IN THE COURT OF APPEAL OF NEW ZEALAND

CA112/05

	BETWEEN	AUCKLAND CITY COUNCIL Appellant
	AND	ROYAL NEW ZEALAND FOUNDATION OF THE BLIND Respondent

Hearing: 27 June 2006

Court: William Young P, Arnold and Ellen France JJ

Counsel: J M T Salter and G D Palmer for Appellant
J E Hodder and M C Sumpter for Respondent

Judgment: 29 August 2006 at 11 am

JUDGMENT OF THE COURT

A The appeal is allowed.

B The declaration made in the High Court is set aside. We declare that land owned by the Royal New Zealand Foundation of the Blind and leased directly or indirectly to third parties on commercial terms for the benefit of the Foundation and its charitable works is not within the rating exemption provided by cl 5 of Part 1 of Schedule 1 of the Local Government (Rating) Act 2002.

C The order for costs made in the High Court is set aside. If the Auckland City Council seeks costs against the Foundation in relation to the High Court proceedings it should do so in that Court.

D In this Court the Council is awarded costs of $6,000 together with usual disbursements.

REASONS OF THE COURT

(Given by William Young P)

Introduction

[1] The Royal Foundation of the Blind is a body corporate whose affairs are now governed by the Royal New Zealand Foundation of the Blind Act 2002. We will refer to it and its predecessors (including the New Zealand Institute for the Blind) as "the Foundation".

[2] Since the late nineteenth century, the Foundation has owned a property in Parnell from which it has operated. Over time it has acquired adjoining properties. Originally the Foundation used the Parnell property to provide schooling for the blind. From the 1920s, the Foundation provided a wide range of other facilities in Parnell including accommodation for the blind of all ages. The Foundation's primary focus was on institutional care. Since the 1970s that focus has shifted towards supporting the blind (and now the partially sighted) in the community.

[3] With that shift in focus, the Foundation's needs in relation to the Parnell property have evolved. Most of the property has been retained for the use of the Foundation (as its national administration centre) but the balance – around 25% – has been leased to the Bledisloe Estate Trust ("the Trust"), a charitable trust established in 1988 by the Foundation. It is this portion of the property which is in issue in this case and, for ease of reference, we will refer to it as "the land". The Trust is effectively the commercial arm of the Foundation. The Trust sublets the land to various commercial tenants. The rent paid by the Trust to the Foundation and the profits which it distributes back to the Foundation are used to fund (in part) the services the Foundation offers.

[4] In issue in this appeal is whether the land is rateable.

[5] Rates have never been paid by the Foundation on any part of the Parnell property. But with the coming into effect on 1 July 2003 of the Local Government

(Rating) Act 2002 (to which we will refer as "the Act" or "the current Act"), the Council maintained that the land is rateable. It has sought to levy rates accordingly.

[6] The Foundation denies that the land is rateable and has obtained from the High Court a declaration to that effect.

[7] The Council now appeals.

Legislative framework

[8] Under s 7 of the Act all land is rateable unless the Act (or another Act) states otherwise.

[9] Section 8 provides that the land described in Part 1 of Schedule 1 of the Act is non-rateable. Clause 5(e) of that schedule refers to:

> Land that is owned or used by, and for the purposes of,-
>
> …
>
> (e) the Royal New Zealand Foundation of the Blind, except as an endowment.

The competing arguments

[10] Since the land is not used by the Foundation, it is common ground that the rating exemption depends upon the land being owned by, and for the purposes of, the Foundation, except as an endowment.

[11] The arguments advanced by the parties have focused primarily on the words "for the purposes of". The Council submits that this phrase has the consequence that the land is rateable unless owned in order to facilitate directly the fulfilment of the purposes of the Foundation, being the provision of services to the blind and partially sighted. Since that (ie use in directly providing services) is not the purpose for which the land is owned, the Council maintains that the land is rateable. On the other hand, the Foundation submits that since the land is used to obtain rents which

fund the provision of services, the land is necessarily owned for the purposes of the Foundation. In this respect the Foundation invokes s 10(p) of the Royal New Zealand Foundation of the Blind Act 2002 which provides that the objects of the Foundation include the doing of "all such other things as are incidental or conducive to the attainment of" its primary objects. Section 10 is set out in full later in this judgment, see [47].

[12] In later sections of this judgment we will refer to the way in which these submissions were developed in argument. We should note, however, at this point that we see rather more significance than the parties did in the phrase "except as an endowment", particularly as to the evolution of the statutory language associated with this and related exemptions.

The Judge's conclusions

[13] Keane J's conclusions were as follows:

> [61] The immunity from rates granted the Foundation by cl 5(e) of the First Schedule, Part 1, of the LGRA does, I consider, extend to the land let by the Trust on behalf of the Foundation to commercial tenants.
>
> [62] The Foundation owns the land. It holds the fee simple interest, and the Trust, which holds a leasehold interest, does so as the instrument of the Foundation. To benefit from the exemption the Foundation does not need to use the land itself. 'Use' is not a cumulative requirement … . The Foundation's interest need only serve the purposes of the Foundation, and in their most complete expression.
>
> [63] The Foundation's central object, to benefit blind persons wherever they may happen to be within the community, by assisting them in a wide variety of ways, no longer calls as it once did for the Foundation to offer institutional care. The Foundation's need for land in that sense is now minimal or non-existent. What the Foundation does need, from any source at its disposal, is income on which it can rely. The services it offers are many, and they are increasing. The land the Foundation has acquired since its inception has taken on that different significance. It has become an indispensable source of revenue.
>
> [64] That reality is recognised, I consider, if only implicitly, in the last of the Foundation's objects (s 10(p)), which, eschewing the distinction between purposes and powers, enables the Foundation to 'do all such other things as are incidental or conducive to the attainment of any of … (its) objects'. The turning to account of the Parnell site for a sustainable income clearly lies within the bounds of that object.

> [65] The reasons for pause, that endowment land, which is gifted as a source of revenue, is an exception to the immunity, and the reality that the tenants may benefit as well as the Foundation, does not, to my mind disturb that conclusion. It is, I consider, a direct expression of the central principles of the Schedule One, Part 1 exempting code.

[14] He accordingly granted the declaration which the Foundation sought.

Overview

The significance of the case

[15] The appeal is of importance not only to the parties but also to local authorities throughout New Zealand who understandably wish to maintain or enhance the rating base and to minimise inequities amongst those who benefit from Council services and infrastructure. For this reason, the issue is also of significance to ratepayers generally.

[16] Further, the "land that is owned or used by, and for the purposes of" formula is used in other clauses in Part 1 of Schedule 1 and the implications, both ways, of the High Court judgment are fiscally significant.

[17] As will become apparent, the interpretation issue posed by the case is by no means easy to answer. That this is so is illustrated by problems which affect the primary arguments of both parties.

The problem with the Foundation's argument

[18] As counsel for the Council pointed out, clause 5 appears to distinguish between land owned by the Foundation "for its purposes" (which is not rateable) and land owned by the Foundation otherwise than "for its purposes". Yet because all land owned by the Foundation must be owned for its purposes (at least in a general sense), Keane J's decision has the practical effect that there is a rating exemption for all land owned by the Foundation.

[19] The Foundation responded by providing three examples of land which would constitute land owned by, but not for the purposes of, the Foundation:

(a) Land of historic value, but not able to be occupied or leased to generate net revenue;

(b) Land of some conservation value; or

(c) Land made available to unrelated persons or entities (another charity, for example) at nil or nominal rent.

The Council's riposte was that such uses would either advance the purposes of the Foundation, or, if not, ownership for those uses would be ultra vires.

[20] It is fair to say that the Foundation's examples did seem somewhat forced. On the other hand, as will become apparent, on whatever approach we take to the issue, there will be practical redundancy of statutory language.

The problem with the Council's argument

[21] On the Council's argument the exemption should be construed as if it read "owned in order to use it for the purposes of". If this is right, there would be comparatively few, if any, circumstances in which the Foundation would need to rely on the ownership leg of the exemption because satisfaction of the "for the purposes of" requirement would almost certainly connote use.

[22] Counsel for the Council responded by giving some examples of land which might be owned for the purposes of the Foundation but not used by the Foundation, for instance, land used by another entity which promotes the purposes of the Foundation. The example he gave was an independently operated workshop intended to provide employment for the partially sighted.

[23] It is possible to quibble with this response. The letting of premises to an entity for the purpose of providing opportunities for the blind could perhaps be regarded as use of the premises by the Foundation. In any event, this example too seems somewhat forced. As well, on the Council's primary argument (which focuses on the words "for the purposes of"), land held as "an endowment" could never be within the primary exemption. If the expression "except as an

endowment" is treated as an exclusion from the exemption (which is the way the Judge and the parties saw it) there is no apparent point to the exclusion.

[24] Accordingly, on the Council's argument, as with the Foundation's argument, there is some apparent redundancy of statutory language.

The relevant legislative history

Overview

[25] Prior to 1876, local government, and thus its funding via rates, was within the legislative competence of provincial governments. It seems sensible therefore to start our account of the legislative history with the Rating Act 1876, the introduction of which was associated with the abolition of provincial government. Parliament enacted other rating acts in 1894, 1908 (as part of the consolidation of that year), 1925 and 1967. There was then the Rating Powers Act of 1988 and, most recently, the Act in issue in these proceedings. As well, rating exemptions have sometimes been conferred or extended by other legislation.

[26] Over the 130 years which have elapsed since a national system of rating was introduced, there have always been some statutory exemptions from rating. These exemptions have always been disparate in nature and some of those which remain in the current Act seem distinctly odd. For this reason, we have focused primarily on rating exemptions associated with land owned or used by charities.

Charitable exemptions – general

[27] The primary heads of charity involve the advancement of religion, the advancement of education and the relief of the aged, impotent and poor. All of the these heads of charity have been recognised as warranting some element of rates exemption.

[28] A full discussion of how these exemptions have evolved would be numbing in its detail and accordingly the discussion which follows is at a reasonably high level of generality.

Religious purposes

[29] Rating exemption for land held for religious purposes was provided for in s 37(3) of the 1876 Act but confined to "lands occupied for churches and chapels". That exemption, which has sometimes become linked with a related exemption for cemeteries, now appears in the first schedule of the current Act as clause 9 which provides:

> 9 Land used solely or principally—
>
> (a) as a place of religious worship:
>
> (b) for a Sunday or Sabbath school or other form of religious education and not used for private pecuniary profit.

What is of interest in the present context is that this exemption has always been confined to places of religious worship or education and has never extended more broadly to apply to property used for the accommodation of ministers of religion or to generate investment income.

Educational purposes

[30] There was no exemption for land used for educational purposes in the 1876 Act. The 1894 Act exempted land and buildings which were "used for the purposes of" public schools or "used for" universities and schools generally, but with the last exemption (ie in relation to schools) confined to land not exceeding four acres in any one urban local government area. The apparently unnecessary variation in language between "used for the purposes of" and "used for" was commented on in *Christchurch City Corporation v Christ's College* (1920) 39 NZLR 662 at 666 (CA).

[31] Section 158 of the Education Act 1914 provided a rating exemption for:

> [S]choolhouses [and] teachers' residences or on any other lands or buildings used for public-school purposes … .

This was amended by s 40(1) of the Finance Act (No 4) 1931 so as to apply to:

> [A]ny land held by or on behalf of any education authority and reserved or set apart, or otherwise in any manner acquired, for any purpose of such education authority and held otherwise than as an endowment.

This is the first time that the expression "an endowment" appears in the legislation.

[32] The exclusion for endowment land was carried through in the relevant legislation as far as the 1988 Act, see s 5(1)(a) and cl 1 of Part II of the First Schedule to that Act. But it is no longer in the current Act in which the corresponding exemption is expressed in these terms:

> 6 Land owned or used by, and for the purposes of,—
>
> (a) a special school established under section 98(1) of the Education Act 1964:
>
> (b) an educational establishment defined as—
>
> (i) a state school under section 2(1) of the Education Act 1989;
>
> (ii) an integrated school under section 2(1) of the Private Schools Conditional Integration Act 1975;
>
> (iii) a special institution under section 92(1) of the Education Act 1989;
>
> (iv) an early childhood centre under section 308(1) of the Education Act 1989, excluding any early childhood centres that operate for profit;
>
> (v) a school under section 35A of the Education Act 1989, excluding any registered schools that operate for profit;
>
> (c) an institution under section 159(1) of the Education Act 1989.

[33] As we will indicate later (see [41] and [42]), we are of the view that the legislature in enacting the current Act did not intend to make substantive changes to the rating exemptions provided for in the Rating Powers Act 1988. This implies that the words "owned or used by, and for the purposes of" in relation to this exemption were seen by the legislature as encompassing the earlier exclusion for endowment land. We find support for this view in note 4 to Part 1 of Schedule 1 of the current

Act (which specifies limited circumstances in which property let by an educational institution is within cl 6), a note which is inconsistent with a broad approach to what constitutes "land owned or used by, and for the purposes of" such an institution.

Other charitable purposes

[34] In the 1876 Act, the only charitable exemption provided for was in respect of churches and chapels. More general exemptions were provided in the 1894 Act in relation to land used for other charitable purposes (albeit subject to area limitations) and these exemptions (with some variations) were carried through the 1908 consolidation and the 1925, 1967 and 1988 Acts.

[35] The exemptions in the current Act are expressed in these terms:

> 8 Land owned or used by a district health board and used to provide health or related services (including living accommodation for hospital purposes and child welfare homes).
>
> …
>
> 21 Land used or occupied by, or for the purposes of, an institution that is carried on for the free maintenance or relief of persons in need, being land that does not exceed 1.5 hectares for any 1 institution.

Again, there has never been any general exemption for properties held by charities for generating investment income.

The Foundation

[36] As already noted, rates have never been paid in relation to the land in Parnell owned by the Foundation. In the mid-1930s, however, the Foundation (then known as the New Zealand Institute for the Blind) and the Council formed the view (perhaps wrongly) that the property was rateable. As a result, the legislature enacted the New Zealand Institute for the Blind Rating Exemption Act 1935 which provided:

> Notwithstanding anything contained in the Rating Act, 1925, … all lands and buildings situated in the City of Auckland for the time being vested and actually used by the Institute for the purposes of any school, workroom, shop, gardens, recreation-grounds, residences, or residential quarters for blind persons and held otherwise than as an endowment shall be deemed not to be and never to have been rateable property for the purposes of the Rating Act, 1925 … .

It will be observed that the words "otherwise than as an endowment" were borrowed from the Finance Act 1931. On the second reading of the Bill which eventually became this Act, the member of parliament who promoted it (Mr Schramm), observed:

> The purpose of the Bill is to exempt the lands used by the institute for the purposes of any school and so on, from payment of rates. … It is not desired that other properties owned by the institute and let for revenue purposes, or which may be acquired by the institute for that purpose, be exempted.

[37] The 1935 Act applied only to land held by the Foundation in Auckland. More extensive rating exemptions for land owned by the Foundation were effected by s 9 of the Education Amendment Act 1949, which treated the Foundation as if it were an educational institution for the purposes of the Finance Act 1931. The exemption thus did not apply to land held as "an endowment".

[38] The New Zealand Foundation for the Blind Act 1955 put the affairs of the Foundation on a statutory footing for the first time. Section 35 provided for an exemption from rates in respect of all land:

> … held by or on behalf of the Foundation and reserved or set apart, or otherwise in any way acquired, for any purpose of the Foundation, and held otherwise than as an endowment.

An exemption in similar terms was provided for in s 43 of the Royal New Zealand Foundation for the Blind Act 1963 and this language was then carried into the Rating Act 1967 and the Rating Powers Act 1988.

[39] While exemptions so expressed were in effect, the Council did not seek to recover rates in relation to the land once it was let to the Trust. In this Court, counsel for the Council contended that the Council's then stance was wrong because he maintained that the words "for any purpose of the Foundation" mean that the exemption only applied if the land was used by or for the Foundation.

The other institutions mentioned in clause 5

[40] The other institutions covered by clause 5 are the New Zealand Historic Places Trust, the Queen Elizabeth the Second National Trust, the Museum of New Zealand Te Papa Tongarewa Board and Children's Heath Camps – The New Zealand

Foundation for Child and Family Health and Development. Counsel took us through their rating exemption histories and we are satisfied that a discussion of those histories will not serve to elucidate the problem we are confronted with.

Was the current Act intended to change pre-existing exemptions?

[41] Part 1 of Schedule 1 to the current Act carries through existing exemptions using language which in part is, and in part is not, borrowed from earlier legislation. This raises the question whether change was intended. The Report of the Local Government and Environment Select Committee on the Local Government (Rating) Bill and other material as to the Act's legislative history, however, make it clear that the changes in the way in which the exemptions are expressed were associated with a desire to modernise the statutory language and that no substantive change was intended (save in relation to certain area limitations).

[42] We have seen the Foundation's submissions on the Local Government (Rating) Bill and it is clear that the Foundation interpreted what became clause 5 as providing an exemption for all its real property including the land. This is, however, not a controlling consideration. That the clause was enacted in the form in which it appeared in the bill cannot be treated as a legislative acceptance of the Foundation's belief. In any event, there is no basis upon which we could attribute to the Legislature a precise knowledge of the purposes to which the land was being used.

The Royal New Zealand Foundation for the Blind Act 1963

[43] When the current Act was passed, the affairs of the Foundation were governed by the Royal New Zealand Foundation for the Blind Act 1963.

[44] Section 4 of that Act was in these terms:

> **4 Purposes of Foundation**
>
> (1) The general purposes of the Foundation shall be—
>
> (a) To provide for the care, relief, education, and training of blind persons, the amelioration of their condition, and the maintenance and promotion of their general welfare:

(b) To provide and maintain such institutions, establishments, accommodation, services, and equipment for the benefit of blind persons as may be necessary or expedient from time to time.

[45] Understandably the Council relied on this section and sought to argue that the reference to the "purposes" of the Foundation in clause 5 should be to these purposes.

[46] This is a consideration which provides some apparent support for the Council's case. But the word "purposes" is used on many occasions in Part 1 of Schedule I of the current Act. This suggests to us that it would not be appropriate to construe the word "purposes" in clause 5 as being a cross-reference to s 4 of the 1963 Act.

The Royal Foundation of the Blind Act 2002

[47] This statute was enacted between the enactment of the current Act and it coming into effect on 1 July 2003. Section 10 provides:

> **10 Objects**
>
> The objects of the Foundation are—
>
> (a) to promote and provide for the independence, integration, enablement, and well-being of blind and vision impaired people in New Zealand society:
>
> (b) to provide, co-ordinate, and facilitate the provision of services, programmes, and activities in the fields of, and in relation to, the education, training, rehabilitation, recreation, equalisation of opportunities, enablement, support, assistance, and well-being of blind and vision impaired people:
>
> (c) to promote and encourage, by education, publicity, and otherwise, respect for, and observance of, the full human and civic rights of blind and vision impaired people:
>
> (d) to promote and encourage the creation of a New Zealand society accessible to, and inclusive of, blind and vision impaired people so that they are able to live, work, and participate in all aspects of community life as valued and equal citizens:
>
> (e) to promote and encourage a positive attitude towards blindness and vision impairment, not only amongst the public but also amongst blind and vision impaired people:

(f) to encourage and assist blind and vision impaired people to achieve personal independence and to realise their full potential in, and for the benefit of, society:

(g) to encourage and assist blind and vision impaired people with additional disabilities to live useful and dignified lives according to their personal choice:

(h) to promote equal opportunities for blind and vision impaired people and their ability to enjoy and exercise the same fundamental rights, privileges, and responsibilities as all other New Zealanders:

(i) to promote and encourage the elimination of barriers to the dignified participation and use by blind and vision impaired people in, and of, mainstream activities, structures and facilities, and to social and physical environments which preserve and enable personal integrity and choice and which recognise the value and contribution of all citizens:

(j) to promote and encourage open and convenient access and use by blind and vision impaired people to, and of, all programmes, services, buildings, and facilities designed or intended for public use including transportation, information and telecommunications, education, work, training opportunities, and creative leisure:

(k) to promote and encourage the creation of opportunities for blind and vision impaired people to contribute to the economic, social, political, and cultural life of the community:

(l) to assist State and civic agencies to fulfil their obligations to blind and vision impaired people as full citizens:

(m) to consult and co-operate with other persons and organisations concerned with the well-being of blind and vision impaired people and the prevention, treatment, amelioration, or cure of blindness or vision impairment:

(n) to promote and encourage programmes that help in raising the awareness, and minimise the incidence, of preventable blindness:

(o) to give particular recognition to the principles of the Treaty of Waitangi and their application to the governance and services of the Foundation:

(p) to do all such other things as are incidental or conducive to the attainment of any of the objects set out in paragraphs (a) to (o).

[48] Section 10(p) was relied on by the Foundation in this Court and by Keane J in the High Court. But for the reasons already given in relation to the Council's corresponding argument based on the 1963 Act, we do not see it as appropriate to treat the reference to "purposes" in clause 5 as being a reference to the "objects" of the Foundation as provided for in s 10. As well, there is the related point that s 10(p) is really in the nature of a power and the fact that this power is treated as an object in

this Act does not mean that it must be treated as a "purpose" when construing another Act.

"Except as an endowment"

[49] When a third party settles property on a charity by way of endowment, it is for the purpose of providing funds (usually by way of income) which the charity can utilise in attaining its purposes.

[50] The parties and indeed Keane J appear to have assumed that the property of a charitable trust is held as an "endowment" only if there has been a prior act of endowment in respect of that property by a third party along the lines discussed in the preceding paragraph. A review of judicial dictionaries reveals that the word "endowment" can be used in this sense, that is as denoting property in respect of which there has been a prior act of endowment by a third party. For instance Black's Law Dictionary (7 ed 1999) defines "endowment" as

> A gift of money or property to an institution (such as a university) for a specific purpose, esp. one in which the principal is kept intact indefinitely and only the interest income from that principal is used.

But it hardly does violence to the word to treat it as extending to a portion of the assets of a charity which has been set-aside for the purposes of producing income. By way of illustration, Dukelow and Nuse in *The Dictionary of Canadian Law* (1990) define "endowment" as

> Any kind of property belonging permanently to a charity.

[51] When the word "endowment" was first employed in relation to the Foundation's rating exemption, it was in a context in which the exemption did not extend to land "held … as an endowment". This language was carried through into the New Zealand Foundation for the Blind Act 1955, the Royal New Zealand Foundation for the Blind Act 1963, the Rating Act 1967 and the Rating Powers Act 1988. That particular collocation of words suggests a focus on the purpose for which the land is held rather than a historical inquiry as to the purpose for which it was originally acquired by (or settled on) the Foundation.

[52] Under the current Act, the key statutory language refers to land "owned … except as an endowment" and this, too, is consistent with a focus on the function the land serves as opposed to an inquiry into how and why the land came to be owned. In any event, for the reasons already indicated, the shift of language between the Rating Powers Act 1988 and the current Act was not intended to affect any substantive change in the rating exemption.

The authorities

[53] There are many cases in which the Courts have addressed statutory language which provides exemptions from rating or tax in relation to land "used" for particular charitable purposes holding that such language does not to extend to land which is leased to outsiders to generate income to support the provision of services associated with those charitable purposes. In this context, it is sufficient to refer to *Oxfam v Birmingham City District Council* [1976] AC 126 (HL) and *The Trustees of the Dunedin Central Methodist Mission v Commissioner of Inland Revenue* (1989) 11 NZTC 6,090 (CA). These cases are plainly distinguishable because the statutory language relied upon by the Foundation is not directly limited to use for the purposes of the Foundation but extends also to ownership for the purposes of the Foundation. But more to the point is *Polish Historical Institution Limited v Hove Corporation* (1963) 10 RRC 73, a judgment of Wilberforce J.

[54] This last case involved a property owned by the Polish Historical Institution Limited (a registered charity). The objects of the Institution were the encouragement and promotion of research into and the study of modern Polish history. The property was held for investment purposes with a view to raising income which could be used to promote the educational objects of the Institution. The property was divided into separate rooms or small apartments which were occupied by residents who made weekly payments of rent to the Institution. The agreements between the Institution and the residents involved licences and not tenancies with the result that the Institution was, for the purposes of the rating legislation in force, the occupier of the premises. The exemption claimed by the Institution was in relation to premises "occupied for the purposes of" the Institution. The Judge held that the activities

carried on in the premises in question were not activities "for the purposes of" the Institution and that accordingly there was no rating exemption.

[55] Despite the Institution's occupation of the premises being of a legal rather than a physical character (and in this sense somewhat akin to ownership), there remains a difference in connotation between "owned for the purposes of" and "occupied for the purposes of", with the latter wording more clearly denoting some element of physical use. So although this case provides some support for the Council's position it is plainly not of controlling significance.

Drawing the threads together

[56] We have not found the case an easy one to determine.

[57] We can resolve this case on the basis that there is no need to break the exemption down into its apparent component parts, namely an exemption and an exclusion from that exemption, but rather that we should read the words of the clause, as they apply to the Foundation, as a whole. On that basis the question is whether the land is owned or used by, and for the purposes of, the Foundation except as an endowment. For the reasons already given, particularly in respect of the words "except as an endowment" we think that the statutory language as a whole points to an intention that property held for investment purposes is rateable.

[58] The exclusion of endowment land from the Foundation's rating exemption (which goes back to 1935 and remains in the current Act) has been an important consideration in the approach we have taken. But we note that the absence of this phrase in other exemptions will not necessarily be critical, see the comments made earlier at [33].

[59] Our conclusion is consistent with the statutory history of rating exemptions for charities. Despite the confusing variations in the language which the legislature has utilised over the last 130 years, the pattern of the exemptions points to a consistent policy that land held for investment purposes and not for the direct use of the charities concerned should be rateable.

Result

[60] The appeal is allowed.

[61] The declaration made in the High Court is set aside. In lieu of that declaration, we declare that land owned by the Royal New Zealand Foundation of the Blind and leased directly or indirectly to third parties on commercial terms for the benefit of the Foundation and its charitable works is not within the rating exemption provided by cl 5 of Part 1 of Schedule 1 of the Local Government (Rating) Act 2002.

[62] We set aside the order for costs made in the High Court. If the Council seeks costs against the Foundation in relation to the High Court proceedings it should do so in that Court.

[63] In this Court the Council is awarded costs of $6,000 together with usual disbursements.

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