HE ARATOHU KI TE LG RATING ACT 2002 MĀ NGĀ MEMA PŌTI

Elected Members' Guide to the LG (Rating) Act 2002

LGNZ
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Introduction

Rates, and funding issues in general, go right to the heart of the relationship between local authorities and their communities. Rates are a highly visible form of tax that attract intense scrutiny.

The Local Government (Rating) Act 2002 (Rating Act) is one of local government's core statutes, giving elected members the right to levy a property tax.

Local Government New Zealand and Taituarā have developed the guide specifically to meet the needs of elected members.

Its focus is on the policy choices that the Rating Act makes available to elected members, local authorities and the community.

It offers an outline of each of the various tools available, their advantages and disadvantages, and examples of when they work well. Some commonly held misunderstandings are explained.

The guide also discusses some of the more important mechanical requirements and legal limits on rating. The intent is to make everyone aware of some of the common pitfalls involved when determining rating policies, including discussion of why some land doesn't pay rates, or why particular policy choices are not available to all local authorities.

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Disclaimer

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.

Every effort has been made to ensure that the information in this guide is as accurate as possible, including review by legal advisors and representatives of the Office of the Auditor-General.

The guide is not a substitute for appropriate legal and policy advice. Local Government New Zealand, Taituarā and the individuals involved in the preparation of this document do not accept any liability for loss or damage arising from the use of material contained herein.

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1/

TE TŪĀPAPA O TE PŪNAHA REITI

Fundamentals of the rating system

INCLUDED IN THIS SECTION:

// What are rates?

// What land pays rates?

// Who pays rates?

1.1/ He aha te reiti? What are rates?

The Local Government (Rating) Act 2002 (the Rating Act) is the legislation through which Parliament has provided local authorities with a power to levy a coercive tax to fund its lawful activities. This tax is referred to as *rates.*

Rates are a tax on property that local authorities use to fund the provision of services to their local or regional communities. When setting rates, local authorities must take a number of matters into consideration. These are set out in the Local Government Act 2002 (LGA 2002) and include:

- // the objectives the local authority has in undertaking the activity,
- // the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals,
- // intergenerational equity,
- // any exacerbators (those whose actions, or failures to act, give rise to the need for expenditure), and
- // the practical implications of funding one activity separately from other activities.

Many economics textbooks include *rating unit* within their standard definition of tax and refer to the 'tax-like characteristics of rates,' such as:

- // universality (everybody pays),
- // coerciveness (everybody has to pay),
- // independence from levels of benefit received and
- // public accountability on the part of the agency levying the tax.

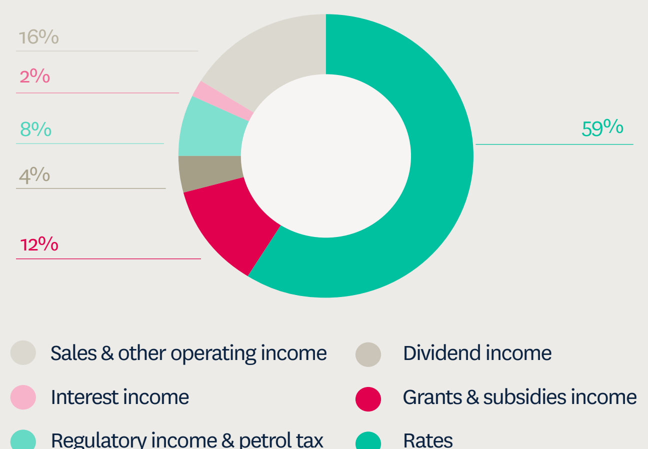
The concept of rates as a tax raises important constitutional and legal principles. Chief of these is that all decisions, actions and procedures must be strictly in accordance with the legislation governing the tax.

That means that:

- // only those rates authorised under the Rating Act can be set and assessed – anything more is unlawful and likely to be set aside if challenged (the legal term for this is *ultra vires*), and
- // rates must be set strictly in accordance with the procedural steps and information requirements set out in the Rating Act and the Local Government Act. Rate-setting that fails to follow these steps stands the risk of judicial risk.

Rates fund the bulk of services provided by a local authority and, as seen in *figure one*, account for around three of every five dollars of income. This varies from local authority to local authority depending on its type, range of activities, and the level of financial and other investments it has. Some get 90 percent of their income from rates, others as little as 45 percent.

FIGURE ONE/ **Local authority operational revenue by source, year ended June 2018**[1]



[1] Source: Statistics New Zealand, Local Authority Financial Statistics, year ended June 2018.

Rates are the means for apportioning the financial cost of council services between the different categories of *rating units.*

One of the most common errors people make when thinking about rates is to assume their rates will increase if the value of their property increases. Sometimes rates on an individual rating unit will fall, even though the value of the property rises – this is because the increase in the property's value is less than the average increase over the district.

A local authority's total rate requirement can be thought of as a pie and the rates each rating unit pays, are its slice of the pie. The size of each slice is, roughly speaking, each rating unit's share of the total value of the district. In a situation where property values are increasing, the level of rates on any individual rating unit will depend on the rating unit's increase relative to the rest of the district.

If a rating unit's value increases 10 percent, but the average increase for the district was 12 percent, the rating unit's share of the district value will be smaller, and it will pay a lower amount in rates. In contrast, if the average district value increased by five percent, then the rating unit's share of the district value will be greater, and it will pay more in rates.

The reason people assume rates increase as property values increase, is because they think of rates like income taxes, where, as wages increase earners get pushed into higher tax brackets. This is not the case in local government. We can only set our rates after determining what our expenditure requirements are, and we must set them afresh each year.

RATES AND THE RATE-SETTING PROCESS DO NOT EXIST IN A VACUUM

Figure two shows how rate-setting is the last step in a process of making policy choices and consulting on these with the community. This includes the following three steps.

STEP ONE: the development of the long-term plan (LTP), which is a process for debating potential service delivery and level of service options, the funding implications and how these will be managed with the community. This plan is also a record of a local authority's long-term intentions. It includes:

- the council's financial strategy (including self-set limits on rates),
- the council's revenue and financing policy, setting out who pays for what, and when,
- the council's Funding Impact Statement (FIS), giving an indication of what rates and charges are payable over the long-term, and
- forecast financial statements.

STEP TWO: the annual plan which sets out the levels of service, FIS (including details of the rates) and financial forecasts for the year.

STEP THREE: the rates resolution, the mechanism that actually sets the rates for the year. A council cannot lawfully collect rates until this step has been done.

FIGURE TWO/ **Rate-setting is the end of the process**

1.2/ Ko ēhea ngā whenua utu reiti? What land pays rates?

THE RATING UNIT

All taxes have what is called a *unit of liability*; the undertaking of an activity or the ownership of property gives rise to a tax unit of liability. With rates, it is the existence of a *rating unit* that gives rise to liability for rates; existence of a rating unit is the first step in getting someone to pay rates on that land.

The Rating Valuations Act 1998 establishes the basic principles for what is and isn't a rating unit. The 'rule of thumb' is that if a separate record of title (a legal document that gives someone legal ownership of, and the right to sell or lease, a piece of land) exists, it will create one rating unit.

The Valuer-General has a limited ability to make rules allowing for the combination of two or more certificates of title into one rating unit. The Valuer-General can only make rules that cover cases where the land in question is:

(i) owned by the same person or persons,

(ii) used jointly as a single unit, and

(iii) contiguous (next to each other) or separated only by a road, railway, drain, water race, river, or stream.

The Valuer-General can also make rules that allow for the establishment of a rating unit that covers only part of a record of title. One of the major tests used in these cases is whether one part of the rating unit could be sensibly sold or leased, without sale or lease of the other.

Local authorities engage a valuer to undertake the valuation of property at least once every three years. It can be more frequent but not less. As part of the valuation process, your valuer will determine what is and isn't a rating unit, following the rules of the Valuer-General. The Valuer-General's office do audit valuations for compliance with the rules.

NON-RATEABLE LAND

The second step in determining whether rates can be collected off a particular rating unit is to ask whether Parliament has exempted it from rates, and to what extent. This land is sometimes (inaccurately) referred to as non-rateable land.

The following categories of land[2] are non-rateable under the Rating Act:

+ Land used for conservation purposes, except where that land is used primarily or exclusively for private or commercial purposes[3]. Some of the major categories include National Parks, the Department of Conservation estate, reserves under the Reserves Act, wildlife reserves or sanctuaries under the Wildlife Act.
+ Land used by local authorities for a public garden, reserve, children's playground, hall, library, athenaeum, museum, art gallery, public bath, swimming pool or sanitary convenience, or for soil conservation and river control.
+ Land owned or used by, and for the purposes of, the Historic Places Trust, the QEII Trust, Te Papa, Children's Health Camps and the Foundation for the Blind. Note that land held for income generation is not considered as used for the purpose of the organisation, even if applied to the purpose of the trust.
+ Land owned by the Health New Zealand and used for the purpose of health and related services. This includes living accommodation for hospital purposes such as nursing hostels and welfare homes.
+ Cemeteries, crematoria, and Māori burial grounds
+ State and integrated, private schools registered under the Education Act and are "not for profit", special education institutions, not for-profit early childhood centres, polytechnics teacher's colleges, universities and wananga[4].
+ Institutions of religious worship.
+ Māori customary land, urupa, marae, meeting places and various categories of Māori freehold land.
+ Public roads.
+ Operational areas of airports and aerodromes, including the areas used for landing and movement of aircraft and the loading and unloading of goods and passengers.
+ The rail network and land used for loading and unloading of goods and passengers.
+ Land used as a wharf (and for the loading and unloading of passengers or goods).
+ Any institution that is providing free maintenance or relief of persons in need.
+ Machinery, although there is a special provision for hydroelectric dams that exempts only the turbines and other equipment through which electricity passes.

[2] This is a summary. The distinction between fully rateable and non-rateable can turn on quite small factual distinctions. For the definitive answer, refer to Schedule One of the Rating Act.

[3] A charge for entry does not necessarily constitute a commercial purpose, particularly if no profit is distributed to any individual.

[4] Private training establishments are fully rateable.

In 2002 non-rateable categories of land were reviewed, with the Government deciding that it was the use of land that should determine whether a particular rating unit was non-rateable. That means there is no blanket prohibition on rating Crown land, except where it is used for a non-rateable purpose.

Even a non-rateable rating unit is liable for paying targeted rates for water supply, sewage disposal or refuse collection if the local authority provides those services to the rating unit.

In addition, Parliament also made the following categories of land 50 percent non-rateable (they pay full rates on any targeted rates for water supply, sewage disposal or refuse collection and 50 percent of any other rates):

- 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 (NB "the arts" are not defined).

Fifty percent non-rateable status applies only if land is not being used for private pecuniary profit, and any land that has a club licence under the Sale and Supply of Alcohol Act 2012 is fully rateable.

1.3/ Ko wai te hunga utu reiti? Who pays rates?

The person who is liable for rates is known as the *ratepayer.* The ratepayer is the person who gets the invoice and all the other documentation that the Rating Act requires, and it is this person who gets penalised, or sued, if rates go unpaid. In most cases the ratepayer and the owner are the same person, even in cases where the owner might live off-site (as is the case with residential and commercial tenancies).

There are a few exceptions to the rule of owner liability. These include:

- *certain leases* - provided the lease covers the whole of the rating unit, is registered under the Land Transfer Acts for a period of ten years or more, and requires that the lessee is liable for the rates (also certain leases entered into before 8 August 2001), and
- *Māori freehold land* - if a block of Māori freehold land is owned by 1-2 owners, they are jointly the ratepayer. In other cases, determining who the ratepayer is will turn on the existence of a lease (in which case the lessee is usually the ratepayer), an occupation order, or the existence of a trust.

In most instances liability is not something the owner can "contract out of". Unless either of the exceptions exist, owners are liable for rates regardless of the terms of the lease. Your recourse is to the owner, what happens after that is a matter for them and the tenant.

Your valuer will determine who the ratepayer is when they prepare the District Valuation Roll. When properties are sold it is the vendor's responsibility to notify you of a change in ownership, or other change that might trigger a change in their status as the ratepayer.

01/

Rates are set under the authority of the Local Government (Rating) Act 2002 usually just referred to as the Rating Act.

02/

Rates are a tax not a user charge. This means that local authorities can only set those rates permitted in the Rating Act and must follow the processes for setting, assessing and collecting rates in this Act. There is little scope for taking decisions or actions that sit outside the Rating Act.

03/

Rates are local authorities' largest revenue source – accounting for around 60 percent of total revenue in the average local authority.

04/

Rate-setting does not occur in a vacuum but is the result of a series of policy and service delivery decisions that elected members make.

05/

Rates are a tax on land. Before rates can be collected on any land, it must be a rating unit. The Valuer-General makes rules for determining what is and isn't a rating unit, and your council's valuer will compile a list of the rating units at least once every three years.

06/

Parliament has given some types of rating unit an exemption from paying rates. These non-rateable properties are liable only for targeted rates that are to fund water supply, refuse disposal or sewage disposal.

07/

The Rating Act contains the main categories of non-rateable land, but there are other laws that exempt small numbers of rating units (often these are specific to a single rating unit).

08/

The Rating Act refers to the person who is liable for rates as the ratepayer. Generally, this will be the owner of the property but there are exceptions for certain types of leases and on Māori freehold land. Your valuer will determine who the ratepayer on any individual property is when they define rating units.

2/

NGĀ RAUEMI REITI
Rating tools

INCLUDED IN THIS SECTION:

// revenue raising powers including the different types of rates,

// limits on the use of rating tools and

// local authorities' powers to waive rates

2.1/ Te mana ki te kohi moniwhiwhi: Reiti Ahuwhānui

Revenue raising powers: General rate

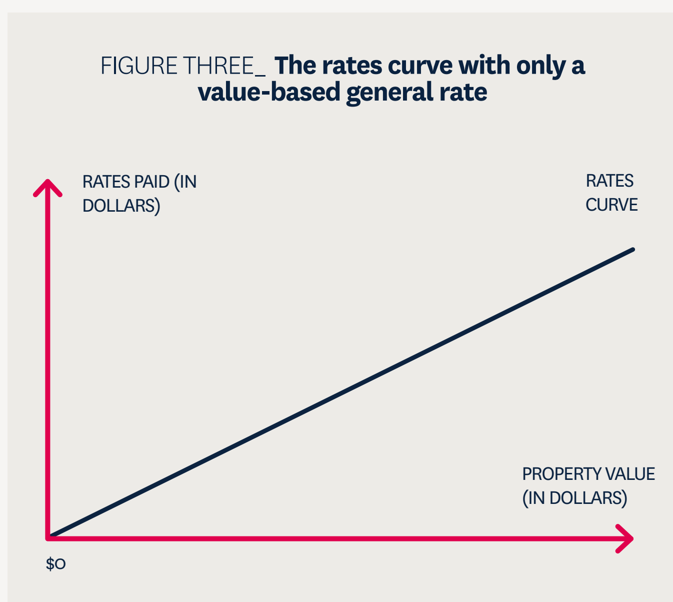
A general rate is a tool for funding activities where your local authority has decided that all rating units should pay. Often this will come out of a view that all rating units benefit from the service, or the costs of funding the activity separately outweigh the benefits.

Local authorities have two general rating tools available to them: the value-based general rate and the *Uniform Annual General Charge* (UAGC). Local authorities can use a combination of the two but cannot use combinations of valuation bases (e.g. 50 percent land and 50 percent annual) for the general rate.

GENERAL RATE TOOL ONE: The value-based general rate

A value-based general rate is set so that as the value of a rating unit increases, the amount of rates paid by the rating unit increases. This produces a result similar to that in *figure three* (though we have exaggerated for effect).

FIGURE THREE_ **The rates curve with only a value-based general rate**



The rates curve goes through zero, because under a rating system that is based entirely on property values, a property that had no value would pay no rates at all.

For general rates local authorities have the choice of three valuation bases – the land value system, the capital value system and the *annual value* system (sometimes incorrectly referred to the rental value system). Your local authority may use only one of these to set a general rate: combinations are not permitted.

In the *land value* system rates are set on the value of unimproved or bare land only; the value of buildings and other improvements is disregarded.

VALUATION-BASED OPTION ONE: Land value

Land value generally provides a poorer reflection of benefit than the other two valuation bases. For example, assume there are three different rating units side by side. They are similar in every respect except one is unimproved, one has a two-bedroom house, and one has a five-story residential apartment complex. All other things being equal the three have the same value under the land value system. But they make quite different use of local authority services.

Historically property values, especially land values, have been considered poor indicators of 'ability to pay'. However, a study undertaken by Covec for the 2007 Independent Inquiry into Rates (Covec 2007)[5] found a surprisingly high correlation between property value and income in metropolitan authorities. While this is far from conclusive evidence, if translated across local authorities of different sizes, and mixes of land use, it might suggest land value is a better predictor of ability to pay than has been previously assumed.

[5] Covec (2007), *Trends in the Use of Rating Tools Nationally to Fund Services.* NLNZ Web Archive Viewer 1.9 - View Web Archive Contents (natlib.govt.nz) Background report requested by the 2007 Local Government Rates Inquiry.

It has been claimed that unimproved values tend to fluctuate more than capital values between revaluations, although there is no known systematic New Zealand evidence to support or refute this. Swings in valuation are driven off sales information which are driven by market demand. One of the major factors in demand is location – certain suburbs or 'school zones' become sought after, urban growth fuels demand for land on the urban/rural fringe, zoning changes manifest themselves in sudden shifts in demand for different categories of property. If it is the site that is the determining factor, it then follows that this would be reflected in valuation.

Partly because of the fluctuation, there tend to be a greater number of 'outliers' (i.e. properties with high values relative to the rest) and sudden swings in valuation. Calls to resolve these tend to point local authorities towards greater use of the UAGC and/or differentials to deal with the impact.

By ignoring improvements, the land value system takes no account of the state of development of the land. To the extent that rates form a significant part of cost structures this may, at the margin, encourage development of vacant land and or more intensive development of developed land. All things being equal, those who use or develop land intensively pay the same rates as those who do not develop land at all. This was historically seen as a strong argument for land value.

It has been argued that rating on unimproved values tends to favour residential ratepayers. Rates are apportioned where unimproved values are highest which will tend to be in central business districts, or near a body of water (or with a view of water).

The market for unimproved land is much smaller than that for improved land. With less transactions data to rely on there is the potential for lower data quality (for example, one or two significant sales of unimproved land could potentially skew results).

VALUATION-BASED OPTION TWO: Capital value

Capital value is based on the value of the land and improvements. This includes fruit trees, nut trees, vines, berry fruit bushes, or live hedges. Network infrastructure is legally regarded as an improvement therefore it has a capital value and can be legally assessed for all capital value-based rates.

The average capital value across all property types is around 2 – 2.5 times higher than land value.

In 2019, the number of councils setting rates on capital value was 71% with 29% setting them on land value. One advantage of capital value, especially in urban areas, is access to a greater volume of transactions and richer sales information, providing more accurate data than that generated under the land value system.

Covec (2007) notes that:

> **"even in areas with a higher number of land sales, land transactions tend to concentrated in the peripheral (greenfields) areas. The value of land in these cases may not be representative of the values elsewhere in the district.[6]"**

Capital value targets intensity of use and development. The higher the intensity of development the greater the capital-to-land value ratio is likely to be and the higher the share of rates any given property will pay. For example, properties such as hydroelectric dams, dairy factories and other capital-intensive properties can expect to pay especially high levels of rates. Covec (2007) found a very high degree of correlation between income and capital values within the local authorities that they surveyed.

Supporters of capital value argue this system tends to bear a better relationship to benefit than unimproved values. A developed property is likely to be making heavier use of the road network, water, refuse collection, and community infrastructure etc. This is one reason why differentials in councils on the capital value system tend to be fewer (both in terms of the number of councils using differentials and the number of differentials in those councils that do use them) and smaller (although there are exceptions among some metropolitan local authorities).

Opponents of capital value argue that this system discourages development. There is little systematic evidence to support this claim although there may be more of an argument with capital intensive industrial projects (see the Productivity Commission's report, for a discussion on this issue[7]).

Capital value tends to be a slightly more buoyant base than unimproved value i.e., it expands more as development occurs. In addition to the price effects on unimproved land noted in the discussion of land value, as land is developed more intensively the value of improvements rises, hence the overall capital base.

VALUATION-BASED OPTION THREE: Annual value

Annual value is not currently used by any local authority. The last to use this system were the former Auckland and Manukau City Councils which ceased when the Auckland Council was required by law to move to capital value for the 2012/13 financial year.

Annual values are based on the greater of:

(i) five percent of the capital value of the rating unit, or

(ii) the rent at which the unit would be let, less twenty percent for houses and buildings and ten percent for land

[6] Covec (2007), *Trends in the Use of Rating Tools Nationally to Fund Services*, page 35.
[7] Productivity Commission, *Local Government Funding and Financing*
https://www.productivity.govt.nz/inquiries/local-government-funding-and-financing/

Supporters of the annual value system argue it is a better reflection of the income-producing capacity of a particular property than land or capital value. This may be more accurate where the annual value is based on rental but is perhaps less so where the annual value is based on a percentage of capital value.

In a similar vein, the correlation between annual value and ability to pay may be closer. Particularly in the residential sector, affordability issues mean that the higher the rental, the higher the income of the residents.

Annual value tends to bear a closer relationship to 'degree of benefit' than is the case with the other systems. For residential property, rentals are often determined by the number of bedrooms (i.e., the number of people who can be accommodated on the property) although there are also strong location related factors as well. All other things being equal, the greater the number of people on a property, the greater the use it is likely to make of both network infrastructure (more people driving on the roads, greater water use) and community infrastructure. While a similar argument can be made for commercial/industrial property it can also be argued that rentals are closely linked to potential profitability, and that this tends to be related to intensity of use.

Generally, rental yields tend to reduce as property value decreases, thus as value increases it becomes more likely that the annual value will be based on the former of the two components. Covec (2007) shows that in one of the above two local authorities, above a capital value of around $300K the capital value component begins to dominate. In a market where sale prices are rising rapidly this can cause annual value to default to the capital value basis.

In 2007 the former Manukau City Council noted[8] that growth in property prices in greater Auckland meant that approximately two-thirds of residential properties at the time were being rated on the '5 percent of capital value' rule. Some opponents of annual value sometimes refer to this system as being 'capital value in drag'.

Annual value requires a significant and active rental market to maintain accurate quality valuation data. This means that annual value is either not going to be a viable option for most rural local authorities or the adoption of annual value would create an incidence of rates little different from capital value.

Those local authorities that have the large and active rental markets to support a rental based value, may also find that the robustness of their valuation data improves. Market rental data tends to be available at more frequent intervals (rental tenure tends to be far shorter in duration than ownership tenure) and at higher volumes then property sales.

THE THREE VALUATION SYSTEMS

01/
Land value tends to be associated with more and higher differentials, less targeting to intensity of use, and potentially lower correlation with benefit and income.

02/
Capital value targets intensity of use and can unduly penalise high capital value properties such as hydroelectric dams and dairy factories. It has a closer relationship with benefit and with levels of income than land value. There are more sales of land and improvements, so data quality is generally better under land value.

03/
Annual value is not currently used in any local authority. Over a certain level it tends to closely mimic the impact of capital value. Annual value requires a large and active rental market to work well – and if this is established it tends to be associated with better quality data. Annual value is thought to be well correlated to the income generating capacity of the land, to benefit and to ability to pay.

04/
The choice of valuation base is generally the subject of intense (and emotive) debate when proposed. Councils are advised to do their own research before proposing change.

[8] Manukau City Council (2007), Manukau City Council's Submission to the Local Government Rates Inquiry, pp 6-7.

DIFFERENTIALS

Differentials to general rates are not a separate tool, but a means of modifying the incidence of the valuation-based rates described earlier.

Differential powers enable local authorities to charge different levels of valuation-based general rate on different categories of rating units.

Rating units can be categorised using one or more of the following[9]:

- land use (far and away the most common use of these powers – when your council sets a commercial differential or a rural differential it is using these powers),
- location,
- land area,
- value, (land, annual or capital), or
- the activities that are permitted, discretionary or controlled in the location under an operative district plan or regional plan.

The most common uses of differentials at the present time are to:

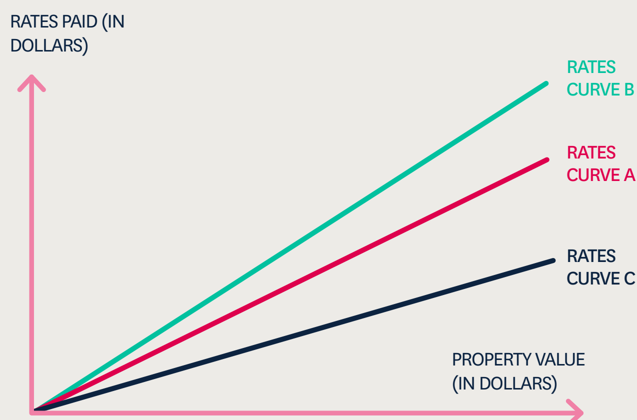
- increase rating loads on commercial/industrial properties,
- decrease rating loads on rural properties, or
- decrease rating loads on 'stand out' high-valued properties (e.g., particularly high-valued residential properties, capital intensive properties such as hydroelectric dams and dairy factories).

The differential is first and foremost a tool for altering the incidence of rates. Setting a differential rate does not release new revenue, it simply allocates the revenue requirement in a different way. Differential rating is therefore bound to create winners and losers.

To illustrate, *figure four* provides an example of the use-based differential, with the most common uses of differentials included, as described above. How would this impact on the rates curve from *figure three*?

Figure four shows that there is more than one rates curve under this proposal, depending on however many differential categories there are. In a 'pure' valuation-based system, a property with no value would pay no rates regardless of the differential category they might belong to. At all other property values, commercial and industrial properties would pay a higher rate in the dollar than residential properties (as shown on curve B), and rural properties would pay a lower rate (as shown on curve C). The differences are exaggerated for illustrative purposes.

FIGURE FOUR_ **Rates curve under a use-based differential**



Poorly justified differential policies may create the perception that the rating system is arbitrary or set for political purposes and is at severe risk in the event of judicial review.

The 2007 *Report of the Local Government Rates Inquiry* suggested that an appropriate rationale for differentiation should be based on 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
- *ability to pay* – if one group has greater means from which to pay rates, then all things being equal it should pay more.
- *willingness to pay* – if one group is willing to pay more than another group, it 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.

Two other grounds that are sometimes used to justify the imposition of differentials on business, are:

- businesses receive favourable tax treatment on the payment of rates, and
- businesses can pass on their rates to the customer.

Business can treat rates as an expense and 'write off' 28 percent of this for taxation purposes. It can claim back GST paid on rates as part of the normal processes through which GST is confined to the sale of final goods and services.

[9] Schedule Two of the Rating Act.

Others point out that owners of rental residential properties also have an ability to claim rates as an expense. Other taxation (e.g., various types of duties) are not set on the basis that business should pay more because of its different status for income tax and GST purposes. Some point to local government's claim that income distribution is a matter for central government, and question whether basing a differential on the basis of perceptions of inequity in tax treatment (and therefore disposable income) are consistent with that line.

It is argued that firms trade in competitive markets and therefore have only limited scope to pass on higher costs in their pricing structures. It is also argued that a differential policy of this sort ignores the differences between the legal incidence of rates (the person to whom the bill is sent) and the economic incidence of rates (whose pocket the money actually comes out of). In other words, that it is ultimately the residential ratepayer who bears the impost.

Finally, and more related to GST, it is argued that GST is a tax on final consumption and that input credits are to ensure that the correct rate is applied at the actual point of final sale. The owners of profitable businesses pay GST when their income is spent.

The validity of these arguments is well and truly open for debate. Most local authorities have moved away from using these as justification for their policies. The arguments have not been tested in court since the introduction of the LGA 2002 section 101(3). Local authorities are advised to engage legal and economic advice before attempting to construct a differential using these as arguments.

Many of the objectives of a differential general rate could theoretically be achieved more transparently using a targeted rate. For example, differences in levels of service tend to manifest themselves in particular services, and a targeted rate might serve to make those differences more apparent than if they are 'hidden' in a differential on the general rate.

GENERAL RATE TOOL TWO: Uniform Annual General Charge

The key features of a Uniform Annual General Charge (or UAGC) are as follows:

- // It is a fixed dollar charge per rating unit or per separately used or inhabited part of a rating unit. The ability to charge this way is an especially useful tool for local authorities that have significant numbers of multi-unit residential properties (blocks of flats, retirement villages etc) or commercial development (shopping malls, office blocks etc). Local authorities can develop their own definitions of *separately used or inhabited parts of a rating unit*. The definitions must be disclosed in the relevant funding impact statements (i.e., both the LTP and the relevant annual plans).
- // Revenue raised from the UAGC can be used to fund any of your activities.
- // It cannot be set differentially. All rating units or separately used or inhabited parts of a rating unit must pay the same dollar amount. For example, you can't set a UAGC at different rates for commercial property and at another rate for residential property.

The UAGC is a tool for shifting the incidence of rates. *Figure five* replicates the rates curve from *figure three.* A UAGC both sets a minimum level of rates and changes the slope of the rates curve (it makes the rates curve 'flatter'). Our hypothetical rating unit with no value would pay an amount of rates equivalent to the UAGC (curve D).

A UAGC transfers rates from higher-valued properties to lower-valued properties; lower-valued rating units will pay a higher level of rates than they would on a 'pure' value-based system.

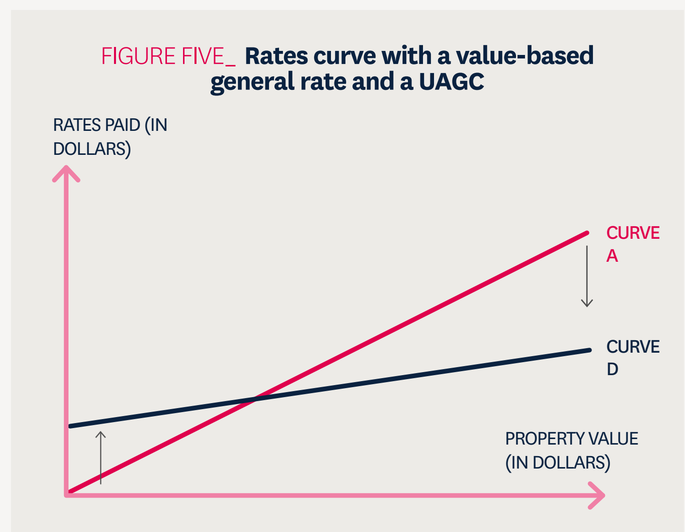


FIGURE FIVE_ **Rates curve with a value-based general rate and a UAGC**

The UAGC therefore provides an element of 'protection' to ratepayers in coastal properties, on the fringes of urban areas, or in areas which have experienced large increases in valuation or are in the central business district. Many rural local authorities also find that changes to a UAGC tend to shift rates between the urban and rural parts of the district. For example, shifting the incidence of rates from the rural into the urban sector

The UAGC is a regressive form of taxation. As a flat dollar charge irrespective of circumstance, lower-income ratepayers pay a proportionately higher share of their income to meet this charge than a higher-income ratepayer. For this reason, the UAGC is often criticised as being regressive. The UAGC is independent of property value and therefore bears little relationship to ratepayer *wealth*.

There is a legal limit to the use of this tool, which is described later.

2.2/ Te mana ki te kohi moniwhiwhi: Ngā reiti motuhake

Revenue raising powers: Targeted rates

A targeted rate is a rate set by local authorities:

- // over one or more categories of property, and
- // to fund one or more identified activities.

Local authorities have a much wider choice of bases for targeted rates. In addition to the three bases for valuation described under general rates and a flat dollar charge per rating unit, targeted rates can be set on:

01_ the improvement value of the rating unit (i.e., capital value less unimproved value),

02_ the number of separately used or inhabited parts of a rating unit,

03_ the number of water closets and urinals within the rating unit,

04_ the number of connections the rating unit has to local authority reticulation,

05_ the extent of provision of any service to the rating unit by the local authority (where this is capable of objective measure and independent verification),

06_ the total land area of the rating unit,

07_ the total land area within the rating unit that is sealed, paved or built upon,

08_ the total area of land within the rating unit that is protected by any facility provided by a local authority, or

09_ the total area of floorspace within the rating unit.

ITEMS 1-7 ARE CURRENTLY IN USE IN ONE OR MORE LOCAL AUTHORITIES.

In addition to these powers, a local authority can set a targeted rate for water supply based on the volume of water consumption (often called water metering). Funding water supply is the *only* activity that can be funded in this way under the Rating Act.

Local authorities can set:

- // more than one targeted rate to fund a particular activity (for example, many rural local authorities with more than one water or sewage scheme set a rate for each scheme, some city councils charge a base water supply rate and an additional fire protection rate) or
- // a targeted rate to fund more than one activity (targeted works and services rates are a common example of this).
- // a targeted rate over only some defined categories of property (such as CBD rate for security patrols, street cleaning or development or a tourism rate over commercial property). Your choice of bases for excluding rating units form liability are limited to the same set of bases as for differentiating the general rate.
- // a differential targeted rate.
- // targeted rates using a combination of factors (a common use is to set a flat dollar charge and a value-based rate) including a rate that uses different factors for different categories of property (for example a targeted rate that is set on the basis of a flat dollar charge for residential property, a value-based rate for commercial property and an area-based rate for rural property).

A targeted rate is a device for achieving the following policy objectives:

- // *more closely tailoring the level of rates to perceived levels of benefit* - the above tools enable local authorities to more closely target the funding of activities to those characteristics that drive cost or benefit from the service.
- // *greater transparency and better demonstration of value for money to the ratepayer* - targeted rates and what they fund must be separately disclosed in accountability documents and on rates assessments and invoices. This is why many of the targeted rates currently in existence are set for utility services such as water, sewage disposal, refuse collection etc.

The policy objectives need to be evaluated against the transactions cost of the rate. Although some of the mechanisms listed above draw on information that comes from the valuation roll (and thus is already paid for in the fee paid to the council's valuation service provider), the council may need to collect other information itself, maintain that information and deal with objections to that information. There is both an initial cost and an ongoing cost to collecting this information. In addition, the introduction of new targeted rates may potentially involve a change to a council's revenue and financing policy and trigger requirements for consultation and audit.

The targeted rating mechanism is another option for sharing the costs of particular activities amongst different sectors of the community. Targeted rating tools are not devices for tapping new pockets of revenue raising potential in and of themselves, any increase in the overall base of revenue would be marginal.

IMPROVEMENT VALUES

Improvement values are defined by legislation as the capital value of a property less the annual value of the property It is only available for targeted rates and cannot be used as the basis for a general rate.

Improvement values could be a useful tool for targeting rates where the intensity of development is a key factor in patterns of benefit, exacerbation etc. Building regulation is an obvious example, where the amount involved in the inspection increases as the complexity of the building project increases. Improvement values may also be a useful tool for various types of rates such as fire protection or flood protection.

Improvement value has many of the same advantages and disadvantages as capital value. Being based on improvements alone it may be less volatile than capital value (the land component is removed). That same factor means that improvement values can be said to target intensity of land use/ development to a greater extent than capital value.

FIXED TARGETED RATES

Fixed Targeted Rates (FTR) operate in the same way as the UAGC except that the revenue raised may only be applied to the activity or activities specified in your funding impact statement.

Like the UAGC, FTRs can be assessed on a 'one per property' or 'one per separately used or inhabited part of a property' and are also subject to the 30 percent cap (see section 2.3). Setting FTRs on a 'one per separately used or inhabited part of a property' can be used as a method of targeting properties where large numbers of people reside or where multiple shops and offices are located.

LAND AREA

Rates are set on the basis of a 'charge per area of rateable land', most commonly, per hectare.

Area has often been used as a proxy for biosecurity and pest management rates (in theory the greater the area of land, the more pests there are on the land) and land drainage rating (the greater the area of land, the more water needs to be removed from it). Some flood and river control rates are also set in this way.

The use of area rating today is largely the result of historical legislation and how these sometimes dictated approaches to funding solutions (such as the Soil Conservation and River Control Act 1941 and the Land Drainage Act 1908).

Area rating is best used in circumstances where patterns of benefit and/or causation of costs are generated by the size of a property. Targeting property size means that these rates are likely to favour residential and small commercial ratepayers and disadvantage farmers and larger industrial and residential properties.

As the supply of rateable land is relatively fixed, area-based rating is unlikely to exhibit much buoyancy. The only times the area of rateable land within a local authority will change are when property moves from non-rateable to rateable status or, in rarer instances such as boundary changes, reclamation of land from the sea and the like. The revenue base for this type of rate is unlikely to change much as the level of development in your community increases.

OTHER AREA-BASED TOOLS

There are two other tools that rely on area as the basis of a targeted rate:

// the area within the rating unit that is sealed, paved or built on

// the area of floor space within the rating unit

// the area within the rating unit that is protected by any amenity or facility provided by the local authority.

Some local authorities use *the area paved or built on* as a proxy for charging for stormwater on the assumption that water falling onto a paved area will not soak into the ground and is disposed of via the stormwater system.

Area built on and area of floor space are more buoyant tools than *total area*, in that as development expands theoretically there may be some increases in the built area or area of floor space.

Floor space will tend to target rates towards multi-storey developments (both residential and commercial). Caution may be needed if your intent is to avoid targeting the average residential home.

Area built on will still target large properties, but by comparison with *total land area* the incidence of this tax would be more likely to shift from farms onto larger commercial and residential developments.

PAN CHARGES

Pan charges is a colloquial term for charging based on the number of water closets and urinals on a property. A property used primarily as a residence for a single household can only be rated for one water closet or urinal regardless of the actual numbers on the property.

Pan charges can be used as a targeted rate to fund any activity (legally speaking). In practice however the link between the number of water closets and urinals on a property and any activity other than wastewater may be difficult to make.

Pan charges will target intensity of use, both commercial and residential. The greater the level of development on a property, the more pans and urinals there are likely to be. This can encourage some landlords to reduce the facilities provided to the bare minimum.

The pan charge is a regressive tax; every residence, office, shop etc, needs at least one regardless of the level of income of the ratepayer.

Some Crown-owned properties (most notably schools) argue that the charge in its purest form is inequitable. The design of schools is heavily regulated (one toilet per 20 pupils) and is designed around the peak capacity (i.e., intervals). The counter to this is of course, that like a school, a local authority must provide for peak capacity.

EXTENT OF SERVICE PROVISION

This tool allows for charging on measures that are proxies for the level of use of a service. After water metering, these are probably closest of the rating tools to a direct user charge. Those local authorities who rate on the basis of per bin, or per container for refuse are using *extent of service provision* as a basis for rating.

Whatever your council uses as its measure of the *extent of service provision* must be capable of independent verification – which means accurate record keeping procedures.

Some expense will be incurred in collecting these and dealing with objections (the process for which needs careful consideration).

WATER METERING

In its simplest form, water metering is a charge per unit of water consumed or supplied. Water metering is the only power in the Rating Act that can truly be said to be a direct charge for service. Charges can be calculated as a fixed charge per unit of water or on a scale of charges (e.g., $1 per cubic metre supplied up to x cubic meters and $1.30 for each cubic meter thereafter).

Local authorities are not empowered to stop water supply for non-payment of rates and may only restrict supply if doing so is unlikely to create insanitary conditions on the property.

The introduction of water metering and changes to existing water metering has historically been contentious. Residents need to fully understand the reasons for the change, how it will work and what it might mean for different types of households.

Water metering has an ongoing cost (reading of meters, separate billing, maintenance and repairs to meters etc) not just the capital cost of installing the meters. Water metering creates a direct relationship between quantity used and cost to the user, therefore providing users with incentives to conserve. As examples:

- Rotorua District Council experienced a 35% reduction in average annual use and a 50% reduction in peak demand,
- Tauranga City Council experienced a 27% reduction in peak flows in 2002 compared to 1994-1998 average
- In Tasman District water consumption fell by at least 15 percent.

Reduced water usage also has the potential to delay infrastructure investment, including the development of new water sources. Reduction in consumption frees-up scarce water for other productive uses and saves energy.

Metering of water has further benefits of assisting in the identification of leaks and allows for much more detailed data collection on water usage, which, in turn, allows for more appropriate management and policy decisions.

It can be argued that water metering is equitable in the sense that depending on the design of the charging structure, users pay for only their consumption. A single senior citizen will typically pay less than a family of six, or a ratepayer with a swimming pool or heavy water-using business.

This same argument is also used by critics of metering. Larger households will typically pay higher charges under a volumetric charging regime than they would under fixed non-volumetric-based rates. Other households that have higher water usage than average for other reasons, for example medical requirements, may also be impacted by increased charges. Careful design of the charging structures can help in these cases.

The other argument that is sometimes advanced is that water metering somehow involves privatisation of water services however, how something is paid for, and who owns and operates the asset are separate issues. Local authorities charge for borrowing of some types of collection items from their libraries and no-one suggests libraries are being privatised. It is also unlawful for councils to privatise their water services, except in the case of very small community schemes which a community wishes to self-manage.

Design of the charge is critical to the achievement of efficiency and equity goals. A tariff structure that does not incentivise conservation will struggle to meet either.

NUMBER AND NATURE OF CONNECTIONS

This power allows for charging based on the number or nature of any connections from a property to any local authority reticulation system. For example, a charge could be based on factors such as the number of pipes or the size of the pipes.

While there are no limits on the activities that could be funded in this way, this is a proxy that appears to have been designed for water, stormwater, and wastewater.

CLASSIFICATION RATING

Some regional councils (and a few territorial authorities) set rates based on classification schemes to fund soil conservation, river control and land drainage. A classification scheme classifies rating units according to the risk of their contributing to erosion, flooding issues and the like, based on a set of risk factors and the degree of benefit each rating unit was assessed.

These were empowered under the Soil Conservation and River Control Act 1941. The power to use classification schemes was removed in 2002 and can only be used where that scheme was in existence before enactment of the Rating Act. These powers are not available in any other circumstance.

LUMP SUM CONTRIBUTIONS

A lump sum contribution (LSC) is a unique power available under the Rating Act. In effect, a ratepayer who elects to make an LSC is paying a particular targeted rate 'up front', in return for which your council foregoes the assessment of that rate.

LSCs are only available as an option for targeted rates that fund the capital cost associated with a particular activity or project. Your local authority cannot offer LSCs as an option on its general rate, or to fund operating costs (such as maintenance). They are more common with water and wastewater disposal schemes but can be used to fund any capital work.

While your local authority makes the decision to offer LSCs as an option, the decision to take up the option is entirely the ratepayer's. Your local authority cannot require an LSC unless the ratepayer has agreed to make one in writing.

For example, your local authority has a new wastewater scheme that it wishes to offer the option of LSCs. Before it can offer the option, it must prepare a capital project funding plan, a document that sets out the scope of the project, how it will be funded, and details both the LSC and the targeted rate it replaces. Your council would then provide the eligible ratepayers with an invitation to make an LSC.

LSCs are complex because they overwrite parts of the long-term plan, and because they bind future councils and ratepayers. They tend to be offered more commonly in rural local authorities.

2.3/ Ngā tepenga o ngā rauemi reiti **Limits on Rating Tools**

Generally local government has a far wider set of rating tools than is the case overseas. There are a few legal limits.

THE 30 PERCENT CAP

This is a limit on local authority's ability to raise revenue from fixed rates, including:

- any UAGC, and
- any targeted rate (other than ones that are set solely for water supply or sewage disposal) that is calculated as a uniform amount per rating unit or separately used or inhabited part of a rating unit.

In any one year, your local authority cannot collect more than 30 percent of its total rates revenue in this way. The cap is less restrictive than it appears. The exemption of fixed rates for water supply and sewage disposal is one reason (there are local authorities that raise more than 50 percent of their rates revenue in this way, entirely legitimately).

The second reason is that the definition of *uniform amount per rating unit* does not include targeted rates where different categories of rating unit are assessed at different levels of fixed charge e.g., a fixed charge of $100 per rating unit on residential units and $105 per unit on commercial units would not be included in the calculation.

Farming and business groups cite this from time to time. Seek legal advice before going too far down this path.

DEFENCE RATES

The total amount of rates assessed on any rating unit used by the Crown as an airforce base, army camp, naval establishment or other defence area must not exceed the amount of rates that would have been assessed if the rate had been calculated on land value.

SCHOOL RATING

While the Government has the power to set regulations governing how schools are rated for sewage disposal, at the time of writing this power has not been used.

2.4/ Ngā whakawāteatanga **Waivers**

The Rating Act provides local authorities with wide powers to waive payment of rates. In this guide we use the term waive or waiver to cover powers to remit or postpone rates.

To remits rates is to permanently forego payment of all or parts of the rates it is owed. To postpone rates is to delay or defer payment for a set period or until a specified event occurs (such as the sale or lease of a rating unit).

All local authorities have the power to waive any amount of rates, on any rating unit, for any reason at their discretion. There are no mandatory requirements to waive rates, nor are there any specific legal limits on the use of waiver powers (subject to prudence).

Elected members set the rules for waivers by adopting a policy covering remission and postponement of rates (and/or charges). Those policies must be adopted through the consultation as laid out in section 82 of the Local Government Act 2002. The policy can be amended or revoked at any time by consultation. Policies must be reviewed at least once every six years.

While the policies are optional, a local authority can only remit and postpone rates as set out in the policy. Foregoing or deferring payment of rates in other circumstances is unlawful – even if it is as minor as a rates clerk foregoing payment of a penalty on an overdue rate.

The following are useful principles to keep in mind when developing a policy on remission and postponement policies.[10] These policies should be:

- // linked to one or more of your objectives,
- // *complementary to the other programmes provided by your local authority*; when considering to remit or postpone rates, consider whether foregoing revenue is the best means of achieving the objective. Sometimes the discipline of having to approve a grant 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 property should be done only in truly exceptional cases: doing otherwise opens you up to special pleading
- // *frequently reviewed* to ensure the circumstances in which a rating unit qualifies for an exemption still apply,
- // *clear in their criteria*; ambiguous policies will create future issues and/or 'special pleading'
- // clear in who takes what decision. Unless otherwise delegated, elected members must make decisions to remit and postpone rates.

REMISSIONS

A remissions policy needs to spell out:

- // the objectives a council is pursuing through offering remissions and
- // any conditions or criteria on remissions.

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),
- // ameliorate 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) or
- // assist groups deemed to be 'worthy causes' such as sporting and cultural groups, or heritage properties.

Your council will need to disclose the amounts it has remitted and the objectives for the remission, in its annual report.

Unless your policy requires applications for remissions, a ratepayer need not make an application to claim a remission. By law, your council has final discretion to decline a remission, even where a rating unit meets the conditions, but this discretion should not be exercised arbitrarily as it is subject to judicial review.

POSTPONEMENTS

A 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).

The policy will need to state the conditions and criteria under which postponements are granted. 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.

Local authorities can charge a fee on postponed rates if the policy empowers it and provided the fee does not exceed an amount sufficient to cover the administrative and financial costs of the postponement. Any fee is treated as part of the rates payable on the rating unit.

Postponement powers are less commonly used than remission powers and is primarily used as a means of dealing with financial hardship, although some councils use them as a means of promoting economic development.

MĀORI FREEHOLD LAND

A policy on remission and postponement on Māori freehold land is a mandatory policy. Māori freehold land is defined as 'land whose beneficial ownership has been determined by the Māori Land Court by freehold order'. There must be a court order in the Māori Land Court records that confers the status of Māori freehold land upon the land.

This definition makes it clear that Māori freehold land relates to a category of land rather than a category of owner. The factors that make Māori freehold land different relate to its different tenure arrangements and restrictions on the sale of transfer of Māori freehold land.

Authorities must have a policy on the remission and postponement of rates on Māori freehold land.

[10] In addition all remission and postponement policies (and the revenue and financing policy) must support the principles set out in the Preamble to the Te Ture Whenua Maori Act 1993. (By virtue of the Local Government (Rating of Whenua Maori) Amendment Act 2021).

In developing a policy your local authority is required to consider the objectives set out in schedule 11 of the LGA:

- // 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 papakainga 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.
- // How it supports the principles in the Preamble to the Te Ture Whenua Maori Act 1993

In summary:

RATING TOOLS

01/

A general rate is a rate where the revenue can be used to fund any lawful activity that your local authority undertakes. Your local authority would use these rates where it considers that all ratepayers should meet the cost of a particular activity.

02/

Local authorities have two general rating tools available to them – a value-based general rate, and a uniform annual general charge.

03/

Local authorities can use one of three valuation systems for their general rate – land value, capital value or annual value. The value-based general rate can be set differentially across different categories of rating unit, provided that one of the matters in Schedule Two of the Act is used as the means for categorising rating units.

04/

A uniform annual general charge is a flat dollar charge per rating unit or *separately used or inhabited part of a rating unit*. It may not be set differentially.

05/

Local authorities may also set targeted rates, which are rates set and assessed on particular categories of rating units or to fund identified activities. Funds raised from targeted rates may only be used for the activities they were raised to fund.

06/

In addition to the three valuation systems available for the general rate, and fixed dollar charges, local authorities can set targeted rates using:

// the improvement value of the rating unit (i.e. capital value less unimproved value)*[11],

// the number of separately used or inhabited parts of a rating unit*,

// the number of water closets and urinals within the rating unit*,

// the number of connections the rating unit has to local authority reticulation*,

// the extent of provision of any service to the rating unit by the local authority (where this is capable of objective measure and independent verification)*,

// the total land area of the rating unit*,

// the total land area within the rating unit that is sealed, paved or built upon*,

// the total area of land within the rating unit that is protected by any facility provided by a local authority, and

// the total area of floor space within the rating unit.

07/

A local authority can use combinations of factors when setting a targeted rate (such as 50 percent capital value and 50 percent land area). It may also use different factors for different categories of rating unit.

08/

Local authorities can also use metering as the basis of a targeted rate for water supply (and only water supply).

09/

Local authorities have wide powers to remit (forego) rates and to postpone rates. Local authorities can set their own rules for remission and postponement by adopting remission and postponement policies. Remission or postponement not authorised by such a policy is unlawful.

10/

Māori freehold land is any land whose beneficial ownership has been determined by an order of the Māori Land Court. Local authorities must have a policy that discusses remission and postponement of rates on Māori freehold land.

[11] Those powers marked * are currently in use in one or more local authorities.

3/

TE TUKANGA REITI
The Rating Process

THIS SECTION PROVIDES A VERY BRIEF OVERVIEW OF SOME OF THE KEY ADMINISTRATIVE ASPECTS OF THE RATING SYSTEM. THIS INCLUDES:

// the process for setting rates,

// invoicing rates,

// collecting and enforcing unpaid rates, and

// rating information.

The intent of this section is to make you aware of the main obligations and areas of risk. This section is not a technical treatise on the mechanics of the rating system. If you need more information, then the guide for staff is a good place to start.

3.1/ Te whakarite reiti Setting rates

THE FUNDING IMPACT STATEMENT

Each year's rate-setting process begins with the annual plan. The annual plan contains the Funding Impact Statement (or FIS). 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 or the factors and matters specified in the FIS.

The FIS must contain the following information about its *general rate:*

- // 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 paid by each category differs (e.g.by reference to ratios)
- // 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* also requiring a definition of separate use or inhabitation).

The same level of detail is required for each targeted rate, and information identifying the activity or activities each targeted rate funds.

The annual plan FIS must include some sample models that demonstrate the impact of the proposals across a range of different rating unit types and values. It must also include a statement of sources and use of funds as prescribed under the Financial Reporting Regulations 2011.

RATES RESOLUTIONS

Having adopted an annual plan, a local authority must then legally set the rate[12] via a *rates resolution.*

The rates set in the resolution must be in accordance with the information provided in the FIS: any difference could render rates invalid. For example, there is no ability to change the way a rate is set or remove a rate. While there is a limited ability to add a new rate, this applies only to rates for urgent and unforeseen circumstances.

This means that before the annual plan is adopted, elected members must agree with:

- // the rates described in the annual plan,
- // how rates will be calculated, and
- // which rates are being used to fund which activities.

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 that your local authority wants to set,
- // any delegations that will be operative (if not made elsewhere), and
- // any penalties that will be operative (if not made earlier).

Note/
We strongly advise local authorities to have their funding impact statements and rates resolutions reviewed by a lawyer before adoption. There are mechanisms available to change defective rates resolutions but these involve public notice and, in some cases, consultation.[13]

[12] The term "set" is a legal term, we strongly discourage local authorities from using other terms such as 'making the rates', 'charging the rates' and the like.
[13] These are known as rates resetting and rates replacement.

3.2/ Te nama i ngā reiti
Invoicing rates

There are two further steps that a local authority needs to take before anyone is legally liable to pay rates.

The first is to issue a rates assessment to every ratepayer. The assessment is a formal notice to each ratepayer, of their liability for rates in that financial year.

A *rates assessment* has to set out extensive information, including:

- the local authority or local authorities assessing the rates[14],
- the year of assessment,
- information about the rating unit, such as the name and address of the ratepayer, the legal description of the rating unit and its location,
- information about each rate including what each rate funds, the amount, how this calculated (including differentials, targeted rates etc),
- a 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[15]) on which rates must be paid, and
- details of any penalty regime and a warning that rates not paid on time may attract a penalty.

Once an assessment has been delivered the local authority can invoice the ratepayer[16].

While the local authority need only send one assessment per year, it must send a separate invoice for each instalment.

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, and
- any unpaid rates owing from a previous year.

Your local authority must allow at least 14 days between the invoice and the due date for payment.

Rates are subject to GST so an invoice must also comply with the requirements of that legislation.

3.3/ Te kohi me te uruhi
Collection and enforcement

COLLECTION

A local authority must accept payment of rates at any of its public offices but can specify additional places on the rates invoice. There is no need to specify places for payment in the rates resolution.

[14] A territorial authority and regional council can issue a combined assessment, but the assessment must show all the required information as it applies to each council. For example, it is not lawful to show all regional council rates as a combined "regional council rates line".

[15] Your local authority is free to use as many or few instalments as you wish, to use different instalment systems for different types of rate etc. The only limits are the cost of invoicing and the council's cash flow needs.

[16] You may combine your assessment with an invoice but your local authority cannot send the invoice before the assessment.

While local authorities are only obliged to accept payments in cash, the easier it is for ratepayers to pay rates, the better the chances of collection. There is no power to offer discounts for preferred methods or to apply penalties to non-preferred methods.

A local authority is not obliged to collect its own rates and may appoint another local authority or other agent to collect rates on its behalf. There are at least five regional councils that delegate the collection of rates to their constituent territorial authorities.

A local authority can forego the collection of rates that are deemed uneconomic to collect. This is not a *remission* of rates; in these circumstances all that is required is for a local authority to tell the ratepayer it will not be collecting the rates.

ENFORCEMENT

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; if there are unpaid rates on a rating unit, and that rating unit is sold or leased, then a local authority has 'first call' on the proceeds of the sale or lease.

Broadly speaking there are three enforcement tools:

01_ the imposition of penalties,

02_ 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, or

03_ enforcement through the courts (also known as the charging order and rating sale process.

PENALTIES

A 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 it has:

// passed a resolution authorising penalties and setting dates,

// included details of the penalty regime in the rates assessment and

// placed a warning about unpaid rates in both the rates assessment and rates invoice.

The penalty resolution must be made not later than the time rates are set i.e. it should be in the 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.

Local authorities may set the following types of penalty:

01_ A penalty on any rates assessed during the current financial year which remain unpaid after the due date.

02_ A penalty on rates overdue from a previous year i.e. a penalty on any rates assessed in a previous year 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.

03_ A further penalty on rates in 2. that remain unpaid six months after that penalty was added.

RECOVERY FROM NON-RATEPAYERS

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.

Where a mortgage exists, a 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 is 1 November in the financial year after the first assessment of the rates (e.g., a rate first assessed in the 2019/20 financial year could not be recovered from a mortgagee until 1 November 2020).

To collect from a mortgagee, a notice must first be sent to them 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).

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

A third option is to recover rates through the Courts. Proceedings cannot be lodged until the debt has been unpaid for at least four months. At that time any other rates that are owing can be added i.e., rates that have been set and assessed on the rating unit but are not overdue.

Rates are statute limited: judicial action cannot be started if rates have been unpaid for more than 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 then the Court will *enter judgement* 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 judgement then the local authority can apply to a Registrar of the High Court to have the judgement enforced by the sale or lease of the rating unit. Proceeds from sale or lease go to pay the costs of administering the process, then to pay the rates, then to the ratepayer.

Māori freehold land is not subject to the rating sale and lease provisions and that process is administered by the Māori Land Court under a separate part of the Act. It will generally not allow the sale of Māori freehold land, though it does allow leases.

3.4/ Mōhiohio Reiti Rating Information

Your local authority must maintain two main sets of rating information.

The Rating Information Database (or RID) is a list of the information necessary to setting and assessing rates (such as ratepayer details, address and values). 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.

The database must contain the following information for each rating unit in the district:

- all the district valuation roll information[17],
- 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 must show a 'use' for each rating unit, such as commercial, residential etc, and
- any information used as the basis of a targeted rate e.g., land area, number of toilets or urinals, value of improvements etc.

Rates records are a set of information that shows the ratepayer's liability for rates on a unit. A rates record contains all the information necessary to show the state of the rates account. 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).

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

In summary:

TE TUKANGA REITI
THE RATING PROCESS

01/

Local authorities must disclose details of their rates and other funding sources in Funding Impact Statements that are part of the Long-Term and Annual Plan.

02/

A local authority must legally resolve to set the rates before it can legally bill anyone for them. The resolution must set out details of all the rates including their due dates and penalties. Rates must be set in accordance with the Funding Impact Statement.

03/

Although it costs, we strongly advise local authorities to have their FIS and rates resolutions legally reviewed before adoption. While there are legal mechanisms available to fix errors, they involve public notice and in some cases consultation.

04/

Before a local authority can invoice rates it must deliver a rates assessment to each ratepayer. The rates assessment sets out details of the rates that a local authority will be assessing on that rating unit, in that rating year.

05/

A local authority must deliver an invoice to each ratepayer, for each instalment a local authority sets.

06/

A local authority is obligated to accept payments of rates at any council office and may specify other places for payment.

07/

Unpaid rates can be assessed penalties of up to 10 percent provided a local authority has resolved to allow imposition of penalties. Penalties can be added immediately after due date, with an additional penalty on rates that are unpaid into the following rating year and a further penalty six months after that.

08/

Local authorities must maintain two sets of rating information. The Rating Information Database contains all the information needed to assess rates, most of which will be prepared by the council's valuer. A local authority must also maintain rates records; information that shows the state of each ratepayer's rates account.

4/

KEI TE HIAHIA MŌHIOHIO ANŌ?

Want more information?

THE LAW/

- The Local Government (Rating) Act 2002 is the main piece of law governing rates. This sets out the rating tools, procedural and mechanical requirements.
- The Rating Valuations Act 1998 governs the setting of valuations for rating purposes. This sets out the definition of rating unit, and circumstances where the Valuer-General can make rules on the rating units and the information that must be collected and maintained on a district valuation roll. The Rating Valuation Rules provide more detail on these matters.
- The Local Government Act 2002 sets out the content of funding impact statements. This act also sets out the requirement for a policy covering remission and postponement of rates on Māori freehold land and empowers remission and postponement of rates on other land.
- The Local Government Financial Reporting Regulations provide a mandatory format for the financial component of Funding Impact Statements, and govern the way other financial information must be presented.
- Te Ture Whenua Maori Act 1993 which sets out principles to considered when developing remission and postponement policies (and the revenue and financing policy).

OTHER GUIDES AND RESOURCES/

The NZ Productivity Commission (2019 *Local Government Funding and Financing,* https://www.productivity.govt.nz/assets/Documents/a40d80048d/Final-report_Local-government-funding-and-financing.pdf

The 2007 Local Government Rates Inquiry NLNZ Web Archive Viewer 1.9 - View Web Archive Contents (natlib.govt.nz)