SOLGM
NEW ZEALAND SOCIETY OF LOCAL GOVERNMENT MANAGERS

RATING KNOWHOW

A GUIDE TO THE LOCAL GOVERNMENT (RATING) ACT 2002

NOVEMBER 2013

We are. LGNZ.

We know
how it works

Simpson Grierson
www.simpsongrierson.com

FOREWORD

This guide is a substantial revision and extension of the Rating KNOWHOW guide jointly produced by the New Zealand Society of Local Government Managers (SOLGM) and *Local Government New Zealand* soon after the Local Government (Rating) Act 2002 became law. It is intended to be the first of two products – with the second being a guide developed jointly by the two organisations specifically for elected members.

Since 2002, the Rating Act has been amended four times. Probably the most significant of these amendments came in 2002 with the requirement to produce a funding impact statement. The power to offer lump sum contributions was restored in 2006. Requirements to state your definition of a separately used or inhabited part of a rating unit were also added in 2006. Those amendments have been reflected here.

The 11 years since enactment have provided us with a substantial amount of practice to reflect on. Some of it, such as the so-called voluntary targeted rates, are truly innovative uses of the powers in this Act. The guide has been designed to help local authorities come up with more innovative (and legal) solutions.

Recent experience tells us that in some areas, such as the funding impact statement and rates resolutions, there are aspects of some current practice that can be improved. This guide has been designed to help councils provide a greater level of quality assurance around the mechanics of rates setting. This part of the guide was based on the results of a review of a sample of resolutions and funding impact statements.

I would like to thank the following for their contribution to the guide:

- Aneel Anthony, Porirua City Council
- Diane Brandish, Christchurch City Council
- Angela Jane, Waikato Regional Council
- David Paris, Masterton District Council
- Steve Paterson, Palmerston North City Council
- Fiona Scragg, Gisborne District Council
- Toni Wilkinson, Taupo District Council
- Philip Jones, PJ and Associates for peer review
- Jonathan Salter and Lizzy Wiessing, Simpson Grierson – for legal review
- Svea Cunliffe-Steel, Office of the Auditor-General – for review
- Daniel Paul and the staff of the PR company for proof reading and editorial work
- Ian Carson and the staff of ID Media for the design work

I commend this guide to you as we, as a sector, seek ways to improve our performance.

Ross McLeod
President, SOLGM
November 2013

Contents

Foreword 3

1 The Local Government (Rating) Act: An overview 5

2 The rating unit and the ratepayer 8

3 Non-rateable land 14

4 Rating tools 21

5 Remissions, postponements and rates rebates 35

6 Rating information 41

7 Assessment, collection and enforcement of rates 47

8 Rates on Maori freehold land 64

9 Rates resetting and replacement. 69

The final exam 73

APPENDICES

Appendix One – A sample rating content of funding impact statement 77

Appendix Two – A sample rates resolution 81

Appendix Three – Self review tool for annual plan, FIS and rates resolutions 84

Appendix Four – Rates assessment - a checklist 88

Appendix Five – Rates invoices - a checklist. 89

The final exam – the answers 90

IMPORTANT: READ BEFORE PROCEEDING

This guide represents the collective wisdom of the local government sector with respect to the setting, assessment and collection of rates under the Local Government (Rating) Act 2002.

The guide is not a substitute for reading or reference to the legislation, and for appropriate legal and policy advice from individuals who are qualified to give that advice.

Every effort has been made to ensure that the information in this guide is as accurate as possible, including review by legal advisers, representatives of the Office of the Auditor-General, and two largely independent sets of practitioners from within the sector.

Neither SOLGM nor the individuals involved in the preparation of this document accept any liability for loss or damage arising from the use of material contained herein. Reading or using the information beyond this point constitutes acceptance of the terms of this disclaimer.

1. THE LOCAL GOVERNMENT (RATING) ACT: AN OVERVIEW

This introductory chapter provides a brief overview of the Local Government (Rating) Act 2002 and the subject matter of this guide. In particular, it discusses:

- the purpose and objectives of the Local Government (Rating) Act
- the nature of rates and what this means for those who work with rates every day.

The Rating Act: Purpose

(Section 3, Local Government (Rating) Act)

Parliament has provided local authorities with a power to levy a coercive tax to fund its lawful activities. We commonly refer to this tax as "rates" or (more commonly) "the rates", and the Local Government (Rating) Act (or the Rating Act) is the device through which Parliament has provided the power.

The Rating Act has the following purposes:

- *It provides local authorities with (relatively) flexible powers to set, assess and collect rates* – while the Act provides local authorities with a set of funding tools and the means to enforce them, there are relatively few legal limits on the use of those tools. For example, the Rating Act does not contain a cap on the total amount of rates[1].
- *It ensures rates are set in accordance with a transparent and consultative decision-making process* – rate-setting is one of the end results of a cycle of long-term and annual planning that sets out local authorities' spending proposals, what people get for their rates and details of the rates themselves.
- *It provides processes and information to ratepayers so they can understand their liability for rates* – one of the big policy objectives that underpinned development of the Rating Act was improved transparency. It's inefficient to send ratepayers a bill with a single number on it, ratepayers should get sufficient information to enable them to work out what they are funding, and to what extent, before the actual invoice is sent.

If in doubt about a particular process, decision or action, it pays to test it for consistency with the purpose of the Rating Act. A decision or act that does not "score well" in this respect may fail to comply with the law.

What are rates?

Rates are a tax, usually assessed on the owners of rating units, to fund local authority provided services. Most, though not all, of the rates mechanisms are set using a proxy for an individual's holdings of wealth (or at least one particular subset of wealth – an individual's holdings of property that is deemed to fall within the scope of the Rating Act).

Most of the tools available under the Rating Act bear only an indirect relationship to an individual's use of or benefit from a particular service. Indeed, the user pays approach is but one of a set of criteria local authorities are obliged to consider, along with:

- the objectives the local authority has in undertaking the activity
- intergenerational equity

[1] We invite readers who are unconvinced of this point to examine the preceding legislation – the Rating Powers Act 1988 – and the funding tools available to local authorities in many English-speaking jurisdictions.

- any exacerbators (those where actions or failures to act give rise to the need for expenditure)
- the practical implications of funding the activity separately from other activities
- the impacts on the community.

The concept of rates as a tax has received judicial recognition on several occasions. The root of this line of jurisprudence is the decision of the Court of Appeal in *Woolworths and Others vs Wellington City (1996)* where the judgment of Richardson P commented that *"it is implicit in the scheme of the legislation that the rating system in its diversity remains primarily a taxation system and not a system inherently based on a principle of user pays".*

Finally, any standard economics textbook includes rates within its standard definition of tax. Economists refer to the "tax-like characteristics of rates", which are generally referred to as:

- universality – that is, everybody pays
- coerciveness – that is, everybody has to pay
- independent from levels of benefit received
- public accountability on the part of the agency levying the tax – one of the golden rules of local government is that you are using public money.

So want does all of this mean in practice?

Rates are a tax and the Rating Act is a taxation statute. A generally accepted constitutional principle of taxation is that all decisions, actions and procedures must be strictly in accordance with the legislation governing the tax. That means that:

- only those rates authorised under the Rating Act can be set and assessed – anything else is unlawful and likely to be set aside if challenged (the legal term for this is *ultra vires*)
- rates must be set strictly in accordance with the procedural steps and information requirements set out in the Rating Act (rate-setting that does not follow the prescribed process also runs a judicial risk – the person who said short-cuts make for long delays had the rating process in mind)
- there is little judicial tolerance for departures from the legislative requirements – even minor typographical errors (for example, an "and" rather than an "or") could be sufficient to invalidate a rate.

These are not academic points – ratepayers can and will scrutinise your decisions and actions. Local authorities set their rates in open council and follow a process of consulting on their spending and rating proposals through the long-term and annual plan (more on this later). The information is therefore readily available to the public.

How to use this guide

The rest of this guide generally follows the structure of the Rating Act itself. We strongly suggest that you follow the guide in the order it's written.

The guide has been designed to be used in conjunction with the legislation. The section references to the relevant legislation have been incorporated into each heading. References to the "LGRA" are to the Local Government (Rating) Act 2002, while the acronym "LGA" refers to the Local Government Act 2002.

Those who only want or need a summary of a particular topic should look for the "Things to Remember" boxes (green), which present the highlights from each chapter.

This guide also comes with a "Final Exam": a set of 20 multiple-choice questions designed to reinforce your learning from the guide.

Chapter Two of the guide deals with the real basics of the Rating Act – who is liable for rates, and how they become liable. There we'll introduce the concepts of the *rating unit* and the *ratepayer*.

There are some categories of land that are not fully rateable, although as we'll see, even most of this land pays at least some rates. Chapter Three covers which rating units are non-rateable and to what extent. The distinctions between fully rateable and non-rateable can turn on some fine points. We advise you read this chapter particularly closely.

Chapter Four turns to the rating tools themselves. This chapter discusses each of the tools in turn, so we'll encounter terms such as *general rates*, the *uniform annual general charge, targeted rates* and *lump sum contributions*. The chapter has a theoretical and a practical component, with the latter consisting of a series of examples of use of the tools.

This mix of theoretical and practical carries over into Chapter Five which discusses the powers local authorities have to "waive" payment of rates. This chapter focusses on local authority powers to *remit* and postpone rates. For the sake of completeness, we also briefly discuss the Rates Rebate Scheme – a scheme funded by central government to assist those on low incomes pay their rates.

Chapter Six and Chapter Seven turn to the technical and procedural side of rating. Chapter Six discusses the information sets that local authorities need to assess and collect rates. We discuss the *rating information database* and *rates records*. This chapter also covers procedures for objecting to and correcting information on these information sets.

Chapter Seven covers the mechanics of setting, assessing, collecting and enforcing rates. These parts of the Rating Act contain a great deal of mandatory information and/or procedural steps – read this section closely. This section also discusses the linkages between the setting of rates and the planning and accountability requirements of the Local Government Act 2002. This chapter is also closely linked to the appendices.

The provisions for assessing, collecting and enforcing rates on Māori freehold land are a little different from other categories of land. Chapter Eight discusses these provisions in some detail – starting by clearing up some misconceptions about Māori freehold land.

And finally, Chapter Nine deals with the two procedures that are available for correcting those things that go wrong – *rates resetting and rates replacement*.

2. THE RATING UNIT AND THE RATEPAYER

This section discusses two of the most fundamental concepts of the Rating Act. These are:
- the rating unit (or "what" gets charged rates) and
- the ratepayer (or "who" gets the rates bill).

The rating unit

What Is a rating unit?
(Sections 5A, 5B and 5C, Rating Valuations Act 1998; the Rating Valuations Regulations)

In tax policy terms, the rating unit is the unit of liability – that is to say, it is the existence of a rating unit that gives rise to the obligation to pay rates. We'll come to who that person is in the next part of this section.

The term "rating unit" is defined in the Rating Valuations Act 1998 (RVA)[2]. The main determinant of whether or not a rating unit exists is the existence of a separate certificate of title (in essence, a document that gives someone an ownership interest in, and the right to sell or lease, an identified part of land). The RVA defines a certificate of title as a certificate issued:
- under the Land Transfer Act 1952 for an estate in the fee simple, or
- under the Unit Titles Act 2010 for a stratum estate, or
- under the Land Transfer Act 1952 for both an undivided share in an estate in the fee simple, and an estate in leasehold of a building or part of a building on land comprised in the estate in the fee simple (commonly referred to as a cross lease).

Land that does not have a certificate of title (CT) and is not Crown land may be a rating unit. The Valuer-General must make rules permitting the treatment of such land as a rating unit. Those rules must follow the following two principles:
- In the case of Crown land, the rating unit is any land where the Valuer-General considers it appropriate to treat as though it had a CT.
- In other cases, either some legal instrument recording or registering ownership of the land must exist, or the Valuer-General must consider that the land could be sold or otherwise transferred.

The "rule of thumb" is that one CT creates one rating unit. But there are exceptions to this.

The Valuer-General can make rules that allow for the combining of multiple CTs into a single rating unit. These rules only apply if the land in question is:
- owned by the same person or persons, and
- used jointly as a single unit, and
- contiguous (next to each other) or separated only by a road, railway, drain, water race, river or stream.

At the time of writing, the Valuer-General has made rules that relate to cases where:
a substantial improvement straddles the boundaries of two CTs
- legal requirements mean that the CTs must be sold or leased together
- the land is used as one farming operation and it is likely that the operation will be alienated (sold or transferred) only as one farming operation.

[2] Sections 5A, 5B and 5C, Rating Valuations Act.

EXAMPLE 1

Upper Creek Farms is divided into three CTs. One is owned by Mr B Smith, one by Mr F Smith and one by the Smith Family Trust. The land in all three CTs is currently farmed by both Smiths as a single unit. How many rating units exist here?

There are three rating units here. Each CT is owned by a different legal person (the trust is regarded as a person in its own right). So while the rating unit is currently farmed as a single unit, the Valuer-General cannot make rules declaring this rating unit a single rating unit. This is a common situation in rural areas.

The Valuer-General may also make rules allowing for rating units that consist *of part of a certificate of title*. This applies to land owned by the Crown, or Māori land subject to an occupation order – but in each case, only where the Valuer-General considers it appropriate.

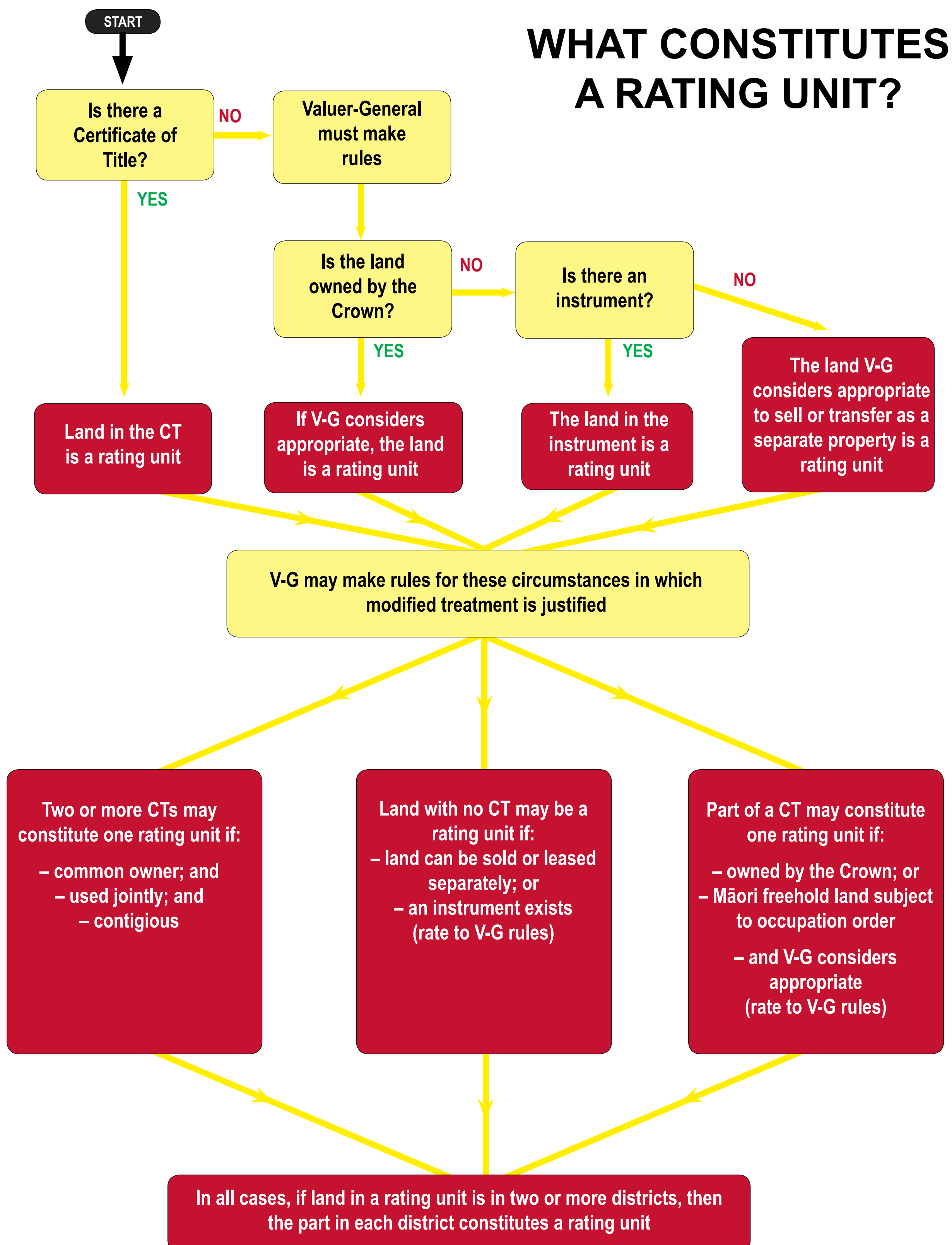
Where land is in two or more districts, the part in each district constitutes a separate rating unit.

The Valuer-General may also make rules that set out how valuers should determine *whether land with no CT* should be treated as a rating unit. This is somewhat murkier, and the rules take the form of a set of principles or criteria rather than tablets of stone.

Those rules must be consistent with the following principles:
If land is owned by the Crown, the rating unit is any land that the Valuer-General considers should be treated as if it is described in a certificate of title.
If land is not owned by the Crown, the rating unit is land described in any instrument registering or recording ownership of a piece of land (deed, Gazette notice, etc.) or, where there is no such instrument, whatever land could be sold or transferred as a separate rating unit.

Figure 1 overleaf shows schematically how to determine whether a rating unit exists.

Figure 1: Defining rating units



The role of the valuer

Your council will generally contract a valuation service provider (VSP) to determine, or help the council determine, what is and isn't a rating unit. Your VSP will also:

- value all the rating units
- prepare the other information on the district valuation roll (see Chapter Six)
- perform divisions of a rating unit (if your local authority wishes to exercise this power).

Although your local authority gets to appoint your VSP, that is the extent of the influence it can bring to bear on your VSP. The VSP is obliged to follow the rules, regulations and procedures, and meet the standards determined by the Valuer-General (the official who is responsible for administering the RVA and providing policy advice to the Government on rating issues).

Who is the ratepayer?

(Sections 10–12, LGRA)

Simply put, "the ratepayer" is the person who has the legal liability for the rates. For example, the ratepayer is the person you have legal recourse to if rates are unpaid.

The first, and most important, rule to grasp is that, generally, if the *owner* of the rating unit and the occupier of a rating unit are different people then it is the owner that is the ratepayer and bears responsibility for paying rates. To take a very simple example, if John Smith is a residential tenant on a rating unit owned by Jo Bloggs, it is generally Ms Bloggs who is the ratepayer and gets the bill.

From time to time you may encounter resistance from a landlord who finds themselves the ratepayer. He or she might argue that the "tenant hasn't paid the rent" or "the contract says they have to pay the rates[3]. Our advice in these instances is that this is not your local authority's concern, and that landlords cannot "contract out of" owner liability under the Rating Act (other than those that fall into the limited circumstances of section 11). Your recourse as a local authority is to the owner. What happens after that is a matter for them and the tenant.

There are exceptions to the presumption of owner liability.
The first, now probably rare, exception was intended as a transitional provision. A lessee (person who is leasing a rating unit from the owner) will be the ratepayer if, and only if:

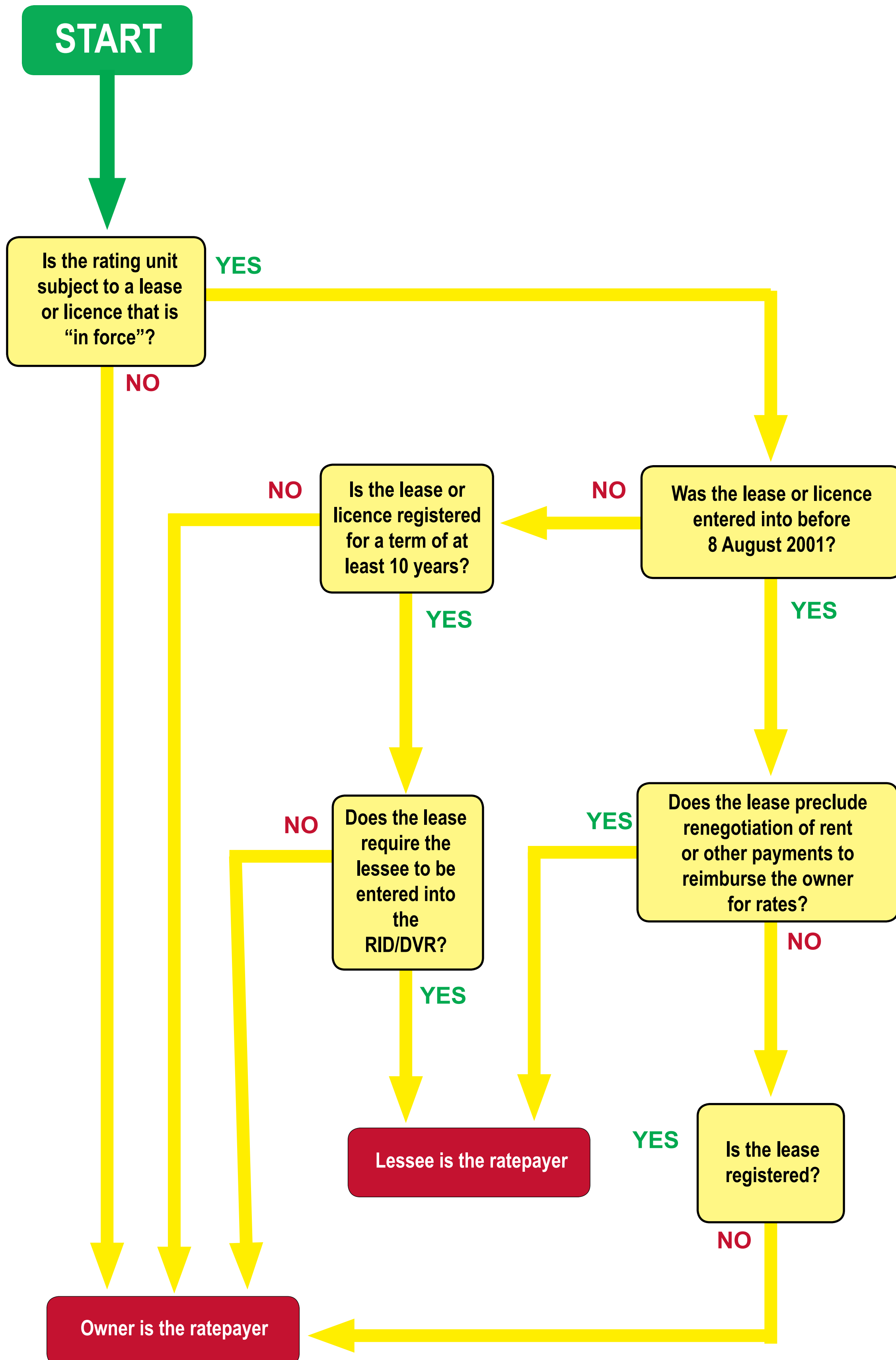
- the lease is for the whole of a rating unit
- the lease was signed before 8 August 2001
- the lease is still in force
- either the rent cannot be renegotiated or the lease is registered under section 115 of the Land Transfer Act 1952.

The second category applies to certain categories of lease where that lease:

- covers the whole of the rating unit
- is registered under section 115 of the Land Transfer Act 1952
- is for 10 years or more (including renewals)
- provides for the lessee to be entered as the ratepayer of the rating unit.

[3] A common case is where a landlord and tenant have signed the standard agreement form available through the Ministry of Business, Innovation and Employment. That form obliges the tenant to pay water rates where these are separate, but it cannot extinguish owner liability.

Figure 2: Determining ratepayers under the Rating Act



THINGS TO REMEMBER

The rating unit and ratepayer

The rating unit is the unit of liability – that is to say that once a rating unit exists, someone has a bill to pay.

Generally, establishment of a rating unit requires the existence of a separate certificate of title – though rules made by the Valuer-General allow for exceptions that establish land without a certificate of title as a rating unit, or combine more than one certificate of title into a rating unit.

Where the owner and the occupier are different people, the legal obligation to pay rates lies with the owner and it is to that person that your legal recourse generally lies (except in very specific circumstances).

3. NON-RATEABLE LAND

This section discusses the land that has a legal exemption, either wholly or partly, from paying rates.

This is an area of the Rating Act where a small difference in wording, or in an interpretation of the wording, can make a big difference to the end result. We recommend that you keep your copy of the Rating Act open to Schedule 1 as you read this section.

The last substantive review of categories of non-rateable land took place in 2001. At that time, the Government decided to retain the categories of non-rateable land in existence at that time. However, the Government also decided that generally non-rateable status should be defined on use, not ownership. For example, Crown land is not automatically exempt just because it is owned by, or used by, the Crown.

What does non-rateable mean?

(Sections 7–9, LGRA)

The term non-rateable is misleading, as many categories of non-rateable land pay some rates. Ratepayers on non-rateable land are to pay targeted rates if:

- those targeted rates are set solely for water supply, sewage disposal or refuse collection; and
- the local authority actually provides these services to the rating unit.

EXAMPLE 2

Upper Creek District Council sets three targeted rates. It sets a targeted rate for water supply of $350 per rating unit, a sewage disposal targeted rate of $250 per rating unit, and a works and services targeted rate (which funds roads, refuse collection, libraries and parks).

A new area school has been built in the town of Hideville and is connected to, or receiving, all of the services listed above. Which rates are the school be liable for?

The school is liable for the water supply rate and the sewage disposal rate. Each of these meets the Rating Act section 9 test.

On the other hand, the school would not be required to pay all or part of the works and services rate – though it is a targeted rate, it is not set solely for any of the services listed in section 9. The school is not even liable for the part of the rate that funds refuse collection.

What land is non-rateable?

(Schedule 1, LGRA)

The following is a summary of the main categories of land that are non-rateable *under the Rating Act*. In addition to the categories of non-rateable land listed in the Rating Act, there are some rating units that have exemptions provided for in their own legislation.

Conservation

The following land is non-rateable:

- national parks under the National Parks Act 1980
- reserves under the Reserves Act 1977
- conservation areas under the Conservation Act 1987
- a wildlife refuge, management reserve or sanctuary under the Wildlife Act 1953
- land vested in the Crown and forming part of a flood ponding area, any foreshore, the bed of the territorial sea, the bed of any navigable lake or river.

However, land that is used primarily or exclusively for private or commercial purposes under a lease, licence or other agreement is not exempt. This is important because it means that properties, such as the conservation estate used for grazing, are fully rateable.

Land owned by a society or association of people that is accessible to the general public, not used for private profit, and used for conservation or preservation purposes is also non-rateable. The Rating Act also specifies that the fact that a charge may be made for access to, or use of, the land does not constitute "private profit" if the proceeds from any charge are applied for the purposes of the society or association, and no profit is distributed to any individual.

This definition of "profit" also applies to the Sunday/Sabbath schools and burial facilities. As we'll see later, this is not necessarily the case with other exemptions.

Local authority land

Land used by local authorities is non-rateable if it is used for the following purposes:

- a public garden, reserve or children's playground
- for games and sports (except galloping races, harness or greyhound racing)
- a public hall, library, athenaeum, museum, art gallery, public bath, swimming bath or sanitary convenience
- soil conservation or river control, being land for which no revenue is received.

Most other local authority land is fully rateable. If your local authority considers that property it owns should not pay rates, it will have to either exclude them from liability (by category of property) or remit the rates. There should be a sound policy rationale for such a decision.

Heritage

Land owned or used by the following organisations, for the purpose of those organisations, is non-rateable:

- the Historic Places Trust
- the Queen Elizabeth the Second National Trust
- the Museum of New Zealand
- Children's Health Camps
- the Foundation for the Blind.

The land must be both owned or used by these organisations and used for their purposes.

A rating unit does not qualify for non-rateable status if it is owned but not used by any of these organisations, or if it is used by an organisation but that use is not for their purposes. The Supreme Court decision in *Royal New Zealand Foundation for the Blind vs Auckland City Council (2008)* held that a rating unit held solely to generate income is not being used for the purposes of that organisation, and is fully rateable.

EXAMPLE 3

Central Children's Health Camp owns a block of land that it intended to build extra accommodation on, but has shelved those plans. The land is a rating unit in its own right and has been leased to Fred's Dairy Company, which grazes stock on the land. The income received is used to fund additional places in the Children's Health Camp's programmes. Is the block of land non-rateable?

The land is fully rateable. This is a similar case to the Foundation for the Blind case in that the rating unit, while owned by the Children's Health Camp, is used by Fred's Dairy Company (the fact that the income the Children's Health Camp receives subsidises additional places in the Children's Health Camp's programme is not relevant in this instance).

Health

Land owned or used by a district health board for the purposes of providing health and related services is non-rateable.

This includes living accommodation for hospital purposes, such as a nursing hostel, and includes child welfare homes.

Cemeteries and crematoria

All cemeteries, crematoria and burial grounds that do not exceed two hectares in area are non-rateable. Those used for private profit are fully rateable.

For example, a cemetery that is 2.5 hectares in area is fully rateable on 0.5 hectares and on all rates for sewage disposal, waste management and water supply (if the cemetery is connected to or receiving the service). This treatment applies to all of the area related restrictions, for example charitable institutions, certain Māori land, etc.

Education

The following categories of educational establishments are non-rateable:

- state and state-integrated schools
- private schools registered under section 35A of the Education Act 1989 that do not operate for profit (you are entitled to ask for evidence of their registration and that they are not operating for profit)
- special institutions as defined by section 92(1) of the Education Act 1989
- early childhood centres[4] that do not operate for profit
- polytechnics, colleges of teacher education, universities and w nanga (these qualify for non-rateable status by virtue of being "institutions under section 159 of the Education Act 1989"), but most private tertiary providers are fully rateable.

[4] Section 308(1) of the Education Act 1989 states that an early childhood centre is any premises used exclusively, mainly or regularly for the education or care of three or more children under the age of 6 by the day or part of a day, and not for a continuous period of more than 7 days.

So-called "school houses" are also included within the scope of this exemption. A residential rating unit that is owned by a school, used solely or predominantly as residential accommodation for any principal, teacher or caretaker, and let at a discounted or subsidised rent is captured by this exemption. The residential rating unit does not have to be on the same site as the school, nor needs to be contiguous to the school.

Religious institutions

Land that is used solely or principally as a place of religious worship, or for a Sunday/Sabbath school or other religious education, is non-rateable[5]. The exemption does not apply to any religious education carried out for private profit.

Māori land

The following categories of Māori land are non-rateable:

- Māori customary land
- Māori burial grounds
- land set aside under section 338 of the Te Ture Whenua Māori Act 1993 that is used as a marae or meeting place and does not exceed two hectares, or is a Māori reservation under section 340 of that Act
- Māori freehold land that does not exceed two hectares and on which a Māori meeting house is erected
- Māori freehold land subject to exemption under section 116 (see the section on Māori freehold land rating).

Transport

Transportation networks are generally not rateable. This includes:

- land owned by the Crown or by a local authority and that is formed and used for a road, limited access road, access way or service lane (the exemption does not apply to privately owned roads)
- land owned by the Crown or any airport authority that is within the operational area of an aerodrome, and is used solely or principally for the landing, movement or departure of aircraft, or solely or principally for the loading and unloading of goods and passengers
- land owned by the New Zealand Railways Corporation or a railway operator that is part of the permanent way of a railway line[6] or used solely or principally for the loading and unloading of goods and passengers (this exemption applies to all railway operators whether privately owned or not)
- land used as a wharf (the exemption does not apply to any wharf used primarily or exclusively for private recreational or personal transport purposes) – for the purposes of the Rating Act a "wharf" is defined as a quay, pier, jetty or other land on which passengers or goods are loaded and unloaded from vessels.

The latter three exemptions do not apply to land that is used for administrative purposes, or to land that is used for parking, storage, freight or machinery, maintenance, cleaning, passenger waiting, freight consolidation, or ticketing.

---

[5] Land used for religious education is liable for rates if it exceeds 1.5 hectares in area, but only to the degree that the rating unit exceeds 1.5 hectares.

[6] The definition of railway line is from the New Zealand Railways Corporation Act 1981 and includes the rails and all land within three metres of a line drawn between the middle of the rails.

Institutions providing free maintenance or relief of persons in need

Land used or occupied by an institution (up to 1.5 hectares in any one institution) that is carried on for the free maintenance or relief of persons in need is deemed to be non-rateable.

The notes to this schedule provide further guidance on when an institution must be treated as being carried on for the free maintenance or relief of persons in need.

Persons in need are "persons in New Zealand who need care support and assistance because they are orphaned, aged, infirm, disabled, sick or needy".

Whether an institution meets this definition should be determined from the institution's policies about admission, rather than its historical practice, or whether the whole institution is carried out for that purpose.

Contrary to popular belief, there is no requirement that the institution provide residential care.

Machinery

Machinery is also non-rateable, regardless of whether it is fixed to the soil or not.

Hydroelectric dams are subject to a qualification that exempts only the turbines, generator and associated equipment through which the electricity produced by the generator actually passes.

Fifty percent non-rateable

(Schedule 1, LGRA)

The Rating Act creates a second list of properties for which rates must not exceed 50 percent of what they would otherwise have been. The list of properties in this category is shown in Part 2 of Schedule 1 and includes:

- land owned or used by a society incorporated under the Agricultural and Pastoral Societies Act 1908 and used as a showgrounds or as a place of meeting
- land owned or used by a society or association of persons (whether incorporated or not) for games or sports except for galloping, harness or greyhound racing
- land owned or used by a society or association of persons (whether incorporated or not) for any branch of the arts (note that "the arts" is not defined).

These exemptions only apply where the land is not being used for the private pecuniary profit of members of the association, and specifically exclude any premises which have a club licence under the Sale and Supply of Alcohol Act 2012. So, for example, the grounds of a golf club might well qualify for "50 percent non-rateable" status but the clubhouse itself would not if it had a liquor licence.

This is a cap on the level of rates that a local authority can charge. In effect, the local authority has to work out the level of rates that "would have" been payable and then charge no more than 50 percent of that amount.

The land is fully liable for any targeted rate made for the purpose of sewage disposal, water supply or waste management where the local authority provides those services to the rating unit.

EXAMPLE 4

The Upper Creek Badminton Club is a society of people which owns a small rating unit which is used for nightly matches, and for no other purpose. The rating unit itself has a capital value of $100,000 and is connected to the town water and sewage disposal networks.

The local council, Kiwi District Council, levies a general rate of 0.3 cents in the dollar of capital value, a targeted roading rate of 0.1 cents in the dollar of capital value, a targeted sewage disposal rate of $110 per separately used or inhabited part of a rating unit, and a targeted water supply rate of $100 per separately used or inhabited part of a rating unit.

What should the club be paying in rates?

The club is fully liable for all targeted rates for water supply and sewage disposal, so it is therefore liable for all of the sewage disposal and water supply rates.

But it is also liable for 50 percent of each of the general rate and the targeted roading rate. The council calculates the "normal" rates as $300 for the general rate and $100 for roading rate. Half these amounts is $200.

The club should therefore be paying $410 in rates.

Changes in rateable status

Properties move into and out of rateable status all the time. What happens if a rating unit use changes (for example, if a school house is let to a doctor from 15 July)?

The rating information database is prepared as at 1 July and changes during the year do not have effect until the following year. Thus, if a rating unit moves into the non-rateable category during the year it remains rateable, and the same applies if a rating unit changes from non-rateable to rateable.

The principle also applies for other changes, such as changes in differential categories or subdivision. It also applies to connections to water and sewage during the year.

THINGS TO REMEMBER

Non-rateable land

Even non-rateable land is liable for targeted rates for water supply, sewage disposal and waste management if your local authority provides those services to the rating unit.

Conservation land that is used primarily or exclusively for a rateable purpose (such as a grazing permit on the conservation estate) is fully rateable.

All schools, whether public or private are non-rateable, other than private schools operated for profit.

Distribution networks (for example, telecommunications and energy networks) are fully rateable. The operational areas of transport networks (such as the rail corridor and the runway of an airport) are non-rateable, but areas used for administration, ticketing, etc are fully rateable.

A rating unit that is 50 percent non-rateable is liable for all targeted rates for water supply, sewage disposal and waste management, where the rating unit receives those services, and is liable for 50 percent of all other rates assessable on the rating unit.

Land used for a charitable purpose is non-rateable if the charity is providing free maintenance or relief to people in need.

A rating unit's rateable/non-rateable status at 30 June is its status for the year and cannot be changed until the following year, i.e. a rating unit that is non-rateable on 30 June must be treated as non-rateable for the following year.

4. RATING TOOLS

This chapter discusses the rating and pricing tools that are available to local authorities under the Rating Act. This chapter is in two parts: the first discusses the tools themselves and the limits on their use (where these exist) and the second provides examples of where these tools might work best.

Unless stated otherwise, all the tools in the Rating Act are available to all local authorities – that is to say that a tool that is available to a territorial authority is also available to a regional council (and vice versa) in almost all cases.

General rates

(Sections 13–15 and Schedule 2, LGRA)

General rates are used in cases where:

- your local authority thinks the community as a whole should pay for a service (having first undertaken the processes of section 101(3) of the Local Government Act)
- there is little or no benefit from, or too much cost involved in, funding the activity separately from others.

Local authorities have access to two types of rating tools that fit this description:
a value based general rate – that is to say a rate that is calculated per dollar of rating unit value
a uniform annual general charge (or UAGC) – a fixed dollar amount irrespective of rating unit value.

Value based general rates

(Sections 13 and 14, and Schedule 2, LGRA)

Local authorities have the choice of three valuation bases (systems) for the general rate. Your local authority could use one of:

- the land value – the value of the land without improvements
- the capital value – the value of the land and improvements
- the annual value – either five percent of the capital value or the value the rating unit would fetch if it were rented (whichever is the greater). At the time of writing (August 2013), no local authority uses annual value as a basis for the general rate (or, in fact, any targeted rates).

Combinations of bases, such as 50 percent land value and 50 percent capital, are not permitted for a general rate (though combinations could be used for a targeted rate).

There is no legally set cap on the value based general rate (either on the maximum rate in the dollar or maximum amount that can be raised from the value based general rate or on an individual rating unit).
The value based general rate can be set either as a uniform rate per dollar of rating unit value, or at different rates in the dollar for different categories of rateable rating unit.

Your choice of ways to categorise rating units is limited to those matters listed in Schedule 2 (and only those in Schedule 2):

- the value of the rating unit (either land, annual or capital)

- the location of the rating unit
- the use to which the rating unit is put, for example residential or commercial land
- the provision or availability of a service by, or on behalf of, a local authority[7]
- any activities that are permitted, controlled or discretionary for the area in which land is subject under an operative district or regional plan under the Resource Management Act 1991
- any activities that are proposed to be permitted, controlled or discretionary for the area in which land is subject under a proposed district or regional plan if there are no "live" submissions in opposition to those proposed activities.

Where you elect to set a rate differentially, your categories (defined by reference to one or more of these matters) and the objectives for the differentiation (that is to say, how the rates in the dollar will vary for each category) must be clearly explained in your council's funding impact statement (either as a total amount of revenue sought from each category or some statement of the relationship between the rates on different categories).
The power to use differential rates is not something that should be used arbitrarily or to excess. SOLGM generally advises local authorities to consider differentials on a general rate in circumstances where there are differences in:

- *levels of service* – if one group receives a higher level of service, or a higher share of benefits, then it should be charged more (this is one of the main reasons that section 101(3) of the Local Government Act 2002 requires a consideration of benefit)
- *willingness to pay* – if one group is willing to pay more than another group, your council might determine that that group should pay a higher proportion
- *cost* – if the cost of providing a service to one group is higher than for others, they should pay more.

We also suggest that if differences between categories of ratepayer are so great that differentials are justified, then there may be a case for using one or more targeted rates.

There is a history of courts in this country reviewing and occasionally overturning rating decisions on administrative law grounds. These are typically described as decisions that have been made while not taking relevant factors into account, taking irrelevant factors into account or where the final decision is unreasonable. Case law describes the term unreasonable as requiring something "perverse", "irrational", "outrageous in its defiance of logic" or "so unreasonable that no reasonable council would have contemplated it".

[7] Note that this variable has three states: the service is provided; the service could be provided – that is to say the service is available but is not currently being provided; or is not provided.

CASE STUDY 1

A successful challenge to a differential rate:
Electricity Corporation of New Zealand vs Mackenzie District Council (1991)

In 1988, the delivery of electricity was moved into a state-owned enterprise (the plaintiff, Electricity Corporation of New Zealand or ECNZ) and its properties became fully rateable. ECNZ owned a number of hydroelectric dams – including three within the Mackenzie District Council.

Hydroelectric dams have an extremely high capital value – even with the exemptions described in the previous section. At the time, Mackenzie District Council set its rates using capital value with no differentials whatsoever, i.e. all rating units in the district paid the same rate in the dollar regardless of use or location. The effect of the sudden change in the rateable status was that ECNZ's dams became liable for around three quarters of the total rate take in the district.

At the same time, Mackenzie District Council made a procedural error in setting its rates. The council set its rates in advance of determining what its expenditure needs were. In effect the council had set the rate, noted it would be left with a surplus and decided it would (unlawfully) make supplementary estimates. This aspect alone probably would have been enough to invalidate the rates.

ECNZ took Mackenzie District Council to the High Court arguing that the degree of mismatch between the rates that would be levied and any benefit it received was so unreasonable that the council should have adopted a differential in ECNZ's favour.

The Court of Appeal held that:

- local authorities are an administrative body and courts have jurisdiction to investigate and overturn decisions on administrative law grounds
- the council failed to follow the statutory processes in that it rated for an unallocated surplus
- the council failed to consider whether there were appropriate other bases it could have used for rate-setting
- the rates set by Mackenzie District Council in respect of the hydroelectric dams bore practically no relationship to the degree of benefit that these properties would enjoy from council services. Although the linkage between rates payable and degree of benefit under the Rating Powers Act 1988 did not contemplate exact and direct relationships between the two, the difference between the rates payable and benefit was so extreme that the Court considered the level of rates unreasonable.

CASE STUDY 2

Woolworths and Others vs Wellington City Council (1996)

In a subsequent case, Woolworths and Others vs Wellington City Council (1996), the Court of Appeal reiterated its position. Wellington City Council was appealing a High Court decision striking down their commercial differential.

At the time, Wellington City Council had a policy of collecting 66 percent of their total rate-take from commercial property. A recent revaluation had seen a significant swing of commercial rates from the CBD to suburban properties. The respondents were all shop owners in a single mall that had experienced significant increases in their rates.

The Court of Appeal upheld the appeal, ruling that:

- the rating legislation has been designed in such a way as not to require any clear and direct correspondence between rates and levels of benefit received[8]
- local authorities have a wide discretion in the design of funding systems and can apply anything ranging from something akin to a taxation system to systems closer in spirit to user pays
- decisions of this nature should be made "in the round" by those elected to make such judgements and courts should intervene only in cases of error of law, or clear and extreme unreasonableness
- benefit does not lend itself to objective, accurate determination – indeed there is no uniform technical answer as to whether a particular service generates benefits of a public or private nature.

Uniform annual general charges

(Section 15, LGRA)

A uniform annual general charge (or UAGC) is a fixed dollar amount on every rating unit, irrespective of the value of the rating unit.

The UAGC may be set as a fixed charge per rating unit or as a fixed charge per separately used or inhabited part of a rating unit (commonly referred to as a SUIP). For example, your local authority could use the power to assess UAGCs on separately used or inhabited parts of a rating unit to assess a UAGC on each flat in a block of flats.

There is no legal definition of the term "separately used or inhabited". If you want to assess UAGCs on a "per SUIP" basis, you must define the term SUIP and include the definition of the term SUIP in your funding impact statement for the year.

There is no single "one size fits all" definition of a SUIP. A good definition:

- would address the circumstances giving rise to separate use or inhabitation (for example, by the owner or other person by virtue of a lease, licence, etc)

[8] In his judgment in the case, Richardson P held that "it is implicit in the scheme of the legislation that the rating system in all its diversity remains primarily a taxation system and not a system inherently based upon a principle of user pays …".

- might include features of separate use or inhabitation (such as separate access, or separate bathroom or kitchen facilities), some of which may require some consideration of unique local factors.

The UAGC is treated as a fixed charge for the purposes of the limits given in section 21.

Targeted rates

(Sections 16–19 and schedules 2 and 3, LGRA)

A targeted rate is a rate that is set to fund a particular activity or group of activities, and may be set and assessed on a particular category or categories of rating units. Your local authority would be more likely to set and assess a targeted rate where it believes:

- there is some benefit to funding the service separately from others and separately funding it in this way carries little or no transaction cost
- some categories of ratepayer should not pay the rate or that some categories should pay a different amount to others.

A local authority may set:

- a targeted rate for more than one activity (and these activities need not be related) – for example a council could set a targeted rate to fund roads and parks combined
- more than one targeted rate for a single activity – for example where local authorities have different water schemes they might use a targeted rate to fund each scheme.

Your local authority can set its targeted rates differentially, provided it uses one of the matters in Schedule 2 (and only from Schedule 2) as the basis for defining the categories.

The set of factors available for use as a basis for determining liability for targeted rates is far wider than is the case for general rates. These factors are listed in Schedule 3 and include:

- rating unit values (land, capital, annual or improvement[9] values)
- land area (either the total area of land in the rating unit; the area of land that is sealed, paved or built on; the area of land protected by any facility or amenity provided by a local authority; the area of floor space of buildings within a rating unit)
- the number of, or nature of, connections from the rating unit to any reticulation system
- the number of water closets and urinals in a rating unit (although a rating unit used primarily as a residence for a single household must be treated as having only one water closet or urinal)
- the number of separately used or inhabited parts of the rating unit (provided you have the appropriate disclosures in your funding impact statement, your local authority may set some targeted rates on a "one per SUIP" basis and others on a "one per rating unit" basis – your local authority could even have different definitions of SUIP for different targeted rates)
- the extent of provision of any service to the rating unit by the local authority (subject to a rider that the extent of provision must be measured objectively and be able to be verified) – it is important to note that where a rating unit is connected to a service during the year, there is no authority to start rating them until the following year if the rate is set per connection
- per rating unit.

[9] The Rating Act defines improvement values as the capital value of the rating unit minus the land value.

It is important to clearly distinguish between matters from Schedule 2 and factors from Schedule 3 – the two are not interchangeable. The best way to distinguish the two is that:

- Schedule 2 matters are used to determine which ratepayers pay and which do not
- Schedule 3 factors are used to determine how and what amounts ratepayers will pay.

Only those factors from Schedule 3 can be used to calculate a targeted rate – for example, your local authority cannot set rates on the number of people who inhabit a rating unit.

Unlike general rates, your local authority may use combinations of these factors to set a rate – for example, a rate that is based 50 percent on capital value and 50 percent on land area.

Your local authority could also use different bases for different categories under the same targeted rate – for example, a rate based on capital value for businesses and land area for residential rating units.

Your choice of Schedule 2 matters and Schedule 3 factors must be disclosed in your council's funding impact statement. It should be clear to readers what matters and factors are being used.

Water metering

(Section 19, LGRA)

The Rating Act contains a specific power allowing local authorities to use water metering as the basis for charging for water supply. This power is legally regarded as a targeted rate if set under the authority of section 19 of the Rating Act. Local authorities have to include these charges in the funding impact statement along with other rating requirements.

These charges may be calculated as a fixed charge per unit of water supplied or according to a scale of charges.

This power applies to water supply only. Water consumption cannot be used as a means of charging for other services such as sewage disposal.

Sections 46(4) and 46(5) allow a local authority to deliver a separate invoice for any targeted rate provided that invoice has all of the information that a rates invoice has to show, and the invoice states the targeted rate it applies to and the period. This will most commonly be used with water metering.

Lump sum contributions

(Sections 117A-N and Schedule 3A, LGRA)

Part 4A of the Rating Act gives local authorities the right to offer lump sum contributions (LSC) to ratepayers as a funding option for payment of targeted rates. Legally speaking, an LSC is not a rate in and of itself. Essentially an LSC is a prepayment of the rates that a ratepayer would expect to pay as the ratepayer's "share" of the cost of a particular capital project.

LSCs are not available as an alternative to the general rate, and they can only be used to fund the capital costs of identified projects (including loan repayments). An LSC cannot be offered in respect of an operating cost.

Local authorities cannot require ratepayers to make an LSC. The Rating Act refers to the choice to

make a lump sum contribution as an election. Once an election is made, it cannot be rescinded, and liability goes with the land (if a rating unit with an unpaid LSC is sold or transferred, the liability moves to the new ratepayer even though they did not make the election).

How would your local authority offer ratepayers the right to make an election?

Your local authority would first identify the capital project or work for which it wants to offer LSCs. It would then prepare a capital project funding plan – a plan that describes how your local authority plans to fund an identified capital work or project, details about the project and how LSCs align with other funding sources.

Schedule 3A lists the matters that must be included in a capital project funding plan. These include:

- identification of the capital project
- the proposed start date
- the total estimated cost, and estimated amounts to be funded out of LSCs and targeted rates
- details of the targeted rate (the number and categories of rating units liable for the rate; details of how the rate will be calculated)
- details of the calculation of the LSC, the due date or dates for the payment of the LSCs, the targeted rates that the LSC will replace (and any that will remain in force even if an LSC is made)
- the date on which the project will be completed, the total costs known and the date on which the LSC will be recalculated (if that is to happen)
- if recalculation is planned, what factors would give rise to a recalculation, how it will be made, and how any refunds or further contributions will be made
- a date of expiration for the plan.

Once your local authority has adopted a capital project funding plan, it is bound to follow it. There are no provisions that allow for amendment of a plan. The project cannot be funded in any other way.

Your funding impact statement must disclose those targeted rates where your local authority offers the LSC option. Your rates resolution must also state clearly if LSCs are an option for targeted rates.

Having adopted a plan, your local authority then makes an invitation to the affected ratepayers to make an election. The invitation basically states the conditions that will apply to the LSC. Part 2 of Schedule 3A lists the requirements for an invitation, which are similar to the capital funding project plan, plus describes the consequences of making an election.

Once ratepayers have made their election, your local authority may invoice. Details of the election must be recorded on your rating information database and rates records.

Your local authority may, if the capital project funding plan and invitation allow, make one recalculation of the LSC, provided that the conditions specified in these documents have been fulfilled. If any ratepayer's liability changes as a result of the recalculation, then your local authority must either refund the difference or invoice for the excess within a month of the recalculation.

The LSC regime is detailed and highly prescribed to provide the basis for enforcing the elections to pay different amounts for a particular capital work over different time periods, but with the legal force of rates. There is the option of simpler but less well prescribed arrangements in reliance on the policies for early payment in sections 55 and 56 of the Rating Act.

Limitations on rates

The Rating Act contains relatively few limitations on the use of rating tools. These include:
- special provisions for rating units in common ownership
- the 30 percent cap
- rating of defence land.

Rating units in common ownership

(Section 20, LGRA)

Two or more rating units that are:
- owned by the same person, and
- used jointly as a single rating unit, and
- contiguous or separated only by a road, railway, drain, water race, river or stream
- must be treated as one for the setting and assessment of rates.

This provision has most relevance for the setting of the UAGC and targeted rates. This provision means that two or more rating units that meet this test are charged only the one UAGC, or one targeted rate set as a fixed amount per rating unit.

EXAMPLE 5

Consider the Upper Creek Farm example from Chapter Two (Example 1). Suppose the council has set and assessed a UAGC. Would the rule around rating units in common ownership apply in this case?

Upper Creek Farms is an example of a group of rating units that would not qualify for relief under this provision. The rating units are contiguous, and are being used jointly as a single rating unit. However, one is owned by Mr B Smith, one by Mr F Smith and one by the Smith Family Trust. They are therefore not in common ownership, so each rating unit would be liable for a UAGC.

Should your local authority consider this inequitable, it would need to adopt a rates remission policy (see Chapter Five).

The 30 percent cap

(Section 21, LGRA)

This is the most significant of the limits on rates, although it does not so much affect the amount of revenue that can be raised as it does the distribution of rates between different categories of rating units.

The 30 percent cap is a limit on a local authority's ability to raise revenue from fixed rates, including:
- any UAGC, and
- any targeted rate that is calculated as a uniform fixed amount per rating unit or separately used or inhabited part of a rating unit (and which is not used solely for water supply or sewage disposal).

In any one year, a local authority may not collect more than 30 percent of its *total rates revenue* by way of these charges.

EXAMPLE 6

The Upper Creek District Council collects $30 million in rates revenue in the 2012/13 financial year. Included within this were the following fixed rates:
a UAGC that collected $5 million in rate revenue
a targeted rate set as a fixed amount per rating unit for refuse collection that collected $1 million in rate revenue
a targeted rate set as a fixed amount per rating unit for water supply that collected $3 million in rate revenue
a targeted rate set as a fixed amount per rating unit for sewage disposal that collected $3 million in rate revenue.

A mayoral candidate claims council breached the 30 percent cap. Is this correct?

No. While the council collected $12 million from fixed rates in this financial year (or 40 percent of its rate revenue), it has not breached the cap. The fixed targeted rates for water and sewage disposal are excluded from the calculation, leaving the UAGC and fixed rate for refuse collection. The council therefore collected $6 million in rates that qualify for section 21 (or 20 percent of its total rate revenue).

Fixed rates are seen as regressive (that is to say, that a fixed rate takes more of lower income earners' incomes than higher income earners').

The definition of fixed amount per rating unit does not include targeted rates where different categories of rating unit are assessed on different levels of fixed charge. For example, a fixed charge of $100 per rating unit on residential units, and $105 per unit on commercial units would <u>not</u> be included in the section 21 calculation.

EXAMPLE 7

Suppose that, in addition to the facts in the above example, the Upper Creek District Council has also assessed a fixed rate for community services that is $100 for all rating units in the townships of Hideville and Carterburg, and $50 for all other rating units. This rate collected $3.2 million in the 2012/13 rating year. Would the aspiring mayor's claim of a breach be correct in this instance?

No. The community services rate has been set differentially – that is to say that the two townships are paying a higher rate than the rest of the district. This rate does not qualify for the purposes of section 21.

The inclusion or exclusion of rates from the section 21 cap is not always clear or intuitive. We strongly recommend that local authorities take legal advice on these matters at the time they have their funding impact statements reviewed.

EXAMPLE 8

Upper Creek District Council is contemplating introducing a new fixed rate for the Hideville Stadium. The rate will be set as $50 per separately used or inhabited part of a rating unit, and assessed on all rating units situated within a 50-mile radius of Hideville Stadium. All other rating units will be excluded. The revenue manager thinks this falls within the scope of the section 21 cap. Is she right?

Yes. The key here is that the rate is uniform in that all ratepayers who are liable for the rate will pay the same amount. The exclusion of some ratepayers from liability for the rate is irrelevant for the purposes of section 21.

Defence rates

(Section 22, LGRA)

The total amount of rates assessed on any rating unit used by the Crown as an air force base, army camp, naval establishment or other defence area (as defined by section 2(1) of the Defence Act 1990) must not exceed the amount of rates that would have been assessed if the rate had been calculated on land value.

Some examples of the tools in action

AUTHOR'S NOTE

The examples presented in this section are purely hypothetical and are in no way presented as "the right answer" to any of the issues described. Although some closely resemble actual solutions that local authorities are facing, they are written for purely illustrative purposes.

EXAMPLE 9:

Using rating as a tool to support other policy initiatives

Central Regional Council has a number of initiatives in place to improve air quality. It has passed a bylaw banning household fires as a means of generating heat. The council recognises that some low income earners may not be able to afford the capital cost of removing open fires and installing other "clean heat" options. It has therefore started a scheme whereby the council loans money to the rating unit owner. The council was concerned about potential non-payment and wants a greater degree of security over-payment. Is there a rating option that could help?

Yes there is. The council could set a targeted rate on all properties whose owners have taken up the scheme using matter number five from Schedule 2 of the Rating Act – the provision or availability of a service as the basis for differentiating between these and other properties.

As this is to repay a loan, probably the only factor available to the council is the extent of provision

of the service (in this case the value of the loan). The council would set the annual rate as a percentage of the cost of the loan. For example, if the loan was for five years, each year's rate would be equivalent to 20 percent of the cost. As a rate, the council has all of the mechanisms available for recovery of rates available to it. Councils that operate these schemes tend to get the ratepayer to sign an agreement, and record details of the scheme on Land Information Memoranda (as well as the rating information database and rates records).

This is an example of what is often referred to as a *voluntary targeted rate*. It is voluntary in the sense that the ratepayer has triggered their own liability by entering into the scheme. Local authorities contemplating them should take advice on the application of consumer protection law, credit law and the Goods and Services Tax Act 1985.

Although the rate is "voluntary", you should still follow all of the legal requirements for setting and assessing rates – don't forget that properties are sold, and that a new owner who did not agree to the rate might look for errors or omissions in rate-setting.

EXAMPLE 10

Targeted rating and water supply

At the 2013 elections, three councillors from the Friends of the Environment League (FEL) stood successfully for council. One of their key policies was the implementation of water conservation policies. The adoption of metering is under discussion. Other councillors have argued that:

(a) the residents of Upper Creek strongly oppose the introduction of user pays
(b) sixty percent of water use is actually by commercial and industrial users, and
(c) the rural parts of the district don't receive water supply.

How could a targeted rate scheme be designed to encourage water conservation while taking these points into account?

Concern (c) is most easily dealt with. The council could adopt a differential based on location (that is to say, it would define an area or areas it considers are served by the scheme and then exempt those outside the area). Or it could use provision or availability of a scheme as the basis for a differential. Or it could use both.

Remember that your local authority can use different factors as the basis for calculating rates on different categories of rating unit.

In a case such as this, it is quite common for local authorities to adopt two targeted rates for water supply with different methods for calculating rates. For example, the council in this case might construct a differential based on land use (from Schedule 2) to establish two categories. The first would be for property categorised as commercial/industrial and use water metering under section 19. The second category would be for all other property and might be a fixed charge per rating unit, per SUIP or even per connection.

EXAMPLE 11

Rating for tourism facilities and promotion

Carterburg is a town in the Upper Creek District Council. This township is situated on a State Highway approximately halfway between the metropolitan centre (Bigg City) and a popular “tourist town” in the Weka District Council.

Upper Creek District Council has long been concerned that tourist buses stop in Carterburg to allow drivers to take lunch breaks and for tourists to take a comfort stop at the public toilets. While resting, it is common for the tourists to walk through town visiting various lunch bars, souvenir shops, etc. The council has considered and previously rejected the option of pay toilets as being unfair on residents. When completing its last revenue and financing policy, it decided that the provision of public toilets and other facilities were in part a public good (benefiting the whole community) and thus would be part funded by the general rate. But what about the remainder?

Upper Creek District Council is undertaking a major tourism promotion campaign to remind visitors about the natural wonders and recreational opportunities that its main township, Carterburg, provides. The council considers that the benefits of this accrue mainly to the commercial sector, especially the accommodation sector. How might it use the targeted rating powers?

Upper Creek District Council might approach its particular issue by using the Schedule 2 powers to differentiate based on location and create a “Carterburg Main Street Rate” to fund part of the activity.

The council could use a targeted rate for tourism promotion. Using the matters in Schedule 2, it could resolve to employ rating unit use as a basis of differentiation and assess this rate only on commercial rating units. If it desired, it could segment this into different types of commercial use (for example, accommodation, retail, industrial, etc).

An obvious factor to use for calculating the rate might be capital, improvement or even annual value (thus recognising intensity of use). Alternatively, if the council knew that these properties were situated in one part of Carterburg, it could use the power to differentiate on location, and exclude all properties outside a particular area.

EXAMPLE 12

Catchment rating

Central Regional Council operates a very large catchment control scheme – the Huia River Scheme. The scheme runs across parts of the Kurikuri and Takahe District Councils, and also protects the large metropolitan Kakapo City Council.

In the past the scheme was based on classification lists. Central Regional Council is aware that these sections have been repealed. Although the power to set rates based on classifications has been "saved" in the Rating Act, the council has decided that the classification schemes cost too much to maintain and wants to replace the lists with some form of differential scheme.

When the council last reviewed its revenue and financing policy, it took the view that rates based on rating unit value are a fair means of charging for flood protection in urban areas, and rates based on land area are a fair means of charging in rural areas. Under the Rating Powers Act, it found that rating in this way was, at the very least, problematic.

In one particular part of the Takahe District Council, the Huia River runs through a rural river valley, the Swallow Valley, which has a large number of river terraces that are well above the level of the river. Farmers in the Swallow Valley have argued for years that rates based on land area result in them being "overcharged" as significant parts of their properties are not really protected.

The revenue manager has been asked to develop a proposal for a new rating system that takes all of these issues into account.

Section 18(3) of the Rating Act allows local authorities making a targeted rate on a differential basis to use different factors for different categories of rating units. In Central's case, this means that the council could develop a differential rate based on location (from Schedule 2), with a rate based on capital value in some areas, and land area in others.

Local authorities can be very specific in their definitions of properties by location. For example, the council might decide that the entire Kakapo City Council is on the flood plain and should pay a targeted rate, but provide a narrower definition of the parts of the Kurikuri and Takahe District Councils that pay the rates. In this case, the council could decide to create a special area called the Huia Flood Plain (which takes in the entire Kakapo City and the parts of the Kurikuri and Takahe Districts) by drawing lines on a map and clearly disclosing that in the funding impact statement. The Huia Flood Plain is split into two areas – "Kakapo" and "Non-Kakapo" to allow the council to use capital values in Kakapo City and land area elsewhere.

The particular issues in the Swallow Valley can be resolved by defining a particular area of benefit and making the rates on that category of rating unit on the basis of the area of land protected.

Based on many years working with the old classification lists, the revenue manager is well aware that some properties by the nature of their land use contribute more than others. This can be reflected by adopting a multi-layered differential that not only differentiates by location but also by use.

A concluding remark about targeted rates

The targeted rating mechanism is potentially a very powerful tool that can be used to solve a variety of rating issues. However, targeted rates are, for the most part, a means of allocating the incidence of rates in a manner that the council deems to be more equitable. As a general rule, targeted rates are not a means for "tapping" previously unexplored pockets of rating potential.

THINGS TO REMEMBER

Rating tools

Any local authority can set and assess any of the rates empowered by the Rating Act.

Local authorities may use any one of land value, capital value or annual value as the basis for setting its general rate. Combinations of valuation base are not permitted for the general rate.

Your local authority can set its general rate differentially but must use one of the matters in Schedule 2 as the basis for defining the categories.

Your local authority may use targeted rates to fund any identified activity or activities. Targeted rates can be set and assessed using any of the factors from Schedule 3 or as a fixed charge per rating unit or separately used or inhabited part. You may use combinations of bases if you wish. Your choice of factor(s) must be included in your funding impact statement.

A targeted rate may be set differentially. If you differentiate, the matters from Schedule 2 are your basis for differentiation.

It's important not to muddle the Schedule 2 matters and the Schedule 3 factors – if in doubt remember the matters determine who pays (or doesn't) and the factors determine how they pay.

There is a limit on fixed rates – that is to say the UAGC and any rate charged as a fixed dollar amount per rating unit (or part) on all rating units within the district. You may not raise more than 30 percent of your total rates revenue in this way – though rates for sewage disposal and water supply are excluded.

Your local authority can use metering as the basis for a targeted rate for water supply.

5. REMISSIONS, POSTPONEMENTS AND RATES REBATES

This chapter discusses the powers that local authorities have to "waive" payment of rates on general land (Māori freehold land is a special subset which will be covered in Chapter Eight). We also touch briefly on the Rates Rebate Act as a state funded remission of rates.

A remission of rates involves the local authority permanently foregoing payment of all or part of any rates it is lawfully owed. Postponement of rates involves the delaying or deferral of payment of rates until either a specified time or a specified event occurs, such as the death of the ratepayer or alienation of the rating unit.

We will use the term *waive* or *waiver* as a shorthand term for remission and postponement of rates together.

All local authorities have the power to make policies allowing for waivers of any amount of rates, on any rating unit, for any reason. There are no mandatory requirements to waive rates, nor any statutory limitations on what waivers your local authority might put in a policy (other than the general requirement to manage all financial dealings prudently).

In effect, your local authority is able to set its own rules for waivers. It does this by adopting each of a remission and postponement policy, following the special consultative procedures of the Local Government Act 2002. Each of these policies is entirely optional, but your local authority may only waive rates in accordance with its policies. Foregoing rates in other circumstances is unlawful (be it as minor as a rates clerk deciding to remit a penalty on an overdue rate).

Remissions and postponement policies are each funding and financial policies for the purpose of section 102 of the Local Government Act. You are required to review each policy at least once every six years. We recommend that the two be reviewed in conjunction with each other (though you need not do so). You may include them in a long-term plan (but need not do so).

Consultation is required before your local authority adopts, reviews, amends or revokes a remission or postponement policy. As the law stood at the time of writing (October 2013), use of the special consultative procedure was mandatory, but an upcoming Local Government Bill is intended to provide local government with wider choice in how they consult on these policies.

Remission and postponement powers

Remissions

(Section 109, Local Government Act 2002; Section 85–86, LGRA)

Remissions shift the burden of rates between rating units – that is to say that if you remit the rates on one category of rating unit, then to collect the same amount of revenue your local authority would need to collect more from other categories.
Your remissions policy must set out the objectives it aims to achieve through remission of rates. Your policy must also state any conditions or criteria that must apply to any rating unit seeking remission. By law, your council has a final discretion to decline a remission, even where a rating unit meets the conditions, but this discretion should not be exercised arbitrarily (it is subject to judicial review). This points to policies that have clear objectives, criteria and conditions.

Where a local authority chooses to remit rates it has to:

- tell the ratepayer that rates have been remitted
- ensure that the rates record for the rating unit records the remitted rates as paid on the due date
- record the remitted rates in their accounts as expenditure against the objective for which rates have been remitted. It is not sufficient to record a total amount of remitted rates (though many local authorities do so).

Remission policies are primarily used to:

- simplify the day to day administration of the rating system (for example almost all local authorities have a policy allowing for the remission of penalties and/or balances that are uneconomic to collect)
- alter the results of the change in primary liability from occupiers to owners (for example some, generally rural local authorities, have policies allowing them to remit fixed rates on properties that are used jointly but in different ownership as per Upper Creek Farms in Example 1)
- provide assistance to groups deemed to be "worthy causes", such as sporting and cultural groups, or heritage properties.

Postponements

(Section 110, Local Government Act 2002; Sections 87–90, LGRA)

Your local authority's postponement policy may allow for the postponement of all or part of the rates owing on any rating unit. Postponement policies may defer payment for a specific period (for example five years), or defer until a particular circumstance or event occurs (such as the sale of a rating unit).

Your policy will need to state the conditions and criteria under which postponements are granted. Local authorities can charge a fee on postponed rates, provided that the fee does not exceed an amount sufficient to cover the administrative and financial costs of the postponement (and your policy empowers it). Any fee is treated as part of the rates payable on the rating unit.

The ratepayer must apply for postponement. There is no power for the local authority to postpone rates of its own accord. A local authority *must* postpone rates if the rating unit meets the criteria in the postponement policy, and *if the ratepayer applies for a postponement in writing*. There is no "final" discretion.

When a local authority decides to postpone rates on a particular rating unit it must tell the ratepayer that rates have been postponed, and when or in what circumstances rates will become payable.

The net cost of a postponement must be recorded as paid by the local authority if it is not charging a fee at an amount that is sufficient to cover the administrative and financial costs or not charging a fee at all. Where postponed rates are recorded in this way, they must be shown as expenditure recorded against the relevant objective in the postponement policy.

Local authorities can register any postponed rates as a charge on the rating unit. This measure prevents the owner of the rating unit from alienating the land (i.e. selling or leasing the land) without the consent of the local authority. This process is governed by the Statutory Land Charges Registration Act 1928. Under that Act, the Registrar of Land can (and probably will) charge a fee for this service.

Postponement powers are less commonly used than remission powers. The overwhelming majority that use these powers do so as a means of dealing with financial hardship, with a much smaller number using them as a means of promoting economic development.

Good practice for remission and postponement policies

SOLGM regards the following as good practice principles for remission and postponement policies. Policies should be:

- *linked to one or more of the community outcomes and other strategic priorities of your local authority* – that is, these policies should be a tool for promoting community outcomes. Your remission and postponement policies need to be designed specifically for your local authority
- *complementary to the other programmes provided by your local authority* – when considering whether or not to remit or postpone rates, your elected members should consider whether foregoing revenue is the best means of achieving the objective. Sometimes the discipline of having to approve a grant (that is actually writing out the cheque) can act as a good way of restraining "generosity"
- *generic* – policies should be phrased in terms of categories of rating units rather than referring to a particular rating unit. Inventing a policy to suit an individual rating unit should be done only in truly exceptional cases, otherwise such a policy is an invitation to special pleading
- *frequently reviewed* – so that your local authority can satisfy itself that the circumstances in which a rating unit qualifies for an exemption still apply. This might be through inspection, requiring reapplications and the like
- *clear in their criteria* – ambiguous policies will create future issues and/or "special pleading". This is particularly important because the Rating Act does not give you discretion over your postponement policy – if a rating unit meets the criteria in the policy and the owner applies, you must postpone the rates
- *clear in who takes what decision* – unless otherwise delegated, elected members must make decisions to remit and postpone rates. Take care that the policy allows for the delegation and that the elected members have so resolved. If this is not done, elected members will need to make a specific decision on each remission or postponement.

Remission and postponement powers in action

AUTHOR'S NOTE

The examples presented in this section are purely hypothetical and are in no way presented as "the right answer" to any of the issues described. Although some closely resemble actual solutions that local authorities are facing, they are written for purely illustrative purposes.

EXAMPLE 13

Remission of penalties

The ability to remit a penalty is a very important power in the day to day administration of rates, particularly when dealing with ratepayers who have a genuine reason for late payment of rates.

The remission powers allow for this. The council can use the powers to set out a list of circumstances in which penalties could be remitted. Examples of the sorts of things that might go in a policy on remission of penalties include:

- criteria dealing with situations where the rates have been unpaid due to circumstances beyond the ratepayer's control, for example through some particular family circumstance
- guidance on proportions to remit
- a delegation to either a committee of council or an identified officer to make decisions – no delegation means that the council must make the decision itself.

EXAMPLE 14

Contiguous properties owned by different owners

Returning to the Upper Creek Farms example from chapters Two (Example 1) and Four (Example 5), let's assume that the council has taken note of the fact that the farm consists of three rating units and would, all other things being equal, be liable for three UAGCs. The council notes that there are several hundred other cases across the district, and that the council considers the rating result inequitable. How would it use the remission powers to resolve this situation?

The council could use the remission powers to remit multiple uniform annual general charges (and other fixed targeted rates). Such a policy would clearly spell out each of the tests from section 20 (that is joint use, contiguity and different ownership) and state each of the tests that it applies to.

The policy would also state which categories of rate it applies to (if no action is taken then it could be argued the policy applies to all rates). In this particular instance, your policy would also need to specify which rating unit receives the remission.

EXAMPLE 15

Rates postponement for farm land

Upper Creek is concerned that farmers on the fringes of Hideville are increasingly subdividing land, and that the rate of subdivision is beyond the council's ability to build (and fund) new infrastructure. The council wishes to explore alternatives to the district plan as a means of discouraging subdivision.

Could remission and postponement powers be used as a tool?

This is a case where postponement might be a better option. The council might allow for a postponement of part of the rates on farm land in a defined area, provided the land is not used for purposes other than farming. The council could elect to include a provision to write-off rates at the end of a period, and should record the rates as a charge on the rating unit (in the event that subdivision occurs). It would also be wise to ensure the postponement is recorded on a LIM.

The Rates Rebate Act 1973

AUTHOR'S NOTE

A provision-by-provision account of the Rates Rebate Act 1973 is beyond the scope of this guide. What follows is a high level summary of the Act and the scheme it establishes. Readers wanting more detail are referred to the Act and to the Department of Internal Affairs website, www.dia.govt.nz.

The Rates Rebates Act 1973 established the Rates Rebate Scheme. The Scheme provides a subsidy to low income *homeowners* on the cost of their rates. Those renting or otherwise occupying a rating unit (such as those in many retirement villages) generally do not qualify, regardless of their income.

Ratepayers must meet the first $160 of rates themselves (regardless of other factors). The amount of any rebate is calculated as two thirds of the amount of rates payable less $1 for each $8 of qualifying income over $23,870, with a maximum rebate of $595.[10]

Income means money received, before tax, during the income tax year ended 31 March preceding the start of the rating year. Income does not include:

- cash grants/capital payments
- family tax credits (formerly family support)
- war widows' or war disablement benefits
- medal of honour payments
- grants for funeral expenses
- prizes and winnings.

Much of the administration of the scheme is done by territorial authorities on the Government's behalf. The ratepayers make their applications to the territorial authority, which does much of the initial processing and then forwards it to the Department of Internal Affairs to approve. The final decision is the Department's.

Applications must have evidence of:

- the ratepayer's income
- residency
- the applicant's status as the ratepayer
- the rates payable.

[10] Both the income level and the maximum rebate are reviewed annually – these figures applied for the 2013/14 financial year. The income threshold also increases by $500 for each dependent that ratepayer has.

THINGS TO REMEMBER

Remissions, postponements and the rates rebate scheme

Your local authority can remit or postpone any amount of rates, on any rating unit, for any reason. The only limits are those that your local authority sets for itself in its remission and postponement policy, and the obligation to act prudently.

Remission and postponement policies must be reviewed at least once every six years. Adoption, review, amendment or revocation of a policy must be done through the special consultative procedure of the Local Government Act 2002.

Policies must state the conditions and criteria that apply to remissions or postponements.

Ratepayers must apply before you can consider postponement, but your local authority may remit rates of its own accord. Your local authority has a final discretion to refuse to remit rates, even those that meet the criteria in your policy, but cannot exercise this arbitrarily. No such final discretion applies to postponements; if a rating unit qualifies and the ratepayer applies then rates must be postponed.

You may charge a fee for postponing rates, but the fee must not exceed the financial and economic costs of providing the postponement.

The total amounts of money remitted must be disclosed in annual reports, classified against the objectives for providing remissions. Similar provisions apply to postponements if your local authority either chooses not to charge a fee, or charges one that does not cover the financial and economic costs.

The Government operates a rates rebate scheme that provides low income homeowners with a subsidy towards the cost of their rates.

6. RATING INFORMATION

This chapter discusses the information sets necessary for lawful (and effective) administration of the Rating Act. This includes:
the rating information database (or RID)
rates records
access to, and inspection of, rating information and rates records
processes for determining and correcting rates information and rates records.

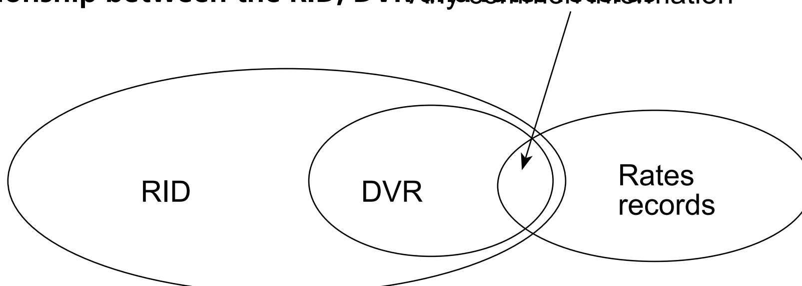
The RID is a list of the information necessary for setting and assessing rates (such as the ratepayer details, address, values and the like). The RID includes all of the information that valuers compile as they undertake general revaluations. This is referred to as the district valuation roll (or DVR) prepared under the Rating Valuations Act 1998.

Rates records are a set of information that shows the ratepayer's liability for rates on a unit. It includes some information from the RID but also includes information such as the state of the rate account (the amount of rates assessed, any arrears, etc).

Figure 3 shows the relationships between the RID, the DVR and the rates records.

Figure 3

Relationship between the RID, DVR and rates records



The Rating Information Database

(Section 27, LGRA; Rating Valuations Rules)

The RID records all of the information your local authority needs to set and assess rates in a form that is easily accessible to itself, and to the public. As one of the purposes of the RID is to enable local authorities to communicate with ratepayers, your local authority can also use information on the "section 27" RID to communicate with ratepayers on rating matters. Privacy principles may prevent the use of the information on this version of the RID – unless the use or disclosure of the information is authorised by another statute.

Legally speaking, your RID can be in either a paper or electronic form (most local authorities have an official RID stored electronically and one or more paper copies). The only requirement is that your RID must be searchable either by address or reference number of the rating unit.

Territorial authorities will have a single RID. Regional councils may keep a separate RID for each of their constituent territorial authorities.

For each rating unit in the district, the database must contain:

- all of the district valuation roll[11] information
- any information required in determining what category or categories the rating unit fits into for the purposes of setting a differential general rate or a differential targeted rate (for example, where a general rate is differentiated by use, the RID has to show a "use" for each rating unit: commercial, residential, etc)
- any information from Schedule 3 used as the basis of a targeted rate, for example land area, number of toilets or urinals, value of improvements, etc.

Inspection of the RID

(Sections 28–28D, LGRA)

Local authorities must make their RIDs available for inspection. Your copy for inspection must be available at your principal offices, and may be made available at other places to allow access to all residents and ratepayers. For example, your local authority might make copies available in service centres and libraries.

The copy of the RID that is available for public inspection must contain all of the information on each rating unit (including the name and postal address of the owner). However, owners do have the right to have their names withheld, provided they make the request in writing. At least once each year owners must be informed of their right to have their names and addresses withheld.

Your local authority cannot charge a fee for inspection of the RID, but can make a reasonable charge if someone requests copies of the information from a database. Note that an individual may request details on more than one rating unit, provided the requests are related and are for purposes other than the bulk collection of information or names or postal addresses.

The database must be available for inspection in May and local authorities must give notice that the database is available for inspection, and of the times and places where the database can be inspected.

The version made available for inspection can generally be used by the council for communicating with property owners for any purpose (for example, to send out copies of your long-term plan summary), so long as a ratepayer/property owner has not requested that the council withhold their name and address from the version made available for inspection.

Objections

(Section 29, LGRA)

Any person named in the RID (be they owner or ratepayer) can object to the information in the RID on the grounds of:

- omission of a rating unit listed from the RID
- incorrect entering of DVR information into the RID

[11] The contents of the DVR are set out in the Valuer-General's rules. The Valuer-General must audit and certify the DVR information – all other information is your local authority's responsibility.

- that information entered in the database is incorrect (this applies only to information not on the DVR – these are subject to the valuation objection process under the Rating Valuations Act 1998)
- that a lawful amendment to the DVR has not been entered into the RID.

Their right of objection is not limited to their "own" rating unit. Objections to the RID must be lodged with the local authority. The Rating Act does not specify that objections have to be made in writing.

Local authorities must notify the objector of their decision on the objection in writing. If the objection is upheld, the local authority must correct the database and notify the ratepayer that a correction has been made.

Division of rating units

(Section 27(5), LGRA)

Some rating units may have parts where different treatment for rating purposes is appropriate because different parts may be:

- in different categories for differential rating purposes
- in different categories for remission or postponement purposes
- rateable and non-rateable.

In these cases, your local authority can elect to *divide* rating units into two or more parts for the purpose of recording on RID and setting rates. Strictly speaking, your local authority decides to divide rating units, and your value will actually undertake the division of value between parts. *Division does not ever create a new rating unit; the different parts are still all one rating unit.*

There is no legal requirement to divide rating units, but there are practical incentives to do so where your local authority has a differential rating scheme, or parts of properties are rateable and parts are non-rateable.

There is no prescribed process for division. For example rather than dividing properties based on value, a local authority might wish to divide a rating unit based on area. We strongly advise those local authorities wanting to perform divisions to document their policies on division (including a delegation to the valuer to perform divisions).

Where a local authority elects to divide a rating unit, it *must* still send only one rates assessment, but that assessment *may* be divided into separate parts.

Estimates of projected valuation

(Section 131, LGRA)

Regional councils may use an estimate of projected values (or EPV) when they delegate the maintenance of its RID to the constituent territorial authorities and those authorities do not have common dates for general revaluations.

The EPV is used to promote equity in the setting of rates by ensuring that comparable rating units are not valued differently merely because their districts were valued at different times. Only a registered valuer can undertake an EPV, but this is not undertaken during the general revaluation process. Unlike DVR information, the Valuer-General has no statutory responsibility to audit EPVs (and does not).

Rates records

(Sections 37–39, LGRA)

A rates record contains all of the information necessary to show the state of the rates account. These records are vital to the collection and enforcement of rates, so the preparation and maintenance of rates records *cannot* be passed to someone else (even if you have an outside agency collecting rates on your behalf).

Rates records can be kept electronically, or in written form, or both. The only other requirement is that, where the rates records draw on information from the RID, then the information must be consistent with what is in the RID.

The rates records must be available for public inspection in much the same manner as the RID. However, the right to inspect rates records is only open to:

- the ratepayer
- any person with authorisation from the ratepayer (the Rating Act doesn't say that this authorisation has to be in writing but in most cases it would be wise for the local authority to ask for such authorisation)
- any person who has become liable to pay rates under the recovery provisions, i.e. a mortgagee or some other person who has an interest in the rating unit
- a solicitor, land broker, real estate agent or any other person that can demonstrate that they are a party to a transaction relating to the unit, and the information in the rates record is reasonably required for the transaction – you are within your rights to ask for evidence in these circumstances
- any member of the public but only with respect to rates assessed (the general public cannot look for details of arrears or remissions and postponements).

The objection processes and requirements are similar to those for the RID.

Objections may be made by the ratepayer, or by someone who has become liable to pay rates under the recovery provisions.

However, grounds for objection are limited to an incorrect balance or that the rates are incorrect. Local authorities can correct errors in the rates records without waiting for an objection.

Changes in circumstances

(Sections 30–36, LGRA)

These provisions deal with situations where ownership of a rating unit is sold or transferred, or other circumstances have occurred that have a bearing on determining the ratepayer.

If a rating unit is sold or transferred, in whole or in part, the owner must notify the local authority within one month of the date on which the sale or transfer took effect. That notice has to include the full name and address of the person to whom the rating unit was sold or transferred, and the sale price.

These provisions also apply where someone becomes the owner of a rating unit by the operation of law, such as a person who inherits a rating unit or the creation of a joint family home. In those cases, the person who is the owner must notify the local authority within one month of the registration of the instrument through which the person became the owner.

Notice has to be given to *both* the territorial authority and the regional council in which the rating unit is located.

The owner of a rating unit must also give notification to a local authority when a lease that requires the lessee to pay the rates has been terminated or the rent is renegotiated. The same requirements also apply where a lessee transfers the lease to someone else, i.e. subleasing.

Local authorities cannot legally remove or change a name from the ratepayer column of its RID unless they have received the notification described above, or the name has been removed from the land transfer register.

Corrections

(Sections 40–42, LGRA)

Where the RID or rates record have been corrected, it is more than likely that there will be a difference between the rates that the ratepayer "should" have paid and those they actually paid.

In cases other than valuation objections, your local authority is obliged to amend the rates assessments for the current and last five years (assuming the error goes back that far).

Where a ratepayer paid more rates than they should have (i.e. the amended assessment is for a lesser amount of rates than was actually paid), then your local authority is obliged to refund the rates to the person who paid them. If a rating unit has been sold during the five years, your local authority will need to make due enquiry to find the person who paid the rates. If a rating unit was sold more than once then you will have multiple ratepayers to find. If you locate ratepayers then the rates must be refunded, you cannot credit any refunds against outstanding balances or take them as early payment against future rates.

Where the ratepayer paid a lesser amount of the rates than they should have (i.e. the amended assessment is for more than the original assessment), the ratepayer is liable for the additional rates if and only if the amended assessment is issued in the same financial year as the original assessment, and to the same person.

An exception to this provision occurs where there has been some change to a matter affecting the liability for rates, and the ratepayer has failed to notify the local authority of the change in circumstances or has not done so within the required time. Where this has resulted in the local authority collecting less rates than it would have been entitled to, the local authority may collect the additional amount plus interest.[12]

There is a different process where the correction is the result of a *valuation objection under the Rating Valuations Act 1998*. In these instances, the obligation to issue an assessment only relates to the year in which the correction is made, and then only if a local authority has already issued an assessment for the year. In these cases, your local authority is not obliged to refund rates if it has no contact details for the person who paid the rates.

[12] A local authority may fix the interest rate itself, but this rate cannot exceed the rate on the local authority's day to day cash account.

THINGS TO REMEMBER

Rating information

All local authorities must keep and maintain two sets of rating information – a rating information database (RID) and rates records.

The RID contains all of the information necessary to set and assess rates, including information from the district valuation roll (DVR), usually prepared by your local authority's valuation service provider.

Rates records contain all of the information to show the state of the rates account – including rates assessed, arrears, waivers and the like.

RIDs must be available for inspection in May each year. The RIDs available for inspection must contain the names and addresses of the owners of all rating units (unless the owner makes a written request asking that their name be withheld).

Any person named in the RID can object to information in the RID. The objection does not have to be in writing.

Rates records can be inspected by the ratepayer, a mortgagee, a solicitor, a real estate agent or someone with authorisation from the ratepayer.

Notification of changes in circumstances (such as the sale or transfer of a rating unit) must be given to both the territorial authority and the regional council.

Liability for refunds and additional payments may arise from corrections to the rates records or RID. The processes for dealing with under- or over-payment differ depending on whether the correction was the result of a valuation objection under the Rating Valuations Act.

Where a rating unit has two or more parts that would otherwise be subject to different rating treatments (for example, a rating unit has a part that is being used for a non-rateable purpose), then your local authority may perform a division of the rating unit into two parts. Division does not create an additional rating unit.

7. ASSESSMENT, COLLECTION AND ENFORCEMENT OF RATES

This chapter discusses the processes that "sit behind" the rating system including:
- setting and assessing of rates
- rates documentation – the rates assessment and rates invoice
- payment and collection of rates
- enforcing unpaid rates.

Setting rates

The revenue and financing policy

(Section 103, Local Government Act 2002)

The rate-setting process begins with the revenue and financing policy (RFP) in the long-term plan. All decisions and actions taken after this point – setting rates, borrowing, development contributions, etc – must be consistent with the RFP.

The RFP is the only policy that must be included in your long-term plan. All amendments to an RFP must be the subject of a special consultative procedure. Significant amendments to an RFP must also be audited.

The RFP sets out your policies on why and how funding sources are used to fund operational needs and capital needs. Your RFP must:
1. show how your selection of funding sources in your policy complies with the funding policy process in section 101(3), and
2. state the policies your local authority has on the funding of operating and capital expenditure from the following sources:
   - general rates (including the choice of valuation basis, differential rates and the use, or otherwise, of uniform annual general charges)
   - targeted rates (the Rating Act does not specify any further disclosures so your RFP need not disclose the basis on which the rates are set, and the basis for any differentiation)
   - lump sum contributions
   - fees and charges
   - interest and dividends from investments
   - borrowing
   - proceeds from asset sales
   - development contributions
   - financial contributions
   - grants and subsidies
   - any other source.

Policies that might be included under the second set of disclosures might include a rationale for choice of capital value, or the reason it chose to go to the legal maximum on fixed rates. It is also the best place to explain the construction of any differential rating policies and your local authority's rationale for these.

In some cases, some level of detail is prescribed. Your RFP must identify your choice of valuation basis, whether you use differentials and the use of uniform annual general charges. Your disclosure of this in an RFP would then be something like:

"General rate – ABC District Council levies the following general rates:

- *a uniform annual general charge* [If this local authority had a policy of going to the maximum, it would then follow this with some form of disclosure along the lines of, *'this charge is set at a level such that x percent of the rate revenue will be generated by this charge'* and an explanation of why the policy is in place]
- *a rate per dollar of rateable capital value, differentiated on the use to which the property is put and the location of the property.* [This would then be followed by a rationale for the use of both the valuation system and differentials. Simple statements along the lines that *'the council considers the capital value system produces the fairest allocation of rating liability'* go some way towards providing a rationale but need further explanation as to why that judgement was made]."

Your disclosure for targeted rates need only specify that a targeted rate will be used to fund a particular activity or activities and briefly explain why.

You are not required to disclose the basis on which the rate will be calculated in your RFP (but you will need to disclose this in the funding impact statement).

The RFP is the policy that the interested ratepayer will go to if they want more detail about "their rates". Preparation of the RFP is not just a matter of compliance with the legislation.

The disclosure requirements apply to *both* operating and capital expenditure. The legislation does not specify that there should be separate disclosures for each, but we strongly advise local authorities to do so.

However, the funding sources for capital expenditure are sometimes quite different from those that apply to operating expenditure. Mixing the two will have the effect of distorting the overall picture, especially if your local authority has a sizeable capital works programme perhaps associated with a large borrowing requirement.

Disclosure of capital expenditure sources becomes especially important if your local authority intends to use either development contributions or financial contributions.

Your demonstration of how your local authority applied section 101(3) is likely to change between long-term plan processes as your local authority starts or ceases activities, the policy rationale for undertaking activities changes, elected members change priorities, or some external change forces a reconsideration of the second step of the process. The implication of this is that your RFP is not something that can be merely rolled over from one long-term plan to the next. While the preparation of a policy need not be done from a "zero base", there will be changes from plan to plan.

More information about revenue and financing policies can be found in the SOLGM guide *More Dollars and Sense: Financials and the LTP.*

The funding impact statement

(Clauses 15 and 20, Schedule 10, Local Government Act 2002)

Each year's rate-setting process actually begins with the annual plan for the year. The annual plan contains the funding impact statement (or FIS). Don't forget that in the year you adopt a long-term plan, it is also the annual plan for the year.

Your rates must be set and assessed in line with the provisions of the FIS – there is no room for departure from the types of rate, and the factors and matters your local authority specified in the FIS.

The required disclosures around rating mechanisms literally require all of the information you would put into a rates resolution *except* the actual level of the rate (the "rate in the dollar", "per rating unit" and the like).

So for a *general rate* the information includes:

- the valuation basis (land, annual or capital)
- differential categories (if any) – a precise definition of their construction and either the revenue sought from each category or an explanation of how the level of the rate that each category pays differs from the others (so, for example if your council has a target differential, such as the commercial sector paying twice the rate in the dollar that the residential sector pays, you would state that here), and
- details of how any uniform annual general charge will be calculated (that is, on a one per rating unit, or one per separately used or inhabited part of rating unit, and if the latter then your definition of separate use or inhabitation).

For a *targeted rate* the information includes:

- the activity or activities that the targeted rate will fund
- the categories of rating unit that will be liable for the rate (using the matters from Schedule 2 if some categories of rating units will be excluded)
- how the targeted rate will be calculated (which of the factors from Schedule 3 of the Rating Act will be used as the basis for the rate, noting that there may be more than one, and there may even be different factors used to calculate rates on different categories of rating unit)
- if differentials are being used, then the matters used to construct the differential (from Schedule 2) and a statement of the relationships between the categories.

Your local authority is also required to disclose the level of every other revenue and financing mechanism it intends to employ in the FIS – including the non-rate mechanisms. This does not mean the FIS needs to identify every fee and charge separately. A single fees and charges disclosure is sufficient (although those that are significant should probably be separately disclosed).

It may seem a minor point, but take care to ensure that your FIS is clearly identified as the FIS – calling it a "funding policy" or "rate-setting" is an unnecessary legal risk.

The annual plan FIS also has to include some sample models that demonstrate the impact of the rating proposals across a range of different rating category types and values. *More Dollars and Sense: Financials and the LTP,* SOLGM's guide to financials and the long-term plan, has this to say about this requirement:

"We suggest that the selection and presentation of samples be kept as simple and understandable as is consistent with the purpose of the legislation. Some useful principles to apply when selecting the number of examples are:

- *logical rationale – selection of the range of values should follow some consistent and explainable rationale. A starting point might be to select either the average or median rating unit value within a category and then select say the rating unit at the 20th percentile and the 80th percentile (or 25 and 75). Whatever your selection is, explaining the rationale avoids perceptions that you have plucked examples from thin air*
- *materiality – your local authority is not obligated to disclose examples for every different category of rating unit – try to focus on the larger categories only (especially if the differences*

in rating treatment are minor). Look for the major sources of difference in rating treatment and base your selection on those (often these will correspond to the categories used for differential rating purposes). This principle is especially relevant for those local authorities with more complex rating systems (ward/community based rating, classification based rating of river schemes etc)."

Your rate models must be included in the FIS, as a matter of law. The models should not be incorporated into the financial strategy – or other parts of the long-term plan/annual plan. Local authorities that place their rate models in places other than the FIS take an unnecessary compliance risk.

Your FIS must also include a statement of sources and use of funds as prescribed under the Local Government (Financial Reporting) Regulations 2011.

Sample FIS content can be found in Appendix A. SOLGM regards it as essential to get the FIS reviewed by legal advisers before the annual plan is adopted. The reviewer should (among other things) check the FIS for consistency with the revenue and financing policy. For example, check that your local authority has selected the same valuation base for its general rate, and that any percentages and thresholds in the policy have been adhered to.

EXAMPLE 16

In consulting on its latest annual plan, the Bigg City Council consulted on a change to the way it sets a targeted rate for tourism promotion. As a result it decided to change the Schedule 3 factor from land value to capital value. However, the revenue manager uses the text of last year's resolution and forgets to make the change, with the result that the council resolves to set the rate on land value. Is this rate invalid?

Yes. In this instance the council has not set the tourism promotion rate in accordance with the FIS. Given that the change in base from land to capital will almost certainly see rates on some rating units increase, the council's only option for correcting the error is to use the rates replacement process.

Common areas of poor/doubtful practice with funding impact statements

In preparing this guide, SOLGM reviewed a (broadly) representative sample of 30 funding impact statements. Although the review did not cross-check these documents with the corresponding revenue and financing policy, there were consistent themes. These include:

- a small number of rates that appear to be ultra vires
- lack of definition of differential categories or lack of specificity in the definitions
- the specification of objectives for differential rates was not always included
- unclear expression of whether fixed rates are set on a per rating unit or per SUIP basis
- lack of explanation of classification rating
- missing definitions of availability of service with utility rates
- missing definitions of extraordinary water supply
- non-representative sample rate models, or a lack of transparency in the selection of the rate models – in some instances we could not locate any obvious sample rate models
- use of out-of-date terminology (mostly from the Rating Powers Act)
- expression of technical terms in "plain English", which either changed the objective the local authority was attempting to achieve or raised doubts about the lawfulness of the rate – a good, though extreme, example of this was the council that described its UAGC as a per person charge
- a lack of quality assurance leading to "typos" that significantly change what it is a local authority is attempting to achieve, or gives rise to inconsistencies either within the FIS or between the FIS and rates resolution.

The rates resolution

(Section 23, LGRA)

Rates can only be set by resolution of your local authority. Rate-setting cannot be delegated to a committee of council, community board or staff member.

EXAMPLE 17[13]

Upper Creek District Council's finance manager is preparing a rates resolution for the councillors to approve. He is running up against a deadline and decides to take a shortcut by including a provision in the resolution that "the council resolves to set the following rates, and delegates authority to the finance manager to determine the final amounts". Was this lawful?

No. Rate-setting cannot be delegated, the council has not set rates properly because it has not set actual amounts.

Rates must be set for a financial year or part of a financial year, and must be set in accordance with the FIS for that financial year and the relevant provisions of the long-term plan. It is not lawful to set and assess rates for more than one financial year.

[13] This is based on a real-life example. The council concerned detected the error and reset the rates.

The rates resolution must state:

- the financial year
- the date or dates (where rates are payable by instalments) on which rates must be paid
- each of the rates to be set by the local authority, together with any relevant details such as the basis of calculation (section 16(4) or 18(2)), the matters that will be used as the basis for differentials, and any factors from Schedule 3 that will be used to calculate the rates
- any delegations that will be operative (if not made elsewhere)
- any penalties that will be operative.

Both the resolution and FIS must take a consistent approach to the treatment of GST. Both should either specify rates (and charges) as GST inclusive or exclusive. While it is acceptable to specify either, in the event that your FIS and resolution do not specify what the GST treatment is, the presumption is that rates and charges are GST inclusive.

An example of a rates resolution can be found in Appendix B. Note that SOLGM regards it as good practice to separate the resolution adopting the long-term plan or annual plan from that adopting the rates. And the resolution adopting the plan must be made before the resolution adopting the rates.

There is a very limited power to set a rate not provided for in a long-term plan and funding impact statement, provided the rate is to fund an unforeseen and urgent need for revenue that cannot reasonably be met by other means. These require a resolution of council, but also require at least 14 days' notice of the council's intention to set the rates.

That notice must provide all of the information that the council would normally provide if the rate was included in the FIS. The notice also has to explain what the urgent and unforeseen need is, and why it cannot reasonably be met otherwise.

EXAMPLE 18

Setting a differential targeted rate

Suppose Upper Creek District Council decides it wants to set and assess a targeted rate for water supply. They have decided that the rate will be differentiated by location and by use, and that the rate will be set using metering for commercial and industrial units, and as a fixed charge per separately used or inhabited part of a rating unit for residential units. What information would go in the FIS, and then the resolution?

The annual plan FIS would need to:

- *identify that there is a targeted rate for water supply and the activities it funds*
- *state that the rate will be assessed differentially and describe the categories.* The location-based differential would then have at least two categories: one or more describing the location or locations served by water supply schemes, and one for all other properties. The FIS would also define the locations – perhaps by drawing a boundary on a map and appending that, or if appropriate by reference to commonly known areas (such as "the Hideville ward"). The use-based differential would have at least two categories: a "commercial/industry" category (with a definition) and a "residential" category
- *a statement of objectives for the rate* – in this instance the FIS would probably declare the different levels of revenue sought for each of the categories, with an explanation for the difference in factors

- *the basis of calculation* (in the case of a residential rating unit, this is the number of SUIPs on each rating unit; in the case of commercial/industrial rating unit, it would be metered water as per section 19)
- since this rate is using a SUIP, a *definition of SUIP* is required.

The council would also ensure that:
- this rate is incorporated into the sample rates models
- the revenue is reflected in the financial disclosures.

The necessary information is then transferred into a resolution that actually sets the rates. This should be a purely mechanical process, with the addition of the final amounts per SUIP, per unit of water, etc.

It is essential that rates resolutions receive a legal review before they are adopted. That review should be done alongside a review of the FIS, and the revenue and financing policy – if either of these says a rate will be set in a particular way then the rate must be set that way.

EXAMPLE 19
Zero tolerance for inaccuracies

The Bigg City Council has adopted its annual plan for the year and is about to pass the rates-setting resolution when Councillor U.B Sharpe notices a small discrepancy.

Bigg City Council is setting a UAGC, but its FIS states the UAGC will be set on a “one per separately used and inhabited part of a rating unit” while the draft resolution states the rates will be set on a “one per separately used or inhabited part of a rating unit”. Cr Sharpe suggests the staff need to amend the resolution to ensure it aligns with the FIS. Is Cr Sharpe right?

Yes. While the error is most probably a typographical error (or an error made by someone not versed in the technicalities of rates), the resolution will need to be tweaked. A separately used or inhabited property is a wider definition than a separately used and inhabited property.

Common areas of poor/doubtful practice with rates resolutions

In preparing this guide, SOLGM reviewed a sample of rates resolutions. Generally these were of a higher standard than the funding impact statements. Some areas of poor practice were identified, including:

- a small number of rates that were not in the funding impact statement – without any apparent attempt to comply with the relevant provisions of the Rating Act for these rates
- some rates that appeared to be set on a different basis to that shown in the funding impact statement – the above example is a real-life example
- unclear information as to whether fixed rates are set on a per rating unit or per SUIP basis (or inconsistencies between the FIS and rates resolution)
- omission of information on the availability of half charges for utility rates set in the FIS
- inclusion of unnecessary detail from the FIS in rates resolutions
- use of out of date or inaccurate terminology to refer to the act of rate-setting (again, mostly from the Rating Powers Act 1988)
- missing instalment dates
- reference to schedules (and then omitting the schedules)
- no resolution to set penalties (while intending to apply them)
- missing penalty dates and, in several cases, missing the so-called "second penalty" (while apparently intending to apply that penalty)
- proofing errors – often carried across from the funding impact statement.

Delegations

(Section 132, LGRA)

Your local authority can delegate most functions, powers or duties. The only things that cannot be delegated are:

- the setting and assessment of rates (including rates replacement or resetting)
- the power to delegate – that is to say, if the council chooses to delegate an activity to a named officer, only that officer can exercise the function or power. Be wary of delegating to the chief executive, because that means only the chief executive can exercise the power.

A function, power or duty that is not delegated *must* be performed by the council. The example below shows what can happen without proper delegations in place.

CASE STUDY 3

The consequences of a missed delegation
Blair vs Upper Hutt City Council

Mr Blair owned a rating unit that was being used in part as a bed and breakfast and in part as a residence. The council had initially categorised the rating unit as being principally used for business purposes (a decision Mr Blair disputed), and subsequently performed a division of the rating unit into a 70 percent business, 30 percent residential. Mr Blair had the division overturned and then pursued the categorisation of the rating unit for differential purposes. Officers had performed the categorisation into the business differential, and the council's valuation service provider had undertaken the division.

The High Court found that the council's differential scheme did not authorise the apportionment of the rating unit and invalidated the apportionment. The High Court also found that there was no delegation to the officers to categorise the rating unit, and that the council itself should have defined the rating unit as a business.

Your local authority should decide whether or not it wishes to delegate the matters listed in Figure 4, and if so, then to whom.

Figure 4
Delegable decisions

S27(5)	Decisions on whether to divide rating units and on the methodology for division
S27(7)(b)	Regional council to delegate maintenance of RID to territorial authorities
S28(2)	Decision whether disclosure of the name of any person is necessary to identify a rating unit
S28(3)	Authority to determine fee for being supplied copy of RID data
S29	Authority to determine objections to the RID
S35(b)	Authority to remove names from the RID
S39	Authority to determine objections to rates records
S40	Authority to correct errors in RIDs and rate records
S41(3)	Authority to fix the interest rate to be charged on re-assessed rates
S54	Authority not to collect small amounts
S61(1)	Authority to recover unpaid rates from owner
S62	Authority to recover unpaid rates from persons other than owners
S72	Authority to sell by private treaty
S77-83	Authority to sell abandoned land
S85/87/114/115	Authority to administer remission and postponement policies
S99	Authority to apply for charging orders
S135	Authority to sign documents for court proceedings (if other than CEO)

Rates documentation

Rates assessments

(Sections 44 and 45, LGRA)

A rates assessment is a formal notice to the ratepayer that advises them of their liability for rates for the financial year. The ratepayer becomes liable for rates once the assessment is delivered to the ratepayer.

A rates assessment has to show the following information:

- the name and address of the local authority
- the name and address of the ratepayer
- the rating unit's number on the district valuation roll
- the legal description and location of the rating unit
- the rateable value of the rating unit
- the amount and a description of each rate
- the activities or groups of activities that will be funded from each rate
- the financial year for which rates are payable
- the total amount of rates payable on the rating unit for the financial year
- any matters from Schedule 2 that have been used for calculating the liability of a rating unit for any differential targeted rate
- any factors from Schedule 3 that have been used for setting a targeted rate
- a brief description of the criteria for rates relief under any remission policy, postponement policy, rates relief policy for Māori freehold land that is in force
- the methods by which rates may be paid
- the due date (or dates where rates are payable in instalments[14]) on which rates must be paid
- details of any penalty regime and a warning that rates not paid on time may attract a penalty
- where an early payment has been made in accordance with any early payment policy, details of the rates paid and any amount left to pay, and of any discount allowed for the early payment of rates
- notification of the ratepayer's right to inspect the rating information database and rates records, and to object to any information included in either
- if the ratepayer made an election to make an LSC, then details of the rates where no liability will attach to the rating unit.

You may place other information on a rates assessment if you wish (and if you can find room).

Rates assessments must be sent either before the first rates invoice, or with the first rates invoice. Invoicing before sending an assessment is unlawful (except for an interim invoice).

You may deliver a rates assessment in two or more parts if the rating unit is divided into different parts for differential rating purposes. The provisos are that:

- each part of the assessment must identify that it relates to a part only
- each part of the assessment must identify the total number of parts.

You may also deliver a combined rates assessment to any ratepayer who is liable for rates on more than one rating unit. But there is a catch. The combined assessment must show all of the information for each rating unit – *a list of properties and a total amount on each rating unit is not sufficient.*

[14] Councils are free to use as many or few instalments as they wish and to use different instalment systems for different types of rate etc. Your instalment arrangements must be notified in the rates resolution. The only limits are the cost of invoicing and the council's cashflow needs.

Rates invoices

(Sections 46—50, LGRA)

The rates assessment is the actual “bill” for rates. Whereas only one assessment is necessary each financial year, an invoice must be sent for *each* instalment, so a local authority that has quarterly instalments must send four invoices.
The rates invoice must contain the following information:

- the name and address of the local authority
- the name and address of the ratepayer
- the legal description and location of the rating unit
- the total amount of rates payable on the rating unit for the year
- the amount of rates that have been paid to date for the financial year
- the amount payable on the current invoice
- the due date for payment of the invoice
- where rates may be paid
- a warning that rates not paid on time may attract a penalty (where the local authority has a penalty regime) and any penalties that have been added in the current rating year
- any unpaid rates owing from a previous year.

Don’t forget that rates are a supply for GST purposes, and that your rates invoices must also comply with the Goods and Services Tax Act 1985.
Rates invoices must be sent at least 14 days before the due date for payment of rates.
Your local authority may separately invoice targeted rates if it wishes to do so. This is particularly common with metered water supply. In these cases the invoice has to clearly state which rate or rates they apply to, and show all of the above information (or as much of it as applied to the rate).

Amending a rates invoice

Suppose your local authority makes an error when calculating the amount of rates payable on any rating unit .. In these cases, a corrected invoice must be delivered. While there is no limit prescribing when a corrected invoice must be delivered, penalties cannot be charged before a date 14 days after the corrected invoice is delivered.

‘Interim’ invoices

(Section 50, LGRA)

Local authorities have the authority to make their first invoice of any financial year an interim invoice if, and only if, it is unable to deliver a rates invoice at least 14 days before:

- the date on which the first payment of rates is payable for the current year where the local authority has passed a resolution to set rates
- the date one calendar year after the date when the first payment of rates was payable in the previous year where a local authority has not passed a resolution to set rates.

These are referred to as “interim” invoices because they are linked to the level of rates payable *during the previous financial year*. Up to 25 percent of the previous year’s rates can be used as the basis for an interim instalment. All that is necessary is a resolution to set an interim invoice, and to state the percentage.

An interim invoice is subject to the same information requirements as other invoices. The exception is that instead of stating the total amount of rates payable and the amount of rates paid to date for the financial year, the invoice would indicate it is based on rates payable during the previous financial year.

The interim invoicing power is most commonly used in circumstances where adoption of a long-term plan or annual plan has been delayed for some reason.

You cannot assess an interim invoice on a rating unit that wasn't on your RID in the previous financial year.

Delivery

(Section 136, LGRA)

"Delivery" under the Rating Act is intended to capture both the communication of information to the ratepayer, and their receipt of that information. The Rating Act explicitly assumes that information is deemed as delivered seven days after the date of post (if it was delivered by post) or two days after transmission (in the case of a fax or email).
After that point, the burden of proof falls on the ratepayer to demonstrate that they did not receive the information, and that the reason for this was not "their fault" (for example, a ratepayer who changed a postal address without advising the local authority would struggle to prove non-delivery was not their fault).

Delivery can be any of the following:

- delivery in person (but noting that all information must be delivered in writing)
- postal delivery to any address that the ratepayer notifies the local authority of, or their last known business or residential address
- delivery by fax
- delivery by any other means acceptable to the ratepayer (this includes electronic means such as email).

Collecting rates

Payment of rates

(Section 52 and sections 55–56, LGRA)

Your local authority is required to accept payment of rates at any of its public offices, but can also specify additional places on the rates invoice. There is no need to specify places for payment in the rates resolution (though many do).
While you can specify acceptable and preferred means of payment, there is no power to offer discounts for preferred methods or to apply penalties to non-preferred methods.[15]

The Rating Act allows your local authority to accept early payments of rates and to make policies around the early payment of rates. An early payment policy has to be adopted and amended through the special consultative procedure, but does not need to be reviewed with any mandated frequency.

Your policy can provide for either or both of:
accepting payment for rates due in the same financial year as they are set and assessed
accepting payment for rates due in future years. This is not the same as an LSC; it is merely a payment "on account".

[15] This does not apply to charges that reflect the costs of accepting payment by a particular method (for example, a bank charge on an electronic transaction). We would not recommend trying to convince a ratepayer of the value of this!

If a ratepayer makes an early payment of rates for future years, it must be credited in accordance with the policy and any instructions that the ratepayer gives. For example, if a ratepayer wants to pay a targeted rate early, the local authority cannot credit it against any general rates.

Collection

(Sections 53 and 54, LGRA)

Your local authority is not obliged to collect its own rates. You may appoint another local authority or other agent to collect rates on your behalf. We are aware of five regional councils that delegate collection of rates to their constituent territorial authorities.

In instances where one local authority is collecting rates for another, a rates assessment and/or invoice that combines information may be delivered, but it must:

- show the rates that are payable to each local authority – it isn't enough for a territorial authority to just put a line on the assessment identifying a total amount of regional council rates (it is not sufficient to have a one line statement "XYZ Regional Council rates")
- meet the information requirements for each document as they relate to each authority. A combined rates assessment for a territorial authority and a regional council would have to show each rate each council sets and each function that each of those rates would fund.

Where a territorial authority collects rates on behalf of a regional authority, it must collect the regional rates *as the regional council set and assessed them*. Regional councils must have good systems and processes in place to ensure that their expectations are clearly communicated to the collecting territorial authority.

Your local authority can forego collection of rates that are uneconomic to collect. This is not a remission of rates. In these circumstances, all your local authority has to do is tell the ratepayer it will not be collecting the rates.

Enforcing rates

Enforcement is a generic term used to describe the set of options available to local authorities to ensure that unpaid rates are collected.

Rates are a charge on the land – that is to say that if there are unpaid rates on a rating unit, and that rating unit is sold or leased, your local authority has "first call" on the proceeds of the sale.

Broadly speaking the three enforcement tools are:

- the imposition of penalties
- "recovery" from people other than the owner – in some cases other people with an interest in the rating unit can be held liable for unpaid rates (typically the first mortgagee)
- enforcement through the courts (also known as the charging order and rating sale process).

Section 60, LGRA, establishes that illegality is the only defence a ratepayer has for not paying rates, i.e. the rate was one that the local authority was not legally permitted to assess. A ratepayer cannot use this defence unless they have first brought proceedings in the High Court. This is not, and should not be, used as a justification to "cut corners" when setting rates.

Penalties

(Sections 57–58, LGRA)

Your local authority can add penalties on any rates unpaid by the due date (though most local authorities unofficially allow a day or two's grace, especially around the weekend) provided that it has:

- *passed a resolution authorising penalties and setting dates*
- included details of the penalty regime in the rates assessment
- placed a warning about unpaid rates in *both* the rates assessment and rates invoice.

The penalty resolution must be done at the time rates are set (or at least no later than), i.e. it should go in your rates resolution for the year. That resolution must also state the dates on which penalties are applied and how the penalty is calculated.

The Rating Act sets a maximum penalty of 10 percent of the unpaid rates at the date on which penalties are applied.

Once applied, a penalty is legally regarded as part of the rate and becomes part of the balance of rates owing. The practical application of this is that if the rates remain unpaid, the penalty will compound – that is to say that a penalty will be applied to a penalty.

Penalty rates are not a supply for GST purposes. Your systems should be set up to clearly separate these.

Local authorities may set the following types of penalty:
a penalty on any rates that were assessed during the current financial year and which remain unpaid after the due date (for example, for each instalment)
a penalty on rates overdue from a previous year, i.e. a penalty on any rates assessed on rates levied in a previous year and which are unpaid on whichever day is the latter of the first day of the year for which a resolution is made or five working days after the date on which the resolution is made
a further penalty on rates in 2. that remain unpaid six months after that penalty was added.

One final piece of advice on penalties: most rating software is set up in such a way as to apply payments to the oldest debts first. If your software falls into this category or you apply this policy for other reasons, we strongly advise you to put this fact in your FIS or rates assessment.

Collection from non-ratepayers

(Section 61 and 62, LGRA)

In some circumstances local authorities can collect unpaid rates from people other than the ratepayer.

Where a person other than the owner is the ratepayer, unpaid rates may be recovered from the owner. In these cases, there is no minimum period before this power can be used, and no requirement to give the owner notification before invoicing them (though it would be wise to do so).

Where a mortgage exists, your local authority may be able to recover unpaid rates from a mortgagee. There is a minimum time before this power can be used. The earliest you can use this provision is 1 November in the financial year after first assessment of the rates (that is to say that a rate first assessed in the 2013/14 financial year could not be recovered from a mortgagee until 1 November 2014).

To collect from a mortgagee, you must first send them a notice stating that the rates on the rating unit are unpaid, and that the local authority has the power to recover the rates from them. Recovery cannot take place until at least three months after delivery of the notice (though the mortgagee can make a voluntary payment). We advise sending notices in August so that any collection can occur in November.

In cases where a local authority recovers from a mortgagee, the amount of the rates must be added to the mortgage and is subject to all of the terms of the mortgage, i.e. the mortgagee can charge interest on that amount.

Judicial proceedings

(Sections 63–76, LGRA)

A third option is to recover rates through the courts. Proceedings for recovery this way cannot be lodged until the debt has been unpaid for at least four months. At that time you can also add any other rates that are overdue by at least one month.

Rates are statute limited – that is to say that judicial action cannot be started if rates have been unpaid for six years after the due date (other than postponed rates, where the six years starts on the date on which rates became payable).

Where the ratepayer has no defence for paying rates, the court *will enter judgment* against the ratepayer, either by name or as "the ratepayer of the land" if the ratepayer is unknown or cannot be found.

If rates still remain unpaid three months after a court judgment then the local authority can apply to a Registrar of the High Court to have the judgment enforced by the sale or lease of the rating unit. Māori freehold land is not subject to the rating sale and lease provisions. Enforcement provisions on this type of land are discussed in the next section.

The application must include:

- a certificate, signed and dated by the chief executive, which sets out the date and amount of the judgment, the name of the ratepayer, and the address, legal description and location of the rating unit
- any fee payable.

Some categories of land may be subject to legal restrictions on sale. These may, however, be leased on terms that produce a yearly rent equivalent to (at least) the annual rates plus five percent. A ratepayer who owns inalienable land, and has interests in other alienable land is liable to have the alienable land sold or leased.

Any interest in Crown land that is held under a lease or licence may be sold or leased under these provisions, i.e. the land itself is not sold but the right to occupy the land conferred by the lease or licence may be sold.[16] This applies even on land that normally would require ministerial consent before the land is leased.

[16] Under section 111 of the Land Act 1948, a ratepayer holding a lease or licence of Crown land who fails to pay rates and has an unpaid judgment automatically forfeits any rights they have under the lease or licence. Reminding ratepayers on this land of this fact at an early stage will probably ensure that Crown land will never get to the point where a rating sale or lease will be necessary.

The Registrar is required to give notice that a judgment has been made for unpaid rates and that the rating unit may be leased or sold if payment of the amount of the judgment and costs, interest, other rates and Registrar's charges is not made within six months of the date of the notice. The notice can be served personally, by being left at or posted to the usual address of the person or their agent or attorney (if the ratepayer is absent from New Zealand), or (where none of these is practicable) by public notification.

If rates and costs are still unpaid six months after the notice, the rating unit may be sold or leased. Sale or lease must be by public auction or public tender. The Registrar may set any lawful conditions for accepting a tender and refuse those tenders that do not comply, buy the rating unit themself at auction or tender the rating unit as often as is required. The Registrar is required to accept the highest bid or tender unless the bid does not cover the amount of unpaid rates and costs, or the tender has not complied with any preconditions set by the Registrar.

On receipt of the proceeds of the sale or lease, the Registrar has to apply the proceeds in the following order:

- the Registrar's fee
- the judgment and any interest or costs incurred in pursuing the judgment
- any other unsatisfied judgment for rates on this rating unit plus interest, costs and disbursements
- any other rates due at the date of the sale or lease on the same rating unit
- any encumbrance of the rating unit
- any unsatisfied judgment for rates on other properties owned by the ratepayer in the district together with interest and costs
- any other rates due on any other rating unit owned by the ratepayer.

The balance goes to the Public Trust, which will ultimately pay it out to any person lawfully entitled to it – owners etc.

Abandoned land

(Sections 77–84, LGRA)

"Abandoned land" is any rating unit on which rates have not been paid for three years or more, and where the ratepayer:

- is unknown, or
- cannot be found after due inquiry and has no known agent, or
- is deceased and has no known agent, or
- has given notice that they have abandoned the land or intend to abandon the land.

The process for dealing with abandoned land begins with the local authority making a public notice of its intent to have the land declared abandoned and then sell or lease the land.

One month after the date of the notice, the local authority may apply to the District Court for an order declaring the land abandoned and granting an order to sell or lease the land. In granting such an order, the court may require local authorities to undertake any advertising/notice requirements that the court sees fit. The sale or lease process is similar to that for rating sales, with the exception that the local authority conducts the sale or lease rather than the Registrar of the High Court.

THINGS TO REMEMBER

Assessment, collection and enforcement of rates

The rating process starts with the revenue and financing policy set out in your long-term plan. All subsequent decisions must be consistent with this policy. The policy explains who pays for what, when and why.

Don't forget that your revenue and financing policy must disclose the valuation base and any differentials on your value based general rate, and whether or not your local authority uses a uniform annual general charge.

Rates must be set in accordance with the funding impact statement in the long-term plan or annual plan. The funding impact statement sets out all of the detail of the rates the council proposes to set and assess, and details of how each rate will be calculated.

All rates specified in the funding impact statement and resolution should be set GST inclusive.

Once an annual plan is adopted (not before), your local authority must pass a resolution that formally sets the rates and penalties. Errors in this document place the affected rate or rates at judicial risk. This resolution is also the place to specify matters such as due dates and penalties.

Local authorities must deliver a rates assessment either at the same time or before rates are physically invoiced. The assessment is a document that shows each ratepayer the amount of each rate that the rating unit is liable for.

One invoice must be sent for each of the instalments your local authority assesses.

Regional council and territorial authority rates may be collected jointly, but the documents must separately record the details for each local authority.

Details of penalty regimes must be included in the assessment and invoice. Penalties are legally regarded as part of the rate – unpaid penalties attract further penalties.

Penalty rates are not a supply for GST purposes.

Local authorities may recover unpaid rates from a mortgagee but not until 1 November in the year following the year in which rates are first assessed. The mortgagee must also receive a notice telling them that they can be held liable for unpaid rates and giving them three months before collection occurs.

Proceedings to recover rates through the courts cannot start until rates have been unpaid at least four months.

8. RATES ON MĀORI FREEHOLD LAND

This chapter discusses the collection, assessment and enforcement of rates on Māori freehold land.
As a general rule, Māori freehold land is liable for rates as if it were general land. There are, however, certain unique requirements for the assessment and enforcement of rates on Māori freehold land, and a requirement to have a policy on the remission and postponement of rates on Māori freehold land.

A note about Māori freehold land

Māori freehold land is defined as land where "the beneficial ownership of which has been determined by the Māori Land Court by freehold order"[17]. There must be a court order somewhere in the Māori Land Court records that confers the status of Māori freehold land upon the land. Your local authority is within its rights to request proof that a block of land has this status as part of the administration of the rating system.

Māori freehold land relates to a category of land and not a category of owner. The factors that make Māori freehold land "different" relate to its different tenure arrangements, the restrictions on alienability and the fact much of it is legally constrained from economic use.

Exemptions on Māori freehold land

(Section 91 and sections 116–117, LGRA)

Contrary to popular belief, most Māori freehold land is fully rateable. Often this fundamental is confused either with land of different status (such as Māori customary land), or the differences in powers to enforce rates on Māori freehold land.

The Governor-General can exempt a specified block of land by Order-in-Council, or release any person who would be otherwise liable for rates, from some or all of that liability. These orders can only be made if:

- the Māori Land Court recommends that an order be made, and
- your local authority consents to the order.

Orders can be revoked or amended at any time, simply by issuing another Order-in-Council. By the way, the legislation is not clear what happens if Māori freehold land under an order moves into general title. Be vigilant.

In deciding whether to consent to an order, the local authority is required to consider the provisions in its policy on rates relief on Māori freehold land, and the objectives of the rates relief provisions set out in section 108 and Schedule 11 of the Local Government Act.

[17] Te Ture Whenua Māori Land Act 1993

Who is the ratepayer?

(Sections 93–98, LGRA)

Multiple ownership (sometimes by hundreds of people) is one of the key characteristics of Māori freehold land. Identifying the ratepayer can by a complex task, much less entering a name or names on the RID and DVR. The following rules apply:

1. If the rating unit is legally and beneficially owned by one or two owners the names of each owner must be entered as the ratepayer.
2. If the land has more than two owners and the entire rating unit is leased then the lessee is the person whose name is entered as the ratepayer, unless the lessor advises the local authority (or the lessee can otherwise provide proof) that the lease provides for the lessor to pay the rates.
3. If neither 1 or 2 applies and the land is the subject of an occupation order under section 328 of the Te Ture Whenua Act 1993 then the person named in that order will be liable.
4. If 3 does not apply and the land is vested in trustees then the names of the trustees must be entered as the ratepayer.
5. If the land is owned by more than two people and there is no trustee then the words "the owners" must be entered in the ratepayer column. If the land is vested in trustees, the names and designations of the trustees must be entered.

The identity of the ratepayer is determined on Māori freehold land thus:

1. If a rating unit has one or two owners then the process for determining the ratepayer is the same as for general land. If there are more than two ratepayers then the subsequent tests apply.
2. If the rating unit is under lease or licence then the lessee is liable if the lease requires payment of rates. If not, the lessor is liable.
3. If there is no lease, but an occupation order exists, the ratepayer could be any of the trustees, the owner or the person in whose name the order is made (depending on what the order says about liability for rates). In the event neither a trustee nor owner is liable, the person whose name is on the order is presumed liable.
4. If there is no lease and no occupation order, but the land is vested in a trustee, then the trustee is liable (but only to the extent that income is derived from the land). If there is no trustee then a person using[18] the land is liable, if there is no user then the owner is liable.

Where there are multiple owners, and the land is not vested in trustees, then your local authority can ask the Māori Land Court to appoint someone to take delivery of the rating documentation. The Court is required to make an appointment unless it is unreasonable or impractical. In these cases the person is named on the RID and DVR as the ratepayer with the addendum "court appointee". This provision cannot be used to make someone liable who was not already liable for rates (i.e. someone who met the above tests).

Valuing Māori freehold land

(Rating valuations rules)

Historically Māori freehold land was valued using much the same rules and principles as applied to general titled land.

[18] The Rating Act defines "use" to mean anyone who leases the land, resides on the land, depastures or maintains livestock on the land, stores anything on the land, or uses the land for profit or benefit.

A landmark case (commonly referred to as Mangatu Incorporated vs The Valuer-General) established that these principles and practices were a starting point only. The Court held that the restrictions on alienability of Māori freehold land, the multiple ownership and the existence of sites of special cultural, historical or conservation significance warranted reductions in the rateable value of between 5 and 15 percent.

Valuation notices must show rating unit values before and after the applications of these reductions, and any percentage adjustments used to arrive at the reduced value.

Enforcing rates

(Sections 99–113, LGRA)

The two major differences in the enforcement provisions between Māori freehold land and general titled land are:
Māori freehold land cannot be sold for unpaid rates (so, while the District Court system is available as an option, it does not have the teeth to enforce judgment in most circumstances)
unpaid rates generally have to be recovered through the charging order process Māori Land Court system.

The charging order process can start once rates have been unpaid for six months after the due date and if the debt is more than $50.

When deciding whether or not to make a charging order, the Māori Land Court must have regard to:

- the area and location of the land
- the name of any person using the land, the purpose for which they used it and whether that person has an interest in the land, i.e. is an owner or lessee
- if land is vested in trustees, whether the local authority has taken all reasonable steps to recover from the trustees
- the value of the land entered on the DVR, and the date when it was last valued
- all objections to the rates
- the names and addresses of any people to whom rates assessments have been delivered
- the objectives of section 17(1) of the Te Ture Whenua Māori Act 1993.[19]

The Court must also satisfy itself that all reasonable steps have been taken to recover from trustees (if there are any) and that action against any person using the land will not result in recovery. In these circumstances, it must make a charging order. In practice, these matters and the above list give the Court wide discretion. Not all applications for charging orders succeed.

Any charging order must be for the unpaid rates and costs involved in getting a charging order. Land under a charging order cannot be sold or leased by the owner without the consent of the Court or your local authority.

The Court may:

- consolidate two or more charging orders on the same rating unit into a single order, or
- make orders over part of a rating unit if the rating unit is partitioned and the Court considers it reasonable.

[19] This states that "In exercising its jurisdiction and powers under this Act, the primary objective of the court shall be to promote and assist in (a) the retention of Māori land and General land owned by Māori in the hands of the owners; and (b) the effective use, management, and development, by or on behalf of the owners, of Māori land and General land owned by Māori."

Where the charging order is unpaid for six months after the date of the order, a local authority may ask the Māori Land Court to enforce the order. The Court must then enforce the order unless it is satisfied that it would be contrary to the interests of the owners. Again, not all applications for an enforcement order are granted.

Enforcement of the charging order occurs through a further order (referred to here as an enforcement order) either:

- appointing a receiver under section 83 of the Te Ture Whenua Māori Act 1993
- constituting an Ahu Whenua trust under section 215 of the Te Ture Whenua Māori Act 1993.

The enforcement order:

- must provide for the receiver or trustees to ensure the charging order is paid
- may authorise the receiver or trustees to recover money from any person for past use of the land by that person or to recover the amount of rates payable during that use.

Enforcement orders must be cancelled if, within two months of the date of that order, the owner can satisfy the Court that all outstanding rates have been paid, and the proper provision has been made to pay future rates.

Remission and postponement of rates

(Sections 114–115, LGRA; Section 108 and Schedule 11, Local Government Act 2002)

Again the provisions for remission and postponement of rates on Māori freehold land are somewhat different. Your local authority must have a policy covering remission and postponement of rates on this land. Provided it meets the procedural requirements and demonstrates consideration of the matters in the Local Government Act, a policy of not remitting and postponing rates is perfectly lawful.

Schedule 11 of the Local Government Act sets out a series of considerations that your local authority must take into account when adopting, reviewing, amending or revoking its policy:

- supporting the use of the land by the owners for traditional purposes
- recognising and supporting the relationship of Māori and their culture and traditions with their ancestral lands
- avoiding further alienation of Māori freehold land
- facilitating any wish of the owners to develop the land further for economic use
- recognising and taking account of the presence of waahi tapu that may affect the use of the land for other purposes
- recognising and taking account of the importance of the land in providing economic and infrastructure support for marae and associated papa kainga housing (whether on the land or elsewhere)
- recognising and taking account of the importance of the land for community goals relating to –
    - the preservation of the natural character of the coastal environment
    - the protection of outstanding natural features
    - the protection of significant indigenous vegetation and significant habitats of indigenous fauna
    - recognising the level of community services provided to the land and its occupiers, and
    - recognising matters relating to the physical accessibility of the land.

Your council must consider:

- the desirability and importance of the above objectives
- whether, and to what extent, the attainment of any of these objectives could be prejudicially affected if there is no remission of rates or postponement of the requirement to pay rates on Māori freehold land
- whether, and to what extent, the attainment of any of these objectives is likely to be facilitated by the remission of rates or postponement of the requirement to pay rates on Māori freehold land, and
- the extent to which different criteria and conditions for rates relief may contribute to different objectives.

Policies that say, "There is no (or little) Māori freehold land in our district,"[20] or "Our policy is not to remit or postpone rates on Māori freehold land" with no other discussion will struggle to demonstrate that Schedule 11 has been considered. At the minimum, your policy should state the matters in Schedule 11 and point the interested ratepayer in the direction of documents that show how your local authority considered those matters.

THINGS TO REMEMBER

Rating of Māori freehold land

This part of the Rating Act applies only to land where legal and beneficial ownership has been determined by the Māori Land Court. It does not apply to general land owned by Māori. You are within your rights to ask for evidence that the land holds this status.

The process for determining ratepayers on Māori freehold land is complex, especially if there are more than two owners. Depending on the existence of leases, licences or occupation orders, any of the owner, the lessee, a trustee, or a person using the land may be liable.

Māori freehold land cannot be sold or leased to recover unpaid rates.

The Māori Land Court is the body that deals with enforcement of rates on Māori freehold land. There is a minimum time frame and minimum amount of rates required to access this process. The process is known as a charging order.

Local authorities must have a policy that discusses remission and postponement of rates on Māori freehold land.

[20] Properties move into and out of Māori freehold land status all the time. This statement may not necessarily even be an accurate reflection of the true state of affairs.

9. RATES RESETTING AND REPLACEMENT

This chapter discusses the powers that local authorities have to fix procedural errors when setting rates. Specifically this chapter discusses:

- powers to reset rates
- powers to replace rates that are, or are likely to be, deemed invalid.

These provisions provide a statutory mechanism for correcting some procedural errors that arise at some points in the process. In circumstances where these powers are not available or appropriate for some reason then the "last resort", approaching Parliament for validating legislation, becomes an option.

Rates resetting

(Section 119, LGRA)

There are two tests to meet before your local authority can use the power to reset rates. Failure to meet either means rate resetting is not available as an option.

The first is that rates can only be reset if the resolution to reset the rates will be made within the same financial year as the rates that will be reset. For example, a local authority that detects an incorrect section reference in the rate resolution for the 2013/14 financial year has until 30 June 2014 to pass the resolution resetting the rates. Obviously the sooner the rates are reset the better!

The second test is that the amount of rates assessed to any rating unit cannot increase as a result of the correction. *Any* increase of *any* amount assessed (even one cent) on any number of rating units (even a single rating unit) is sufficient to remove resetting rates as an option.

To reset a rate, your local authority needs to:

- give 14 days' public notice of its intention to reset the rate, and
- comply with any standing orders for the revocation and alteration of resolutions that your local authority made in originally setting the rates.

The public notice must contain all of the information about the rates that will be reset that would be contained in the funding impact statement, and must also explain why the rate has to be reset.

If resetting the rates means that some properties have a decrease in liability, then the local authority must amend their rates records and issue amended rates assessments *for the current year.*

Rates replacement

(Sections 120–130, LGRA)

Availability

Rates replacement is designed to resolve errors where the necessary changes will result in at least one rating unit being assessed more rates or where an error is discovered in rates set in a previous year. Therefore, this power comes with a higher procedural requirement (including the requirement to consult).
Replacement of rates can come about in one of three ways:

- a court orders the council to invalidate a rate

- your local authority receives legal advice that a rate may be invalidated if challenged in court
- the local authority may decide to replace a rate on its own initiative due to a mistake in setting the rate, an irregularity in setting the rate or a relevant change in circumstances.

Rates replacement cannot be used as a device for raising more revenue than your local authority originally sought (for example, if you sought $30 million from the rates, you cannot use replacement to generate $31 million). Nor can the rates replacement process be used to replace one rate with another after a law change – the law that was in force on the date that the original rate was set remains in force for the purposes of setting rates.

The rates replacement process

The replacement process, like resetting, starts with public notice of the intent to replace rates. That notice must specify the rates that will be replaced. The notice has to be given as soon as practicable after the decision to replace rates has been made.[21]

Replacement rates can only be set by the adoption of a rates replacement proposal prepared and adopted in accordance with the special consultative procedure (section 87). The proposal must:

- state the relevant year for which rates are being replaced
- list all of the rates set and assessed in that year (not just the rates being replaced), the date on which those rates were set, and whether the rate was a general rate based on rateable value, a UAGC or a targeted rate
- state which rates are the subject of the proposal and explain the reasons for the replacement
- state the basis for each replacement rate, i.e. whether the replacement rate is a general rate based on rateable value, a UAGC or a targeted rate
- identify whether there will be any difference in the revenue sought from the replacement rate, and the revenue sought from the original rate, and the reasons for any difference (replacement rates can be used to gather less total revenue than the original rates)
- identify and explain any departures from the local authority's revenue and financing policy
- explain any difference in basis or type of rates
- describe the general effect that the rates replacement proposal is expected to have on the overall liability for ratepayers or groups of ratepayers for the relevant year.

Notification of the proposal must go to every ratepayer in the district, not just those affected.

That notice must include a statement that the proposal affects only the rates in the relevant year. The notice must also include a description of what happens where the amount of rates assessed on rating units under the proposal differs from that under the original proposal.

What happens once rates are replaced?

Once a rates replacement proposal has been adoptedthe replacement rates are considered set, and the original rates lose their legal effect.

Adoption of a rates replacement proposal does not affect:

- the lawfulness of any action to recover unpaid rates brought before the adoption of the proposal

[21] Once a decision to replace rates has been made, your local authority has 14 days to notify the Secretary for Local Government of the decision to replace.

- the lawfulness of assessing the original rates, of payment of the original rates, and the receipt of that payment before the adoption of the proposal
- any rates rebates granted under the Rates Rebate Act 1973 before the adoption of the proposal
- any discounts granted, or penalties imposed, before the adoption of the proposal
- any remission granted before the adoption of the proposal.

The reassessment of liabilities for rates must be done as quickly as practicable after adoption of the proposal. Liability for replacement rates can only be assessed in accordance with the information in the rating information database as *at the end of the financial year preceding the relevant year.*

The local authority *must* deliver a notice to all ratepayers that:
- shows which rates have been replaced on that rating unit
- describes the replacement rates on the rating unit
- identifies whether there was any difference in the rates assessed under the proposal and the original rates, and if so how any under- or over-payment will be dealt with.

A notice may include any other material that the local authority considers necessary to explain what is happening and why.

Where the replacement rates on a rating unit are less than the original rates, an excess exists. This excess *must* be applied in the following order:
- paying any rates arrears on the rating unit for the relevant year
- paying any other rates arrears on the rating unit
- crediting any remaining sum against future rates.

A local authority is only *required* to refund rates under Part 5 if there is an amount to be credited against future rates and the ratepayer applies in writing for a refund.

Where the replacement rates on a rating unit are greater than the original rates, a deficit exists. That deficit must be assessed against the rating unit in the current year, i.e. the year the replacement rate is set (if the local authority hasn't set a general rate in the current year) or in any subsequent year.

Deficits can be remitted if your rates replacement proposal provided for this or your local authority creates a remission policy. Your local authority also has the power not to collect a deficit on any unit if it considers that collecting the rates would be unreasonable.

Where rates have been postponed on a rating unit and those rates have been replaced, the local authority must go through the process of assessing the rates again and adjusting the amounts accordingly (including any interest payable on the postponed rates).

Where part of a rating unit was sold or transferred during the relevant year and that transfer occurs before adoption of the rates replacement proposal then any excess or deficit must be allocated amongst the separate parts of that unit in accordance with the rateable values of those parts.

THINGS TO REMEMBER

Rates replacement

The mechanisms in the Rating Act are for correcting errors in the rates resolution. There are two processes. Your local authority could reset the rates if the resetting occurs in the same year as the rates it corrects, and no rating unit will be assessed more rates as a result. Otherwise your local authority will have to use the rates replacement process.

The rates replacement process requires your local authority to develop a proposal and consult on this using the special consultative procedure.

10. THE FINAL EXAM

Instructions: Select the answer you think is most correct based on the information in front of you.

1. Shark and Rook Plaza is a shopping mall, consisting of 43 shops. It is owned by SharkCorp, which leases the shops to each of 42 different occupiers, with one reserved for mall management (Smith Property Managers). Shark and Rook Plaza is on one certificate of title. How many rating units exist on this rating unit?
   (a) 1
   (b) 2
   (c) 42
   (d) 43
   (e) Insufficient information to determine

2. Based on the information provided in question 1 above, who should be entered as the ratepayer for Shark and Rook Plaza?
   (a) Each of the 42 lessees of the shops
   (b) Smith Property Managers
   (c) Shark and Rook Plaza
   (d) SharkCorp
   (e) Insufficient information to determine

3. The Department of Internal Affairs owns a rating unit in downtown Wellington from which it operates its passport and censorship services. Is this rating unit:
   (a) fully rateable
   (b) non-rateable
   (c) 50 percent non-rateable
   (d) not a rating unit
   (e) Insufficient information to determine

4. Broadstairs Learning Academy is a private, not-for-profit school. Is this rating unit:
   (a) fully rateable
   (b) non-rateable
   (c) 50 percent non-rateable
   (d) not a rating unit
   (e) Insufficient information to determine

5. Zephyr Café is situated in the terminal at Upper Creek Airport. Assuming that the council wanted to perform a division of the rating unit, would that make the café:
   (a) fully rateable
   (b) non-rateable
   (c) 50 percent non-rateable
   (d) 25 percent non-rateable
   (e) Insufficient information to determine

6. Kiwi District Council has resolved to set and assess a "district rate for roading". It is a rate of 0.00005 cents per dollar capital value on all rating units in the Kiwi District, with the proceeds being tied exclusively for use on the maintenance, construction and renewal of roads. Is this:
   a) a value based general rate
   b) a uniform annual general charge
   c) a targeted rate
   d) a lump sum contribution
   e) none of the above.

7. Which of the following is not a lawful factor under Schedule 3?
   (a) improvement values
   (b) number of units of demand
   (c) number of visitor stay units
   (d) area paved, sealed or built on
   (e) b) and c)

8. Kiwi District Council wants to set differentials on its general rate. Which of these matters cannot be used to construct a differential:
   (a) land value
   (b) capital value
   (c) improvement value
   (d) land area
   (e) location

9. Kiwi District Council also wants to set a targeted rate for roading with differentials. Which of the following matters cannot be used to differentiate that targeted rate:
   a) land value
   b) capital value
   c) improvement value
   d) land area
   e) location

10. Which of these rates would not count for the purposes of section 21 – the 30 percent cap?
   (a) the uniform annual general charge
   (b) a fixed targeted rate for community facilities set at $100 per rating unit in an urban area and $25 per rating unit for all other rating units
   (c) a fixed targeted rate for water supply of $100 per rating unit set across the entire district
   (d) a fixed targeted rate for roads of $100 per rating unit across the entire district
   (e) b) and c)

11. Kiwi District Council wants to defer rates on new businesses provided they meet certain employment criteria. The intent is to defer payment of rates for five years, or until the rating unit is sold or leased. Is this an example of:
   (a) differential rating
   (b) rates remission
   (c) rates postponement
   (d) rates rebates
   (e) rates replacement

12. Central Regional Council has decided to delegate powers to its revenue manager to waive penalties on unpaid rates. Is this an example of:
    (a) differential rating
    (b) rates remission
    (c) rates postponement
    (d) rates rebates
    (e) rates replacement

13. Which of the following are part of the content of a rating information database (assume this is not the copy available for public inspection)?
    (a) name of the ratepayer
    (b) capital value
    (c) land area
    (d) rating unit use (if the local authority needs this information for differential rating)
    (e) all of the above

14. Which of these people cannot object to the information on a rate record?
    (a) a land broker
    (b) the ratepayer
    (c) a mortgagee who has become liable under the recovery provisions
    (d) a lessee who has become liable under the recovery provisions
    (e) all of the above may object to the information on a rate record

15. Jo Bloggs wants to object to the value of her rating unit as it appears on the DVR. Which of the processes below are her lawful options?
    (a) objecting to the rating information database
    (b) objecting to the rates record
    (c) lodging a valuation objection
    (d) seeking a division of the rating unit
    (e) all of the above

16. Which of the following is not a statutory role for your council's valuation service provider?
    (a) deciding what to value
    (b) valuing properties in accordance with Valuer-General's rules
    (c) calculating an estimate of projected value
    (d) dividing a rating unit for differential rating purposes
    (e) a), c) and d)

17. Kiwi District Council is setting its rates for the year. Which of the following must be in the resolution?
    (a) the financial year or part of a year for which the rates are set
    (b) penalties (if the local authority wishes to assess penalties)
    (c) the date or dates on which rates are payable
    (d) details of each of the rates to be set
    (e) all of the above

18. Which of the following functions cannot be delegated?
    (a) setting the rates
    (b) granting remissions and postponements
    (c) categorising rating unit for differential rating purposes
    (d) determining objections to the RID
    (e) commencing judicial proceedings

19. Which of the following is not part of the mandatory content of a rates assessment?
    (a) name and address of ratepayer
    (b) total amount of rates payable in the current financial year
    (c) amount of any arrears
    (d) factors from Schedule 3 that are used to set rates on the rating unit
    (e) details of the penalty regime

20. Which of the following is not part of the mandatory content of a rates invoice?
    (a) name and address of ratepayer
    (b) total amount of rates payable in the current financial year
    (c) amount of any arrears
    (d) factors from Schedule 3 that are used to set rates on the rating unit
    (e) details of the penalty regime

You've finished the final exam. Now review the answers on page 9. If you scored 15 or more, congratulations, you've finished the book. If you scored 14 or fewer you should review the relevant chapters.

APPENDICES

APPENDIX ONE

A sample rating content of funding impact statement

AUTHOR'S NOTE

This is a purely hypothetical example for the purposes of illustration, to show how the various elements of the annual plan funding impact statement fit together. It is not the only format that would comply with legal requirements, just as the examples of rates are not the only way that local authorities are choosing to set rates for these services. The numbers here are purely illustrative.

BACKGROUND

The Upper Creek District Council is working on the content of its annual plan and wants to prepare a funding impact statement. It wants to set and assess the following rates:

- a value based general rate set on capital value, and which is differentiated on use (where the categories are "general", "residential" and "rural")
- a UAGC set on a one per rating unit basis
- a targeted rate for water supply set on commercial rating units, calculated using the volume of water consumed as provided by section 19
- a targeted rate for water supply set on all other rating units calculated as a fixed amount rating unit differentiated by provision or availability of service
- a targeted rate for roading set on capital value
- a targeted rate for sewage disposal set as a flat dollar charge, differentiated by provision or availability of service
- a targeted rate for community facilities set as a fixed targeted rate per rating unit, differentiated by location (with each of the three wards being used as the basis for the differential)
- a targeted rate for refuse collection set as a targeted rate per rating unit, differentiated in the same way as the community facilities rate, and
- a tourism promotion and facilities rate for the Carterburg CBD based on capital value.

The council wishes to invoice rates in four instalments and assess all of the penalties it is lawfully entitled to under the Rating Act.

UPPER CREEK DISTRICT COUNCIL:

Funding Impact Statement

Important: To be read first

At various points in this funding impact statement the Council has included an indicative level of rate or charge. These indicative figures support the calculations in the sample rate models and are included to provide you with an indication of the level of rates we are likely to assess on your rating unit in the coming year. So long as we set rates in accordance with the system described in this statement, the amounts may change.

All rates specified in this funding impact statement are GST inclusive.

1. GENERAL RATE

Both the general rate and the uniform annual general charge will be used to fund democratic services, regulatory services and stormwater disposal.

Value based general rate

Council proposes to set a general rate based on the capital value of each rating unit in the district.

The general rate will be set on a differential basis based on land use (the categories are "residential", "commercial" and "rural").

A commercial rating unit is defined as any rating unit that is wholly or principally used for retail or wholesale trade, manufacturing, or the provisions of services with profit as the intent. In its last review of its revenue and financing policy, the council considered that this category of rating units should pay 1.2 times the rate residential rating units pay.

A rural rating unit is defined as any rating unit wholly or used primarily for the purposes of agriculture, horticulture, viticulture, or silviculture. In its last review of its revenue and financing policy, the council considered that this category of rating units should pay 0.9 times the rate residential rating units pay.

Residential rating units include any rating unit not classified as commercial or rural.
The indicative rates (in cents per dollar of capital value) for 2013/14 are:

Residential 0.002c

Commercial 0.0024c

Rural 0.0018c

Uniform general charge

The council proposes to set a uniform annual general charge per rating unit. In the 2013/14 year, this charge is estimated to be $50 per rating unit.

2. WATER SUPPLY

The council proposes to set two targeted rates for water supply.

2.1 Water supply – commercial

All rating units defined as commercial for the purposes of the general rate will pay a targeted rate of $2.97 per cubic metre of water supplied as measured by meter. The Council is seeking $2.1 million in revenue from this rate.

2.2 Water supply – other

All rating units not classified as commercial will pay a differential targeted rate based on the provision or availability of a Council-supplied water service. This rate will have three categories:
"Connected" – all rating units connected to a Council-supplied water scheme.
"Serviceable" – all rating units not connected to a Council-supplied water scheme, but where all or part of the rating unit is situated within 100 metres of a Council-supplied water main or headwork. These rating units will pay half the rate that a connected rating unit would pay.

"Not supplied" – all other rating units. These rating units will be excluded from paying rates for water supply.

In the 2013/14 rating year, connected rating units will pay a targeted rate of $100 per rating unit, and serviceable rating units will pay a targeted rate of $50 per rating unit.

The total revenue sought from this rate is $3.5 million.

3. ROADING

The council proposes to set a targeted rate to fund the provision and maintenance of roads, footpaths, kerbing and channelling of 0.001 cents per dollar of capital value on all rating units in the district.

Community facilities

The council proposes to set a targeted rate on each rating unit within the district to fund the Carterburg Sports Centre; Council-operated sports grounds, parks, and libraries; and Hideville Founders Museum. The rate will raise $4.25 million in total.

The rate will be set differentially by ward as follows:
- "Hideville" – all rating units situated in the Hideville Ward will pay a targeted rate of $200 per rating unit, with the proceeds to raise $2 million in revenue.
- "Carterburg" – all rating units situated in the Carterburg Ward will pay a targeted rate of $150 per rating unit, with the proceeds to raise $1.75 million in revenue.
- "Rural" – all rating units situated in the Rural Ward will pay a targeted rate of $50 per rating unit, with the proceeds to raise $0.5 million in revenue.

4. REFUSE COLLECTION AND DISPOSAL

The council proposes to set a targeted rate on each rating unit within the district to fund the Council's refuse collection and disposal operations, and recycling. The rate will be set differentially in each ward (as defined for the purposes of the Community Facilities rate) to raise $2.2 million, with the indicative amounts being:

- $100 per rating unit in the Hideville Ward with the proceeds to raise $1.0 million in revenue
- $80 per rating unit in the Carterburg Ward with the proceeds to raise $0.8 million in revenue
- $40 per rating unit in the Rural Ward with the proceeds to raise $0.4 million in revenue.

5. CARTERBURG TOURISM PROMOTION AND FACILITIES RATE

Council proposes to set a targeted rate for all commercial properties within the Carterburg central business district (CBD) of 0.0001 cents per dollar capital value. The council is seeking $150,000 from this rate, and will use the proceeds to fund the provision of public toilet facilities in Carterburg and the "Connect with Carterburg" promotional campaign.

For the purposes of this rate, "commercial properties" are those defined as commercial for the purposes of the general rate.

The Carterburg CBD includes all properties within the area bounded by and with road frontage on David Street, Daniel Street, and State Highway 73.[22]

6. SEWAGE DISPOSAL RATE

Council proposes to set a fixed targeted rate for sewage disposal differentiated by provision or availability of service.

For the purposes of the sewage disposal rate, the council will assess the service in the following ways:

- "connected" means a rating unit if the council provides a sewage disposal service in the normal course of events
- a rating unit is "serviceable" if the rating unit is within 100 metres of a sewerage trunk or headworks, and these rating units will pay half the rate that a connected rating unit will pay
- "not serviced" means all rating units not classified as "available" and "serviceable", and this category of rating unit will be excluded from paying this targeted rate.

Rating units connected to the sewage disposal service will pay a targeted rate of $250 per rating unit. This rate is expected to generate $3.5 million in revenue.

Each rating unit that the council classifies as serviceable will pay a targeted rate of $125. This rate is expected to generate approximately $0.5 million in revenue.

The funding impact statement would also show:

- details of other funding mechanisms used
- some sample rate models
- the whole-of-council funding impact statement as per the Financial Reporting Regulations.

[22] In this case, a map might be the best way of depicting the area.

APPENDIX TWO

A sample rates resolution

BACKGROUND

Having included details of the rates in the funding impact statement as it appears in the annual plan, the Upper Creek Council now wishes to set and assess those rates. It first needs to set a rates resolution.

27 JUNE 2013
RESOLVED (CR MULDER/CR SCULLY)

SETTING OF RATES FOR 2013/14 FINANCIAL YEAR

1. That the Upper Creek District Council sets the following rates under the Local Government (Rating) Act 2002, on rating units in the district for the financial year commencing on 1 July 2013 and ending on 30 June 2014.

(a) Uniform annual general charge

A uniform annual general charge of $50 (GST inclusive) per rating unit, set under section 15 of the Local Government (Rating) Act 2002.

(b) General rate

A general rate set under section 13 of the Local Government (Rating) Act 2002 made on every rating unit, assessed on a differential basis as described below:

- a rate of 0.002 cents in the dollar (GST inclusive) of capital value on every rating unit in the "residential" category
- a rate of 0.0024 cents in the dollar (GST inclusive) of capital value on every rating unit in the "commercial" category
- a rate of 0.0018 cents in the dollar (GST inclusive) of capital value on every rating unit in the "rural" category

(c) Water supply rates

A targeted rate for water supply, set under section 19 of the Local Government (Rating) Act 2002, of $2.97 cents (GST inclusive) per cubic metre of water consumed to any rating unit that is classified as commercial.

A targeted rate for water supply on all rating units classified as "other" for the purpose of water supply rates, set under section 16 of the Local Government (Rating) Act 2002, as described below:

- $100 per rating unit for all rating units classified as connected
- $50 per rating unit for all serviceable rating units

(d) Roading rate

A targeted rate for roading set under section 16 of the Local Government Rating Act 2002 on all rating units in the Upper Creek District of 0.001 cents (GST inclusive) per dollar of capital value.

(e) Community facilities rate

A targeted rate set under section 16 of the Local Government (Rating) Act 2002 for community facilities of:

- $200 (GST inclusive) per rating unit on all rating units situated within the Hideville Ward
- $150 (GST inclusive) per rating unit on all rating units situated within the Carterburg Ward
- $50 (GST inclusive) per rating unit on all rating units situated within the Rural Ward.

(f) Refuse collection and disposal rate

A targeted rate for refuse collection and disposal set under section 16 of the Local Government (Rating) Act 2002 of:

- $100 (GST inclusive) per rating unit on all rating units situated within the Hideville Ward
- $80 (GST inclusive) per rating unit on all rating units situated within the Carterburg Ward
- $40 (GST inclusive) per rating unit on all rating units situated within the Rural Ward.

(g) Carterburg tourism promotion and facilities rate

A targeted rate for tourism promotion and facilities set under section 16 of the Local Government (Rating) Act 2002 on all commercial rating units within the Carterburg central business district of 0.0001 cents per dollar (GST inclusive) of capital value.

(h) Sewage disposal rate

A targeted rate for sewage disposal, set under section 16 of the Local Government (Rating) Act 2002 of:

- $250 per rating unit for all rating units classified as connected
- $125 per rating unit for all serviceable rating units.

2. That the council adopt the definitions for its differential categories set out in the funding impact statement contained in the 2013/14 Annual Plan as its differential rating categories for the year.

3 That all rates will be payable in four equal instalments with the due dates for payment being:

Instalment One	15 August 2013
Instalment Two	15 November 2013
Instalment Three	15 February 2014
Instalment Four	15 May 2014

4(a) That the council apply the following penalties as follows:

i. a charge of 10 percent on so much of any instalment that has been assessed after 1 July 2013 and which is unpaid after the due dates below

Instalment One	15 August 2013
Instalment Two	15 November 2013
Instalment Three	15 February 2014
Instalment Four	15 May 2014

ii. a charge of 10 percent on so much of any rates assessed before 1 July 2013 that remain unpaid on 4 July 2013

iii. a further amount of 10 percent on any rates to which a penalty has been added under (ii) if the rates remain unpaid on 5 January 2014.

4(b) That authority to apply the council's policy of remission on penalty rates be delegated to the Finance Manager.

1. That rates shall be payable at any of the following places:
   - the council offices, 34 Daniel Street, Carterburg
   - Hideville Service Centre, 103 Jekyll Road, Hideville
   - Mountainview Service Centre, cnr State Highway 73 and Kerr's Road
   - using online banking or direct debit facilities established by the Council
   - between the hours of 8.30am to 5.00pm, Monday to Friday.

APPENDIX THREE

Self review tool for annual plan, FIS and rates resolutions

FUNDING IMPACT STATEMENT

Quality control

- ☐ If you have specified indicative rates (and you do not have to), has someone checked the council's financial modelling to ensure these rates are correct? And has someone checked their checking?
- ☐ If you have specified indicative rates (and you do not have to), have you ensured that you have clarified whether each is GST inclusive or exclusive (either is fine but the "default presumption" is that the rate is GST inclusive)?
- ☐ If you are specifying section references (and you do not have to), have you checked they are correct, and has the checker been checked?
- ☐ Are the sources of funding specified in the funding impact statement consistent with provisions of the revenue and financing policy and the funding impact statement in the long-term plan?
- ☐ Has the funding impact statement *in its entirety* been reviewed by a legal adviser *conversant with the Rating Act*?
- ☐ Have you checked your financial model, funding impact statement and consequent documentation for compliance with the section 21 limit (the 30 percent cap)?

General rates

Assuming that your council is proposing to set and assess a *value based general rate*, then:

- ☐ has it been set and assessed on one, *and only one*, of land value, capital value or annual value?
- ☐ does this match the valuation base declared in your local authority's revenue and financing policy?
- ☐ has your local authority's choice of valuation base been clearly specified in the funding impact statement?
- ☐ if you have specified an indicative rate, is this correctly expressed as cents per dollar (and is the decimal point in the right place)?

If your council is planning to use *differentials* on its general rate then:

- ☐ have you clearly specified this fact in your funding impact statement?
- ☐ have you clearly identified the Schedule 2 matters you will use to construct the differential or differentials?
- ☐ are the differentials as specified in your revenue and financing policy?
- ☐ can the ratepayer clearly determine, on the basis of the information provided, what category or categories their rating unit falls into?
- ☐ are each of these matters listed in Schedule 2?
- ☐ have you specified an objective or objectives for the differentials (note that this can be expressed as either the relationship between the different categories or the revenue sought from each category)?
- ☐ has your council taken adequate policy and legal advice on the rationale for its differential system?

If your council is proposing to set a *uniform annual general charge* then:

- ☐ is the charge consistent with that specified in your revenue and financing policy
- ☐ is the charge set and assessed at the *same amount on all rating units* or separately used or inhabited parts of a rating unit
- ☐ has the council set the uniform annual general charge on a consistent basis across the entire local authority (i.e. a regional council cannot set a UAGC on a one per rating unit basis in one territorial authority and on a one per SUIP basis in another)
- ☐ have you identified whether the charge is set and assessed on a "one per rating unit" or "one per separately used or inhabited part of rating unit"
- ☐ have you defined separately used or inhabited part of a rating unit (assuming you need to)?

Targeted rates

For each targeted rate that your council is proposing to set, has your council:

- ☐ identified the activity or activities that the targeted rate will fund (remembering that there need not be a one-to-one relationship between activities and targeted rates)
- ☐ specified the manner in which the targeted rate will be calculated, which could be one or more of:
  - a fixed rate per rating unit
  - one of the factors from Schedule 3
  - water by meter (for water supply only)
- ☐ specified any matters from Schedule 2 that will be used as the basis for a differential or excluding some categories from paying the targeted rate
- ☐ checked that the ratepayer can clearly determine, *on the basis of the information provided*, what category or categories their rating unit falls into
- ☐ specified objectives for differential rating (if the targeted rate will be set and assessed differentially)
- ☐ defined separately used or inhabited part of rating unit (assuming that a fixed targeted rate has been set on this basis)
- ☐ stated whether it intends to invite lump sum contributions in respect of the targeted rate?

Lump sum contributions

If your local authority intends to offer lump sum contributions in respect of any targeted rate:

- ☐ has your local authority adopted a capital project funding plan
- ☐ has this been reviewed for compliance with Part 4A of the Rating Act
- ☐ is the proposed lump sum contribution and targeted rate consistent with the provisions of that capital project funding plan?

Other funding sources

- ☐ Has your local authority specified the other funding sources that it proposes to use?
- ☐ Have these been checked against the council's financial model? Has the checking been checked?

Sample rating models

- ☐ Has your council included examples of rating impact of the proposed general and targeted rates on different categories of rateable land with a range of property values?

- ☐ Are they representative of the major aspects of the council's rating system?
- ☐ Does the council have a rationale for its selection of property types and values?
- ☐ Is the rationale written down somewhere?

Financial reporting regulations

- ☐ Has your local authority included a whole-of-council funding impact statement in the format prescribed by the Financial Reporting Regulations?
- ☐ Has your local authority included the group of activity funding impact statement in the format prescribed by the financial reporting regulations?

RATES RESOLUTION

The fundamentals

- ☐ Has your council adopted its annual plan for the year that your rates resolution covers? **(If this box is not ticked, the resolution cannot be adopted)**

- ☐ Does the resolution actually state that the council is resolving to set and assess the rates?

- ☐ Has the rates resolution specified the correct financial year? And are all references to the financial year correct?

- ☐ Are you using the correct legal terminology, for example "set" and "assessed" not "make" and "levy"?

Quality control

- ☐ Does your council have its final rating information database for the financial year?
- ☐ Has a check been made of the rates in the resolution against the final RID and the council's financial model? Has the checking been checked?
- ☐ Has at least one "fresh pair of eyes" looked at the rates resolution for consistency with the annual plan funding impact statement?
- ☐ Has the rates resolution in its entirety been reviewed by a legal adviser conversant with the Rating Act?
- ☐ Is it clear whether the rates are GST inclusive or exclusive?
- ☐ Are there any rates that were not provided for in the funding impact statement? **(If there are, they are invalid unless you are satisfied there is an urgent or unforeseen need and give at least 14 days public notice of your intention to set the rate)**

Delegations

- ☐ Are all of the necessary delegations either in the rates resolution or the delegations register?
- ☐ Has each function been delegated to the correct place?

Instalments, due dates and penalties

- ☐ Has the council resolved to set and assess rates on instalments?
- ☐ Has the council specified the correct number of due dates in the resolution (for example, if rating on quarterly instalments then four due dates would be needed)?

- ☐ Does the resolution specify how much of the annual rates will be collected in each instalment?
- ☐ If your first instalment is an interim instalment then has your resolution stated this fact?
- ☐ Is the interim instalment for no more than 25 percent of the rates assessed in the previous year?
- ☐ Have you specified all of the penalties that your council intends to apply (remember there are three types that you can apply)?
- ☐ Has a date (or dates) for application of each type of penalty been included?

Rates

For the uniform annual general charge (if any):

- ☐ do you need to specify a definition of separately used or inhabited part of a property? have you?
- ☐ is it clear that the UAGC is set and assessed on a per rating unit or per SUIP basis?
- ☐ is there only one UAGC?
- ☐ is the correct amount specified?

For the value-based general rate (if any):

- ☐ have you specified one and only one valuation base
- ☐ have you specified the Schedule 2 matters for differentials (if any)
- ☐ have the categories for differentials been defined
- ☐ are the correct amounts specified?

For each targeted rate:

- ☐ have you specified the correct factor or factors from Schedule 3, section 18 or section 19
- ☐ have you specified the correct matter or matters from Schedule 2 (these apply if you are setting the targeted rate differentially or proposing to exclude any category of rating unit from the targeted rate)
- ☐ are the correct amounts specified?

APPENDIX FOUR

Rates assessments – a checklist

Have you included the following?

RID information

- ☐ the DVR number for the rating unit
- ☐ the legal description and location of the rating unit
- ☐ the name and address of the ratepayer
- ☐ the rateable value of the rating unit
- ☐ the Schedule 2 matters that have been used as the basis for any differentials (or as the basis to exclude rating units from liability for a targeted rate)
- ☐ the Schedule 3 factors that have been used to calculate liability for any targeted rates
- ☐ notification of the ratepayer's rights to inspect and object to the rating information database and rates records.

Rating information

- ☐ an amount and description of each rate
- ☐ a description of the activities or groups of activities that will be funded by each rate
- ☐ the total amount of rates payable on the rating unit for the financial year
- ☐ where early payment has been made, details of the rates paid, and the rates left to pay as well as any discount for early payment
- ☐ where an LSC has been made, details of the targeted rates for which no liability has been attached.

Council information

- ☐ the name and address of your local authority
- ☐ the financial year for which the rates are payable
- ☐ a description of the criteria for relief under any remission or postponement policy (if any), including for Māori freehold land
- ☐ the methods by which rates will be paid
- ☐ the due date or dates on which rates will be payable
- ☐ details of any penalty regime and a warning that rates not paid on time may attract a penalty.

Joint assessments

If this is a joint assessment for one or more local authority then does the assessment:

- ☐ specify the name and address for each of the assessing local authorities
- ☐ clearly set out the activities funded by each rate set and assessed by each council
- ☐ clearly set out the particulars of each rate set and assessed by each local authority, and a total amount for each local authority
- ☐ clearly identify any differences in each of:
- ☐ remission policies, postponement policies and policies for the remission and postponement policies on Māori freehold land
- ☐ penalty regimes.

Quality control

- ☐ Has the assessment been checked by at least one other staff member?
- ☐ Has at least one other staff member checked that all of the items on this list have been actioned?
- ☐ Have you had your assessment reviewed by a solicitor?

APPENDIX FIVE

Rates invoices – a checklist

Have you included the following?

- ☐ the name and address of the invoicing council or councils
- ☐ the name and address of the ratepayer
- ☐ the legal description and location of the rating unit
- ☐ the amount of rates payable for the financial year on the rating unit
- ☐ the amount of rates that have been paid to date for the financial year
- ☐ the amount payable on the current invoice
- ☐ the due date for payment on the current invoice
- ☐ where rates may be paid
- ☐ a warning that unpaid rates will attract a penalty (if a council has a penalty regime)
- ☐ details including amounts of any penalties added in the current financial year (if any)
- ☐ the amount of any unpaid rates from a previous year
- ☐ a statement that the invoice is a tax invoice
- ☐ the GST number of the collecting local authority (or authorities).

Joint invoices

If this is a joint invoice for one or more local authority then does the invoice:

- ☐ specify all of the section 46 information for each of the local authorities?

Quality control

- ☐ Has the invoice been checked by at least one other staff member?
- ☐ Has at least one other staff member checked that all of the items on this list have been actioned?
- ☐ Have you had your invoice form reviewed by a solicitor or other external adviser who is conversant with the Rating Act, the Goods and Services Tax Act and consumer law?

12. THE FINAL EXAM: THE ANSWERS

1 (a) There is only one certificate of title and therefore there is only one rating unit.

2 (d) In the absence of information suggesting that the exceptions of section 11 apply, the owner (SharkCorp) must be the ratepayer.

3 (a) Don't forget that most rates exemptions are phrased in terms of use, as opposed to ownership. Crown land is rateable unless the Rating Act provides otherwise. While the Department of Internal Affairs is a Crown agency, censorship and passport services are not on the list in Schedule 1.

4(b) The only schools that are fully rateable are private, for profit schools.

5(a) This is the "classic" case where division of a rating unit would be appropriate.

6 (c) The proceeds from the rate are targeted to funding only a particular function, so even though the rate is set and assessed across the district, it is, legally speaking, a targeted rate. Note that it is the legal form of the rate, and not what that council calls it, that is determinative.

7 (e) Both b) and c) do not appear in Schedule 3 – and neither is authorised anywhere else in the Rating Act.

8 (c) Improvement values are not listed in Schedule 2. They cannot be used as the basis for a differential. They are listed in Schedule 3 and can be used to calculate a targeted rate.

9 (c) Improvement values are not listed in Schedule 2, they cannot be used as the basis for a differential. They are listed in Schedule 3 and can be used to calculate a targeted rate, but not as the basis for a differential on a targeted rate.

10 (e) Answer c) does not count for section 21 purposes because it is set for water supply. Answer b) is omitted because the charge differs in different parts of the district, i.e. it is not set on a uniform basis.

11 (c) The council has merely deferred payment until either a time or a condition is met. The council has not reduced payment.

12 (b) The council has decided to immediately and permanently reduce the amount of rate it was lawfully owed – this is an example of the most common use of the remission power.

13 (e) All of the above are part of the RID.

14 (a) Ratepayers have the right to object to the records that apply to their own rating unit. Mortgagees and lessees who become liable under recovery provisions also have the right to object. Those are the only people who may object.

15 (c) If the objection is to the value, the process for appeal is section 39 of the Rating Valuations Act – which is termed a valuation objection.

16 (e) EPVs are a council responsibility (though it may be delegated, it is not a statutory function). Likewise division of rating units. VSPs are bound by the Valuer-General's rules on what is and isn't a rating unit.

17 (e) All of these are core parts of a rates resolution – missing any of these could create problems.

18 (a) Rates must be set by resolution of the council – including the amounts, penalties and dates for instalments. No variation is permitted. Council approval is legally not needed before commencing judicial proceedings to enforce rates – but is commonly sought.

19 (c) Arrears do not have to go on the assessment – they have to go on the invoice. But many councils do put them on the assessment.

20 (d) Only the actual liability for rates has to go on the invoice – you do not need to specify how these amounts were calculated.

Building capability and excellence
among local government managers and staff

New Zealand Society of Local Government Managers (SOLGM)

8th Floor, Civic Assurance House
114-118 Lambton Quay, Wellington

PO Box 5538
Wellington 6145

Phone 04 978 1280   Fax 04 978 1285
info@solgm.org.nz   www.solgm.org.nz