

16. RURAL RATES

Officer responsible General Manager Corporate Services	Author Geoff Barnes, Funds and Financial Policy Manager, DDI 941-8447
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PURPOSE OF REPORT

1. The Council at its meeting of 17 February 2005 recommended that the Item 6, Rural Rates, be held over to the next meeting of the Council for consideration and that further advice be made available on:
 - That appointment of a committee of the Council to hear and determine objections under Section 29 of the Local Government (Rating) Act 2002 (LGRA),
 - The process for review of the differential sectors,
 - Amendment to the LTCCP to modify the Rural Sector definition - Legal Services Manager reports,
 - Solution to the Rural sector moratorium on the 147 properties - Legal Services Manager reports,
 - Identify the impacts of changing to a Town Planning Zone based differential definition for 'Rural' Sector.

STAFF RECOMMENDATIONS

It is recommended that the Council:

- (a) Rate, those properties which were rated as rural in the 2004/05 rating year, as rural for the 2005/06 rating year, and that the difference be treated as a remission.
- (b) Agree that any review of the Differential definitions be part of the next LTCCP review for 2006/07.

BACKGROUND

2. The General Manager, Regulation and Democracy Services reports:

“STATUTORY FRAMEWORK

The statutory framework for this issue is derived from the Local Government (Rating) Act 2002. That Act provides that the Council may set a general rate for all rateable land within its district. The Act goes on to provide that that general rate may be set at different rates in the dollar of the capital value of the land for different categories of rateable land. The Act further provides that the Council may set a general rate differentially (what is generally called a “differential rate”) for all land in its district, and since the Council was formed in 1989, it has operated a differential rating scheme.

The Local Government (Rating) Act provides that the Council can establish categories of rateable land for differential rating purposes which are identified in its Funding Impact Statement and which are defined in terms of one or more matters listed in the Act.

Those matters upon which the Council may establish a differential rating scheme are:

- *The **use** to which the land is put*
- *The **activities** that are permitted, controlled, or discretionary for the area and the rules to which the land is subject under an operative district plan under the Resource Management Act*
- *The **activities** that are permitted, controlled or discretionary in the proposed rules under a proposed district plan*
- *The **area** of land within each rating unit*
- *The **provision** or availability to the land or the service provided by, or on behalf of, the Council*
- ***Where** the land is situated*
- *The **capital**, annual or land value of the land*

Since 1989 this Council has had a differential rating system based on “...the use to which the land is put” which provides that the general rate is paid by three different sectors:

- *Sector A - Business*
- *Sector B - Residential and other*
- *Sector C - Rural*

It will be noted that the Act does not permit a differential rating system simply based on a particular zone that land is located in eg rural differential for rurally-zoned land, and residential rate for residentially-zoned land. Any reference to the Resource Management Act is only to “activities” permitted or not in the City Plan, not the zoning of the land.

Under the Council’s differential rating system, each sector pays different proportions of what is referred to as the base general rate. The base general rate is that rate which is set for the residential sector and in effect Sector A - Business, pays that residential rate plus 65% in addition.

Sector C - Rural properties pay 75% of the residential rate for the same capital value. This reduction has always been intended by the Council to reflect the fact that rural properties do not receive the same levels of service as residential properties.

Consequently every rateable property in Christchurch City is classified by the Council according to one of these three sectors. For that purpose, the Council defines each of the sectors. These definitions are prepared by the Council itself and are part of its rating policies.

The definitions for Sector B - Residential and Sector C - Rural are:

Sector B - Residential

Includes any rating unit which is:

- (a) **Used for residential purposes** (including home and ownership flats); or

- (b) Land zoned residential, rural residential under the transitional district plan administered by the Council, and which is within the sewered area and used other than for a commercial or industrial purpose (including travellers and special purpose accommodation, and offices and administrative and associated functions); or
- (c) A Council-operated utility network; or
- (d) Land not otherwise classified under Sectors A, or C.

Sector C - Rural

Includes any rating unit which is:

- (a) Zoned rural under the transitional district plan administered by the Council, or zoned residential or rural residential under the transitional district plan administered by the Council, and situated outside of the sewered area, and where the rating unit is (a) **used solely or principally for agricultural, horticultural, pastoral or forestry purposes** or the keeping of bees or poultry, or
- (b) Vacant land not otherwise used.

Does not include any rating unit which is:

- (i) used principally for industrial (including quarrying) or commercial purposes (as defined in Sector A above); or
- (ii) **is used principally for residential purposes** (including home ownership flats).

It will be noted from the words underlined in the definition of Sector C if land is used "...**principally** for residential purposes..." then it falls **outside** Sector C, and falls within Sector B. It is important to bear in mind that the Council must, as a matter of law, operate within the definitions it has established in deciding whether a particular property falls within one sector or another. The Council does not have an unfettered discretion on the matter. The net effect is that such a piece of land loses the negative deferential of 25% enjoyed by Sector C properties, and would pay the base residential rate as all other residential properties do in Christchurch.

The key points are that if the property is used "...**principally** for residential purposes..." then it must fall within Sector B and pay the usual residential rate.

The Shorter Oxford Dictionary defines the word "principally" as meaning-

"The chief, main or most important thing, part, point or element"

That involves a consideration of the facts of each particular piece of land and as noted in the definition of "principally" above, there is a connotation of a majority use of the land, or a predominant use of the land for residential purposes, rather than for any other rural or commercial purpose. It is a question of judgement in each individual case by the Council as to which sector the land is to be placed within. However, given that the Courts have held that it is the use by the owner that is determinative, other factors such as the zoning of the land, whether or not the land is sewered or on the Council's water supply, are legally irrelevant to that decision.

So there is a judgement involved as to **whether the use of** a particular property is "principally" for residential purposes, or for rural purposes.

It is common for rateable land to be shifted between the three sectors during the course of a rating year. Since amalgamation the Council has delegated to officers the power to make judgements on which sector a particular piece of rateable land would fall in to, and that information is then entered into the Council's rating information database.

Clearly, there will be occasions when there is an element of judgement to be exercised by the officers in deciding whether or not a particular piece of rateable land falls within one sector or another.

It is important that the Council approach the issue in a dispassionate manner with a careful consideration of the particular facts of each piece of land, bearing in mind that the Council has a responsibility to treat like pieces of land in a similar way across the city. This is to ensure that all owners of land in a similar factual situation are treated in the same way. The Council could not legally adopt one approach for the owners in Templeton and another approach for the owners in others parts of the city.

Furthermore, any decision by the Council would need to be a reasonable one otherwise the Council would be open to the allegation that it is not operating within the definitions it itself has established. If the Council was not to operate within its own definitions, then other owners, particularly owners of commercial land, could fairly argue that the Council should reclassify their land as residential and ensure a substantial saving by avoiding the loading which the commercial sector is required to pay.

Can the Council Change the Definition of the Sectors in an Annual Plan Year?

The Local Government (Rating) Act requires that the categories of differentially rated land (ie Sectors A, B and C for this Council) must be identified in the Council's funding impact statement.

The Local Government (Rating) Act defines the phrase "funding impact statement" as meaning the funding impact statement included in the Long-Term Council Community Plan (for an LTCCP year) and "...in relation to any other year, means the funding impact statement included under Clause 13 of Schedule Ten of the Local Government Act 2002, in the annual plan adopted for that year under Section 95 of that Act."

*So in an annual plan year, the Council can legally adopt a funding impact statement which **alters** the definitions of the sectors for the purposes of the differential rating scheme. A funding impact statement must be adopted on an annual basis and forms part of the annual plan which itself is adopted through the special consultative procedure. Any variation to the funding impact statement in an annual plan year, from the LTCCP, would need to be set out by the Council as part of the special consultative procedure.*

While the Council can legally change its Funding Impact Statement through the Annual Plan process, the Council needs to exercise extreme caution in making any alteration to this part of its Funding Impact Statement this close to having to adopt its Draft Annual Plan at its 10 March 2005 meeting. Rating generally is a very complex area, given the large number of individual landowners involved and the very significant sums of revenue for the Council involved. What may appear to be a simple change can have catastrophic financial effects if all of the implications of that change are not carefully thought through.

It is critical that the public have confidence in the Council's administration of its rating system given that payment of rates is compulsory. The Council should be very careful to avoid any changes which may lead to a loss of confidence by the public in the fair administration of its rating system."

Councillors may Determine Objections to the Differential Sector Assignment

3. The Council is obliged to establish the rateability of all rating units (the property) and publish this in the Rate Information Database (RID) and on the Rate Assessment (the annual statement of rate calculation). Section 27 LGRA.
4. The RID is available for inspection by the public and any ratepayer can object to any entry in the RID under Section 28 of the LGRA. Generally it is only the ratepayer who makes the objection, but any ratepayer can object to any other rating unit's rateability.
5. The assignment and review of rateability is an ongoing management matter. All rating units are reviewed at subdivision time and where it is appropriate as change of land use is apparent.
6. There are over 145,000 rating units in the city. Land use, subdivision, building consents and to a lesser extent zoning changes are an every day occurrence.

7. Rateability issues include:
- If fully rateable then the classification into either of Residential (and Other), Business, and Rural differential sectors - LTCCP Rate Policies,
 - Non rateable, then what land use category under Schedule 1 of LGRA,
 - 50% non rateable under Schedule 1 LGRA,
 - The application of targeted rates for Water, Sewerage, or Land Drainage, - in essence is the Rating Unit within the serviced area of Council, - LTCCP rating Policies,
 - The validity and extent of a mixed use and therefore mixed rateability under Section 27.5 LGRA,
 - The number of separately occupied parts of a rating unit - LTCCP Rating Polices,
 - The application of standard remissions for example for some classes of Council owned or used land, - LTCCP Rate Remission Policies,
 - The application of discretionary remissions - LTCCP Rate Remission Policies
 - Application (and possible remission) of penalties for late payment. - LTCCP Rate Policies
8. Formal objections are a rare occurrence. Only one ratepayer has objected in the current financial year. A more frequent occurrence is a ratepayer questioning the determination and arguing for an alternative. The rates staff are accustomed to resolution by discussion and clarity of the facts of each Rating Unit.
9. It is the policy of staff to make known to the ratepayer the right of objection to the ratepayer whenever a significant change is made that is disputed. Each letter sent to ratepayers in this current Rural issue outlined the objection rights.
10. The delegated authority to hear and subsequently determine objections to the assignment of any Rating Unit to a differential sector is delegated to officers of Council. This delegation was made by Council in December 2002.
11. Council have the right at any time to hear and determine the objections, with or without additional delegations. I believe it is unreasonable for objections to be heard by the full Council as the determination should follow a site visit - a major undertaking for the whole Council.
12. The preferred alternative is to continue with the delegations, but if Council wish that withdrawn then a committee of Council be appointed with delegated authority to hear and conclude on objections under Section 29 of LGRA. Council will presumably then withdraw the delegated authority to staff to hear and determine objections.
13. That committee, once appointed can set its own process, however, it should reasonably include:
- Decisions made in compliance with the policy as approved by Council in the LTCCP,
 - Establishing consistent criteria on which to base the determination, for example for the rural sector residential issue:
 - Number of dwellings on the rating unit,
 - Portion of land given over to farming versus purely household uses,
 - The extent to which the farming land has been improved with developments, fencing, plantings etc.
 - Intensity of farming use,
 - A site inspection will generally be required,
 - Hearing the evidence presented by the objector,
 - Staff recommendations.
14. The criteria thus developed would then be applied by staff in making the initial determination for all rating units.

Process for Review of the Differential Sectors

15. The differential sectors will be next reviewed as part of the Revenue Policy development for the next LTCCP.
16. This work will commence in August 2005 with a briefing seminar with Council to identify the scope of issues and the opportunities for change.

17. An earlier change will necessitate a review of the Revenue & Financing Policy as the differentials only exist in that Policy context. Differentials are the means of allocating rates to sectors.
18. Piecemeal change of one component of the Revenue Policy is inappropriate without an awareness of the impacts of such change.
19. An earlier change of the Revenue & Financing Policy will trigger an amended LTCCP and must be done prior to 30 June 2005. Rates must be set by that date and are assessed to rating units on the rateability of land, as resolved by Council, as at 30 June 2005.
20. This means the amended LTCCP and rating policies must be part of the Annual Plan 2005/06 process. Time is against Council to consider this.
21. The Legal Services Manager reports:

"The draft 2004/14 LTCCP was considered for adoption by Council on the 30 June 2004. The draft LTCCP contained new provisions regarding rural rates as follows.

The Annual Plan Subcommittee considered submissions and reported to Council as follows:[p.16]:

24.10. Yaldhurst Rural Residents' Association, Ouruhia Residents' Association and Other Rural Ratepayers

That the action of staff in administering the long-standing Council policy of rating properties in the rural area used principally for residential purposes at the residential rate, be confirmed.

Councillor Wells moved by way of amendment to 24.10,:

"24.1. That those properties which were rated as rural in the 2003/04 rating year be rated as rural for the next 12 months.

24.2. That a set of criteria be developed against which the 'rural' nature of individual properties are measured.

24.3. That the Council develop policy which clarifies the relationship between land use and rating type, including (but not limited to) the appropriate rating of properties in living zones when their use changes, either by way of resource consent or by permitted development, and considers criteria against which they could be measured."

The amendment was carried. Note this did not expressly seek to amend the rural sector differential definition in the LTCCP as adopted.

The LTCCP was adopted including the residential exclusion exception for the rural sector as quoted above.

I am advised that Council officers have interpreted and implemented Clause 1 of the 24.10 amendment as creating a moratorium stopping the change of classification of properties from rural to residential in Templeton for the period 1 July 2004 until 30 June 2005.

The position as I see it now is:

- *The LTCCP was adopted 30 June 2004 and included rates policies, one of which is the rural differential definition. This was unchanged from the draft LTCCP before Council.*
- *Amendments in Resolution 24.10.1 sought to prevent the further assessment of properties principally with respect to approx 147 rural rating units, not the policy itself.*
- *Amendments R. 24. 10. 2 and 3 sought changes to the policy / definitions to be actioned in the future [as part of an amendment of the LTCCP]. That review has yet to occur.*

- To give effect to R 24.10.1 amendment the moratorium should be considered as a specific remission resolution pursuant to Rates Remission Policy number 6 in the LTCCP as adopted.
- The remission may now be **extended** by ordinary resolution of Council for a further period of 12 months until the policy changes contemplated in R. 24. 10. 2 and 3 are considered and possibly adopted. A suggested resolution could be:

“That the 147 rural rating units where change from rural to residential was planned will continue to be assessed as rural for the 2004/2005 year with the rates otherwise assessed being remitted. “

- It is reasonable to consider this resolution as “just and equitable” at this time given the overall effect of the resolutions passed by Council at the 30 June 2004 meeting.

Chris Gilbert, Legal Services Manager”

Impact of Changing the Differential Policy to Zoning Rules

22. There is a suggestion to change the basis of differential rating to the City Plan zoning definitions/rules. This will mean the differential basis will be on Schedule 2 Clauses 2 & 3 only of LGRA, rather than Clause 1,2,3, 5, and 6.
23. This suggested change brings a complexity and new set of problems if applied consistently. Some rating units that are rated residential are in zones other than Living.
24. For instance rating units currently in the residential sector and without water or sewerage include:
 - 8 rating units zoned business,
 - 1 zoned conservation,
 - 10 zoned multiple zones,
 - 10 zoned open space,
 - 215 zoned rural,
 - 9 zoned special purpose,
 - 14 zoned living.
25. Notwithstanding the need for analysis, these can be classed as residential units in the outlying areas, could be described as rural. It has been suggested that a more appropriate rate base would be Business, Rural, and several other new differential sectors for, say:
 - Conservation,
 - Multiple zones,
 - Open space,
 - Special purpose.
26. To be consistent, Council should then consider reviewing the Residential (and other) sector. In this sector there are rating units with both water and sewerage connections and not zoned Living:
 - 472 rating units zoned business,
 - 248 zoned central city,
 - 37 zoned conservation,
 - 117 zoned cultural,
 - 1,634 zoned multiple zones,
 - 156 zoned open space,
 - 243 zoned rural,
 - 249 zoned special purpose.
27. These include inner city apartments over shops etc. To be consistent should they be rated according to the underlying land zone?

28. There needs to be a significant analysis of the issues, however, to be fair and reasonable in the rating outcome:
 - it is possible that each City Plan Zone would constitute a differential sector, and for some zones, more than one sector.
 - There may not be equitable treatment for all rating units within a zoned based sector as the makeup of the sector defines the underlying zone, not the current use under existing use rights nor the use permitted under resource consent processes at odds with the zone permitted uses.
29. This zoning approach may introduce anomalies that are difficult to resolve.
30. The analysis will take some time and will not be available for the draft Annual Plan for 2005/06 even if an amendment to the LTCCP was contemplated.