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Rating ‘urban blight’:The recent decision of the SAT in Minister for Local Government and City of Greater Geraldton [2014] WASAT 116

By Elisabeth Stevenson

In *Minister for Local Government and City of Greater Geraldton* [2014] WASAT 116, the State Administrative Tribunal (**SAT**) quashed differential rates imposed by the Cities of Fremantle and Greater Geraldton on ‘derelict properties’.

Section 6.33(1) of the *Local Government Act 1995* (**Act**) relevantly states –

‘A local government may impose differential general rates according to any, or a combination, of the following characteristics —

a. the purpose for which the land is zoned, whether or not under a local planning scheme or improvement scheme in force under the *Planning and Development Act 2005*; or
b. a purpose for which the land is held or used as determined by the local government; or
c. whether or not the land is vacant land…’.

City of Greater Geraldton

In the context of its 2012/2013 Annual Budget, Greater Geraldton identified a differential rating category which it referred to as the ‘Unoccupiable City Centre Zone Differential Rate’. The City imposed the rate on land within its City Centre Zone on which a building or buildings had been completely constructed and either –

a. more than 50% of the building space was unoccupied and unfit for occupancy due to building deterioration; or
b. the building or buildings had been boarded up, enclosed or left to deteriorate in a way that would deter or deny occupancy.

Greater Geraldton also imposed the rate in its 2013/2014 financial year with some modifications. The modifications increased the percentage of unoccupied building space required to meet the first criteria, identified specific criteria for determining whether space was unfit for occupancy and clarified that the City had determined that property which met the criteria was held for an unoccupiable purpose.

City of Fremantle

Fremantle took a similar approach in its efforts to discourage urban blight by imposing a rate in the 2012/2013 financial year which it referred to as its 'Undeveloped CBD Zone Property' differential rate. Fremantle's version of the differential rate applied to land zoned 'CBD' in its local planning scheme which was –

a. vacant;
b. underdeveloped (defined as having buildings covering 20% or less of the land area); or
c. developed with buildings that had deteriorated to the point of being unfit for occupation. Fremantle extended this in its 2013/2014 financial year to cover land outside the CBD that was zoned for commercial or

Challenge

The Minister for Local Government applied to SAT for orders quashing the relevant differential rates.

Crucial phrase

SAT decided that the matter rested on the meaning of the phrase used in section 6.33(1)(b) 'a purpose for which the land is held or used as determined by the local government'. It concluded that it must have the same meaning in section 6.33(1)(b) as it does in section 6.33(1)(a). SAT reasoned that as the purpose for which land is zoned can be determined by 'the application of well understood objective principles', a purpose for which land is held or used for the application of section 6.33(1)(b) must also be able to be objectively identified.

It was stated that a local government could not impose a differential rate 'simply on the basis of nominated characteristics.'

SAT concluded that neither City had identified objective characteristics for determining the purpose for which the

relevant land was held or used and that land could not be held or used for the purpose of being 'un-occupiable', or 'an undeveloped site'.

Comment

The decision provides very little reasoning on why the respective characteristics specified by the Cities were not considered to be capable of identifying **a** purpose for which the land in question is held or used. The characteristics identified could be objectively assessed. The decision seems to rest on the view that 'un-occupiable' or 'undeveloped site' do not demonstrate a purpose for which land can be held or used. This seems to place an undue emphasis on nomenclature rather than on the characteristics identified for determining a purpose for which the land was held or used.

There are some distinct differences between the wording of sections 6.33(1)(a) and (1)(b) –

a. (1)(a) refers to **'the** purpose for' and (1)(b) refers to '**a** purpose for'; and

b. (1)(a) is definitive in that it refers only to the purpose for which land is zoned and zoning can be readily and clearly determined. (1)(b) not only raises the potential for application to one purpose, among others, for which land is held or used, it also provides for a choice between 'held' or 'used' and for the local government to make a determination

on purpose

Leaving a property in a state where it is not able to be used, or is substantially unusable, is a choice made by an owner as to how the owner wishes to use the property at that point in time. The owner may well have long term intentions for the property but it seems undeniable that if the owner allows a property to fall into disrepair, and has no current plans for redevelopment, the immediate intent is to hold the property in an under developed state.

It was argued that a property may be held for a current purpose of being vacant or unoccupiable and a longer term purpose of being available for future development. This argument was rejected without explanation. It was simply stated that '[t]he characteristics must provide the basics for determining the relevant purpose'.

The decision seems to fit the cliché of 'form before substance' and provides little guidance on what an appropriate application of section 6.33(1)(b) might be.

If you would like any further information in relation to this update, please do not hesitate to contact **Elisabeth Stevenson on 9424 6210.** The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.