintiff's  
Exhibits

No.13(D)

TOWN CLERK

A.E. TUCKER  
VICE-CHAIRMAN

Minutes of  
Council and  
committee  
meetings and  
reports between  
27/11/68 and  
10/4/1969

MAYORAL MINUTE TO COUNCIL MEETING OF 9.1.69

ON: 1969 ESTIMATES OF EXPENDITURE AND INCOME

9.1.69

(continued)

10 The preparation of Estimates and rates for 1969 has probably been one of the most difficult tasks of financial budgeting which Orange City Council has experienced.

On December 9th last the Valuer-General delivered to the Council new valuations of Orange lands. In very many instances property valuations were greatly increased, making it impossible for the Council to levy 1969 rates on those properties which would be reasonably comparable with the rates levied in 1968 and previous years.

20 Within the relatively short time since December 9th the Estimates Sub-Committee has met on three occasions, spending many hours on the problems of mitigating the fluctuation of rates which must follow as a consequence of fluctuating land values. In addition, the Council as a whole has met with the Estimates Sub-Committee on two subsequent occasions, and throughout this time the Council's administrative staff has also been solely engaged on these problems.

30 Ratable values of urban farm lands have increased by 246%, the residential areas by 176%, but in the principal business area the valuations have increased by only 13%. The total valuation of ratable lands has almost doubled from \$12.1m to \$24.2m.

40 In the circumstances where the Council is bound by law to charge a common General rate, a common water rate to all lands supplied with water, and a common sewerage rate to all lands connected to the sewerage system, it is obviously impossible to levy these rates in 1969 so that any movement in

Plaintiff's Exhibits

rates - either by way of increase or decrease - would be consistent with previous rating levels.

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

The Estimates Committee has therefore had to deal with this quite major problem by first reducing proposed expenditure from the rates common to all areas - General, water, sewerage and gas loan rates - as far as possible, and I think the estimates in the form now before us clearly indicates the earnest efforts which have been applied to this purpose.

10

(continued)

In 1968 the General rates and gas loan rates combined amounted to \$617,000. Despite subsequent cost increases beyond the Council's control - such as award increases in wages and salaries, and increases on materials purchased by the Council - which would normally require an increase of about 11% in the 1969 General rates, the 1969 estimates propose General and gas loan rates of \$602,000, or a reduction of \$15,000 on the rates which were levied for these purposes in 1968.

20

This is Report Referred to on Page No. 1 of Minutes of the Special meeting of the Orange City Council held on 9th January, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

- 2 -

Water rates levied in 1968 amounted to \$245,000, and since those rates were levied the Council has an additional expense of \$22,000 per annum against loans raised for Spring Creek dam reconstruction, which would mean that on these items alone the water rate for 1969 should be levied at about \$67,000. The 1969 Estimates propose a levy of water rates of \$256,000.

30

Similarly with sewerage rates, these rates in 1968 amounted to \$180,000, but despite additional operating costs incurred since that time the 1969 sewerage rates are proposed in the Estimates as \$181,700.

The position has therefore been reached in the 1969 estimates where the General, Gas Loan, Water and Sewerage rates are actually some \$2,000

40

less than the rates levied in 1968.

The original draft estimates for 1969 for these rates totalled \$1,180,000 which means they were pruned down by \$140,000.

Consistent with the Council's obligation to maintain services, and look for improvement in some items - notably, in water reticulation and recreation grounds - these reductions were about as far as we could go.

Plaintiff's  
Exhibits

No.13(D)

Minutes of  
Council and  
committee  
meetings and  
reports between  
27/11/68 and  
10/4/1969

(continued)

10 The four rates mentioned, which apply to the whole area - General, Gas Loan, Water and Sewerage - were reduced from 7.369 cents in the \$ to 3.86 cents. Minimum water and sewerage rates levied in 1968 were not increased, and the result - as I have mentioned - was a reduction in the levy of these rates for 1969 as against 1968.

However, a major problem arises when the incidence of these rates - as between urban farm lands, business area, and other areas - is considered.

20 In order to give relief to the residential areas and the urban farm lands, the rate in the \$ was reduced as I have mentioned, but the reduced rate applied also, as an operation of law, to the business area where in most cases valuations remained relatively static.

This has meant that these rates have increased on residential areas, and with few exceptions have decreased in the main business area.

30 In money terms there is a transfer in respect of all four of these rates of \$173,000 from the main business area to other areas of which about \$8,000 is transferred - as a consequence of the valuation alterations - to urban farm lands, and \$165,000 to remaining areas.

It would be misleading, however, for ratepayers to gather the impression that all residential rates have increased by 27%. There is no consistent pattern of valuation alterations in residential areas. In some cases when (Overtyped)

40 This is Page No. two of Minutes of the Special

Plaintiff's Exhibits

meeting of the Orange City Council held on 9th January, 1969.

No.13(D)

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

- 3 -

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

rates have been reduced but in the majority of cases there are increases and the amount of the rates increase depends upon the excess in valuation change over 100% increase.

Fundamentally the valuation increases in residential areas has been brought about by shortage of residential allotments and the higher prices which the blocks available have brought in the competitive market. 10

The Council was recently assured by the Department of Local Government that it had the authority to buy land in broad acres, subdivide it, provide essential services and sell the land by ballot and not by public auction. In circumstances where home-building blocks are in short supply it is fairly obvious that sale of land by auction will tend to sustain high market prices. The practicability of the Council making land available by ballot is by no means remote and is recommended for the attention of the present Council. However, it must be realised that unless fresh valuations are provided at more frequent intervals than six years - the previous valuation list was supplied in 1962 - the present level of values will continue for the next six years and it must also be realised that there will be cases of hardship among ratepayers to meet the obligations which the present system imposes upon them. 20 30

As things stand the calculation of rates is a mere arithmetical procedure - taking the ratable value and multiplying it by a common rate in the § - and Councils have no general power when levying these rates or taxes, to consider the ability of the ratepayer to pay.

In any acceptable method of taxation the ability of the taxpayer to meet the obligations placed upon him is an essential prerequisite. Without canvassing this matter further at this 40

stage I propose that the Council give this aspect of levying rates examination in greater depth with a view to submissions being made to the Minister.

Plaintiff's  
Exhibits

No.13(D)

Minutes of  
Council and  
committee  
meetings and  
reports between  
27/11/68 and  
10/4/1969

(continued)

10 The cost of establishing and maintaining the three public parking areas in Orange have in the past been charged partly to ratepayers generally, and partly to a relatively few properties adjoining the parking areas. The 1969 estimates propose that the full cost of these parking areas be levied over part of the main business area, and the estimates propose for this purpose a levy of £27,220 on the business area which extends approximately from the junction of Hill and Summer Streets to the western side of the Lords Place/Summer Street junction and extending to cover business premises north and south to Byng and Kite Streets. This rate will represent an amount of 0.523c. in the £.

20 The estimates also propose that a business area local rate be levied of 2.302c. in the £ which will yield £151,851 in

This is Report Referred to on Page No. Three of Minutes of the Special meeting of the Orange City Council held on 9th January, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

- 4 -

30 rates to be applied to special works and services in the business area extending from the junction of Summer and Hill Streets to Five-Ways and including business premises north and south to Byng and Kite Streets, as shown on a plan tabled at this meeting. Included among the purposes of this rate is a women's rest centre proposed to be established on part of the Anson Street frontage of the Anson/Sale Streets parking area. The women's rest centre with furnishings is estimated to cost £22,000. The Local Fund will also provide £64,000 towards the provision of another parking area, to be established near the City Library, and the Fund also includes £10,000 which is the cost of street and gutter  
40 cleaning of the main business area; £3,000 for tourist promotion and £13,700 towards main street lighting including improved lighting in this section of the City



Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

Allowing for these business area rates the total rates payable by the business premises in this area is estimated to be \$433,770 as against \$438,908 levied on these properties in 1968.

9/1/69

This is Report Referred to on Page No. four of Minutes of the Special meeting of the Orange City Council held on 9th January, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

10

1/1969

MINUTES OF THE SPECIAL MEETING OF ORANGE CITY COUNCIL HELD AT THE TOWN HALL, ORANGE ON THURSDAY, 9TH JANUARY, 1969 AT 6.30 P.M.

ATTENDANCE: Alderman R.O. Thomas (Mayor) Alderman D.H. Perry (Deputy Mayor); Aldermen K.E. Brown, F.S. Dobbin, W.K. Jefferson, H.D. Lapham, K.S. McCarron, L.P. McFarlane, H. McMaster, K.L. Selwood, A.E. Tucker. Town Clerk. Deputy Town Clerk. City Engineer, Saleyards Manager, Librarian. Accountant. Deputy City Health Surveyor, Rates Clerk. Assistant Engineer.

20

RESOLVED: That the Minutes of the Meetings of the Estimates Sub-Committee held on 16th December, 1968, 17th December, 1968, 6th January, 1969 and 8th January, 1969 be confirmed.

MAYORAL MINUTE.

30

1969 ESTIMATES OF EXPENDITURE AND INCOME.

The Mayor submitted a Minute in this matter (copy attached) dated 9th January, 1969.

1 RESOLVED That the Mayoral Minute be adopted.

1969 ESTIMATES OF EXPENDITURE AND INCOME. (copy attached).

It was MOVED and SECONDED that the

recommendation of the Estimates Sub-Committee (8.1.69) be adopted and that Estimates of Expenditure and Income for the year 1969 be adopted in respect of:

Plaintiff's Exhibits

No.13(D)

	Estimated Expenditure	Estimated Income (other than Rates)	Nett amount proposed to be raised from Rates	Rate in $\pounds$ U.C.V. (Cents)	Rateable U.C.V.
10	2				
General Fund	1,117,790	580,277	537,513	2,374	23,551,775
Urban Farm Land				1,738	<u>713,365</u>
					24,265,140
Water Supply Local Fund	551,229	306,236	244,993	.855	24,709,225
	(Minimum Rates - Connected to water			$\pounds$ 24.20	
	- Not connected			$\pounds$ 16.00)	
Sewer Local Fund	278,739	105,540	173,199	.507	23,000,000
	(Minimum Rates - Connected to sewer			$\pounds$ 22.00	
	- Not connected			$\pounds$ 12.00)	
Gas Trading Fund Loan Rate	37,568	8,808	28,760	.124	24,265,000
Parking Area Local Fund	28,344	1,124	27,220	.523	5,201,700
Service Area Local Fund	156,800	4,949	151,851	2.302	6,599,080

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

40 This is Page No. One of Minutes of the Special meeting of the Orange City Council held on 9th January, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

Plaintiff's  
Exhibits

No.13(D)

Minutes of  
Council and  
committee  
meetings and  
reports between  
27/11/68 and  
10/4/1969

(continued)

Aldermen Dobbin and Jefferson MOVED AN AMENDMENT

That the Estimates of Expenditure and Income for the year 1969 be adopted with the inclusion of a provision of \$4,800 for Aldermen's fees (Section 29A).

The Mayor ruled that the AMENDMENT was a direct opposite of the Motion and was therefore out of order.

Aldermen Perry and McCarron complimented the Estimates Sub-Committee for its work in the examination of the Estimates and for its presentation of the final draft Estimates to the Meeting. 10

The MOTION, on being put to the Meeting, was CARRIED.

(Alderman Jefferson requested that his vote against the Motion be recorded.)

SERVICE AREA LOCAL FUND.

The Mayor reported that it would be necessary for an architect to be engaged in respect to the proposed Women's Rest Centre in Anson Street

RESOLVED That Messrs. Brown, Brewer and Gregory (Orange) be commissioned to prepare plans and estimates and to supervise the construction of a Women's Rest Centre in Anson Street, Orange. 20

Alderman Brown referred to the present Country Women's Association building in Robertson Park (which was sinking into the ground along one wall) and asked if the needs of the Country Women's Association could be considered in conjunction with the proposed Women's Rest Centre.

The Mayor stated that the Architect would be requested to submit a report on the matter. 30

COMMONWEALTH SAVINGS BANK OF AUSTRALIA. Letter No.28. Proposed Renewal Loan \$12,082. Water Supply Local Fund.

Enclosed Mortgage Deed for execution under the Seal of the Council.

RESOLVED That the loan of \$12,082 authorised by the Governor's Approval dated 11th December, 1968 be obtained from the Commonwealth Savings Bank of Australia at an interest rate of 5.875% p.a., and that the Common Seal of the Council be affixed to the Mortgage Deed to secure the loan and interest thereon. 40

THE MAYOR DECLARED THE MEETING CLOSED AT 7.25 P.M.

This is Page Number Two and the final page of the

Minutes of the SPECIAL MEETING OF COUNCIL held on 9th JANUARY, 1969.

Plaintiff's Exhibits

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

No.13(D)

MINUTES OF THIS MEETING CONFIRMED 21/1/69.

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

R. THOMAS  
MAYOR

(continued)

10 Extract from minutes of Council Meeting of 21st January, 1969. (Note that Parking Areas Local Rate and Service Area Local Rate were NOT made)

MAKING OF RATES AND FIXING OF FEES AND CHARGES 1969

(i) GENERAL RATE.

20 WHEREAS the estimates of income and expenditure of the General Fund for the year 1969 were adopted by the Council on 9th January, 1969 AND WHEREAS such estimates were advertised in the Central Western Daily newspaper on 11th January, 1969 IT IS HEREBY RESOLVED  
24 THAT a General Rate be now made for the year 1969 of two decimal three seven four cents (2.374c) in the dollar on the unimproved value of all ratable land other than urban farm lands AND THAT a General Rate be now made for the year 1969 of one decimal seven three eight cents (1.738c) in the dollar on the unimproved capital value of all ratable land being urban farm lands.

30 (ii) WATER SUPPLY LOCAL RATE.

40 WHEREAS the estimates of income and expenditure of the Orange Water Supply Local Fund for the year 1969 were adopted by the Council on 9th January, 1969 AND WHEREAS such estimates including notice of the proposal to make and levy a local rate in connection therewith were advertised in the Central Western Daily newspaper on 11th January, 1969 IT IS HEREBY RESOLVED THAT a Water Supply Local Rate of decimal eight five five cent (.855c) in the dollar on the unimproved capital value of all land ratable to the

Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

25 Water Supply Local Rate in pursuance of Section 379 of the Local Government Act, 1919 be now made for the year 1969 subject to a minimum amount of twenty-four dollars twenty cents (24.20) per assessment excepting any assessment in respect of land not built upon and not supplied with water in which case the minimum amount shall be sixteen dollars (\$16.00) per assessment.

(iii) SEWERAGE LOCAL RATE.

WHEREAS the estimates of income and expenditure of the Orange Sewerage Local Fund for the year 1969 were adopted by the Council on 9th January, 1969 AND WHEREAS such estimates including notice of the proposal to make and levy a local rate in connection therewith were advertised in the Central Western Daily newspaper on 11th January, 1969

26 IT IS HEREBY RESOLVED THAT a Sewerage Local Rate of decimal five nought seven cent (.507c) in the dollar on the unimproved capital value of all land ratable to the Sewerage Local Rate in pursuance of Section 379 of the Local Government Act, 1919 be now made for the year 1969 subject to a minimum amount of twenty-two dollars (\$22.00) per assessment excepting any assessment in respect of land not built upon and not connected with the Council's sewers in which case the minimum amount shall be twelve dollars (\$12.00) per assessment.

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This is Page No. Four of Minutes of the Regular Meeting of the Orange City Council held on 21st January, 1969.

\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
R. THOMAS  
MAYOR

(iv) GAS LOAN RATE.

WHEREAS estimates of instalments of principal and interest on Gas Trading Fund Loans falling due for payment in 1969 were adopted by the Council on 9th January, 1969 AND WHEREAS such estimates including notice of the proposal to make and levy a loan rate in connection therewith

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27 were advertised in the Central Western Daily newspaper on 11th January, 1969 IT IS HEREBY RESOLVED THAT a Gas Loan Rate of decimal one two four cent (.124c) in the dollar on the unimproved capital value of all ratable land in the area be now made for the year 1969.

CHARGES 1969.

(i) GARBAGE SERVICE.

10 RESOLVED THAT the charge to be made upon each person liable under Section 168 of the Local Government Act, 1919 for the weekly removal of garbage for the year commencing 1st January, 1969 be fixed at five dollars thirty-three cents (\$5.33) per annum per pan of the size and pattern approved by the Council, payable in advance within one month  
28 from date of service of the account, provided that such charge may be varied at the discretion of the Council having regard to any  
20 variations in the cost of rendering the service, and that for broken periods the charge be ten decimal two five cents (10.25c) per pan.

(ii) SANITARY SERVICE.

30 RESOLVED THAT the charge to be made upon each person liable under Section 168 of the Local Government Act, 1919 for the weekly removal of nightsoil for the year commencing 1st January, 1969 be fixed at twenty-eight dollars sixty cents (\$28.60) per pan, payable in advance within one month from date of  
29 service of the account, provided that such charge may be varied at the discretion of the Council having regard to any variations in the cost of rendering the service, and that for broken periods the charge be seventy cents (70c) per pan.

(iii) SEWERAGE SERVICE.

40 RESOLVED THAT the Council impose in pursuance of its authority under Section 378 (4) of the Local Government Act, 1919 the following charge in connection with the rendering of sewerage services: In respect of land which is subject to a separate assessment of sewerage local rates, a sewerage service charge be and is hereby made for the year 1969

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(continued)

Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

30 of eleven dollars (\$11.00) for each of the first two water closets or urinals installed, and fifteen dollars (\$15.00) for each additional service, provided that such charge shall be reduced by the amount of the sewerage rates levied.

(iv) WATER METERS.

31 RESOLVED that pursuant to Section 392 of the Local Government Act, 1919 a charge of one dollar (\$1.00) per annum be and is hereby made for the hire of three-quarter inch meters used for measuring the quantity of water supplied.

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(v) KERBSIDE PETROL BOWERS, AIR PUMPS, ETC.

RESOLVED THAT pursuant to Section 171 of the Local Government Act, 1919 the following charges be and are hereby made for the year 1969 in respect of:

32 (a) petrol pumps erected on any public place - ten dollars fifty cents (\$10.50) for each pump regardless of whether it is a single or dual pump.

20

(b) air pumps - two dollars (\$2.00) for each pump.

This is Page No. Five of Minutes of the Regular Meeting of the Orange City Council held on 21st January, 1969.

TOWN CLERK

R. THOMAS  
MAYOR

4/69.

30

MINUTES OF THE ORDINARY MEETING OF ORANGE CITY COUNCIL HELD AT THE TOWN HALL, ORANGE ON TUESDAY, 4TH FEBRUARY, 1969.

ATTENDANCE: The Mayor (Alderman R.O. Thomas); Deputy Mayor (Alderman D.H. Perry): Aldermen K.E. Brown; R.J. Cutcliffe; F.S. Dobbin; W.K. Jefferson; H.D. Lapham; K.S. McCarron; L.P. McFarlane; H. McMaster; K.L. Selwood and A.E. Tucker. Town Clerk, Deputy Town Clerk,

City Health Surveyor; Librarian; Town Planning Officer; Accountant; Gas Engineer.

Plaintiff's Exhibits

RESOLVED That the Minutes of the Ordinary Meeting of Council held on the 28th January, 1969 be adopted.

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

COMMITTEE REPORTS.

FINANCE COMMITTEE

(continued)

10

RESOLVED That the recommendations made by the Finance Committee at its meeting held on the 4th February, 1969 be adopted.

GAS COMMITTEE.

RESOLVED That the recommendations made by the Gas Committee at its meeting held on the 4th February, 1969 be adopted.

PLANNING AND HEALTH COMMITTEE.

20

RESOLVED That the recommendations made by the Planning and Health Committee at its meeting held on the 4th February, 1969 be adopted.

MR. P. M. RAFFIN. Letter No. 339.

Advised that Mr. Raffin had been appointed Chairman of a group of ratepayers who wished to hold a discussion with Council on the proposed service area local fund rate.

RESOLVED That the Mayor, Deputy Mayor, Vice-Chairman of the Finance Committee and the Town Clerk meet a deputation from the group of ratepayers above referred to

30

This is Page No. One of Minutes of the Regular Meeting of the Orange City Council held on 4th February, 1969.

TOWN CLERK

R. THOMAS  
MAYOR

7/69.

MINUTES OF THE ORDINARY MEETING OF ORANGE CITY COUNCIL HELD AT THE TOWN HALL, ORANGE ON TUESDAY, 18TH FEBRUARY 1969 AT 7.30 P.M.

40

ATTENDANCE: The Mayor (Alderman R.O. Thomas); Deputy Mayor (Alderman D.H. Perry); Aldermen K.E. Brown; R.J. Cutcliffe; W.K. Jefferson;



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(continued)

H.D. Lapham; K.S. McCarron; H. McMaster; K.L Selwood and A.E. Tucker. Town Clerk; City Engineer; Gas Engineer. Saleyards Manager.

RESOLVED That the Minutes of the Ordinary meeting of Council held on the 21st January, 1969 be confirmed.

RESOLVED That the Minutes of the Special Meeting of Council held on the 10th February, 1969 be confirmed.

RESOLVED That the Minutes of the Ordinary Meeting of Council held on the 11th February, 1969 be confirmed.

10

MAYORAL MINUTE.

SALEYARDS' INQUIRY.

The Mayor submitted a Minute in this matter (copy attached)

As referred to in the Minute, and as requested at the Council meeting of 4/2/69, a copy of Council's letter of 18/12/68 to the Minister for Local Government was tabled.

20

It was MOVED AND SECONDED

331 That the Mayoral Minute be adopted.

AN AMENDMENT WAS MOVED AND SECONDED

That the suggestions of all Aldermen be referred to the Minister for him to formulate the appropriate terms of reference.

332 THE AMENDMENT, on BEING PUT TO THE MEETING, WAS LOST.

THE MOTION, on being put to the Meeting, was CARRIED.

30

CORRESPONDENCE

1. MR. P. M. RAFFIN. Letter No. 371. Again requested that Mr. Raffin's Committee meet the full Council for a discussion on the proposed levy of a Business Area Local Rate.

RESOLVED That in addition to the Alderman already nominated to meet Mr. Raffin's Committee, those Aldermen who wish to meet the Committee, be invited to do so.

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This is Page No. One of Minutes of the Regular Meeting of the Orange City Council held on 18th February, 1969

TOWN CLERK R. THOMAS  
MAYOR.

IN COMMITTEEPlaintiff's  
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REPORT TO: COUNCIL MEETING OF 17TH MARCH, 1969

FROM: TOWN CLERK

ON: SERVICE AREA LOCAL RATE AND PARKING  
AREAS LOCAL RATE - RATES PROPOSED FOR  
1969

Minutes of  
Council and  
committee  
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reports between  
27/11/68 and  
10/4/1969

(continued)

10 On the 6th instant members of the Council met informally with certain local business-men and discussion - agreed to as being "without prejudice" - took place on the proposed levying of the above rates. It was accepted as common ground that whereas the new valuations furnished by the Valuer-General for application for 1969 rates (and probably to rates to be levied in the period 1969-1974) had increased in the residential sector by an average of about 168% (from £6.6 m to £17.7 m), the increase in the business sector was considerably less at about 19% (from £5.6 m to £6.6 m); that ratable valuations in various parts of the residential sector extended up to increases of 778%; that, as reported in the local press, the Council had designed in its rating method for 1969 the levying of a service area local rate and a parking areas local rate on lands within the Central business area.

20 The business-men present were Messrs. P.M. Raffin, T. O'Malley, T. Finley, A. Spinner, J. Mace, N. Tait, G. Simpson and J. Gallagher. Aldermen Thomas, Selwood, Lapham, Tucker, McMaster, Dobbin and Cutcliffe, and Messrs. McDowell, Dwyer and Clements represented the Council.

30 Mr. Finley and Mr. Raffin addressed the meeting. Copies of their submitted notes are appended, together with a graph purporting to show the average of rates levied on 11 houses and 10 shops. For this survey the houses selected were 10 Rowan Street, 45 Icely Road, 8 March Street, 59 Gardiner Road, 54 Kite Street, 152 Hill Street, 147 Sampson Street, 59 Cox Avenue, 284 McLachlan Street, Lot 27 Treweeke Street, 84 Nile Street. The shops were Payten's Pharmacy, Orange Realty, McKenzies, Fosseys, Blue Shop. Buckingham's, Jims Cafe, Ryan's Fruit Shop, 40 24 Sale Street, Bobeldyk's.

The Town Clerk said the estimates of the two

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(continued)

local rates showed proposed rate levies of \$151,851 (service area local rate) and \$27,220 (parking areas local rate). The former was intended to be levied on business premises within an area roughly bounded by Hill Street to the west and 5-ways to the east, Byng Street to the north and Kite Street to the south. The rating area of the latter would be a part of the same area - bounded roughly by Hill, Kite and Bung Streets and Lords Place. Rate notices had been issued excepting notices for the properties within these areas. Formal resolutions and the publication of certain notifications had yet to be made precedent to the levy of the local rates, and following attention to these matters rate notices would be issued to the business premises concerned. Answering a question, the Town Clerk said that in the event of the Council deciding not to proceed with the local rates the Council would have legal competence to issue amended rate notices to the residential sector, levying higher rates to take up the amounts presently included in local rate estimates, but it was difficult to see that this could practicably occur.

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It seemed necessary first to establish what amounts of rates were intended to be levied on the business premises. Taking all rates into account, the overall increase in 1969 as against 1968 would be 4% an increase of \$17,000 from \$418,000 (1968) to \$435,000 (1969). The increase in the remainder of the City was 23% or \$144,000 from \$628,000 in 1968 to \$772,000 in 1969.

30

It was important to realise that the works and services proposed to be provided from the service area local rate would include substantial improvements to the business area. As for the parking areas local rate, this would displace the two separate parking area local

This is Report referred to on Page No. Four-teen  
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Orange City Council held on 17th March, 1969.

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TOWN CLERK

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R. THOMAS  
MAYOR

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(continued)

10 rates levied in previous years on considerably fewer ratepayers. One of two displaced rates had been levied each year since 1963, specifically the local rate levied on about seven ratepayers for the parking area in Anson Street north of Summer Street; the incidence and purpose of that rate had been well known to business-men yet none had come forward during those six years (other than those few sub-  
jected to the rate) objecting to it or otherwise  
contending that the principle of local rating was wrong.

The deputation appeared to be under some misconception of the rates intended to be levied on business-premises. Taking the local rating area block by block, a comparison of all rates levied in 1968 with all rates proposed to be levied in 1969 showed:

1. Summer Street

- 20 a) Northern side, Hill to Anson Streets -  
Reductions in 1969  
(overall from £59,052 to £53,667)
- b) Northern side, Anson Street to Lords Place -  
Increases in 1969  
(overall from £60,520 to £65,437)
- c) Northern side, McNamara Street to Railway -  
Reductions  
(overall £9,724 to £8,131)
- 30 d) Southern side, Peisley Street to Lords  
Place - Reductions  
(overall from £35,233 to £28,187)
- e) Southern side, Lords Place to Anson Street -  
Increases  
(overall from £67,855 to £84,808 of which  
the major increase will be to Western  
Stores of £11,243 because of U.C.V.  
increase of £207,200)
- f) Southern side, Anson Street to Hill Street -  
Reductions  
(overall from £52,406 to £49,595)

Plaintiff's Exhibits

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(continued)

- g) Anson Street - Reductions in 16 assessments, increases in 15 assessments (net overall increase from ~~£~~45,388 to ~~£~~51,746)
- h) Lords Place - Reductions in 25 assessments, increases in 9 assessments (net overall increase from ~~£~~41,894 to ~~£~~42,142)
- i) Kite Street - Overall increase from ~~£~~3,654 to ~~£~~5,791
- j) Sale Street - Overall increase from ~~£~~3,551 to ~~£~~5,103
- k) Post Office Lane - Overall increase from ~~£~~5,313 to ~~£~~5,547
- l) McNamara & Byng Streets - Overall increase from ~~£~~4,554 to ~~£~~5,058
- m) Bathurst Road (Railway to 5-Ways, both sides) - Overall reduction from ~~£~~7,690 to ~~£~~7,618
- n) Peisley Street - Overall increase from ~~£~~19,977 to ~~£~~22,160
- o) Little Summer Street - Increase from ~~£~~747 to ~~£~~949

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Totals	-	1968	all rates	-	<del>£</del> 417,555
		1969	" "	-	<del>£</del> 434,939
				Increase	<u><del>£</del> 17,384</u>

Authority for Local Rate. The Council's authority to make and levy a local rate is given in Section 121, Local Government Act which provides: "For or towards defraying the expenses of executing any work or service or for or towards repaying with interest any advance made by the Minister or debt incurred or loan raised in connection with the execution of any work or service where, in either case, such work or service in the opinion of the Council would be of special benefit to a portion of its area to be defined as prescribed, the Council may

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(continued)

- 3 -

IN COMMITTEE

make and levy a local rate on the unimproved capital value or on the improved capital value of ratable land within such portion".

10 The primary test as to whether a local rate may be levied in respect of a work or service is whether, in the Council's opinion, that work or service will be of special benefit to the portion of the area subjected to the local rate.

20 The works and services, envisaged in the preliminary estimates to be provided from local rate revenue, and the proposal generally, are recommended to be discussed with Counsel - and Council's approval of this course is requested. Drafts of the resolutions (which the Council would be required to make before levying the local rates) are proposed to be put to Counsel for approval, and from the conference a further report will be prepared for Council.

Business-men's letter of 6/3/69 is quoted hereunder, together with their notes of submissions to the discussion.

A. B McDowell  
TOWN CLERK

14/3/69

30 The Town Clerk,  
Orange City Council,

Dear Sir,

Following our deputation to your Council tonight we hereby request that your Council give consideration to abandoning the Service Area Local Fund Rate which has been advertised in the press as being proposed to be levied on businesses in Orange located in specified areas.

Plaintiff's Exhibits

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Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

We attach hereto notes of the submissions made tonight which we feel firmly establishes a case against the justification of such proposed rate, and to which we trust your Council will give due consideration in deliberating this question.

We look forward to your advice as to the outcome of our request.

Yours faithfully,  
Signed: PM. Raffin

10

SUBMISSIONS

Mr. T. Finley

- 1. I thank the Aldermen for the chance to meet and see if we can ensure that the press are excluded.
- 2. There has been a lot of talk of legality of this proposed rate, and I do not think we should concern ourselves with this tonight. This will be decided by the proper authorities at the appropriate time. There is no point in any of us wasting our time debating or discussing it here.
- 3. What I am sure the business people want to do is to make sure that as many of the Aldermen as possible fully appreciate all the facts in regard to Summer Street rates and values.

20

If the few words that I and others say here tonight can give the Council a full understanding of the views from our side of the fence, then I feel that this meeting will achieve something.

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\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
R. THOMAS  
MAYOR

4. We brought along a few facts and figures and a quick read graph which we will circulate shortly, but before doing this there are a few comments of a general nature which I would like to make, and Mr. Peter Raffin can carry on with the graph and other figures.

5. From discussions I have had and people you talk to generally there seems to be a very popular misconception that Summer Street consists of Coles', Woolworths and Myers. Whilst these stores are very large, there is infinitely more frontage in Summer Street occupied by one man or family business. There are a few represented here tonight - Mr. Mace, Mr. Raffin, Mr. Gallagher and myself.

Every shopping centre needs small speciality shops, frock salons, hairdressers, etc. There is no doubt in my mind that if the rate pattern continues these smaller shops - the likes of hairdressers, bootmakers, etc. operating with their own two hands are going to be forced out of Summer Street simply because they cannot afford to be there.

It may well be argued that that is their problem. I think that from the good of the shopping centre as a whole and from the civic stand point that this would be a very bad thing, and it will undoubtedly happen.

6. Another equally popular misconception is that there is no limit to the overhead a retail business can stand, because we can simply pass it on. With 75% of our goods selling at nationally advertised fixed retail prices, plus the intense competition in the retail field, there is little or no chance of merely passing everything on.

7. Another cost factor which is directly related to unimproved capital values is land tax. Whilst this does not concern the Council, it is another heavy impost directly related to U.C.V.'s. In my own case, as an example, my U.C.V. was increased from \$54,000 to \$74,000 in this recent valuation. This means a land



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tax increase from \$540 to approximately \$900. To cut a long story short, it costs me personally \$135 per week in municipal rates and land tax to open my doors - and I don't get any discount for cash.

Comparisons at the best of times are odious, but I have a bigger store in Bathurst, in a comparable position with a wider frontage, and the weekly charge there is \$35.00.

8. I understand that for some years past Summer Street has borne about 40% of the rate burden of Orange, due to the very high U.C.V.'s everyone was quite happy to let this arrangement run along. There was no suggestion of a special rate on the residential section to spread the load more equitably when the position was in reverse. This year the ball bounced the other way, and immediately the Council wants to change the rules. 10
9. Whilst it is certainly not my prerogative to give advice to you Gentlemen, I think that a point about this special rate that we should all give more than a passing thought to is this: Briefly, certain isolated streets have been selected and a special rate levied upon them. Undoubtedly there will be other Councils in the years to come along after we have all passed from the scene, and if this special rate is levied it does not require much imagination to see that a special rate could be levied in the future on say Autumn Street and not on Green Lane, and so on and so on. Where does it stop? It surely can't be desirable or healthy to go around picking streets out of random. 30
10. The other thing that absolutely terrifies me as far as this special rate is concerned is that once principle is established this area will be a milking cow for ever. The rate in the dollar can be increased at any time an irresponsible Council thinks fit, and we all know that once levied, rates or taxes never come down. 40

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IN COMMITTEE

(continued)

11. I am not so concerned with the legality of this proposed rate as I am with the justice of it.

.....

10 Mr. P. M. Raffin

1. Mr. Finley has covered the subject well and I feel made some excellent points about the general attitude of business people generally to rates.

While any increase in rates is bad enough, the main aspect exercising the minds of every businessman concerned it is the proposed imposition of a special rate on businesses to cover amenities of benefit to the city generally. Let's face it - the provision of parking area, Ladies' Rest Rooms and better facilities generally in the commercial area are as much of benefit to the citizens generally as they are to Shop Keepers - after all, it's the customers who use them most. In just the same way are Parks, Olympic Pools, maintenance on streets, cutting of footpaths, lawns, etc. of benefit to the shopping centre because they make for a better town and a more attractive one.

20

30 2. Business people are terrified that should this special rate become established then it could become the thin end of the wedge for future Councils to slug business people harder each time more revenue is needed, and the plan facts are - costs keep rising. We cannot let this special rate go unchallenged.

3. We are here tonight to submit that the proposed special area rate is:-

40

- A) Unfair
- B) Discriminatory
- C) Unjustified

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- A) Unfair - because it seeks to step around the system of rating based on Government determined values - not that we believe the system is necessarily the best one, but like it or not it is the system adopted for rating in this state, and it was good enough for Orange City Council to use right through the 1950's and 1960's. When values on commercial properties skyrocketed and the burden of rating shifted heavily onto the shoulders of the commercial owners, while values remained relatively stable in residential areas and rates showed only minor increases, and in some years even reduced, surely, as Mr. Finley said, it can't be fair to change the rules just because the ball bounces the other way. Is this a fair go? 10
- B) Discriminatory because it signals out a defined section of the city and saddles it with a specially designated rate to cover services which are of benefit to every resident of the town and district! 20
- C) Unjustified
1. Because it side steps the rating system which has applied for years and years.
  2. Unjustified because the very people now to be charged with this proposed special rate are the very ones who for more than fifteen years have heavily subsidised the residential area in an era of what would be regarded as the most dynamic progress and development ever undertaken in this city and at tremendous cost. 30
  3. Unjustified simply because the Summer Street area might receive some relief from the heavy rate slugging it has endured for these past 15 or 16 years. 40

I have referred with great repetition to the heavy burden placed on the business community for 15 or 16 years, and no doubt you will be

interested to have me substantiate this claim, so if I may I would like to recount briefly the development of this city since the war.

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TOWN CLERK

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MAYOR

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10           Until the elections in December 1953 this city had been stagnating for some 15 to 20 years, and while I have no wish to throw brick-bats at former Council, it is an accepted fact that in 1953 the voters demonstrated that it was time for a change, and a new Council with a progressive outlook was elected at that time.

20           They faced a mammoth task of finding finance and materials (which were still in short supply) to provide increased sewerage capacity, sewerage extensions, increased water supplies and water filtration plants, and other essential amenities such as street sealing, road making and footpath making, and at the same time endeavoured to provide Orange with the amenities not only in keeping with, but demanded by, this City, then on the threshold of considerable development. I refer of course to the Library, Olympic Pool, Aerodrome, Improvements to playing fields and many other  
30           sorely needed amenities.

40           At about this same time big business became interested in the commercial centre of Orange, and we began to see the advent of the chain stores and other retailers who were prepared to pay bigger prices to get into business in our shopping centre. This was shortly to be followed by the Service Station boom. The result was that on the one hand a Council undertook the planning and then the implementation of big development schemes (with which we are all in hearty accord), and on the other hand prices in the commercial sector took off to such an extent that the Valuer General began

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to heavily increase values in the commercial areas, Somebody had to foot the bill for our developments, and under the rising commercial values it was a relatively simple matter to establish a level of rating, which only moderately increased domestic rates, but which skyrocketed the rates in Summer Street. While we may have grizzled mildly about the rate increases from time to time, we realized what it was about and accepted the increases as being part of the system.

10

5. One picture is said to be worth more than a thousand words - so to spare your ears a thousand words this graph illustrates very clearly the comparative burdens created by the increasing rates in the commercial sector as compared to the residential, during the period 1952 to 1969.

Reference to our survey.

20

6. We are certain that Aldermen are not aware that the rate pattern has followed such a course and perhaps even may have not remembered the concern expressed by the Council of the day over the rate pattern of 1959 when businesses were hit even more heavily than previously, and residential was reduced - witness the enclosed cutting of C.W.D. 31/4/59.

7. Should the commercial centre continue to be slugged - as the proposed special rate would pave the way for such a practice in the future - then many of the smaller businesses will find themselves squeezed out of Summer Street altogether - and this would lead to vacant shops which would be disastrous for Orange generally.

30

8. To perhaps help allay the popular misconception that is often times quoted in the press that Summer Street consists of Coles, Woolworths and Myers, I have with me a survey showing the number of ground floor (street level) businesses in Summer Street between Sale Street and Peisley Street, and I think Aldermen will be quite astounded to

40

realise there are in this area - and I stress - just on the street level without any regard to upstairs businesses - a total of no less than 138 businesses. Need I point out that of this total of 138 - the big three occupy only five. This means that in the 3 1/2 blocks of Summer from Sale Street to Peisley Street alone (where half a block is taken up by Robertson Park), there are 133 individual traders.

Plaintiff's Exhibits

No.13(D)

Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/1969

(continued)

10 This is Page 6 of the Report referred to on Page No. sic Four - Item (13) of Minutes of the Regular meeting of the Orange City Council held on 17th March, 1969.

TOWN CLERK

R. THOMAS  
MAYOR

- 7 -

IN COMMITTEE

9. Details of these businesses are attached and some need to be highlighted, especially on the smaller businesses.

20 10. In conclusion - may I stress - the aspect we really fear in your proposed service area rate is the dangerous precedent to be set by discriminating the business sector (or any other sector) for special rate treatment!

All we want is a fair deal - a fair go - and we ask your Council to abandon proposals to levy this rate.

This is Page 7 of Report referred to on Page No. 4 - sic Item (13) of Minutes of the Regular meeting of the Orange City Council held on 17th March, 1969.

30 TOWN CLERK

R. THOMAS  
MAYOR

Plaintiff's Exhibits

EXTRACT FROM MINUTES OF COUNCIL MEETING OF 10TH APRIL, 1969

- 3 -

No.13(D)  
Minutes of Council and committee meetings and reports between 27/11/68 and 10/4/69  
(continued)

(1) SEWERAGE PROPOSAL FOR WESTERN AREA OF ORANGE (WESTLEA AND ADJACENT AREAS).

The Committee of the Whole considered a report by the Town Clerk in this matter dated 9/4/69.

790 RECOMMENDATION That the Town Clerk's report be adopted.

(2) BREACH OF PURE FOOD ACT REGULATION 77(5) - MR. G. RYAN.

10

The Committee of the Whole considered a report by the City Health Surveyor in this matter dated 2/6/69.

791 RECOMMENDATION That the City Health Surveyor's report be adopted.

(3) REST CENTRE - ANSON STREET.

RECOMMENDATION That this matter be considered in conjunction with the Service Area Local Rate at the next Council Meeting on 15/4/69.

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RECOMMENDATIONS, COMMITTEE OF THE WHOLE.

RESOLVED That the recommendations of the Committee of the Whole, as previously set out, be adopted.

THE MAYOR DECLARED THE MEETING CLOSED AT 10.20 P.M.

This is Page Number Three and the final page of the Minutes of the ORDINARY MEETING OF COUNCIL held on 10TH APRIL, 1969.

TOWN CLERK. R. THOMAS  
MAYOR

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MINUTES OF THIS MEETING CONFIRMED 18/4/69.

R. THOMAS  
MAYOR

No. 13(E)

EXHIBIT E - MINUTES OF ORDINARY MEETING OF COUNCIL OF 15.4.69 TOGETHER WITH ESTIMATES ATTACHED THERETO FOR THE THEN PROPOSED SERVICE AREA LOCAL RATE

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15/69

MINUTES OF THE ORDINARY MEETING OF ORANGE CITY COUNCIL HELD AT THE TOWN HALL, ORANGE ON TUESDAY,

15TH APRIL, 1969 AT 7.30 P.M.

ATTENDANCE: The Mayor (Alderman R.O. Thomas); Deputy Mayor (Alderman D.H. Perry); Aldermen R.J. Cutcliffe; F.S. Dobbin; W.K. Jefferson; H.D. Lapham; K.S. McCarron; L.P. McFarlane; H. McMaster; K.L. Selwood; and A.E. Tucker. Town Clerk, Deputy Town Clerk, City Engineer, City Health Surveyor, Town Planning Officer, Accountant, Rate Clerk, Librarian, Gas Engineer.

Plaintiff's Exhibits

No.13(E)

Minutes of Ordinary Meeting of Council, together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69 (continued)

10 AN APOLOGY FOR ABSENCE was received from Alderman K.E. Brown.

RESOLVED That the Minutes of the Ordinary Meeting of Council held on the 10th April, 1969 be confirmed.

MAYORAL MINUTE

CENTRAL WESTERN DAILY PUBLICATION OF LOCAL FUND PARTICULARS

The Mayor submitted a Minute in this matter (copy attached)

20 815 THE MAYOR MOVED, AND WAS SECONDED

That the Mayoral Minute be adopted.

THE MOTION, on being put to the Meeting, was CARRIED.

SERVICE AREA LOCAL FUND - ESTIMATES FOR 1969.

IT WAS MOVED AND SECONDED

816 That the Estimates for 1969 for the Service Area Local Fund be adopted.

AN AMENDMENT was MOVED AND SECONDED

30 That the Estimates for 1969 for the Service Area Local Fund be adopted with the omission of expenditure listed in Schedules 1 and 2 totalling \$48,720.

THE AMENDMENT on being put to the Meeting, was LOST.

THE MOTION on being put to the Meeting, was CARRIED.

Alderman W.K. Jefferson recorded his vote against the Motion.

SERVICE AREA LOCAL FUND

40 WHEREAS on the 15th April, 1969 the Council has given attention to estimates and schedules for the year 1969, copy attached, of a proposed



Plaintiff's Exhibits

No.13(E)

Minutes of Ordinary Meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69

(continued)

local fund (called in such estimates "Service Area Local Fund") describing works and services estimated to cost \$173,194 and proposing the levy of a local rate of 2.572 cents in \$ on the unimproved capital value of ratable lands within a portion of its area, it is hereby

817 RESOLVED (1) That in the opinion of the Council the works and services described in such estimates are or would be of special benefit to the portion of its area defined hereunder by metes and bounds and shown coloured red in a plan signed by the Mayor under Seal of the Council. 10

This is Page No. One of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

TOWN CLERK R. THOMAS MAYOR 20

- 2 -

- (2) That the estimates as aforesaid be and are hereby adopted.
- (3) That the estimates as aforesaid be advertised together with the notice of the Council's proposal to make and levy a Service Area Local Rate in connection therewith.
- (4) That the form of the advertisement referred to under (3) above be in or to the following effect: 30

Notice is hereby given that for or towards defraying the expenses of executing the works and services described hereunder, or for or towards repaying with interest any loan raised in connection with such works and services, the Council of the City of Orange, being of the opinion that the works and services as aforesaid are or will be of special benefit to the portion of its area hereunder defined by metes and bounds, proposes to make and levy in and for the 1969 a LOCAL RATE (to be known as the SERVICE AREA LOCAL RATE) of two decimal five seven two cents (2.572¢) in the dollar on the unimproved capital value of all ratable land within the portion of its area as hereunder defined, and also gives notice that the following estimates of the SERVICE AREA LOCAL FUND have been adopted by the Council: 40

ESTIMATES

	Work or Service	Estimated Expenditure	Plaintiff's Exhibits
	Summer Street drainage, etc.	\$32,300	No.13(E)
	Summer/Hill Sts. roadwork	560	Minutes of
	Various streets - Kerb, Gutter, Footpath reconstruction	15,860	Ordinary
	Street cleaning	22,040	Meeting of
10	Parking Areas maintenance	30,820	Council
	Advertising advantages of area	1,253	together with
	Street lighting	4,315	estimates
	Women's Rest Centre, etc.	13,380	attached
	New parking area; extension to existing parking area	23,440	thereto for
	Engineering salaries, etc.	6,614	the then
	Administrative expenses	9,760	proposed
	Miscellaneous expenses and contingencies	<u>12,852</u>	Service Area
		<u>\$173,194</u>	Local Rate
			15/4/69
			(continued)
20		Estimated Income	
	Local rate of 2.572% in \$ on U.C.V. of \$6,519,355	\$167,677	
	Ex-gratia payments	<u>5,529</u>	
		<u>\$173,206</u>	

DEFINITION

(Portion of the area within which the Local Rate is proposed to be levied. A plan showing the lands to be rated may be seen at the Council's office.)

ALL THAT piece or parcel of land being part of Section 14 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line commencing at

This is Page No. Two of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

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TOWN CLERK

\_\_\_\_\_  
R. THOMAS  
MAYOR

Plaintiff's  
Exhibits

No. 13(E)

Minutes of  
Ordinary  
Meeting of  
Council  
together with  
estimates  
attached  
thereto for  
the then  
proposed  
Service Area  
Local Rate  
15/4/69

(continued)

the intersection of the western alignment of Sale Street and the northern alignment of Summer Street bearing westerly along the northern alignment of Summer Street for 665'9" or thereabout to the eastern alignment of Hill Street thence by a line bearing northerly along the eastern alignment of Hill Street for 133'10" or thereabout to the southern alignment of Little Summer Street thence by a line bearing easterly along the southern alignment of Little Summer Street for 396'10" or thereabout to the eastern boundary of Little Summer Street thence by a line bearing northerly along the eastern boundary of Little Summer Street for 32' to the northern alignment of Little Summer Street thence by a line bearing westerly along the northern alignment of Little Summer Street for 176'3" or thereabout thence by a line bearing northerly for 165'8 $\frac{1}{4}$ " or thereabout thence by a line bearing easterly for 177' or thereabout thence by a line bearing southerly for 49'8" or thereabout thence by a line bearing easterly for 90' or thereabout thence by a line bearing southerly for 99'0 $\frac{1}{4}$ " or thereabout thence by a line bearing westerly for 1' thence by a line bearing southerly for 14'4 $\frac{1}{4}$ " or thereabout thence by a line bearing easterly for 46'9" or thereabout thence by a line bearing easterly for 18'4" or thereabout thence by a line bearing easterly for 115'8 $\frac{1}{2}$ " or thereabout to the western alignment of Sale Street thence by a line bearing southerly along the western alignment of Sale Street for 154'9 $\frac{1}{2}$ " or thereabout to the northern alignment of Summer Street and the point of commencement AND ALL THAT piece of parcel of land being part of Section 13 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line commencing at the intersection of the western alignment of Sale Street and the Southern alignment of Summer Street bearing southerly along the western alignment of Sale Street for 255' or thereabout thence by a line bearing westerly for 132' or thereabout thence by a line bearing southerly for 75' or thereabout thence by a line bearing easterly for 132' or thereabout to the western alignment of Sale Street thence by a line bearing southerly along the western alignment of Sale Street for

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Plaintiff's  
Exhibits

No.13(E)

Minutes of  
Ordinary  
Meeting of  
Council  
together with  
estimates  
attached  
thereto for  
the then  
proposed  
Service Area  
Local Rate  
15/4/69

(continued)

bearing westerly along the northern alignment of Summer Street for 663' or thereabout to the eastern alignment of Sale Street thence by a line bearing northerly along the eastern alignment of Sale Street for 143'6 $\frac{3}{4}$ " or thereabout thence by a line bearing easterly for 126'6 $\frac{3}{4}$ " or thereabout thence by a line bearing northerly for 60' or thereabout thence by a line bearing easterly for 18' or thereabout thence by a line bearing northerly for 61'6" or thereabout thence by a line bearing westerly for 144'6 $\frac{3}{4}$ " or thereabout to the eastern alignment of Sale Street thence by a line bearing northerly along the eastern alignment of Sale Street for 252'9" or thereabout thence by a line bearing easterly for 249'11" or thereabout thence by a line bearing northerly for 148'1" or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 219'4 $\frac{3}{4}$ " or thereabout thence by a line bearing southerly for 122' or thereabout thence by a line bearing easterly for 30' or thereabout thence by a line bearing northerly for 122' or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 165' or thereabout to the western alignment of Anson Street thence by a line bearing southerly along the western alignment of Anson Street 660' or thereabout to the northern alignment of Summer Street and the point of commencement AND ALL THAT piece or parcel of land being part of Section 8 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line commencing at the intersection of the western alignment of Anson Street and the southern alignment of Summer Street bearing southerly along the western alignment of Anson Street for 529'5" or thereabout thence by a line bearing westerly for 324'6" or thereabout thence by a line bearing northerly for 91' or thereabout thence by a line bearing north-westerly for 8'6" or thereabout thence by a line bearing westerly for 11' or thereabout thence by a line bearing northerly for 35' or thereabout thence by a line bearing westerly for 159'10" or thereabout thence by a line bearing southerly for 51'8" or thereabout

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thence by a line bearing westerly 174'6" or there-  
 about to the eastern alignment of Sale Street thence  
 by a line bearing northerly along the eastern align-  
 ment of Sale Street for 183'5" or thereabout thence  
 by a line bearing easterly for 165'10" or thereabout  
 thence by a line bearing northerly for 28'0 $\frac{3}{4}$ " or  
 thereabout thence by a line bearing westerly for  
 9' or thereabout thence by a line bearing northerly  
 for 11'11" or thereabout thence by a line bearing  
 10 westerly for 25'6" or thereabout thence by a line  
 bearing northerly for 49'6" or thereabout thence by  
 a line bearing westerly for 29'3" or thereabout  
 thence by a line bearing northerly for 47'2 $\frac{3}{4}$ " or  
 thereabout thence by a line bearing westerly for  
 101'2 $\frac{1}{4}$ " or thereabout to the eastern alignment of  
 Sale Street thence by a line bearing northerly  
 along the eastern alignment of Sale Street for 30'  
 or thereabout thence by a line bearing easterly for  
 83' or thereabout thence by a line bearing northerly  
 20 for 18' or thereabout thence by a line bearing  
 north-westerly for 5'7" or thereabout thence by a  
 line bearing westerly for 79' or thereabout to the  
 eastern alignment of Sale Street thence by a line  
 bearing northerly along the eastern alignment of  
 Sale Street for 79'9" or thereabout to the southern  
 alignment of Summer Street thence by a line bearing  
 easterly along the southern alignment of Summer  
 Street for 663' or thereabout to the western align-  
 ment of Anson Street and the point of commencement  
 30 AND ALL THAT piece or parcel of land being part of  
 Section 41 Town and City of Orange, Parish of Orange,  
 County of Wellington and State of New South Wales  
 and being bounded by a line commencing at the inter-  
 section of the western alignment of Lords Place and  
 the northern alignment of Summer Street bearing  
 westerly along the northern alignment of Summer  
 Street for 663'0" or thereabout to the eastern  
 alignment of Anson Street thence by a line bearing  
 northerly along the eastern alignment of Anson  
 40 Street for 660' or thereabout to the southern align-  
 ment of Byng Street thence by a line bearing easterly  
 along the southern alignment of Byng Street for  
 82'10 $\frac{3}{4}$ " or thereabout thence by a line bearing  
 southerly 134'1 $\frac{1}{4}$ " or thereabout thence by a line  
 bearing easterly for 129'5" or thereabout thence by  
 a line bearing northerly 12'3" or thereabout thence  
 by a line bearing easterly for 119'6 $\frac{1}{2}$ " or there-  
 about thence by a line bearing southerly for 12'  
 or thereabout

Plaintiff's  
 Exhibits

                      
 No.13(E)

Minutes of  
 Ordinary  
 Meeting of  
 Council  
 together with  
 estimates  
 attached  
 thereto for  
 the then  
 proposed  
 Service Area  
 Local Rate  
 15/4/69

(continued)

Plaintiff's Exhibits

meeting of the Orange City Council held on 15th April, 1969.

No.13(E)

Minutes of Ordinary Meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69 (continued)

TOWN CLERK R. THOMAS  
MAYOR

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thence by a line bearing easterly for 125' or thereabout thence by a line bearing northerly for 132' or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 205' or thereabout to the western alignment of Lords Place thence by a line bearing southerly along the western alignment of Lords Place for 660' or thereabout to the northern alignment of Summer Street and the point of commencement AND ALL THAT piece or parcel of land being part of Section 40 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line commencing at the intersection of the western alignment of Post Office Lane and the Southern alignment of Summer Street bearing southerly along the western alignment of Post Office Lane for 264' or thereabout thence by a line bearing westerly for 20'7 $\frac{1}{2}$ " or thereabout thence by a line bearing southerly along the western alignment of Post Office Lane 131'11" or thereabout thence by a line bearing easterly 20'7 $\frac{1}{2}$ " or thereabout thence by a line bearing southerly along the western alignment of Post Office Lane 62'8 $\frac{3}{4}$ " or thereabout thence by a line bearing westerly 137' or thereabout thence by a line bearing southerly 69'6" or thereabout thence by a line bearing easterly 137' or thereabout to the western alignment of Post Office Lane thence by a line bearing southerly along the western alignment of Post Office Lane 132' or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street 329'9 $\frac{1}{2}$ " or thereabout to the eastern alignment of Anson Street thence by a line bearing northerly along the eastern alignment of Anson Street 132'3" or thereabout thence by a line bearing easterly 150'3" or thereabout thence by a line bearing northerly 66'3 $\frac{3}{8}$ " or thereabout thence by a line bearing westerly 150'3" or thereabout to the eastern alignment of Anson

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Plaintiff's  
Exhibits

                      
No.13(E)

Minutes of  
Ordinary  
Meeting of  
Council  
together with  
estimates  
attached  
thereto for  
the then  
proposed  
Service Area  
Local Rate  
15/4/69

(continued)

10 Street thence by a line bearing northerly along the  
eastern alignment of Anson Street 462'3" or there-  
about to the southern alignment of Summer Street  
thence by a line bearing easterly along the south-  
ern alignment of Summer Street 331'0" or thereabout  
to the western alignment of Post Office Lane and  
the point of commencement AND ALL THAT piece or  
parcel of land being part of Section 40 Town and  
City of Orange, Parish of Orange, Counties of  
Bathurst and Wellington and State of New South  
Wales and being bounded by a line commencing at the  
intersection of the western alignment of Lords  
Place and the southern alignment of Summer Street  
bearing southerly along the western alignment of  
Lords Place for 660' or thereabout to the northern  
alignment of Kite Street thence by a line bearing  
westerly along the northern alignment of Kite  
Street 305' or thereabout to the eastern alignment  
of Post Office Lane thence by a line bearing  
20 northerly along the eastern alignment of Post  
Office Lane for 660' or thereabout to the southern  
alignment of Summer Street thence by a line bear-  
ing easterly along the southern alignment of  
Summer Street 305' or thereabout to the western  
alignment of Lords Place and the point of  
commencement AND ALL THAT piece or parcel of land  
being part of Section 44 Town and City of Orange,  
Parish of Orange, County of Bathurst and State of  
New South Wales being bounded by a line commencing  
30 at the intersection of the western alignment of  
Peisley Street and the northern alignment of Summer  
Street bearing westerly along the norther alignment  
of Summer Street 333'9" or thereabout to the east-  
ern alignment of McNamara Street thence by a line  
bearing northerly along the eastern alignment of  
McNamara Street for 329'4 $\frac{1}{2}$ " or thereabout thence  
by a line bearing easterly for 147'2 $\frac{1}{4}$ " or there-  
about thence by a line bearing northerly for  
199'10 $\frac{1}{2}$ " or thereabout thence by a line bearing  
40 westerly for 146'6" or thereabout to the eastern  
alignment of McNamara Street thence by a line bear-  
ing northerly along the eastern alignment of  
McNamara Street for 124'10 $\frac{1}{2}$ " or thereabout to the  
southern alignment of Byng Street thence by a line  
bearing easterly along the southern alignment of  
Byng Street 329'1 $\frac{3}{4}$ " or thereabout to the western  
alignment of Peisley Street thence by a line bearing  
southerly along the western alignment of Peisley  
Street 660' or thereabout to the northern alignment  
50 of Summer Street and the point of commencement



Plaintiff's Exhibits

No.13(E)  
Minutes of Ordinary Meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69  
(continued)

AND ALL THAT piece or parcel of land being part of Section 45 Town and City of Orange, Parish

This is Page No. Five of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

TOWN CLERK R. THOMAS  
MAYOR

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of Orange Counties of Bathurst and Wellington and State of New South Wales and being bounded by a line commencing at the intersection of the western alignment of McNamara Street and the southern alignment of Summer Street bearing southerly along the western alignment of McNamara Street 273'7 $\frac{1}{4}$ " or thereabout thence by a line bearing westerly 142'0 $\frac{1}{2}$ " or thereabout thence by a line bearing southerly 118'2" or thereabout thence by a line bearing easterly 142' or thereabout to the western alignment of McNamara Street thence by a line bearing southerly along the western alignment of McNamara Street 68'5 $\frac{1}{4}$ " or thereabout thence by a line bearing westerly 143'8" or thereabout thence by a line bearing southerly 42'3 $\frac{1}{4}$ " or thereabout thence by a line bearing easterly 143'10 $\frac{1}{4}$ " or thereabout to the western alignment of McNamara Street thence by a line bearing southerly along the western alignment of McNamara Street 142'10 $\frac{1}{2}$ " or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street 285'9" or thereabout to the eastern alignment of Lords Place thence by a line bearing northerly along the eastern alignment of Lords Place 660' or thereabout to the southern alignment of Summer Street thence by a line bearing easterly along the southern alignment of Summer Street 285'3" or thereabout to the western alignment of McNamara Street and the point of commencement

AND ALL THAT piece or parcel of land being part of Section 45 Town and City of Orange, Parish of Orange, County of Bathurst and State of New South Wales being bounded by a line commencing at the intersection of the western alignment of Peisley Street and the southern alignment of Summer Street bearing southerly along the western

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alignment of Peisley Street for 660' or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street 333' or thereabout to the eastern alignment of McNamara Street thence by a line bearing northerly along the eastern alignment of McNamara Street for 198'9" or thereabout thence by a line bearing easterly for 132'7 $\frac{3}{4}$ " or thereabout thence by a line bearing northerly for 67'8" or thereabout thence by a line bearing westerly 132'7" or thereabout to the eastern alignment of McNamara Street thence by a line bearing northerly along the eastern alignment of McNamara Street for 396' or thereabout to the southern alignment of Summer Street thence by a line bearing easterly along the southern alignment of Summer Street for 333' or thereabout to the western alignment of Peisley Street and the point of commencement AND ALL THAT piece or parcel of land being

Section 1 Town and City of Orange, Parish of Orange, County of Bathurst and State of New South Wales being bounded by a line commencing at the intersection of the eastern alignment of Peisley Street and the northern alignment of Summer Street bearing northerly along the eastern alignment of Peisley Street 660' or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street 92' or thereabout thence by a line bearing southerly 683'11" or thereabout to the northern alignment of Summer Street thence by a line bearing westerly along the northern alignment of Summer Street for 95'0 $\frac{3}{4}$ " or thereabout to the eastern alignment of Peisley Street and the point of commencement AND ALL THAT piece or parcel of land in the Town and City of Orange, Parish of Orange, County of Bathurst and State of New South Wales being bounded by a line commencing at the intersection of the eastern alignment of Peisley Street and the southern alignment of Summer Street bearing southerly along the eastern alignment of Peisley Street for 466' or thereabout thence by a line bearing easterly 93'8" or thereabout thence by a line bearing northerly 452' or thereabout to the southern alignment of Summer Street thence by a line bearing westerly along the southern alignment of Summer Street 96'4" or thereabout to the eastern alignment of Peisley Street and the point of commencement.

Plaintiff's  
Exhibits

No.13(E)

Minutes of  
Ordinary  
Meeting of  
Council  
together with  
estimates  
attached  
thereto for  
the then  
proposed  
Service Area  
Local Rate  
15/4/1969

(continued)

Plaintiff's Exhibits

No.13(E)

Minutes of  
of Ordinary  
Meeting of  
Council  
together with  
estimates  
attached  
thereto for  
the then  
proposed  
Service Area  
Local Rate  
15/4/69  
(continued)

- (5) That upon the making of a Service Area Local Rate herein the Anson Street Parking Area Local Fund and the Anson/Sale Streets Parking Area Local Fund be closed and authority sought from the Minister under Section 109 (3) Local Government Act for the balances therein to be carried to the Service Area Local Fund.

This is Page No. Six of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

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\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
R. THOMAS  
MAYOR

- 7 -

SERVICE AREA LOCAL FUND

RESOLVED That formal application be made to the Commonwealth Trading Bank for overdraft accommodation in the sum of \$70,000 in respect of the Service Area Local Fund

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RESOLVED That in respect to the construction of the Women's Rest Centre and Tourist Office, Council's Architect be requested to prepare Plans and Specifications and that tenders be called subject to the specifications being first submitted to the Council.

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The Mayor adjourned the meeting of Council at 9.15 p.m.

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The Mayor re-opened the meeting of Council at 10.15 p.m.

FINANCE COMMITTEE

RESOLVED That the recommendations made by the Finance Committee at its meeting held on 15th April, 1969 be adopted.

GAS COMMITTEE

RESOLVED That the recommendations made by the Gas Committee at its meeting held on 15th April, 1969 be adopted.

MOTIONS OF WHICH NOTICE HAD BEEN GIVEN

MEETING DATE

Submitted by Aldermen A.E. Tucker and H.D. Lapham --

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RESOLVED That all Committee and Council Meetings be held, in future, on Thursday nights commencing at 7.30 p.m.; that Notice of business close at noon on the preceding Friday; and that business-papers be issued on the preceding Tuesday.

820

The MOTION, on being put to the Meeting was CARRIED.

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QUESTIONS

Alderman Tucker asked why the report requested at the Meeting of the Finance Committee on 17/3/69 on the hire by Council of a Massey Ferguson Tractor had not been submitted. The Town Clerk said that the report was to be contained in a comprehensive report on plant by the Engineer to the next Meeting of the Works Committee. Alderman Tucker requested that a separate report be submitted on the Massey Ferguson Tractor. The City Engineer said that a separate report would be submitted.

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Alderman Cutcliffe asked when would the date for the opening of the Saleyards Inquiry be announced. The Mayor said the date would be announced by the Commissioner.

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Plaintiff's Exhibits

No.13(E)

Minutes of Ordinary Meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69

(continued)

Plaintiff's Exhibits

No.13(E)

Minutes of Ordinary Meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69

(continued)

823 Alderman Tucker asked what period of time elapsed between notification to owners of proposed works of kerbing, guttering and the issue of an account for the work. The City Engineer said the period of time was variable. Notifications are issued as soon as a programme is determined by Council but construction, and the subsequent raising of the charge, may be up to 12 months later.

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This is Page No. Seven of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

TOWN CLERK

R. THOMAS  
MAYOR



Plaintiff's Exhibits

of the Regular meeting of the Orange City Council held on 15th April, 1969.

No.13(E)  
Minutes of Ordinary Meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69  
(continued)

TOWN CLERK \_\_\_\_\_ R. THOMAS  
MAYOR \_\_\_\_\_

SCHEDULE 1

CITY OF ORANGE  
SERVICE AREA LOCAL FUND  
ESTIMATES OF EXPENDITURE AND INCOME FOR THE YEAR 1969

EXPENDITURE

	<u>EXPENDITURE</u>	10
Item		
1 (a)	Summer Street - both sides from Anson Street to main stormwater channel (Robertson Park) PROVISION FOR UNDERGROUND DRAINAGE to eliminate surface gutter flows of up to 8 feet wide and eliminate flows across adjacent foot-paths - drainage installations on south side including cross drainage from north side at Anson Street \$16,500 RAISING OF GUTTER LEVEL, both sides, to give a kerb height of 6" - 7" (in lieu of existing 9" - 10") including restoration of concrete gutter on both sides and raising of road shoulders to new gutter levels. \$ 6,050 \$22,550	20
(b)	Summer Street - both sides from Peisley Street to main stormwater channel - PROVISION FOR UNDERGROUND DRAINAGE \$ 5,900 RAISING OF GUTTER LEVEL where necessary including restoration of concrete gutter and raising of road shoulders \$ 3,850 \$ 9,750	30
	<u>\$32,300</u>	

This is Report referred on Page No. 1 of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

TOWN CLERK \_\_\_\_\_ R. THOMAS  
MAYOR \_\_\_\_\_

SCHEDULE 2.Plaintiff's  
ExhibitsNo.13(E)Minutes of  
Ordinary  
meeting of  
Council  
together with  
estimates  
attached  
thereto for  
the then  
proposed  
Service Area  
Local Rate  
15/4/69

(continued)

	2.	N.E. and S.E. Corners Hill and Summer Streets - ROAD SHOULDER RECONSTRUCTION	§	<u>560</u>	
	3.	Kerbing, Guttering and Footpath Reconstruction -			
10	a)	Peisley St. - Kite St. to Summer St. West Side - reconstruction 230' of 12' concrete paving @ \$4.80		1104	
		230' of concrete kerb @ \$1.80		414	
		East side - reconstruction 50' of 12' concrete paving @ \$4.80		240	
		50' of concrete kerb @ \$1.80		<u>90</u>	1,848
20	b)	Anson St. - Kite St. to Summer St. East side - reconstruction 325' of concrete kerb & gutter @ \$2.10		683	
		460' of 12' concrete paving @ \$4.80		2208	
		615 sq.yds. road shoulders reconstruction to gutter level @ \$2.00		<u>1230</u>	4,121
30	c)	Anson St. - Byng St. to Summer St. West Side - reconstruction 295' of concrete kerb @ \$1.80		531	
		295' of 12' concrete paving @ \$4.80		<u>1416</u>	1,947
40	d)	Byng Street - Lords Place to Anson St. South side - reconstruction 210' of concrete kerb & gutter @ \$2.10		441	
		210' of 12' concrete paving @ \$4.80		1008	
		280 sq.yds. road shoulders @ \$2.00		<u>560</u>	2,009



Plaintiff's Exhibits

No.13(E)

Minutes of Ordinary meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69

(continued)

e) Post Office Lane - Kite St. to Summer St. West side - construction 400' of concrete kerb & gutter @ \$2.10	840		
400' of 4' concrete paving @ \$1.60	<u>640</u>	1,480	
f) Byng St. - Sale St. to Anson St. South side - reconstruction 375' of concrete kerb & gutter @ \$2.10	788		10
295 sq.yds. road shoulders reconstruction to gutter level @ \$2.00	<u>590</u>	1,378	
g) McNamara St. East side - reconstruction 132' of concrete kerb & gutter @ \$2.10	277		20
655' of 8" concrete paving @ \$3.20	2096		
352' sq.yds. road shoulders reconstruction to gutter level @ \$2.00	<u>704</u>	<u>3,077</u>	
		<u>\$15,860</u>	

This is Report referred on Page No. 1 of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969. 30

\_\_\_\_\_  
TOWN CLERK

R. THOMAS  
\_\_\_\_\_  
MAYOR

SCHEDULE 3

4. STREET AND GUTTER CLEANING

(a) Present method of labour and hand-brooms, expected to continue until about 30/6/69:			
2 men 26 weeks	\$2,912		
Relief labour 6 man weeks	312		
Lorry and driver	<u>330</u>	\$ 3,554	40

Plaintiff's Exhibits

No.13(E)

Minutes of Ordinary meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69

(continued)

(b) As from 1/7/69, (i) mechanical method of cleaning gutter channels and road shoulders;  
(ii) washing downfootpaths;  
(iii) labour and hand-brooms in areas not accessible to plant -

(i) Purchase of street sweeping machine  
10 Operating costs - \$17,600

Program - Service area:  
Mon. - Fri.  
5 days x 2½ hrs sweeping + 1 hr to dump  
Sat. 3 hrs + 1 hr dump;  
Sun. 3 hrs + 1 hr dump;  
Mtce 7 Hours week ..  
as .. 32 hrs

20 - Other areas: Mon. - Fri.  
5 days x 2 hrs + 1 hr dump  
Mtce 4 hrs week .. 19 hrs  
per week ... 51 hrs

Labour:  
Driver per week \$76.39  
Mtce " " 16.39

Service Area ...  
\$66.42 x 26 weks ... 1,727  
Other Areas ...  
\$26.36

30 Sundries per week:  
Brooms \$15 Parts \$12  
Insurance \$2, Petrol & Oils \$13, - \$42 or abt  
82½ hour Service area  
\$26 x 26 ... 676  
Other areas \$16  
\$23,557

40 Less reimbursement from General Fund for:  
19 hrs wk x 26 = 494 hrs @ \$1.06 for  
Depreciation (Depreciation of \$2,800 p.a.  
for 6 years; residual book value  
\$800) ... \$ 524  
for Proportion of General Rates (\$7500 levied over

Plaintiff's  
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Local Rate  
15/4/69  
(continued)

whole area 1969 for street cleaning - UCV service area as \$6.5m, UCV whole area S/24.07m ...	\$ 2025	\$ 2,549	\$21,008
(ii) Washing down footpaths - twice weekly - 6 hours week average x 26 = 156 hours @ \$4.75 hr			741
(iii) Labour etc. for parts of service area not accessible to plant -			<u>291</u>
			<u>\$22,040</u>

10

This is Report referred on Page No. 1 of Minutes  
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held on 15th April, 1969.

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TOWN CLERK

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R. THOMAS  
MAYOR
SCHEDULE 45. \* PARKING AREAS MAINTENANCE

* Anson Street, between Summer & Byng Streets Anson - Sale Streets Little Summer Street			20
Attendants' Wages - 5 man- days week including penalty rates Sat. mornings			2,760
Cleaning (included with Street Cleaning)			-
Lighting (included with Street Lighting)			-
Bay-Marking			1,570
Signs			180
** Rates			9,200
Little Summer Street - Walkway provision			800
" " " - Hard Standing			300
Pavement patching			600

30

## Principal and Interest on Loans:

	<u>Loan</u>	<u>P &amp; I</u>	
Anson St.	£ 34,834	£3,003	
Anson/Sale Sts.	144,000	11,022	
Little Summer	18,250	<u>1,385</u>	15,410
			<u>£30,820</u>

Plaintiff's Exhibits

No.13(E)

Minutes of Ordinary meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69

(continued)

**	Anson Street UCV	£52,000	
	Anson/Sale Streets	68,000	
	Little Summer Street	14,200	
10	Peisley/McNamara Street (1/3 year)	24,600 (est.)	

This is Report referred on Page No. 1 of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

TOWN CLERK \_\_\_\_\_ R. THOMAS  
MAYOR \_\_\_\_\_

ITEM SCHEDULE 5  
6 ADVERTISING ADVANTAGES OF AREA (Tourism Promotion)

Estimated Annual Cost of Tourist Information Office

20	Tourist Offices		
	- Salary	£5,000	
	Travelling	500	
	Office Expenses		
	- Phone	350	
	Postage	300	
	Printing and Stationery	450	
	Typists/Stenographers (part)	500	
30	Advertising	2,000	
	Sundry Expenses	<u>900</u>	

£10,000

\* Expenditure for, say, four months 1969 £3,333

\* Less voluntary contribution offered to be raised by Chamber of Commerce  
£6,250 p.a., four months 1969

40 £2,080 £1,253

\* Scheme not expected to commence until about 1st September, 1969.

Plaintiff's Exhibits

No.13(E)

Minutes of Ordinary meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69 (continued)

This is Report referred on Page No. 1 of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

TOWN CLERK R. THOMAS  
MAYOR

SCHEDULE 6

7) Street Lighting (including lighting of parking areas)

At present the lighting system within the Service Area consists of:

10

3 x 100 w Inc lamps	@ \$14.50	p.a.	
1 x 25 w Fl.	"	@ \$20.00	
15 x 20 w Fl.	"	@ \$14.50	
29 x 250 w MV	"	@ \$27.00	
2 x 300 w Inc	"	@ \$26.00	
<u>21</u> x 400 w MV	"	@ \$36.00	. . \$1,872 p.a.
<u>71</u>			

This system is proposed to be replaced as from 1/7/69 and on the recommendation of Ophir Council with:

20

2 x 20 w Fl. lamps	@ \$14.50	
53 x 60 w Sod	" @ \$18.00	
33 x 250 w MV	" @ \$27.00	
<u>75</u> x 400 w MV	" @ \$36.00	. . \$4,574 p.a.
<u>163</u>		

The County Council's annual charges are inclusive of capital charges and running expenses.

The proposed system will, on Country Council's advice, provide more effective and efficient lighting, and the 75 x 400 w MV lamps are quoted at \$36 p.a. after allowing traffic route lighting subsidy of \$36 p.a. per lamp.

30

Summer Street	will have	70	lamps in		
			place of	25	
Peisley Street	" "	11	" "	8	
Lords Place	" "	10	" "	6	
Anson Street	" "	10	" "	5	
Sale Street	" "	4	" "	2	
McNamara Street	" "	11	" "	2	
Post Office Lane	" "	6	" "	4	
Kite Street	" "	7	" "	5	
Byng Street	" "	2	" "	3	
Parking Areas	" "	<u>32</u>	" "	<u>11</u>	
		<u>163</u>		<u>71</u>	

40

All locations are within the service area.

White-way lighting (or under-awning lighting)  
 within the service area - operating from dusk to  
 midnight  
 - £3,216  
 Maintenance 400 £3,616

Plaintiff's  
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 Council  
 together with  
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 proposed  
 Service Area  
 Local Rate  
 15/4/69  
 (continued)

In 1969 General Fund estimates £9,350 is  
 included for street lighting: Proportion  
 payable by service area £2,524 . . . . . £2,524  
 (UCV service area £6.5m; UCV whole area  
 £24.07m)

10

Recapitulation

Service Area street lighting costs -  
 1/1/69 - 30/6/69 . . . . . £ 936  
 1/7/69 - 31/12/69 . . . . . 2,287  
 White way-lighting 3,616  
 6,839  
 Less proportion of General Rates 2,524  
£4,315

20

This is Report referred on Page 1 of Minutes of  
 the Regular meeting of the Orange City Council  
 held on 15th April, 1969.

\_\_\_\_\_ R. THOMAS  
 TOWN CLERK MAYOR

SCHEDULE 7

ITEM 8. CONSTRUCTION OF WOMEN'S REST CENTRE &  
 TOURIST OFFICE

30

(a) Construction of building, including design and  
 supervision, furniture and fittings - £36,000  
 To be financed by way of 1969 Rates  
 £12,000 with balance from Bank  
 Overdraft repayable over 3 years at  
 interest of 6% per annum (interest  
 bearing for, say, 4 months in 1969)  
 Part of Capital Cost £12,000  
 Interest on Overdraft,  
 say 480 £12,480

40

(b) Maintenance of building - from  
 estimated date of completion  
 31/8/1969 to 31/12/1969  
 Cleaning £ 640  
 Heating 80  
 Lighting 80  
 Minor Maintenance 100 £ 900 £13,380

Plaintiff's  
Exhibits

No.13(E)

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15/4/69

(continued)

This is Report referred on Page No. 1 of Minutes of  
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on 15th April, 1969

\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
R. THOMAS  
MAYOR

SCHEDULE 8

ITEM

9	<u>PROVISION OF EXTENSION OF PARKING AREAS</u>		
a.	Peisley Street/McNamara Street (new Parking Area)		
	Acquisition of Land	£30,000	10
	Compensation	£ 6,300	
	Construction	<u>£18,700</u>	
		<u>£55,000</u>	
	To be financed by way of 1969 Rates £18,000 with balance from Bank Overdraft repayable over 3 years at interest of 6% per annum (interest bearing for, say, 4 months in 1969)		
	Part of Capital cost	£18,000	20
	Interest on Overdraft, say	<u>740</u>	
		£18,740	
b.	Anson Street/Sale Street Parking Area (*Provision for walkway to Summer Street)		
	Acquisition of Land	£18,400	
	Compensation	£ 3,130	
	Demolitions and site treatment	£ 2,000	
	Paving 480 sq.yds. @ £1.50	£ 720	
	Contingencies	£ 450	
		<u>£24,700</u>	30
	Less amount estimated to be a charge against 1970 Revenue (*Proposed to be completed in 1970)	<u>£20,000</u>	£ 4,700
			<u>£23,440</u>

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on 15th April, 1969

\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
R. THOMAS  
MAYOR

SCHEDULE 9Plaintiff's  
ExhibitsITEM 10. PROPORTION OF ENGINEERING SALARIES &  
EXPENSES

No.13(E)

Salaries & ExpensesMinutes of  
Ordinary  
meeting of  
Council  
together with  
estimates  
attached  
thereto for  
the then  
proposed  
Service Area  
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15/4/69

(continued)

	Salaries of Engineers and Engineering Staff (As per Schedule 4 to the 1969 General Fund Estimates)	¥54,000
10	Add 1969 Award Marginal Increases	¥ <u>1,315</u>
		¥55,315
	Other expenses subject to con- tributions by other funds (as per Schedule 4) - Engineers' office expenses etc.	¥ <u>15,000</u>
(a)		¥ <u>70,315</u>

Total Works Expenditure (as per 1969  
Estimates) under Engineers Supervision

	General Fund	
20	- Public Works	270,695
	Swimming Pool	12,600
	Noxious Weeds	800
	Airport	122,500
	Public Works Depot	34,000
	Sportsground Development	36,000
	Water Supply Local Fund	
30	- Pumping Stations	34,750
	Reservoirs	4,000
	Water Treatment	21,400
	Mains & Services	15,750
	Sundry (less Depot)	4,400
	Installations	5,000
	Capital Works	235,950
	Sewerage Local Fund	
	- Treatment Works and Pump Station	22,000
	Sewers M & R	6,000
40	Misc. Private Works	1,500
(b)	Capital Works	<u>94,000</u>
		¥921,345



Plaintiff's Exhibits		Service Area Local Fund		
<u>No.13(E)</u>		Item 1 (a) Drainage etc.	22,550	
Minutes of Ordinary meeting of Council together with estimates attached thereto for the then proposed Service Area Local Rate 15/4/69		1 (b) Drainage etc.	9,750	
		2 Shoulder Improvements	560	
		3 Kerbing etc.	15,860	
		4 Street & Gutter Cleaning	22,040	10
		5 Parking Areas M & R	6,210	
(c)		9 Parking Area Constr.	<u>18,700</u>	
			<u>£ 95,670</u>	
	(d)		<u>£1,017,015</u>	

(continued)

Engineering Salaries and Expenses chargeable to Service Area Local Fund. Proportion of service area local fund works expenditure to Total Works Expenditure in relation to Engineering Salaries etc:  $\frac{c \times a}{d}$

= £6,614

20

This is Report referred on Page No. 1 of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

\_\_\_\_\_ R. THOMAS  
TOWN CLERK MAYOR

SCHEDULE 10Plaintiff's  
ExhibitsITEM 11. ONCOSTS BASED ON WAGES

	<u>*Scale A</u>	<u>**Scale B</u>
Payroll Tax	2.50%	2.50%
Superannuation	1.75	1.75
Workers Comp. Insurance	2.50	1.40
Public & Annual Holidays	12.00	
Sick Leave	4.00	
Long Service Leave	1.65	
Tools	<u>2.00</u>	<u>        </u>
	<u>26.40%</u>	<u>5.65%</u>

No.13(E)  
Minutes of  
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15/4/69

(continued)

WAGES CONTENT OF ITEMS INCLUDED IN THESE ESTIMATES

<u>Item</u>	<u>Wages Content</u>	<u>Oncost %</u>	<u>Oncost</u>
1 (a) & (b)	£7,150	26.4%	£1,887
2	210	26.4%	55
3	6,140	26.4%	1,620
4	5,600	26.4%	1,478
5	3,960	26.4%	1,045
9	4,800	26.4%	1,267
10	5,197	5.65%	293
12	7,400	5.65%	418
			<u>£8,063</u>

\* Scale A applicable to wages staff (who are replaced when absent on leave etc.)

\*\* Scale B applicable to Engineering and Administrative salary costs

This is Report referred on Page No. 1 of Minutes of the Regular meeting of the Orange City Council held on 15th April, 1969.

TOWN CLERKR. THOMAS  
MAYOR

Plaintiff's  
Exhibits

SCHEDULE 11

No.13(E)

Minutes of  
Ordinary  
meeting of  
Council  
together with  
estimates  
attached  
thereto for  
the then  
proposed  
Service Area  
Local Rate  
15/4/69

(continued)

ITEM 12. ADMINISTRATIVE EXPENSES

Expenditure as per \*1969 Estimates, all Funds  
and Accounts, but excluding General Fund  
Administrative expenses -

	General Fund	\$798,534	
	Water	352,479	
	Sewerage	197,239	
	*Gas (1968)	<u>238,119</u>	
		1,586,371	10
(a)	Service Area Local	<u>162,645</u>	
(b)	Total	<u>\$1,749,016</u>	
(c)	Administrative expenses for all purposes 1969	\$105,106	

Proportion of Administrative Expenses  
chargeable to Service Area Local Fund:

$$\frac{a \times c}{b} = \underline{\$9,760}$$

20

This is Report referred on Page No. 1 of Minutes  
of the Regular meeting of the Orange City Council  
held on 15th April, 1969.

\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
R. THOMAS  
MAYOR

EXHIBIT F - MINUTES OF COUNCIL MEETING OF  
1.5.69 TOGETHER WITH MAYORAL  
MINUTE OF SAME DATE

Plaintiff's  
Exhibits

No.13(F)

17/69

Minutes of  
Council  
meeting  
together with  
Mayoral minute  
of 1/5/69

MINUTES OF THE ORDINARY MEETING OF ORANGE CITY  
COUNCIL HELD AT THE TOWN HALL, ORANGE ON THURSDAY,  
1ST MAY, 1969 AT 7.30 P.M.

10 ATTENDANCE: The Mayor (Alderman R.O. Thomas);  
Deputy Mayor (Alderman D.H. Perry); Aldermen  
F.S. Dobbin; W.K. Jefferson; K.E. Brown; A.E.  
Tucker; K.S. McCarron; L.P. McFarlane; H. McMaster;  
Town Clerk; Deputy Town Clerk; City Health  
Surveyor; City Engineer; Gas Engineer.

APOLOGIES FOR ABSENCE were received from Aldermen  
R.J. Cutcliffe, H.D. Lapham and K.L. Selwood.

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MAYORAL MINUTE.

SERVICE AREA LOCAL RATE.

20 The Mayor withdrew a Minute submitted on the  
Service Area Local Rate dated 29.4.69 for the  
reason that it was incomplete and submitted in  
its stead a Minute dated 30.4.69.

30 910 RESOLVED That WHEREAS the estimates of  
income and expenditure of the  
Service Area Local Fund for the  
year 1969 were adopted by the  
Council on 15th April, 1969  
AND WHEREAS such estimates inclu-  
ding notice of the proposal to  
make and levy a local rate in  
connection therewith were adver-  
tised in the Central Western Daily  
newspaper on 18th April, 1969 it  
is HEREBY RESOLVED that a Service  
Area Local Rate of two decimal  
five seven two cents (2.572¢)  
in the dollar on the unimproved  
capital value of all ratable  
land within the portion of the  
area as defined hereunder be  
40 now made for the year 1969:-

Plaintiff's Exhibits  
No.13(F)  
Minutes of Council meeting together with Mayoral minute of 1/5/69  
(continued)

ALL THAT piece or parcel of land being part of Section 14 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line commencing at the intersection of the western alignment of Sale Street and the northern alignment of Summer Street bearing westerly along the northern alignment of Summer Street for 665'9" or thereabouts to the eastern alignment of Hill Street thence by a line bearing northerly along the eastern alignment of Hill Street for 133'10" or thereabout to the southern alignment of Little Summer Street thence by a line

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This is Page No. One of Minutes of the Regular meeting of the Orange City Council held on 1st May, 1969.

TOWN CLERK R. THOMAS  
MAYOR

bearing easterly along the southern alignment of Little Summer Street for 396'10" or thereabout to the eastern boundary of Little Summer Street thence by a line bearing northerly along the eastern boundary of Little Summer Street for 32' to the northern alignment of Little Summer Street thence by a line bearing westerly along the northern alignment of Little Summer Street for 176'3" or thereabout thence by a line bearing northerly for 165'8 $\frac{1}{4}$ " or thereabout thence by a line bearing easterly for 177' or thereabout thence by a line bearing southerly for 49'8" or thereabout thence by a line bearing easterly for 90' or thereabout thence by a line bearing southerly for 99'0 $\frac{1}{4}$ " or thereabout thence by a line bearing westerly for 1' thence by a line bearing southerly for 14'4 $\frac{1}{4}$ " or thereabout thence by a line bearing easterly for 46'9" or thereabout thence by a line bearing easterly for 18'4" or thereabout thence by a line bearing easterly for 115'8 $\frac{1}{2}$ " or thereabout to the western alignment of Sale Street thence by a line bearing southerly along the western alignment of Sale Street for 154'9 $\frac{1}{2}$ " or thereabout to the northern alignment of Summer Street and the point of commencement AND ALL THAT piece or parcel of land being part of Section 13 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line

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commencing at the intersection of the western alignment of Sale Street and the southern alignment of Summer Street bearing southerly along the western alignment of Sale Street for 255' or thereabout thence by a line bearing westerly for 132' or thereabout thence by a line bearing southerly for 75' or thereabout thence by a line bearing easterly for 132' or thereabout to the western alignment of Sale Street thence by a line bearing southerly along the western alignment of Sale Street for 161'  $3\frac{1}{4}$ " or thereabout thence by a line bearing westerly for 133'  $2''$  or thereabout thence by a line bearing southerly for 170' or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street for 2'  $10\frac{1}{2}''$  or thereabout thence by a line bearing northerly for 84' or thereabout thence by a line bearing north westerly for 34' or thereabout thence by a line bearing northerly 42'  $9''$  or thereabout thence by a line bearing westerly for 255'  $8''$  or thereabout thence by a line bearing northerly 20' or thereabout thence by a line bearing westerly 132'  $8''$  or thereabout thence by a line bearing northerly for 310' or thereabout thence by a line bearing westerly for 132' or thereabout to the eastern alignment of Hill Street thence by a line bearing northerly along the eastern alignment of Hill Street for 10' or thereabout thence by a line bearing easterly for 60'  $2\frac{1}{4}''$  or thereabout thence by a line bearing northerly 68'  $7\frac{1}{2}''$  or thereabout thence by a line bearing westerly for 60' or thereabout to the eastern alignment of Hill Street thence by a line bearing northerly along the eastern alignment of Hill Street for 91'  $1''$  or thereabout to the southern alignment of Summer Street thence by a line bearing easterly along the southern alignment of Summer Street for 468'  $11''$  or thereabout thence by a line bearing southerly for 140' or thereabout thence by a line bearing easterly 36' or thereabout thence by a line bearing northerly for 140' or thereabout to the southern alignment of Summer Street thence by a line bearing easterly along the southern alignment of Summer Street for 161'  $10''$  or thereabout to the western alignment of Sale Street and the point of commencement AND ALL THAT PIECE or parcel of land being part of Section 7 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line commencing at the intersection

Plaintiff's  
Exhibits

                      
No.13(F)

Minutes of  
Council  
meeting  
together with  
Mayoral minute  
of 1/5/69

(continued)

Plaintiff's Exhibits

No.13(E)  
Minutes of Council meeting together with Mayoral minute of 1/5/69  
(continued)

of the Western alignment of Anson Street and the northern alignment of Summer Street

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bearing westerly along the northern alignment of Summer Street for 663' or thereabout to the eastern alignment of Sale Street thence by a line bearing northerly along the eastern alignment of Sale Street for 143'6<sup>1</sup>/<sub>4</sub>" or thereabout thence by a line bearing easterly for 126'6<sup>3</sup>/<sub>4</sub>" or thereabout thence by a line bearing northerly for 60' or thereabout thence by a line bearing easterly for 18' or thereabout thence by a line bearing northerly for 61'6" or thereabout thence by a line bearing westerly for 144'6<sup>3</sup>/<sub>4</sub>" or thereabout to the eastern alignment of Sale Street thence by a line bearing northerly along the eastern alignment of Sale Street for 252'9" or thereabout thence by a line bearing easterly for 249'11" or thereabout thence by a line bearing northerly for 148'1" or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 219'4<sup>3</sup>/<sub>4</sub>" or thereabout thence by a line bearing southerly for 122' or thereabout thence by a line bearing easterly for 30' or thereabout thence by a line bearing northerly for 122' or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 165' or thereabout to the western alignment of Anson Street thence by a line bearing southerly along the western alignment of Anson Street 660' or thereabout to the northern alignment of Summer Street and the point of commencement AND ALL THAT piece or parcel of land being part of Section 8 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line commencing at the intersection of the western alignment of Anson Street and the southern alignment of Summer Street bearing southerly

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along the western alignment of Anson Street for  
 529'5" or thereabout thence by a line bearing  
 westerly for 324'6" or thereabout thence by a line  
 bearing northerly for 91' or thereabout thence by  
 a line bearing north-westerly for 8'6" or there-  
 about thence by a line bearing westerly for 11' or  
 thereabout thence by a line bearing northerly for  
 35' or thereabout thence by a line bearing westerly  
 for 159'10" or thereabout thence by a line bearing  
 southerly for 51'8" or thereabout thence by a line  
 bearing westerly 174'6" or thereabout to the  
 eastern alignment of Sale Street thence by a line  
 bearing northerly along the eastern alignment of  
 Sale Street for 183'5" or thereabout thence by a  
 line bearing easterly for 165'10" or thereabout  
 thence by a line bearing northerly for 27'0 $\frac{3}{4}$ " or  
 thereabout thence by a line bearing westerly for  
 9' or thereabout thence by a line bearing northerly  
 for 11'11" or thereabout thence by a line bearing  
 westerly for 25'6" or thereabout thence by a line  
 bearing northerly for 49'6" or thereabout by a line  
 bearing westerly for 29'3" or thereabout thence by  
 a line bearing northerly for 47'2 $\frac{3}{4}$ " or thereabout  
 thence by a line bearing westerly for 101'2 $\frac{1}{4}$ " or  
 thereabout to the eastern alignment of Sale Street  
 thence by a line bearing northerly along the  
 eastern alignment of Sale Street for 30' or there-  
 about thence by a line bearing easterly for 83'  
 or thereabout thence by a line bearing northerly  
 for 18' or thereabout thence by a line bearing  
 north-westerly for 5'7" or thereabout thence by a  
 line bearing westerly for 79' or thereabout to the  
 eastern alignment of Sale Street thence by a line  
 bearing northerly along the eastern alignment of  
 Sale Street for 79'9" or thereabout to the southern  
 alignment of Summer Street thence by a line bearing  
 easterly along the southern alignment of Summer  
 Street for 663' or thereabout to the western  
 alignment of Anson Street and the point of  
 commencement AND ALL THAT piece or parcel of land  
 being part of Section 41 Town and City of Orange,  
 Parish of Orange, County of Wellington and State  
 of New South Wales and being bounded by a line  
 commencing at the intersection of the western  
 alignment of Lords Place and the northern align-  
 ment of Summer Street bearing westerly along the  
 northern alignment of Summer Street for 663'0" or  
 thereabout to the eastern alignment of Anson  
 Street thence by a line bearing northerly along  
 the eastern alignment of Anson Street for 660' or  
 thereabout to the southern alignment of Byng Street

Plaintiff's  
Exhibits

No.13(E)

Minutes of  
Council  
meeting  
together with  
Mayoral minute  
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(continued)



Plaintiff's Exhibits

No.13(F)

Minutes of Council meeting together with Mayoral minute of 1/5/69

(continued)

thence by a line bearing easterly along the southern alignment of Byng Street for 82'10<sup>3</sup>/<sub>4</sub>" or thereabout thence by a line bearing southerly 134'1<sup>1</sup>/<sub>4</sub>" or thereabout thence by a line bearing easterly for 129'5" or thereabout thence by a line bearing northerly 12'3" or thereabout thence by a line bearing easterly for 119'6<sup>1</sup>/<sub>2</sub>" or thereabout thence by a line bearing southerly for 12' or thereabout

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thence by a line bearing easterly for 125' or thereabout thence by a line bearing northerly for 132' or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 205' or thereabout to the western alignment of Lords Place thence by a line bearing southerly along the western alignment of Lords Place for 660' or thereabout to the northern alignment of Summer Street and the point of commencement AND ALL THAT piece or parcel of land being part of Section 40 Town and City of Orange, Parish of Orange, County of Wellington and State of New South Wales and being bounded by a line commencing at the intersection of the western alignment of Post Office Lane and the southern alignment of Summer Street bearing southerly along the western alignment of Post Office Lane for 264' or thereabout thence by a line bearing westerly for 20'7<sup>1</sup>/<sub>2</sub>" or thereabout thence by a line bearing southerly along the western alignment of Post Office Lane 131'11" or thereabout thence by a line bearing easterly 20'7<sup>1</sup>/<sub>2</sub>" or thereabout thence by a line bearing southerly along the western alignment of Post Office Lane 62'8<sup>3</sup>/<sub>4</sub>" or thereabout thence by a line bearing westerly 137' or thereabout thence by a line bearing southerly 69'6" or thereabout thence by a line bearing easterly 137' or thereabout to the western alignment of Post Office Lane thence by a line bearing southerly along the western alignment of Post Office Lane 132' or

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thereabout to the northern alignment of Kite Street  
 thence by a line bearing westerly along the north-  
 ern alignment of Kite Street  $329'9\frac{1}{2}"$  or thereabout  
 to the eastern alignment of Anson Street thence by  
 a line bearing northerly along the eastern align-  
 ment of Anson Street  $132'3"$  or thereabout thence  
 by a line bearing easterly  $150'3"$  or thereabout  
 thence by a line bearing northerly  $66'3\frac{3}{8}"$  or  
 thereabout thence by a line bearing westerly  
 10  $150'3"$  or thereabout to the eastern alignment of  
 Anson Street thence by a line bearing northerly  
 along the eastern alignment of Anson Street  $462'3"$   
 or thereabout to the southern alignment of Summer  
 Street thence by a line bearing easterly along the  
 southern alignment of Summer Street  $331'0"$  or  
 thereabout to the western alignment of Post Office  
 Lane and the point of commencement AND ALL THAT  
 piece or parcel of land being part of Section 40  
 Town and City of Orange, Parish of Orange,  
 20 Counties of Bathurst and Wellington and State of  
 New South Wales and being bounded by a line com-  
 mencing at the intersection of the western  
 alignment of Lords Place and the southern align-  
 ment of Summer Street bearing southerly along the  
 western alignment of Lords Place for  $660'$  or  
 thereabout to the northern alignment of Kite  
 Street thence by a line bearing westerly along the  
 northern alignment of Kite Street  $305'$  or there-  
 about to the eastern alignment of Post Office Lane  
 30 thence by a line bearing northerly along the  
 eastern alignment of Post Office Lane for  $660'$   
 or thereabout to the southern alignment of Summer  
 Street thence by a line bearing easterly along the  
 southern alignment of Summer Street  $305'$  or there-  
 about to the western alignment of Lords Place and  
 the point of commencement AND ALL THAT piece or  
 parcel of land being part of Section 44 Town and  
 City of Orange, Parish of Orange, County of  
 Bathurst and State of New South Wales being  
 40 bounded by a line commencing at the intersection  
 of the western alignment of Peisley Street and the  
 northern alignment of Summer Street bearing  
 westerly along the northern alignment of Summer  
 Street  $333'9"$  or thereabout to the eastern  
 alignment of McNamara Street thence by a line  
 bearing northerly along the eastern alignment of  
 McNamara Street for  $329'4\frac{1}{2}"$  or thereabout thence  
 by a line bearing easterly for  $147'2\frac{1}{4}"$  or there-  
 about thence by a line bearing northerly for  
 50  $199'10\frac{1}{2}"$  or thereabout thence by a line bearing

Plaintiff's  
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No.13(F)

Minutes of  
Council  
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(continued)

Plaintiff's Exhibits

No.13(F)

Minutes of Council meeting together with Mayoral minute of 1/5/69

(continued)

westerly for 146'6" or thereabout to the eastern alignment of McNamara Street thence by a line bearing northerly along the eastern alignment of McNamara Street for 124'10 1/2" or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street 329'1 3/4" or thereabout to the western alignment of Peisley Street thence by a line bearing southerly along the western alignment of Peisley Street 660' or thereabout to the northern alignment of Summer Street and the point of commencement AND ALL THAT piece or parcel of land being part of Section 45 Town and City of Orange, Parish

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of Orange Counties of Bathurst and Wellington and State of New South Wales and being bounded by a line commencing at the intersection of the western alignment of McNamara Street and the southern alignment of Summer Street bearing southerly along the western alignment of McNamara Street 273'7 1/4" or thereabout thence by a line bearing westerly 142'0 1/2" or thereabout thence by a line bearing southerly 118'2" or thereabout thence by a line bearing easterly 142' or thereabout to the western alignment of McNamara Street thence by a line bearing southerly along the western alignment of McNamara Street 68'5 3/4" or thereabout thence by a line bearing westerly 143'8" or thereabout thence by a line bearing southerly 42'3 1/4" or thereabout thence by a line bearing easterly 143'10 1/4" or thereabout to the western alignment of McNamara Street thence by a line bearing southerly along the western alignment of McNamara Street 142'10 1/2" or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street 285'9" or thereabout to the eastern alignment of Lords Place thence by a line bearing northerly along the eastern alignment of Lords Place 660' or

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thereabout to the southern alignment of Summer Street thence by a line bearing easterly along the southern alignment of Summer Street 285'3" or thereabout to the western alignment of McNamara Street and the point of commencement AND ALL THAT piece or parcel of land being part of Section 45 Town and City of Orange, Parish of Orange, County of Bathurst and State of New South Wales being bounded by a line commencing at the intersection of the western alignment of Peisley Street and the southern alignment of Summer Street bearing southerly along the western alignment of Peisley Street for 660' or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street 333' or thereabout to the eastern alignment of McNamara Street thence by a line bearing northerly along the eastern alignment of McNamara Street for 198'9" or thereabout thence by a line bearing easterly for 132'7 $\frac{3}{4}$ " or thereabout thence by a line bearing northerly for 67'8" or thereabout thence by a line bearing westerly 132'7" or thereabout to the eastern alignment of McNamara Street thence by a line bearing northerly along the eastern alignment of McNamara Street for 396' or thereabout to the southern alignment of Summer Street thence by a line bearing easterly along the southern alignment of Summer Street for 333' or thereabout to the western alignment of Peisley Street and the point of commencement AND ALL THAT piece or parcel of land being Section 1 Town and City of Orange, Parish of Orange, County of Bathurst and State of New South Wales being bounded by a line commencing at the intersection of the eastern alignment of Peisley Street and the northern alignment of Summer Street bearing northerly along the eastern alignment of Peisley Street 660' or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street 92' or thereabout thence by a line bearing southerly 683'11" or thereabout to the northern alignment of Summer Street thence by a line bearing westerly along the northern alignment of Summer Street for 95'0 $\frac{3}{4}$ " or thereabout to the eastern alignment of Peisley Street and the point of commencement AND ALL THAT piece or parcel of land in the Town and City of Orange, Parish of Orange, County of Bathurst and State of New South Wales being bounded by a line commencing at the intersection of the

Plaintiff's  
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No.13(F)  
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(continued)



was firmly of the opinion that this Local Rate was necessary for the advancement of the commercial centre in Orange. The Council had obtained legal advice and was satisfied that it was within the powers of the Council to levy the rate. The Council was satisfied that it was necessary for the genuine advancement of the commercial centre that this rate be levied in order to carry out the works and services which the rate proposed to finance.

Plaintiff's Exhibits

No.13(F)

Minutes of Council meeting together with Mayoral minute of 1/5/69

(continued)

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RESOLVED That in all other respects the Mayoral Minute be noted.

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This is Page No. Six of Minutes of the Regular meeting of the Orange City Council held on 1st May, 1969.

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MAYOR

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20 (2) NOTICE OF MOTION, SUBMITTED BY ALDERMAN DOBBIN AND SECONDED BY ALDERMAN JEFFERSON.

933 "That no action be taken to carry out work to be paid for by Special Area Services Rate until the legal position of the rate has been finally determined."

The Motion was LOST and no recommendation was made to Council.

(3) LEVY OF SERVICE AREA LOCAL RATE.

30 934 The Mayor read Letter No. 1578 from Messrs. Campbell, Paton and Taylor.

RECOMMENDATION That the letter be noted.

RECOMMENDATION That an approach be made to the Orange Branch of the Country Women's Association with a view to offering the Association accommodation at the proposed Women's Rest Centre in Anson Street and that the approach on Council's behalf be made by the Mayor,

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Plaintiff's  
Exhibits

the Town Clerk and the  
Architect.

No.13(F)

Minutes of  
Council  
meeting  
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(continued)

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QUESTIONS.

938 Alderman Tucker asked where two rate notices being served in the Service Area in respect of 1969. The Town Clerk said that accounting problems had prevented the issue of one rate notice only.

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This is Page No. Nine of Minutes of the Regular meeting of the Orange City Council held on 1st May, 1969.

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TOWN CLERK R. THOMAS  
MAYOR

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MAYORAL MINUTE: TO COUNCIL MEETING OF 1st MAY,  
1969

ON: SERVICE AREA LOCAL RATE

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It is recommended that the following resolution be made by the Council:

Service Area Local Rate

(1) WHEREAS the estimates of income and expenditure of the Service Area Local Fund for the year 1969 were adopted by the Council on 15th April, 1969 AND WHEREAS such estimates including notice of the proposal to make and levy a local rate in connection therewith were advertised in the Central Western Daily newspaper on 18th April, 1969 it is HEREBY RESOLVED that a Service Area Local Rate of two decimal five seven two cents (2.572%) in the dollar on the unimproved capital value of all ratable land within the portion of the area as defined hereunder be now made for the year 1969.

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Definition

(Metes and bounds description as approved by Council on 15/4/69)

(2) Counsel retained to watch the Council's interests advise that the Council may proceed to levy the rate.

Plaintiff's  
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(3) The Council has been clearly placed on warning that the rate will be contested. In these circumstances, common prudence requires that further discussion on matters affecting, or likely to affect, litigation of the rate should be discussed in Committee; in this connection I draw

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attention to a Motion under Notice tonight:  
"That no action be taken to carry out work to be paid for by Special Area Services Rate until the legal position of the rate has been finally determined."

(continued)

Prior to the Meeting I expect to receive further legal advice on the questions raised in this Motion under Notice which I will make available to the Council in Committee. I do suggest, however, that the Council should resolve to deal with further questions on the rate in Committee.

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(4) On the levy of the Local Rate generally, I think the Council's attitude may be summed up in the following way - which I now submit for endorsement: The Council is aware that the rate has aroused some controversy in the city and it has considered the various points of view which have been expressed, and after very careful consideration of all these matters, is firmly of the opinion that this Local Rate is necessary for the advancement of the commercial centre in Orange. The Council has obtained legal advice and is satisfied that it is within the powers of the Council to levy the rate. The Council is satisfied that it is necessary for the genuine advancement of the commercial centre that this rate be levied in order to carry out the works and services which the rate proposes to finance.

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R.O. Thomas (Sgd.)  
(R.O. Thomas)  
MAYOR.

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30/4/69

This is Report referred on Page No. One of Minutes of the Regular meeting of the Orange City Council held on 1st May, 1969.

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TOWN CLERK

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R. THOMAS  
MAYOR



Plaintiff's Exhibits

No.13(G)

Judgment of Else-Mitchell J.

31st October 1969

EXHIBIT G. - JUDGMENT OF ELSE-MITCHELL J.  
IN THE LAND AND VALUATION COURT

CORAM: ELSE-MITCHELL J.

ORANGE. Friday, 31st October, 1969.

ALAN E. TUCKER PTY. LIMITED AND ORS.  
v. ORANGE CITY COUNCIL

JUDGMENT

HIS HONOUR: On 1st May, 1969 the Orange City Council resolved to impose a local rate of 2.572~~4~~ in the dollar upon the unimproved value of all lands in part of the business area of the City of Orange delineated on a plan identified at the meeting of the Council. Assessments to this rate, which was designated as a Service Area Local Rate, were served on the ratable owners of all lands in the defined area on 2nd May, 1969 and within thirty days after that date some 187 notices of appeal under s.133 of the Local Government Act, 1919 were filed in the Registry against the levy of the rate on the following grounds:

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- "1. The service area local rate is invalid and contrary to law.
- 2. The service area local rate is not of special benefit to the area in respect of which it has been levied.
- 3. That the Council of the City of Orange did not form any opinion that the service area local rate was of special benefit to the area in respect to which it was levied.
- 4. There was no material upon which the Council of the City of Orange could validly form an opinion that the service area local rate was of special benefit to the area in respect to which it has been levied."

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All these appeals were listed for hearing but, by

arrangement between counsel representing the several appellants and the Orange City Council, a group of sixteen appeals relating to the lands of ten ratepayers was selected for hearing on the basis that they should be heard together on common evidence in the expectation that a decision upon those appeals would determine the fate of the totality. The appeals so selected for hearing were:

Plaintiff's Exhibits

No.13(G)

Judgment of Else-Mitchell J.

31st October 1969

(continued)

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- 6769 Alan E. Tucker Pty. Limited
- 6770) Bert Raffin Pty. Limited
- 6783)
- 6784 Jaynik Pty. Limited
- 6771 Mace's Pty. Limited
- 6772 Finley Investments Pty. Limited
- 6778 Keith Donaldson McCallum
- 6812 E.C. Cameron & Sons Pty. Limited
- 6827 Dalton & Redmond Estate
- 6859-6862 (inclusive) The Western Stores Limited
- 6883-4 B.G. Dein Pty. Limited
- 6942 E.C. Cameron & Sons Pty. Limited

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The case made by the appellants against the levy of the Service Area Local Rate was based on various grounds, first, that the rate was made for the purpose of financing several works or services so as to be beyond the scope of s.121 of the Local Government Act, secondly, that there was no sufficient identity between the area of benefit of these works and services with the lands in the defined portion of the City, and thirdly, that the resolutions making the rate and defining the portion of the area to be rated were invalid because they were influenced by extraneous or irrelevant considerations. When it was intimated by Mr. McAlary, on behalf of the appellants, that evidence would be tendered in support of each of these claims, objection was raised by Mr. Morling, senior counsel for the Orange City Council, to the admissibility of that evidence and to the jurisdiction of this Court to determine the validity of a rate in an appeal under s.133 of the Local Government Act. I reserved consideration of this preliminary matter until the conclusion of the hearing of the appeals but it necessarily falls for decision before I can enter upon the substance of the appeals.

Plaintiff's  
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No.13(G)

Judgment of  
Else-  
Mitchell J.

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1969

(continued)

Briefly stated, the contention of the Council is that s.133 is limited to questions of the application of a rate to particular lands of premises, including the scope of the exemptions specified in s.132; it was further said that the section assumes the existence of a rate to which land may be subject and, therefore, the validity of that rate as a deliberative act of the council must also be assumed. Some distinction was sought to be drawn between different grounds of invalidity and particularly between what may, perhaps inaccurately, be called essential invalidity and invalidity due to some irregularity such as could be rectified under s.140 of the Act, but I confess to an inability to understand how a clear distinction between

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different grounds of invalidity can be drawn for the purposes of limiting and defining the jurisdiction of this Court.

The general question of whether s.133 enables this Court to decide the validity of a local rate upon the ground that some condition precedent to its valid making has not been complied with has been considered on previous occasions and in *Baldwin v. Orange City Council*, 10 L.G.R.A. 356, Hardie, J. expressly rejected an objection to the jurisdiction of this Court under s.133 to determine the validity of a local parking rate in the City of Orange based on such a ground. I adopted the same view, though not expressly, in entertaining a challenge to the validity of another local parking rate in the same local governing area in *K.C.R. Pty. Limited v. Orange City Council*, (1968) 2 N.S.W.R. 470. The same question of jurisdiction was raised before Hardie, J. and rejected again in *Reynolds v. Wingecarribee Shire Council*, 10 L.G.R.A. 380, at p.384, and although this matter was taken to the Supreme Court and the High Court of Australia no doubt as to the Court's jurisdiction was implied or raised by any member of those Courts or by counsel for the appellant (*Wingecarribee Shire Council v. Reynolds*, 12 L.G.R.A.95.290). I should add that I expressly stated by concurrence in the decisions of Hardie, J. in *Tooth & Co. Limited v. Lane Cove Municipal Council*, (1964-5) N.S.W.R. 2040, at p.2043, in circumstances which were not entirely obiter

because the aggrieved ratepayer was there seeking to pursue concurrent remedies by prosecuting an appeal under s.133 of the Local Government Act against the levy of a rate and a suit in equity for a declaration of the invalidity of the same rate. Upon the basis of these decisions and the practice of this Court, I therefore hold that there is jurisdiction under s.133 of the Local Government Act to determine whether land is rat-  
 10 able on grounds which go to the validity of the rate as well as the application of a rate and I dismiss the preliminary objection to jurisdiction.

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 Else-  
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 1969

(continued)

I should perhaps add, in support of the authorities to which reference has been made, that the appellate procedure under s.133 provides an expeditious and adequate, though not the exclusive,

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method of resolving questions of the application and validity of a rate. Expedition in determin-  
 20 ing such questions is important because rates are in accruing annual liability on land and the revenues and expenditure of a local government council are based upon the adoption of annual estimates of expenditure for which revenue must be raised in the same period chiefly by the levy of rates on the valuations determined by the Valuer-General. It stands to reason that a land-  
 30 owner must be concerned to know at the earliest moment the extent of the rate burden charged on his land and, moreover, that any challenge to the validity of a rate, if not promptly determined, may severely disturb the balance between revenue and expenditure and even produce a state of practical, if temporary, insolvency in the council. Experience has shown that the validity of a rate can be resolved far more expeditiously by an appeal under s.133 than by a suit in equity or by defending an action at law for the recovery of the amount of the rate and, so far as relevant or  
 40 necessary, there are not less effective procedural advantages in the prosecution of such an appeal in this Court (see Rules 49-55B inclusive). I proceed then to consider the substantive claims against the validity of the Service Area Local Rate.

As the challenge to this rate was based in

Plaintiff's  
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Judgment of  
Else-  
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31st October  
1969

(continued)

part upon the pursuit by the Orange City Council of an irrelevant purpose or the consideration by it of extraneous factors, it is necessary to look at some of the events which preceded the passing of the resolution making the rate in May 1969 and which appear from minutes and record of proceedings of the Council which were tendered in evidence. As I have said, objection was taken to the relevance of these minutes and records of proceedings, but they are clearly admissible in view of the grounds upon which the appellants assert the invalidity of the resolution making the rate (cf *Tooth & Co. Limited v. Lane Cove Municipal Council*, (1965) N.S.W.R. 628, at p.631). It appears from this material that at some time in November 1968 the Valuer-General had completed the sexennial revaluation of lands in the City of Orange and was about to furnish to the Council a valuation list revealing considerable increases in the unimproved values of residential lands but small and even minimal increases in the unimproved

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values of lands in the business centre of the City. The Finance Committee of the Council in a report to the Council expressed concern at these new valuations and recommended that objections should be lodged by the Council "against the values in the business area so that on adjusted values there would be no reduction in rates in the business area at the expense of ratepayers in other areas"; it was also recommended that the Council should seek to postpone the use of the new valuations, and to levy rates for 1969 on the footing of the old valuations, a course which runs counter to Pt. V of the Valuation of Land Act. Early in January 1969, after negotiations and discussions with officers of the Department of Local Government and the Deputy Premier, the Hon. C.B. Cutler, about the effect of the valuations, the Mayor, in a Minute which was adopted by the Council, referred to the effect of the new valuations and drew attention to "the problems of mitigating the fluctuation of rates which must follow as a consequence of fluctuating land values". This Minute stated that because values of urban farm lands had increased by 246 per cent, those of residential lands by 176 per cent, and those of the principal business premises by only thirteen per cent, it was "obviously impossible

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to levy these rates in 1969 so that any movement in rates - either by way of increase or decrease - would be consistent with previous rating levels". The Minute then referred to the fact that the estimates had been severely pruned and the rate in the dollar reduced in order to give relief to the residential areas and the urban farm lands but "the reduced rate applied also, as an operation of law, to the business area where in most cases valuations remained relatively static". It went on to regret that rating had to be an arithmetical procedure of taking the ratable value and multiplying it by a common rate in the dollar, a procedure which it criticized because "In any acceptable method of taxation the ability of the taxpayer to meet the obligations placed on him is an essential prerequisite". The final observation in the Minute sought to explain that the 1969 estimates proposed to shift

Plaintiff's  
Exhibits

No.13(GO)

Judgment of  
Else-  
Mitchell J.

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(continued)

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the burden of some items of cost to the business area and that a business area local rate of 2.302% in the dollar be levied to yield \$151,851 to be applied to special works and services in the business area between Hill Street and Five Ways and from Byng Street to Kite Street and that, included among the purposes of this rate, was the construction of a women's rest centre, another parking area,  
1/ the cost of street and gutter cleaning of the main  
3/ business area, a sum for tourist promotion and  
30 4/ another sum towards street lighting. It concluded by stating that "allowing for these business area rates the total rates payable by the business premises in this area is estimated to be \$433,770 as against \$438,908 levied on these properties in 1968."

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The minutes and records of proceedings of the Council show that opposition to this method of rating was expressed by the owners of the relevant business premises in Orange and conferences with a committee of businessmen took place over a period of time, but on 15th April, 1969 resolutions were passed by the Council in relation to estimates and schedules of works and services estimated to cost \$173,194, in respect of which a local rate of 2.572% in the dollar on lands in a defined area was proposed in the terms inter alia as follows:

Plaintiff's  
Exhibits

No.13(G)

Judgment of  
Else-  
Mitchell J.

31st October  
1969

(continued)

"(1) That in the opinion of the Council the works and services described in such estimates are or would be of special benefit to the portion of its area defined hereunder by metes and bounds and shown coloured red in a plan signed by the Mayor under Seal of the Council.

(2) That the estimates as aforesaid be and are hereby adopted.

(3) That the estimates as aforesaid be advertised together with the notice of the Council's proposal to make and levy a Service Area Local Rate in connection therewith."

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These works and services were substantially similar to those referred to in the Mayoral Minute adopted in January 1969 but the cost was different. The area defined for the purpose of this resolution was rather smaller than that referred to in the Mayoral Minute of January 1969 but it included most of the business centre of Orange from the railway line westerly to Hill Street, southerly to Kite Street, and northerly to Byng Street but it excluded more

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than thirty sites occupied by dwelling-houses and blocks of flats and in addition all lands zoned as living area under the Orange Planning Scheme. The schedule of works submitted to the meeting and approved included a wide variety of items which were summarized as follows:

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"1	Provision of Underground Drainage and Raising Gutter Levels	£32,300	
2	Road Shoulder Construction Kerbing, Guttering & Footpath Construction	560 15,860	
3	Street & Gutter Cleaning	22,040	
4	Parking Areas Maintenance	30,820	
5	Advertising Advantages of the Area	1,253	40

	6	Street Lighting	4,315		Plaintiff's Exhibits
	7	Construction of Women's Rest Centre and Tourist Office	13,380		<u>No.13(G)</u>
	8	Provision or Extension of Parking Areas	23,440		Judgment of Else-Mitchell J.
	9	Proportion of Engineering Salaries & Expenses	6,614	} \$28,000	31st October 1969
	10	Oncosts Based on Wages	8,063		(continued)
10	11	Administrative Expenses	9,760		
	-	Contingencies	<u>4,789</u>		
		TOTAL EXPENDITURE	<u>£173,194</u>		
			<u>£145,000</u>		

20 An explanation or elaboration of some of these items is necessary; the underground drainage related only to two sections of Summer Street, namely the blocks between Anson Street and Lords Place and between McNamara Street and Peisley Street respectively; the road shoulders to be re-

30 constructed were those at the north-east and south-east corners of Summer Street and Hill Street; the kerb, gutter and footpath construction related only to parts of Anson Street, Post Office Lane, Byng Street, McNamara Street, and Peisley Street, and in most instances the footpath on one side only of those streets; the estimate of street and gutter cleaning included and was based principally upon the cost of purchasing a mechanical street sweeper; the parking area main-

40 tenance related to three parking areas in different parts of the City; the advertising of the area was based on the salary and office expense of a tourist officer after allowing

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for a voluntary subsidy from the Chamber of Commerce; the lighting improvement was proposed in most streets of the business area but the location of the lights was not specified with particularity; the women's rest centre and tourist office item covered the cost (over three years) of



Plaintiff's  
Exhibits

No.13(G)

Judgment of  
Else-  
Mitchell J.

31st October  
1969

(continued)

constructing and furnishing a building near one of the parking areas off Anson Street; the new parking area was proposed to be between Peisley Street and McNamara Street, east of Robertson Park; and the remaining items represented an apportionment of various administrative and incidental costs including the salaries of the engineering staff. Following the adoption of these estimates and the notification by advertisement of the proposal to impose the Service Area Local Rate in the defined area, which was specified in the advertisement, that rate (at 2.572¢ in the dollar) was levied by the passage of formal resolutions at a Council meeting held on 1st May, 1969 and thereafter, as has been mentioned, rate notices were served on the land-owners in the defined area.

10

During the hearing of the appeals which were selected for determination evidence was given by several of the appellants to the general effect that the undertaking and provision of these works and services would not be of any benefit or any particular benefit to them or their premises. Upon this it was sought to found an argument that the rate was invalidly made because there was no identity between the area benefited and the works and services for the financing of which the rate was levied. But precise identity there will seldom be and, indeed, the terms of s.121 of the Local Government Act seem to me to be framed so as to enable a local rate to be validly levied without a requirement of identity between the lands benefited and the lands rated. The terms of the section are quite explicit in this respect for it provides:

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"(1) For or towards defraying the expenses of executing any work or service or for or towards repaying with interest any advance made by the Minister or debt incurred or loan raised in connection with the execution of any work or service where, in either case, such work or service in the opinion of the council would be of special benefit to a portion of its area to be defined as prescribed, the Council of a municipality or shire

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may make and levy a local rate on the unimproved capital value or on the improved capital value of ratable land within such portion."

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10 It is clear, as a matter of words and in point of authority, that it is the opinion of the council as to the extent of the special benefit which the section adopts as a condition of the imposition of a local rate; but it is obviously not open to a council to form an opinion which has no basis in fact nor to reach an opinion by the exercise of considerations or factors which have no relevance to the benefits ensuing from the provision of the works or services to be financed from the local rate. It is not in doubt, either, as I pointed out in *K.C.R. Pty. Limited v. Orange City Council*, supra, that there is a presumption as to the validity of a rate levied by a resolution of a local government council and the burden of showing that no case existed for the levy of the rate, that the council exceeded its powers, or that it otherwise acted improperly rests upon the person seeking to avoid liability to pay the rate.

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30 In the many decisions upon s.121 of the Local Government Act, 1919 and its predecessor in the Local Government Act 1906, different formulations to test validity have been stated. In *Bankstown Municipal Council v. Fripp*, 26 C.L.R. 385, at p.403, Isaacs and Rich, JJ. said that the question of special benefit is concluded by the council's opinion "Provided only the service is one which is reasonably capable of being so considered". Hardie, J. adopted this in *Baldwin v. Orange City Council*, supra, at p.360, and added that the council's opinion would not be conclusive "if the material before the council was such that the area was defined without real or proper regard to the clear undisputable facts or if the council in reaching its decision took into consideration extraneous or irrelevant matters". In *K.C.R. Pty. Limited v. Orange City Council* supra, at p.472, I stated the test as being "whether the work or service cannot be said to be reasonably capable of being regarded by the council as of special benefit to the particular area defined". But, however the test be stated, it is plain that questions of fact or degree or of presence or

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Plaintiff's Exhibits

No.13(G)

Judgment of  
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31st October  
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(continued)

Plaintiff's  
Exhibits

No.13(G)

Judgment of  
Else-  
Mitchell J.

31st October  
1969

(continued)

absence of evidence of benefit and of reasonableness are entailed and these must be resolved in the light of the material which was before the council and the relevant objective facts including the nature of the works and services, the character of the defined area, and so on; there thus seems to me

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little room for entertaining or giving weight to the subjective opinions of ratepayers as to the measure of benefit which may ensue to their lands from the works or services to be undertaken or provided.

10

Before passing to this question there is one matter of construction raised by the appellants which should be resolved, namely, that s.121 does not authorise the levy of a local rate to finance the cost of a conglomeration of works and services but is limited to authorising the levy of a local rate in a defined area to finance only one work or only one service; this contention was said by Mr. Morling to disregard s.21(b) of the Interpretation Act of 1897 but, whether that section applies or not, there is no reason why the objection should not be overcome by a series of successive resolutions being passed each authorising a separate work or service and defining the area to benefit from that work or service. I should myself not be disposed to agree that s.121 can be invoked in respect of one work or one service only, and many instances can be imagined in which a combination of two or more works may be authorised together provided that the area of benefit from each of the works is the same. The submission, however, highlights the problem of the definition of a single static area as one which derives similar special benefit from a variety of works and services of a widely differing character. This submission, rather than being one of construction, becomes therefore, I think, one of fact or degree and it is convenient to consider it along with the vital question of whether the appellants have made out their claim that in the circumstances proved by the relevant evidence the several categories of works and services were not reasonably capable of being regarded as of special benefit to the particular area defined in the resolution.

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In considering this question I have had the benefit of an inspection of the relevant parts of the City of Orange and in the light of the several categories of works and services will state at once the major elements which seem to me significant. First, the defined area extending from Hill Street to the railway line represents over half a mile of the business centre along and to the

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Plaintiff's  
Exhibits

No.13(G)

Judgment of  
Else-  
Mitchell J.31st October  
1969

(continued)

10 north and south of the main street (Summer Street) and includes parts of streets which are level and parts which are relatively steep and in which different drainage patterns and different watersheds exist. Secondly, some parts of the area consist of streets in which there is, in contrast with Summer Street, relatively less vehicular traffic for Summer Street is in fact also the main Western Highway and there are differences too in the pedestrian traffic and in the volume of

20 vehicles seeking parking space. Thirdly, some of the proposed works are of very limited and particular relevance to a small section only of the defined area, for example, the levelling of the road shoulders at the corner of Hill and Summer Streets, whilst others have a particular relevance to other sections of the area, for example, the provision of a parking area between Peisley Street and McNamara Street, and the same applies to the provision of footpaths, if not kerbing and guttering.

30 Fourthly, some of the services such as . . . advertising the advantages of the area have a quality which would normally benefit a much wider area than that defined by the Council's resolution. Fifthly, some of the works by their nature are not calculated to serve or benefit the whole of the defined area because similar works have already been provided in parts of that area and, indeed, they have in some instances been so provided by the levy of a local rate; in illustration, there

40 is a women's rest centre in Robertson Park near Byng Street and Lords Place which is of benefit to the lands in that part of the defined area so that a new women's rest centre in Anson Street could hardly be of any benefit to that locality; and there are two parking areas off Anson Street, north and south respectively of Summer Street, which were financed by the levy of local rates on adjoining properties, and those properties are not likely to benefit from the new parking area

Plaintiff's  
Exhibits

                      
No.13(G)

Judgment of  
Else-  
Mitchell J.

31st October  
1969

(continued)

proposed near Peisley Street and McNamara Street. Finally, the local rate was designed to cast a share of general administrative expenditure, such as the salaries of the engineering staff and the major part of the cost of purchasing a mechanical street sweeper which can be used anywhere in the City, on to lands in the defined area.

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These factors appear to me to emphasize such an absence of similar or common benefit from the several categories of works and services that there can be no basis upon which the Council could reasonably form the opinion that all the lands in the defined area would be likely to derive special benefit from each and every one of the proposed works and services. True it is that in many cases there will be some special benefit from one or other of the works and services, but in others there can be no benefit at all and between these extremes there will be innumerable instances of benefits of varying degree - some substantial, some of a general nature shared in common with most other parcels of land in the City of Orange, and others so tenuous as to the minute and not even constituting a scintilla of benefit. In such circumstances I find it difficult to say that there is any basis upon which a council acting reasonably could reach the conclusion that every parcel of land in the defined area would derive a special benefit, that is, a benefit over and above some common or general benefit, from each of the works and services. Upon this basis I am of the opinion that the Service Area Local Rate has not been validly made under s.121 of the Local Government Act.

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There remains for consideration the claim that the Service Area Local Rate is invalid because the Council pursued a foreign purpose and was influenced by extraneous considerations in the making of that rate. It is not necessary, in view of the conclusion I have already reached that the rate is invalid, to discuss this in detail but it is sufficient to refer to the observations of Hardie, J. in Baldwin's case and to decisions such as Werribee Shire Council v. Kerr, 42 C.L.R. 1, and those mentioned in Tooth & Co. Limited v. Lane Cove Municipal Council, (1965)

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N.S.W.R. 628, at p.631, to support this head of the appellants' claim. Upon this question the evidence leading up to the adoption of the estimates for 1969 and the levy of the general and Service Area Local Rate irresistibly seems to me to show that the Council was diverted from its proper function and duty of determining what works and services should be undertaken or provided during 1969 and what rate should be struck to finance those works and services by an anxiety to produce some different incidence

Plaintiff's  
Exhibits  

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No.13(G)  
Judgment of  
Else-  
Mitchell J.  
31st October  
1969  
(continued)

12

of the rate burden from that which the Local Government Act envisages. Under that Act there is a statutory presumption that equality of the rate burden is achieved by the levy of the same rate on all unimproved land values, but the Council was not content to accept this and sought to adopt the levy of the Service Area Local Rate as a device to shift a major part of the rate burden from residential lands on to lands in the business area. It unashamedly adopted this discriminatory policy to the point of excluding from the defined area several parcels of land occupied for residential purposes notwithstanding the fact that these parcels were included in business zones under the Council's Planning Scheme and were likely to pass the business uses in the near future; the exclusion of these lands from a rate raised to pay for the whole cost of the construction of some permanent works in the year 1969 seems to me to reek of discrimination and to support the inference which I have otherwise drawn from the evidence that the Council's main, dominant, or substantial purpose in defining the service area as it did was not to provide for the financing of works and services which would be of special benefit to the central business area but to achieve an altered incidence in the rating burden. This, I think, was beyond the purview of the Council's functions and in my opinion has the consequence of invalidating the levy of the Service Area Local Rate in that area defined by the Council's resolutions of 15th April, 1969 and 1st May, 1969.

I therefore allow the appeals and hold that the lands of the ten appellants described in the sixteen notices of appeal and the relevant rate notices are not ratable to the Service Area Local

Plaintiff's Exhibits

No.13(G)

Judgment of Else- Mitchell J.

31st October 1969

(continued)

Rate of 2.572 in the dollar levied by the resolution of the Orange City Council of 1st May, 1969.

The Council must pay the costs of the appellants of the appeal to be taxed on the highest scale but on the basis of there being only one set of costs of all appellants.

The other matters will stand over to be mentioned. The exhibits will remain in Court except for the plan which is part of Ex. B which is, I understand, the original and should be returned to the Council's custody.

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EXHIBIT H. - MINUTES OF COUNCIL MEETING OF 4.12.69. MAYORAL MINUTES OF SAME DATE, REPORT OF ACTING CITY ENGINEER OF 2.12.69 AND MINUTES OF COUNCIL OF 24.12.69

EXTRACT FROM MINUTES OF COUNCIL MEETING OF 4TH DECEMBER 1969

- 3 -

20

The Town Clerk verbally reported that he had informed the owners that further communications with Council on the proposed Water Reservoir Site must be in writing.

RECOMMENDATION

That the Town Clerk's report of 1/12/69 be noted;

457

That the letter from N.J. and M.E. Stevenson dated 3/12/69 be noted and that a further copy of the relevant material contained in the report by the Consulting Engineer be submitted to them;

30

That the action verbally reported by the Town Clerk be endorsed.

(4) APPLICATIONS FOR POSITION OF CITY ENGINEER.

The Committee of the Whole considered a report by the Town Clerk dated 26/11/69 in this matter.

Plaintiff s  
Exhibits

No.13(H)

RECOMMENDATION

458

That the Town Clerk's report be adopted and that the two absent Aldermen be informed of the date and time of the scheduled interviews.

Minute of Council meeting of 4/12/69  
Mayoral Minute of same date,  
Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69

(continued)

10 (5) LOSS OF PERSONAL PROPERTY IN FIRE IN COUNCIL VEHICLE

The Committee of the Whole considered a report by Overseer Mr. W. Elliott dated 1/12/69 in this matter.

RECOMMENDATION

459

That the report be noted and that the Overseer be reimbursed in the sum of \$63.80.

20 That enquiries be made to ascertain if an insurance cover could be obtained by Council against such occurrences as reported by the Overseer.

(6) COUNCIL COTTAGE AT 27 NATIONAL AVENUE, ORANGE

30 The Mayor reported that the stove at the cottage was in bad repair and that maintenance parts could not be obtained. He said that a quotation had been obtained for replacement of the unit at a cost of \$256.65.

RECOMMENDATION

460

That the quotation of \$256.65 be accepted and the installation be carried out.



Plaintiff's Exhibits

No. 13(H)

Minute of Council meeting of 4/12/69. Mayoral Minutes of same date, Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69 (continued)

(7) COUNCIL'S LOAN ALLOCATION, 1969/70

The Town Clerk verbally reported that of Council's current loan allocation of \$400,000, loans of \$100,000 had been negotiated and that the Commonwealth Savings Bank had offered loans totalling \$300,000.

RECOMMENDATION

That the negotiation with the Bank be endorsed and that Council advises its formal acceptance of the Bank's offer of loans totalling \$300,000 for the financial year 1969/70 and that applications for Governor's Approval for such loans be executed under the Seal of the Council.

10

(8) ANSON STREET PARKING AREA LOCAL FUND.

RECOMMENDATION

(1) That estimates, as follow, be and are hereby made of the Anson Street Parking Area Local Fund for the year 1969:

20

Expenditure.

Maintenance of parking area including attendant's wages, lighting and cleaning \$1,140

30

Rates on parking area 2,654

Proportion of administrative expenses 100

\$3,894

This is Page No. Three of Minutes of the Regular Meeting of the Orange City Council held on 4th December, 1969.

Plaintiff's Exhibits

No.13(H)

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

Minute of Council meeting of 4/12/69. Mayoral Minute of same date, Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69

(continued)

- 4 -

Income.

Levy of Local rate of 0.737 cent in \$ on UCV of \$527,550 ... \$3,888

10

(2) That the estimates for 1969 in respect of the Anson Street Parking Area Local Fund be advertised, including the Anson Street Parking Area Local Rate proposed to be levied in and for the year 1969 of decimal seven three seven cent (0.737c) in the dollar on the unimproved capital value of all ratable land within the portion of the area as described in metes and bounds in an advertisement published in the Central Western Daily newspaper on 5th April, 1963 and as defined in a resolution made by the Council on 16th April, 1963.

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(9) ANSON-SALE STREETS PARKING AREA LOCAL FUND.

463 RECOMMENDATION

(1) That estimates, as follow, be and are hereby made of the Anson-Sale Streets Parking Area Local Funds for the year 1969:-

Plaintiff's  
Exhibits

No.13(H)

Minute of  
Council  
meeting of  
4/12/69.  
Mayoral  
Minute of  
same date,  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69  
(continued)

Expenditure:

Maintenance of parking  
area, including lighting  
and cleaning ... \$ 640

Rates on parking area 3,300

Proportion of  
administrative  
expenses 150  
\$4,090 10

Income:

Levy of local rate  
of 0.661 cent in \$  
on UCV of \$572,670  
... \$3,785

Ex-gratia contri-  
bution (UCV of  
\$46,200) 305  
\$4,090

- (2) That the estimates for 1969 in respect of the Anson-Sale Streets parking area local fund be advertised, including the Anson-Sale Streets Parking Area Local Rate proposed to be levied in and for the year 1969 of decimal six six one cent (0.661c) in the dollar on the unimproved capital value of all ratable land within the portion of the area as described in metes and bounds in an advertisement published in the 'Central Western Daily' newspaper on 22nd June, 1967 and as defined in a resolution made by the Council on 24th May, 1967. 30 40

(10) ORANGE TOWN IMPROVEMENT LOCAL FUND.

464 RECOMMENDATION

Plaintiff's Exhibits

No.13(H)

Minute of Council meeting of 4/12/69. Mayoral Minute of same date, Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69

(continued)

10

(1) That - having considered a mayoral minute dated 2/12/69 and a report from the Acting City Engineer dated 4/12/69 (copies attached) -

(a) Part of the area, hereunder defined by metes and bounds, be constituted by notice in the Gazette as a town improvement district, to be known as "Orange Town Improvement District", within which a town improvement local rate may be levied;

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This is Page No. Four of Minutes of the Regular Meeting of the Orange City Council held on 4th December, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

- 5 -

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(b) The said part of the area be and is hereby identified by black edging in a plan of the City of Orange, and that the Seal of the Council be affixed to such plan;

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(c) For the purpose of effecting improvements to works and services within the proposed Orange Town Improvement District - a town improvement local rate be levied;

Plaintiff's  
Exhibits

No.13(H)

Minute of  
Council  
meeting of  
4/12/69.  
Mayoral  
Minute of  
same date,  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69

(continued)

(d) A town improvement local rate be levied in and for the year 1969 and that the following estimates now adopted, be published in the 'Central Western Daily' newspaper together with a metes and bounds description of the proposed Orange Town Improvement District, and notice of the proposal to make and levy an Orange Town Improvement Local Rate for 1969:

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(Aldermen Jefferson & Tucker asked that their votes against the recommendation be recorded.)  
ORANGE TOWN IMPROVEMENT LOCAL FUND  
ESTIMATES FOR YEAR 1969:

20

Expenditure:

Principal and interest on loans raised by Council for or towards the provision of Public parking areas known as Anson Street parking area, Anson-Sale Streets parking area, and Little Summer Street parking area ... \$15,410

Kerb and gutter and Footpath improvements in McNamara Street and Byng Street ... 3,309

Preliminary expenses including Architect's fees in connection with proposed construction of a Women's Rest Centre and Child-minding Centre in Anson Street ... 1,557

30

\$20,276Income:

Orange Town Improvement Local Rate of decimal two seven cent (0.27%) in \$ on Unimproved Capital Value of ratable land within the town improvement district (UCV \$7,289,035) ... \$19,680

40

Ex-gratia contributions ... 580

\$20,260

ORANGE TOWN IMPROVEMENT DISTRICT -  
DEFINITION.

Plaintiff's  
Exhibits

No.13(H)

Minute of  
Council  
meeting of  
4/12/69.  
Mayoral  
Minute of  
same date,  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69

(continued)

- 10 ALL THAT piece or parcel of land being the whole of section 46 and part of sections 39, 40, 44, 45 Town and City of Orange and the whole of sections 1 and 1A 997 Litho in the Parish of Orange County of Bathurst and being the whole of sections 7, 41 and part of sections 1, 8, 13, 14, 39, 40, 44 and 45 Town and City of Orange Parish of Orange County of Wellington and being bounded by a line commencing at the intersection of the western alignment of Peisley Street and the northern alignment of Moulder Street bearing westerly along the northern alignment of Moulder Street for 1430' 0" or thereabout to the eastern alignment of Anson Street thence by a line bearing northerly along the eastern alignment of Anson Street for 759'0" or thereabout to the northern alignment of Kite Street thence by a line
- 20 This is Page No. Five of Minutes of the Regular Meeting of the Orange City Council held on 4th December, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

- 6 -

- 30 bearing westerly along the northern alignment of Kite Street for 269'0" or thereabout thence by a line bearing northerly for 132'0" or thereabout thence by a line bearing westerly for 142'5" or thereabout thence by a line bearing northerly for 91'0" or thereabout thence by a line bearing north-westerly for 8'6" or thereabout thence by a line bearing westerly for 11'0" or thereabout thence by a line bearing northerly for 35'0" or thereabout thence by a line bearing westerly for 334'0" or thereabout to the eastern alignment of Sale Street thence by a line bearing southerly along the eastern alignment of Sale Street for 93'0" or thereabout thence by a line bearing westerly for 232'2" or thereabout thence by a line bearing southerly for 170'0" or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street for 2'10 $\frac{1}{2}$ " or thereabout thence by a line
- 40

Plaintiff's  
Exhibits

No. 13(H)

Minute of  
Council  
Meeting of  
4/12/69.  
Mayoral  
Minute of  
same date,  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69

(continued)

bearing northerly for 84'0" or thereabout thence by a line bearing north-westerly for 34'0" or thereabout thence by a line bearing northerly for 42'9" or thereabout thence by a line bearing westerly for 255'8" or thereabout thence by a line bearing northerly for 20'0" or thereabout thence by a line bearing westerly for 132'8" or thereabout thence by a line bearing northerly for 310'0" or thereabout thence by a line bearing westerly for 132'0" or thereabout to the eastern alignment of Hill Street thence by a line bearing northerly along the eastern alignment of Hill Street for 435'0" or thereabout to the northern alignment of Little Summer Street thence by a line bearing easterly along the northern alignment of Little Summer Street for 219'9" or thereabout thence by a line bearing northerly for 165'8 $\frac{1}{4}$ " or thereabout thence by a line bearing easterly for 308'0" or thereabout thence by a line bearing northerly for 167'0" or thereabout thence by a line bearing easterly for 233'0" or thereabout to the eastern alignment of Sale Street thence by a line bearing northerly along the eastern alignment of Sale Street for 165'0" or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 759'0" or thereabout to the eastern alignment of Anson Street thence by a line bearing northerly along the eastern alignment of Anson Street for 230'0" or thereabout thence by a line bearing easterly for 660'0" or thereabout to the western alignment of Lord's Place thence by a line bearing southerly along the western alignment of Lord's Place for 230'0" or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 952'0" or thereabout to the western alignment of the railway reserve thence by a line bearing southerly along the western alignment of the railway reserve for 1225'0" or thereabout to the south-eastern corner of section 1A 997 Litho thence by a line bearing westerly for 192'0" or thereabout to the western alignment of Peisley Street thence by a line bearing southerly along the western alignment of Peisley Street for 965'0" or thereabout to the northern alignment of Moulder Street and the point of commencement.

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QUESTION.

465 Alderman Lapham asked what Governmental or Council regulations would apply in respect of a Child Minding Centre and if Council would be interested in assisting the establishment of such a centre by the sale or lease of land. Further, would the proposal be eligible for any form of Government assistance.

10

RESOLVED That the recommendations of the Committee of the Whole as before-mentioned, be adopted.

THE MAYOR DECLARED THE MEETING CLOSED.

This is Page Six and the final page of the Minutes of the ORDINARY MEETING OF COUNCIL HELD ON THE 4TH DECEMBER, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

MINUTES OF THIS MEETING CONFIRMED 11/11/69.

20

R. THOMAS  
MAYOR

IN COMMITTEE

MAYORAL MINUTE: TO COUNCIL MEETING OF 4TH DECEMBER, 1969

Further information is coming to hand which gives a clearer picture of works or services necessary for an upgrading of portion of the area, and I anticipate that this fuller information will be available for the above Council meeting for better clarification of the various courses of procedure open to the Council.

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I think there is general agreement that within the commercial centre improvement works are necessary, or alternatively, works or services which would be of special benefit to that portion of the area, and I have therefore called for a more comprehensive report on these matters.

The Council may resolve to sit as a Committee of the Whole to consider these items, and to consider its capacity to perform them or some of them, and later the Committee may submit a report to the Council.

40

R. THOMAS  
(R.O. Thomas)  
MAYOR.

2/12/69.

This is the Mayoral Minute referred to on Page No. Four Item 10 of Minutes of the Regular Meeting of the Orange City Council held on 4th December, 1969

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

Plaintiff's  
Exhibits

No.13(H)

Minute of  
Council  
Meeting of  
4/12/69.  
Mayoral  
Minute of  
same date.  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69

(continued)





3.	Kite Street to Moulder Street Reconstruct kerbing and guttering in concrete - 540 l.ft. @ \$2.10	\$1134.00	
	Raise road shoulders 540 l.ft. @ \$1.00	<u>\$ 540.00</u>	
		<u>\$1674.00</u>	\$1674.00

Plaintiff's  
ExhibitsNo.13(H)Minute of  
Council  
Meeting of  
4/12/69.  
Mayoral  
Minute of  
same date,  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69

(continued)

PEISLEY STREET - EAST SIDE

10	1. Summer Street to area boundary Reconstruct kerbing in concrete 40 l.ft. @ \$1.80	\$ 72.00	
	Reconstruct footpath in concrete (12' wide) 85 l.ft. @ \$4.80	\$ 408.00	
	Raise gutter level to give 6" kerb 464 l.ft. @ \$0.90	\$ 418.00	
20	Raise road shoulder 464 l.ft. @ \$1.00	<u>\$ 464.00</u>	
		<u>\$1362.00</u>	\$1362.00

This is Page No. One of the Report referred to on  
Page No. Four Item 10 of Minutes of the Regular  
Meeting of the Orange City Council held on 4th  
December, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

- 2 -

McNAMARA STREET - EAST SIDE

30	1. Byng Street - Summer Street Reconstruct paving in concrete (8' wide) 418 l.ft. @ \$3.20		\$1338.00
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McNAMARA STREET - WEST SIDE

	1. Moulder Street to Kite Street Reconstruct footpath in concrete 12' wide 290 l.ft. @ \$4.80	\$1392.00	
40	370 l.ft. @ \$	<u>\$ 592.00</u>	
		<u>\$1984.00</u>	\$1984.00

Plaintiff's  
Exhibits

No.13(H)

Minute of  
Council  
Meeting of  
4/12/69.  
Mayoral  
Minute of  
same date,  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69

(continued)

2. Kite Street to Summer Street			
Reconstruct kerbing and guttering in concrete			
581 l.ft. @ \$2.10		\$1220.00	
Reconstruct footpath in concrete (8' wide)			
581 l.ft. @ \$3.20		<u>\$1859.00</u>	
		<u>\$3079.00</u>	\$3079.00

LORDS PLACE - WEST SIDE

1. Boundary to Byng Street			10
Reconstruct footpath in concrete (12' wide)			
132 l.ft. @ \$4.80		\$ 634.00	
Reconstruct kerbing and guttering in concrete			
132 l.ft. @ \$2.10		<u>\$ 277.00</u>	
		<u>\$ 911.00</u>	\$ 911.00
2. Byng Street to Summer Street			
Reconstruction kerbing and guttering in concrete			20
101 l.ft. @ \$2.10		\$ 212.00	
Reconstruct footpath in concrete (12' wide)			
101 l.ft. @ \$4.80		\$ 485.00	
Raise gutter level to eliminate high kerbs			
335 l.ft. @ \$2.00		\$ 670.00	
Reconstruct road to raised gutter level			
335 l.ft. @ \$1.80		<u>\$ 503.00</u>	30
		<u>\$1870.00</u>	\$1870.00
3. Summer Street to Kite Street			
Raise gutter level to eliminate high kerbs			
200 l.ft. @ \$2.00		\$ 400.00	
Reconstruct road to raised gutter level			
200 l.ft. @ \$1.50		<u>\$ 300.00</u>	
		<u>\$ 700.00</u>	\$ 700.00
4. Kite Street to Moulder Street			
Reconstruct kerbing and guttering in concrete			
280 l.ft. @ \$2.10		\$ 588.00	

Reconstruct footpath in concrete (12' wide)		
280 l.ft. @ \$4.80	\$1344.00	
Reconstruct footpath in concrete (6' wide)		
80 l.ft. @ \$2.40	\$ 192.00	
Raise road shoulder		
280 l.ft. @ \$1.00	<u>\$ 280.00</u>	
	<u>\$2404.00</u>	\$2404.00

Plaintiff's Exhibits

No.13(H)

Minute of Council Meeting of 4/12/69.  
 Mayoral Minute of same date, Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69

10 This is Page No. 2 of the Report referred to on Page No. Four: Item 10 of Minutes of the Regular Meeting of the Orange City Council held on 4th December, 1969.

<u>W. MARSHALL</u>	<u>R. THOMAS</u>
DEPUTY TOWN CLERK	MAYOR

- 2a -

(continued)

LORDS PLACE - EAST SIDE

20	1. Kite Street to Moulder Street		
	Reconstruct footpath in concrete (12' wide)		
	360 l.ft. @ \$4.80	\$1728.00	
	Reconstruct and seal shoulders (10' wide)		
	360 l.ft. @ \$2.00	\$ 900.00	
	Reconstruct damaged kerbing and guttering		
	250 l.ft. @ \$2.10	<u>\$ 525.00</u>	
		<u>\$3153.00</u>	\$3153.00

30 This is Page No. 3 of the Report referred to on Page No. Four: Item 10 of Minutes of the Regular Meeting of the Orange City Council held on 4th December, 1969.

<u>W. MARSHALL</u>	<u>R. THOMAS</u>
DEPUTY TOWN CLERK	MAYOR

ANSON STREET - EAST SIDE

1. Byng Street to Summer Street	
Reconstruct footpath in concrete (12' wide)	
426 l.ft. at \$4.80	\$20,457

300.

Plaintiff's Exhibits

No.13(H)

Minute of Council Meeting of 4/12/69.  
 Mayoral Minute of same date, Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69

(continued)

2. Summer St. to Kite St. Reconstruct kerbing and guttering in concrete 325 l.ft. at \$2.10	683		
Reconstruct footpath in concrete (12' wide) 365 l.ft. at \$4.80	1,752		
Reconstruct and raise shoulders to gutter level 325 l.ft. at \$1.00	<u>325</u>		10
	2,760	\$2,760	

ANSON STREET - WEST SIDE

1. Byng St. to Summer St. Reconstruct kerbing in concrete 291 l.ft. at \$1.80	524		
Reconstruct footpath in concrete (12' wide) 291 l.ft. at \$4.80	1,397		
Raise gutter level 373 l.ft. at \$0.90	336		20
Raise shoulder to gutter level 373 l.ft. at \$1.00	<u>373</u>		
	2,630	\$2,630	

2. Summer St. to Kite St. Reconstruct kerbing & guttering in concrete 135 l.ft. at \$2.10		284	
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SALE STREET - EAST SIDE

1. Byng St. to Summer St. Reconstruct kerbing and guttering in concrete 307 l.ft. at \$2.10		645	30
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HILL STREET - EAST SIDE

1. Little Summer Street to Summer Street Reconstruct kerbing and guttering in concrete 46 l.ft. at \$2.10	97		40
Reconstruct footpath in concrete (12' wide) 46 l.ft. at \$4.80	<u>221</u>		
	318	318	

	2. Summer St. to southern boundary of zoned area Reconstruct footpath in concrete (12' wide) 60 l.ft. at \$4.80	288	Plaintiff's Exhibits <u>No.13(H)</u> Minute of Council Meeting of 4/12/69. Mayoral Minute of same date, Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69 (continued)
	<u>BYNG STREET - NORTH SIDE</u>		
10	1. Anson St. to Lords Place Reconstruct kerbing and guttering in concrete 690 l.ft. at \$2.10	1,449	
	<u>BYNG STREET - SOUTH SIDE</u>		
	1. Sale St. to Anson St. Reconstruct kerbing and guttering in concrete 630 l.ft.	1,323	
20	2. Anson St. to Lords Place Reconstruct kerbing and guttering in concrete 540 l.ft. at \$2.10 Reconstruct footpath in concrete (12' wide) 540 l.ft. at \$4.80	1.134 <u>2,592</u> 3,726	
		3,726	

This is Page No. 4 of the Report referred to on Page No. Four: Item 10 of Minutes of the Regular Meeting of the Orange City Council held on 4th December, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

30 SUMMER STREET - NORTH SIDE

40	1. Peisley Street to railway Reconstruct kerbing and guttering in concrete 71 l.ft. at \$2.10 = \$ 149.00 Reconstruct footpath in concrete (12' wide) 450 l.ft. at \$4.80 = \$2160.00 Raise shoulder to gutter level 660 l.ft. at \$1.00 = \$ 660.00	<u>\$3765.00</u>	\$3,765
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Plaintiff's  
Exhibits

No.13(H)

Minute of  
Council  
Meeting of  
4/12/69.Mayoral  
Minute of  
same date,  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69

(continued)

KITE STREET - NORTH SIDE

## 1. Lords Place to Peisley Street

Reconstruct kerbing and  
guttering in concrete  
360 l.ft. at \$2.10 \$ 756.00Reconstruct footpath in  
concrete (12' wide)  
360 l.ft. at \$4.80 \$1728.00\$2484.00 \$ 2484

Total \$41,903.00 10

Stormwater DrainageSummer Street

Hill Street to Sale Street \$10,000 approx.

Sale Street to Anson Street \$12,000 approx.

Anson Street to Lords Place \$16,500

Peisley Street to Robertson  
Park \$ 6,010Byng Street

Sale Street to Anson Street \$ 8,000 approx.

Anson Street to Lords Place \$210,000 approx. 20

Various interaptor lines  
into Anson Street, \$10,000 approx.

Peisley Street,

McNamara Street,

Sale Street

\$272,500 approx.Road ReconstructionMcNamara Street - Kite to  
Moulder Street \$ 8,000 approx.Post Office Lane (inc. kerb  
and guttering, footpath) \$ 9,300 30Peisley Street - Byng to  
Summer Street \$13,000 approx.\$30,300

This is Page No. 5 of the Report referred to on  
Page No. Four: Item 10 of Minutes of the Regular  
Meeting of the Orange City Council held on 4th  
December, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

MINUTES OF THE SPECIAL MEETING OF ORANGE CITY COUNCIL HELD AT THE TOWN HALL, ORANGE ON WEDNESDAY, 24TH DECEMBER, 1969 AT 12.30 P.M.

Plaintiff's Exhibits

No.13(H)

ATTENDANCE: The Mayor (Alderman R.O. Thomas) Deputy Mayor (Alderman D.H. Perry); Aldermen R.J. Cutcliffe; W.K. Jefferson; H.D. Lapham; K.S. McCarron; K.L. Selwood and A.E. Tucker. Town Clerk; Deputy Town Clerk; Acting City Engineer.

Minutes of Council Meeting of 4/12/69. Mayoral Minute of same date, Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69

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APOLOGIES FOR ABSENCE were received from Aldermen F.S. Dobbin; K.E. Brown and H. McMaster

RESOLVED That Council sit as a Committee of the Whole.

RESUMPTION OF SPECIAL MEETING OF COUNCIL.

The Town Clerk reported that the following recommendations had been formulated by the Committee of the Whole:-

(continued)

(1) ORANGE TOWN IMPROVEMENT LOCAL RATE.

The Committee of the Whole considered Letter No. 4477 from the Discriminatory Rate Committee.

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586 RECOMMENDATION That the letter be noted.

(2) ANSON STREET PARKING AREA LOCAL RATE.

RECOMMENDATION WHEREAS estimates of income and expenditure of the Anson Street Parking Area Local Fund for the year 1969 were made by the Council on 4th December, 1969 AND WHEREAS such estimates including notice of the proposal to make and levy a local rate in connection therewith were advertised in the Central Western Daily newspaper on 13th December, 1969, IT IS HEREBY RESOLVED THAT an Anson Street Parking Area Local Rate of decimal seven three seven cent (0.737c) in the dollar be and is hereby made to be levied in and for the year 1969 on the unimproved capital value of all ratable land within the portion of the area as described in metes and bounds in an advertisement published in the Central Western Daily newspaper on 5th April, 1963 and as referred to in a resolution made

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Plaintiff's Exhibits

No.13(H)

Minutes of Council Meeting of 4/12/69. Mayoral Minute of same date, Report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69

(continued)

by the Council on 1st February, 1968 and which is shown in a plan available at the Council's office for inspection.

(3) ANSON-SALE STREETS PARKING AREA LOCAL RATE:

RECOMMENDATION WHEREAS estimates of income and expenditure of the Anson-Sale Streets Parking Area Local Fund for the year 1969 were made by the Council on 4th December, 1969 AND WHEREAS such estimates including notice of the proposal to make and levy a local rate in connection therewith were published in the Central Western Daily newspaper on 13th December, 1969 IT IS HEREBY RESOLVED THAT an Anson-Sale Streets Parking Area Local Rate of decimal six six one cent (0.661c) in the dollar be and is hereby made to be levied in and for the year 1969 on the unimproved capital value of all ratable land within the portion of the area as described in metes and bounds in an advertisement published in the Central Western Daily newspaper on 22nd June, 1967 and as referred to in a resolution made by the Council on 1st February, 1968 and which is shown in a plan available at the Council's office for inspection.

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This is Page No. One of Minutes of the Regular Meeting of the Orange City Council held on 24th December, 1969.

TOWN CLERK \_\_\_\_\_ R. THOMAS \_\_\_\_\_ MAYOR

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(4) ORANGE TOWN IMPROVEMENT LOCAL RATE.

589 RECOMMENDATION WHEREAS by notice in the Gazette published on 12th December, 1969 the Council defined part of the area to be known as "Orange Town

Improvement District" AND  
WHEREAS estimates of income  
and expenditure of the Orange  
Town Improvement Local Fund  
for the year 1969 were made  
by the Council on 4th  
December, 1969 AND WHEREAS  
such estimates including  
notice of the proposal to  
make and levy a local rate  
in connection therewith and  
a metes and bounds descrip-  
tion of the Orange Town  
Improvement District were  
published in the Central  
Western Daily newspaper on  
13th December, 1969 IT IS  
HEREBY RESOLVED THAT an  
Orange Town Improvement  
Local Rate of decimal two  
seven cent (0.27c) in the  
dollar be and is hereby made  
to be levied in and for the  
year 1969 on the unimproved  
capital value of all ratable  
land within the Orange Town  
Improvement District as  
hereunder defined in metes  
and bounds for the purpose  
of improvements to works  
and services within and in  
the opinion of the Council  
for the special benefit of  
the Orange Town Improvement  
District.

Plaintiff's  
Exhibits

No.13(H)

Minutes of  
Council  
Meeting of  
4/12/69.  
Mayoral  
Minute of  
same date,  
Report of  
Acting City  
Engineer of  
2/12/69 and  
Minutes of  
Council of  
24/12/69

(continued)

DEFINITION.

ALL THAT piece or parcel of land being the whole  
of section 46 and part of sections 39, 40, 44,  
45 Town and City of Orange and the Whole of  
sections 1 and 1A 997 Litho in the Parish of  
Orange County of Bathurst and being the whole of  
sections 7, 41 and part of sections 1, 8, 13, 14,  
39, 40, 44 and 45 Town and City of Orange Parish  
of Orange County of Wellington and being bounded  
by a line commencing at the intersection of the  
western alignment of Peisley Street and the  
northern alignment of Moulder Street bearing  
westerly along the northern alignment of Moulder  
Street for 1430'0" or thereabout to the eastern

Plaintiff's Exhibits

No.13(H)

Minutes of Council Meeting of 4/12/69. Mayoral Minute of same date, report of Acting City Engineer of 2/12/69 and Minutes of Council of 24/12/69

(continued)

alignment of Anson Street thence by a line bearing northerly along the eastern alignment of Anson Street for 759'0" or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street for 269'0" or thereabout thence by a line bearing northerly for 132'0" or thereabout thence by a line bearing westerly for 142'5" or thereabout thence by a line bearing northerly for 91'0" or thereabout thence by a line bearing north-westerly for 8'6" or thereabout thence by a line bearing westerly for 11'0" or thereabout thence by a line bearing northerly for 35'0" or thereabout thence by a line bearing westerly for 334'0" or thereabout to the eastern alignment of Sale Street thence by a line bearing southerly along the eastern alignment of Sale Street for 93'0" or thereabout thence by a line bearing westerly for 232'2" or thereabout thence by a line bearing southerly for 170'0" or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street for 2'10 $\frac{1}{2}$ " or thereabout thence by a line bearing northerly for 84'0" or thereabout thence by a line bearing north-westerly for 34'0" or thereabout thence by a line bearing northerly for 42'9" or thereabout thence by a line bearing westerly for 255'8" or thereabout thence by a line bearing northerly for 20'0" or thereabout thence by a line bearing westerly for 132'8" or thereabout thence by a line bearing northerly for 310'0" or thereabout thence by a line bearing westerly for 132'0" or thereabout to the eastern alignment of Hill Street thence by a line bearing northerly along the eastern alignment of Hill Street for 435'0" or thereabout to the northern alignment of Little Summer Street thence by a line bearing easterly along the northern alignment of Little Summer Street for 219'9" or thereabout thence by a line bearing northerly for 165'8 $\frac{1}{4}$ " or thereabout thence by a line bearing easterly for 308'0" or thereabout thence by a

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This is Page No. Two of Minutes of the Regular Meeting of the Orange City Council held on 24th December, 1969.

TOWN CLERK

R. THOMAS  
MAYOR



Defendant's  
Exhibits

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No. 1

Exhibit reproduced elsewhere

Photographs  
of kerbing  
in some  
parts of the  
commercial  
area in  
Orange

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No. 2

Exhibit reproduced elsewhere

Two  
photographs

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No. 3

Exhibit reproduced elsewhere

Six photo-  
graphs  
showing  
Anson and  
Summer  
Streets  
following  
heavy rain

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EXHIBIT 4. - MINUTES OF SPECIAL MEETING OF  
THE ORANGE CITY COUNCIL HELD ON  
25.11.69

Defendant's  
Exhibits

No. 4

48/69

SPECIAL MEETING OF ORANGE CITY COUNCIL HELD AT THE  
TOWN HALL, ORANGE ON TUESDAY, 25TH NOVEMBER, 1969,  
AT 8.00 P.M.

Minute of  
Special  
Meeting of  
the Orange  
City Council  
held on  
25/11/69

10 ATTENDANCE: The Mayor (Alderman R.O. Thomas);  
Deputy Mayor (Alderman D.H. Perry); Aldermen  
K.E. Brown; R.J. Cutcliffe; F.S. Dobbin;  
K.S. McCarron; L.P. McFarlane; H. McMaster and  
K.L. Selwood. Town Clerk; Deputy Town Clerk and  
Senior Assistant Engineer (C.J. Clements).

APOLOGIES FOR ABSENCE were received from Aldermen  
W.K. Jefferson; H.D. Lapham and A.E. Tucker

RESOLVED That Council sit as a Committee of  
the Whole.

RESUMPTION OF SPECIAL MEETING OF COUNCIL

20 The Deputy Town Clerk reported that the following  
recommendations had been formulated by the Committee  
of the Whole:-

(1) PROPOSED WATER RESERVOIR - ORANGE NORTH.

The Committee of the Whole considered a report  
by the Deputy Town Clerk dated 25.11.69.

38'7 RECOMMENDATION That Messrs. Gutteridge, Haskins  
& Davey of 123 Clarence Street,  
Sydney be engaged by Council to  
investigate all of the sites  
30 suggested as being suitable by  
N.J. & N.E. Stevenson, and to  
supply a second opinion after  
discussion with Messrs. Palmer  
and Sneath as to the site of  
the proposed reservoir.

40 RECOMMENDATION That the Town Clerk report to  
Council Meeting scheduled for  
27th November, 1969, as to  
whether Messrs. Gutteridge,  
Haskins & Davey are prepared  
to accept engagement and as to  
the probable cost of such  
engagement.

(2) CIVIC CENTRE - COMMONWEALTH/STATE/COUNCIL OFFICE  
BUILDING.

The Committee of the Whole considered a report  
by the Town Clerk dated 25.11.69.

Defendant's Exhibits

No. 4

Minute of Special Meeting of the Orange City Council held on 25/11/69

(continued)

388 RECOMMENDATION That the Town Clerk's report be noted, and that negotiations carried on to date be endorsed by Council

(3) IMPROVEMENTS OF PART OF THE AREA.

The Committee of the Whole gave consideration to the carrying out of works and services for the improvement and benefit of part of the Area.

The Deputy Town Clerk submitted details and costs of such works and services that had been carried out in the central business zone of the City in 1969 and similar details in respect of improvements which could be carried out in 1970. 10

389 RECOMMENDATION That the details and figures submitted by the Deputy Town Clerk be noted, and that a Special Meeting of Council be called for Tuesday, 2nd December, 1969 at 7.30 p.m. at which all necessary 20

This is Page No. One of Minutes of the Special Meeting of the Orange City Council held on 25th November, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

- 2 -

information should be available to permit due consideration of the question of the levy of Local Rates (including Parking Area Local Rates) for the financing of works and services which would be calculated to benefit or improve the zoned central business area of the City. 30

RESOLVED That the recommendations of the Committee of the Whole as before-mentioned be adopted.

THE MAYOR DECLARED THE MEETING CLOSED AT 10.20 P.M. 40

This is Page Number Two and the final page of the Minutes of the SPECIAL MEETING OF COUNCIL HELD ON 25TH NOVEMBER, 1969.

W. MARSHALL  
DEPUTY TOWN CLERK

R. THOMAS  
MAYOR

MINUTES OF THIS MEETING CONFIRMED 27.11.69

R. THOMAS  
MAYOR

CITY OF ORANGE - DEFINITION OF PART OF THE AREA  
TO BE KNOWN AS "ORANGE TOWN IMPROVEMENT DISTRICT"

- Local Government Act, 1919 - Whereas on the fourth day of December, one thousand nine hundred and sixty-nine, the Council of the City of Orange (hereinafter called "the Council") by resolution in pursuance of the Local Government Act, 1919, defined part of the area to be known as a "town improvement district" within which a town improvement local rate may be levied, now therefore, the Council doth hereby give notice that the part of the area of the City of Orange hereunder defined by metes and bounds shall be known as the "Orange Town Improvement District" within which a town improvement local rate may be levied.

DEFINITION: All that piece or parcel of land being the whole of section 46 and part of sections 39, 40, 44, 45 Town and City of Orange and the whole of sections 1 and 1A 997 Litho in the Parish of Orange, County of Bathurst and being the whole of sections 7, 41 and part of sections 1, 8, 13, 14, 39, 40, 44 and 45 Town and City of Orange, Parish of Orange, County of Wellington and being bounded by a line commencing at the intersection of the western alignment of Peisley Street and the northern alignment of Moulder Street bearing westerly along the northern alignment of Moulder Street for 1,430 feet 0 inches or thereabout to the eastern alignment of Anson Street thence by a line bearing northerly along the eastern alignment of Anson Street for 759 feet 0 inches or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street for 269 feet 0 inches or thereabout thence by a line bearing northerly for 132 feet 0 inches or thereabout thence by a line bearing westerly for 142 feet 5 inches or thereabout thence by a line bearing northerly for 91 feet 0 inches or thereabout thence by a line bearing northwesterly for 8 feet 6 inches or thereabout thence by a line bearing westerly for 11 feet 0 inches or thereabout thence by a line bearing northerly for 35 feet 0 inches or thereabout thence by a line bearing westerly for 334 feet 0 inches or thereabout to the eastern alignment of Sale Street thence by a line bearing southerly along the eastern alignment of Sale Street for 93 feet 0 inches or thereabout thence by a line bearing westerly for 232 feet 2 inches or thereabout thence by a line bearing

Defendant's  
Exhibits

No. 5

Extract from  
Government  
Gazette defining  
Orange Town  
Improvement  
District  
12/12/69



Defendant's  
Exhibits

No. 5

Extract from  
Government  
Gazette defining  
Orange Town  
Improvement  
District  
12/12/69

(continued)

southerly for 170 feet 0 inches or thereabout to the northern alignment of Kite Street thence by a line bearing westerly along the northern alignment of Kite Street for 2 feet 10 $\frac{1}{2}$  inches or thereabout thence by a line bearing northerly for 84 feet 0 inches or thereabout thence by a line bearing northwesterly for 34 feet 0 inches or thereabout thence by a line bearing northerly for 42 feet 9 inches or thereabout thence by a line bearing westerly for 255 feet 8 inches or thereabout thence by a line bearing northerly for 20 feet 0 inches or thereabout thence by a line bearing westerly for 132 feet 8 inches or thereabout thence by a line bearing northerly for 310 feet 0 inches or thereabout thence by a line bearing westerly for 132 feet 0 inches or thereabout to the eastern alignment of Hill Street thence by a line bearing northerly along the eastern alignment of Hill Street for 435 feet 0 inches or thereabout to the northern alignment of Little Summer Street thence by a line bearing easterly along the northern alignment of Little Summer Street for 219 feet 9 inches or thereabout thence by a line bearing northerly for 165 feet 8 $\frac{1}{4}$  inches or thereabout thence by a line bearing easterly for 308 feet 0 inches or thereabout thence by a line bearing northerly for 167 feet 0 inches or thereabout thence by a line bearing easterly for 233 feet 0 inches or thereabout to the eastern alignment of Sale Street thence by a line bearing northerly along the eastern alignment of Sale Street for 165 feet 0 inches or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 759 feet 0 inches or thereabout to the eastern alignment of Anson Street thence by a line bearing northerly along the eastern alignment of Anson Street for 230 feet 0 inches or thereabout thence by a line bearing easterly for 660 feet 0 inches or thereabout to the western alignment of Lords Place thence by a line bearing southerly along the western alignment of Lords Place for 230 feet 0 inches or thereabout to the southern alignment of Byng Street thence by a line bearing easterly along the southern alignment of Byng Street for 952 feet 0 inches or thereabout to the western alignment of the railway reserve thence by a line bearing southerly along the western alignment of the railway reserve for 1,225 feet 0 inches or

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thereabout to the south eastern corner of section 1A 997 Litho thence by a line bearing westerly for 192 feet 0 inches or thereabout to the western alignment of Peisley Street thence by a line bearing southerly along the western alignment of Peisley Street for 965 feet 0 inches or thereabout to the northern alignment of Moulder Street and the point of commencement. R. O. THOMAS, Mayor. A. B. McDOWELL, Town Clerk.

Defendant's Exhibits

          
No. 5

Extract from Government Gazette defining Orange Town Improvement District  
12/12/69

(continued)

Exhibit reproduced separately

No. 6

Plan of Anson Street parking rate area

Exhibit reproduced separately

No. 7

Plan of Anson/Sale Street parking rate area

Exhibit reproduced separately

No. 8

Page of Central Western Daily of 5/4/63

Exhibit reproduced separately

No. 9

Copy of extract from Council Minutes of 1/12/68

Exhibit reproduced separately

No. 10

Copy of extract from Central Western Daily of 22/6/67

