

# Response to New Zealand Productivity Commission

## Local government funding and financing

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### Summary

The Local Government system as practiced in New Zealand is the exact opposite of Productive at the Local and Country wide basis for the following reasons:

The Local Government (Rating) Act, 2002 places no limit on the Rates that may be charged, and there is no ability (apart from an appeal to the High Court) for ratepayers to object. Should a ratepayer withhold Rates as an objection Councils have the power to sell the property.

There are hundreds of hours of meetings to maintain the illusion that Councillors are making all the decisions.

Extensive spending on glossy consultations that provide exaggerated estimates of “benefits to the city” to persuade Councillors and ratepayers to embrace various (often ill-fated) schemes – The most well-known being the V8 races in Hamilton.

Despite highly paid executive staff there is excessive spending on Consultants and Legal Advice (\$7.3million in the 2017/18 annual accounts for Hamilton City Council.

There are 78 Local Authorities each with a Mayor and highly paid CEO for a population of less than 4 million people, about 1.3million ratepayers.

40% of Local Body CEOs are earning more than the Minister of Finance. Four Council CEOs are earning nearly as much as (or in the case of Auckland 145% of) the salary of the Prime Minister. There is no statute that governs the salaries of Local Body Officials.

Across the 78 Local Authorities there is a huge duplication of roles of executive staff that are common to all councils.

The Fake Democracy of election of powerless Councillors supposedly representing ratepayers and setting direction and policy is extremely costly for no advantage to ratepayers.

The Fake Democracy of preparing Consultations that fewer than 4% of ratepayers respond to and whose results are largely ignored.

### Introduction

Thank you for the opportunity to contribute to this inquiry. We can only comment from our personal perspective, and mostly on the Hamilton City Council.

I am 70 and my husband 74, born in NZ and living in Hamilton for 34 years. My husband was made redundant at age 57 and has struggled to find well-paid work since then. I retired at the end of January 2018. Hence we are left with an income of the married person’s pension (\$32,069 per annum), my husband’s small income from part-time employment and a small “nest-egg”.

Our hopes of eking out a reasonable living on this income were dashed just 2 months after I retired when a letter arrived from the CEO of Hamilton City Council saying that our rates would be \$4692 in 2018, \$5137 in 2019 and \$5333 in 2020 (that is 14.6%, 16% and 16.6% of a married couples superannuation) and increase by

3.8% each year after that. I have struggled to find answers from the Council and Councillors that can justify the apparently unlawful and seemingly arbitrary way our Rates are calculated.

I looked at our Rates history and was surprised to find that our Rates had increased by almost 90% since 2001 when we purchased an overgrown gully section close to the city and hospital, and built a small, low maintenance, easy access townhouse for our retirement.

## Local Government Funding and Financing

Table 1 shows Actual Rates collated from our Rate Invoices for 2001-02 to 2018-19, also showing the Land Value and Capital Value that the Rates are based on. This does not include the Rates for the Waikato District Council (about \$670 per annum). The large increase in Capital Value after 2006 is partly because we purchased a 15 year old transportable “Versatile” house and had it moved onto our section to house our unmarried adult daughter who has some health problems and does not earn sufficient to ever purchase a house.

Table 1 Hamilton City Council Rates Increases

Year	Land Value / Capital Value \$thousand	Actual Rate	Actual annual % increase	Compound Increase
2001-02	100/170	\$1,893		
2002-03	100/355	\$1,909	0.9%	0.9%
2003-04	125/365	\$1,983	3.9%	4.8%
2004-05	125/365	\$2,200	11.0%	16.2%
2005-06	125/365	\$2,314	5.2%	22.3%
2006-07	220/605	\$2,455	6.1%	29.7%
2007-08	220/605	\$1,975	-19.5%	4.4%
2008-09	220/674	\$2,108	6.7%	11.4%
2009-10	220/674	\$2,173	3.1%	14.8%
2010-11	210/665	\$2,162	-0.5%	14.2%
2011-12	210/665	\$2,380	10.1%	25.8%
2012-13	210/665	\$2,524	6.1%	33.4%
2013-14	210/670	\$2,564	1.6%	35.5%
2014-15	210/670	\$2,669	4.1%	41.0%
2015-16	210/670	\$2,879	7.9%	52.1%
2016-17	315/870	\$3,344	16.2%	76.7%
2017-18	315/870	\$3,580	7.1%	89.2%
2018-19	315/870	\$4,158	16%	119.7%
		<b>Predicted</b>		
2019-20		\$5,137	23.5%	171.4%
2020-21		\$5,333	3.8%	181.8%
2021-22		\$5,536	3.8%	192.5%
2022-23		\$5,746	3.8%	203.6%

## Question 1

Q1

**What other differing circumstances across councils are relevant for understanding local government funding and financing issues?**

The first two figures in the Productivity Commission “Issues paper” demonstrate that the greatest problem with local government funding and financing in New Zealand is the inflated cost of operating Local Bodies.

We are a country of 4.8million people and there are 78 Local Authorities –“67 territorial authorities include 54 district councils (four of which are unitary authorities), 12 city councils (one of which is a unitary authority) and Auckland Council (which is a unitary authority)”.

That means there are 78 Mayors and 78 CEOs all earning large (excessive) salaries.

Four Council CEOs are earning nearly as much as (or in the case of Auckland 145% of) the salary of the Prime Minister.

40% of Local Body CEOs are earning more than the Minister of Finance.

The Bella Vista fiasco in Tauranga demonstrates that highly paid executives do not guarantee competent, well trained staff at the coal face.

The Tables below are mainly extracted from data collected from Councils by the Taxpayers Union.

Table 2 shows the Staff costs for the 10 largest City Councils in New Zealand

**Table 2 Financial Information for the 10 largest City Councils**

Financial Information 2017						
	Population	Number of ratepayers	Number of Staff	Average Staff Remuneration	CEO Annual Remuneration	Advertising Spend
<b>Auckland Council</b>	1,614,400	496,950	7184	\$111,035	\$680,000	\$2,927,030
<b>Christchurch City</b>	374,900	148,582	3616	\$20,926	\$403,000	\$1,026,094
<b>Wellington City</b>	270,900	70,878	1572	\$91,925	\$416,000	\$1,180,000
<b>Hamilton City</b>	165,000	49,700	1150	\$79,246	\$440,000	\$1,273,927
<b>Dunedin City</b>	127,000	48,837	811	\$61,884	\$353,000	
<b>Tauranga City</b>	128,200	48,095	634	\$73,281	\$357,000	\$453,979
<b>Palmerston Nth City</b>	86,300	27,077	611	\$48,032	\$388,000	\$356,000
<b>Napier City</b>	61,100	21,307	512	\$42,307	\$290,000	\$258,485
<b>Porirua City</b>	55,400	17,827	365	\$38,579	\$277,000	\$324,430
<b>Nelson City</b>	50,600	19,053	267	\$44,885	\$309,000	\$157,198
<b>Average NZ CEO Salary</b>					\$150,000	
	Population NZ	Number of Taxpayers	Annual Remuneration			
<b>Prime Minister NZ</b>	4.75 million	3.6 million	\$470,000			
<b>Minister of Finance NZ</b>		3.6 million	\$296,000			
<b>Average Household Income</b>			\$100,000			
<b>Average Personal Income NZ</b>			\$50,000			

In “Better Local Government” <sup>1</sup>(a review of local bodies in March 2012) the Minister of Local Government (Nick Smith) made this comment:-

“There has been significant public concern about some local government chief executives’ salaries. This Government believes increased disclosure requirements will help keep costs in check. Councils will be required, as state agencies are, to disclose in their annual reports information on the number of staff employed by salary bands.”

## The Outcome

In another example of “Process over Outcome”, an extra table of information is added to the Council Annual Report, CEO salaries continue to rise. As example:- In 2017 the Hamilton City Council CEO was given a salary increase of \$60,000 bringing his annual remuneration to \$440,000, just \$30,000 less than the Prime Minister. Hamilton City has a population of 165,000, about 50,000 ratepayers and a total income from Rates and other revenue of \$259million (2017), staff costs were \$71million for 2017.

Table 3 shows the Staff costs for the 10 Councils in the greater Waikato region

The greater Waikato region with a population of 460,000 (similar to cities such as Bristol and Edinburgh in the UK) has 10 Mayors and 10 CEOs. The data in Table 3 is not quite up-to-date but demonstrates the costs per ratepayer in the greater Waikato region. A region with a population of 460,000 (164,000 ratepayers) spends more than \$4million in salaries for Mayors and CEOs. The average annual cost to ratepayers for council staff is \$1,559 - times 164,000 ratepayers equals \$255.6 million. Much of this is from activity duplicated across councils in the region.

**Table 3 Staff Costs for Councils in the Greater Waikato Region**

	Population 2017	Staff Costs	Operating expenses	Mayoral remuneration	CEO Remuneration
		per ratepayer	per ratepayer		
Hamilton City	165,400	\$1,288	\$4,099	\$156,412	\$339,900*
Matamata-Piako District	34,700	\$1,589	\$5,315	\$101,733	\$310,483
Waikato District	73,600	\$2,559	\$10,617	\$125,300	\$332,000
South Waikato District	24,200	\$1,182	\$4,278	\$88,960	\$257,000
Thames Coromandel	29,000	\$664	\$3,253	\$104,119	\$351,659
Waipa District	53,000	\$1,296	\$4,797	\$113,300	\$274,062
Hauraki District	19,850	\$2,284	\$7,011	\$84,853	\$276,922
Otorohanga District	10,150	\$1,737	\$7,829	\$69,886	\$213,000
Taupo District	36,800	\$1,157	\$4,740	\$110,702	\$397,105
Waitomo District	9,730	\$1,835	\$9,595	\$125,300	\$332,000
		Avge \$1,559	Avge \$6,153	<b>\$1,080,565</b>	<b>\$3,084,131</b>

\* Increased to \$440,000 in 2017

## Conclusion

There should be amalgamation of some of the smaller Councils. Each Council could have a Mayor and CEO (Town Clerk) paid at a salary commensurate with their budget and responsibilities, but there should be a central office for each larger region providing the expertise and advice in legal, planning, governance etc.

This central office should establish uniformity in consenting and compliance costs, and should also be responsible for training Building Inspectors and other such officials so that there is consistency in the application of rules and regulations across the region.

## Unaffordability of Rates

### Increase in Debt not Matched by Increase in Revenue

The Hamilton City Council 10 Year plan 2018-2028 informed ratepayers that debt would increase to \$760million in 2023, despite most ratepayers calling for reduction in debt and the Mayor and Councillors campaigning for election on a platform of debt reduction. Ratepayers were not given the opportunity to vote on this increase in debt, and the debt per ratepayer was not clearly set out.

Figure 1 Rates of Increase of Debt and Revenue in Years 2007 - 2023

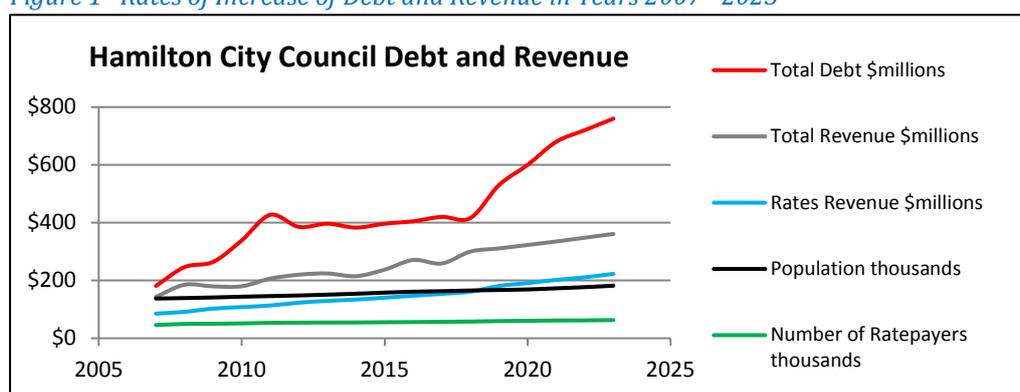


Table 4 Actual and anticipated growth of debt and income in Hamilton City Council

year ended June	Hamilton Population	Total Debt (\$millions)	Total Debt per capita	Total Debt per ratepayer	Number of ratepayers	Capital Contributions	Rates Revenue	Total Revenue	Annual Rate per Ratepayer
	thousands	\$millions			thousands	\$millions	\$millions	\$millions	
2007	137.5	\$181	\$1,318	\$3,948	45.9	15.11	\$85.3	\$143.4	\$1,859
2008	139.2	\$246	\$1,769	\$4,955	49.7	12.77	\$91.6	\$185.3	\$1,842
2009	141.3	\$264	\$1,871	\$5,244	50.4	10.42	\$102.6	\$179.6	\$2,036
2010	143.9	\$339	\$2,353	\$6,573	51.5	9.47	\$108.0	\$180.0	\$2,097
2011	146.0	\$427	\$2,925	\$7,981	53.5	10.03	\$113.5	\$206.5	\$2,121
2012	148.2	\$385	\$2,601	\$7,124	54.1	9.45	\$123.3	\$220.0	\$2,279
2013	151.0	\$397	\$2,626	\$7,275	54.5	11.95	\$129.4	\$224.3	\$2,374
2014	154.2	\$383	\$2,484	\$7,002	54.7	16.68	\$134.0	\$215.0	\$2,451
2015	158.0	\$397	\$2,509	\$7,144	55.5	16.07	\$140.5	\$237.5	\$2,532
2016	161.2	\$405	\$2,512	\$7,219	56.1	24.24	\$147.3	\$271.0	\$2,626
2017	163.0	\$420	\$2,577	\$7,368	57	15.80	\$153.7	\$258.9	\$2,696
2018	165.4	\$457	\$2,764	\$7,883	58	25.84	\$161.4	\$300	\$2,772
2019	167	\$530	\$3,170	\$8,908	59.5		\$181	\$311	\$3,042
2020	169	\$600	\$3,550	\$9,917	60.5		\$191	\$323	\$3,157
2021	173	\$680	\$3,931	\$11,057	61.5		\$202	\$335	\$3,285
2022	177	\$720	\$4,068	\$11,613	62		\$211	\$348	\$3,403
2023	182	\$760	\$4,176	\$12,063	63		\$223	\$361	\$3,540

Predicted data italicised

During the period 2007 to 2018 there has been massive development to the North of Hamilton City; it is obvious from the data in Table 4 that growth has not paid for itself. In the 10 years from 2007 to 2017 the total sum of Capital Contributions (Developer Contributions) was \$152million, Total Debt increased by \$240 million and the Total Debt per ratepayer nearly doubled.

The elected Councillors and the ratepayers in submissions to the Consultation argued against the large Rate increases. However, as the Consultation explained, the increase in debt was the result of accepting 10 year interest free loans from the government to open up more land for housing.

Since the Council already had debt of about \$470 million, loans of \$290 million (in the first instance to start the Peacocke development) increase debt to \$760 million. There are more interest free Government loans on offer for development of sections in other areas of Hamilton, so we can expect more Rate increases to come that are unrelated to any advantages to existing ratepayers.

The Local Government Funding Authority (LGFA) requires that the ratio of debt to revenue should be below a certain level – it used to be 170% and has now increased to 250%. Therefore as one of the requirements of being a member of the LGFA and in order to retain the ability to borrow from the LGFA, Hamilton City Council must increase revenue by at least 10% each year until 2022 (compound about 50%) to keep the debt to revenue ratio below their target of 230%. (aiming for 230% to allow a margin for error.)

## Cost of GST to Ratepayers

Submitters to the Hamilton City Council 10 Year Plan “Consultation” pointed out the interest -free loans and the existing debt still had to be repaid either through Rates, Developer fees or other income -hopefully within the 10 year period.

The loans are not truly interest-free to the ratepayer because 15% GST is added to all Rates. Thus the existing debt of about \$470million will attract about \$27million in interest (5.75%) each year and that interest will have GST of \$4million added when it is included in the Rates. Therefore when the LGFA interest rate is 5.75% ratepayers effectively pay 6.6% in GST and interest.

Also, any part of the interest free Government loan that is paid off through Rates will cost ratepayers an extra 15%.

As an example, consider the \$38.6 million that Tasman ratepayers were committed to paying towards the Waimea Dam. The elected Councillors tried to block the decision because funding for a large infrastructure project, such as the Waimea dam, is of benefit to many more than the 20,500 Tasman ratepayers. However the Councillors finally voted for the contribution.

Most ratepayers are wage earners paying income tax, about 17% on the average wage in NZ. In addition 15% GST is added to Rates. Thus a payment of \$38.6 million from Council funds to the Waimea dam fund would have cost ratepayers \$45.4 million (\$6.8 million GST) and require earnings of \$54.7 million before tax (\$9.3 million in income tax). Thus the government might have received \$6.8million in GST and \$9.3 million in income tax, a total of \$16.1 million dollars (41.7% of \$38.6 million), while the Dam fund received \$38.6million

If the Dam was funded, for example, by a charitable trust, contributions would not attract GST and large donors can claim income tax back. All supporters, not just ratepayers, could contribute to the dam project without paying 41.7% in taxes.

## Conclusion

Money to pay off interest should be exempt from GST, and money that is gifted by the Council to Charities and Trusts (such as the one building a Theatre in Hamilton) should be able to claim GST back.

Most of the cost of developing new subdivisions should be covered by Developer fees. However the costs of these fees plus high Council charges for consents and compliance inspections have driven up the price of sections and discouraged development in Hamilton.

## Question 11

Q11

**Is local government expenditure shifting away from traditional core business into activities such as economic development, sport and recreation and community development? If so, what is the rationale for this shift, and could these activities be better provided by other parties?**

Hamilton City Council (HCC) spending on “non-core” services has increased well above the “average” spending outlined in Figure 3.1 and Table 5.3 (page 12 and p37) of the Productivity Commission “Issues paper”.

These “non-core” Hamilton City Council costs are mainly due to staffing of and maintenance of loss-making venues – Waikato Stadium, Seddon Park and Claudelands Event Centre, plus advertising costs. User charges for these venues are not sufficient, and would be a deterrent to use of the venues if anything approaching the costs of running was charged.

**Table 5 Comparison of Hamilton City Council Figures with Figure 3.1 in Issues Paper**

**Compare HCC Figures with Figure 3.1 in the Issues Paper**

	Productivity Issues Paper	HCC 10 Year plan division of costs for 10 years	
	%	\$million	%
Roading	16%		
Transport	13%		
Roading, Transport, Parking		\$685	22.3%
Recreation, Sport	9%	\$389	12.6%
waste water	8.5%	\$421	13.7%
Council Support Services	15.5%		
Planning and Development		\$167	5.4%
Safety		\$70	2.3%
Democracy Services		\$34	1.1%
<b>Total</b>	62%	sum	57.4%
Arts and Community		\$219	7.1%
Venues, Tourism, Major Events		\$264	8.6%
Visitor Attractions		\$213	6.9%
		sum	22.6%
Water Supply		\$306	9.9%
Storm water		\$192	6.2%
Rubbish and Recycling		\$117	3.8%

**Table 6 Comparison of HCC Figures with Figure 5.3 in Issues Paper**

Compare HCC Figures with Table 5.3 in the Issues Paper			
	Productivity Issues Paper	HCC 10 Year plan division of costs for 10 years	
	%	\$million	%
core infrastructure	46%	\$1,721	56%
core services	18%	\$237	8%
"non-core"	17%	\$1,085	35%
Council support	16%	\$34	1%
other	3%		
	100%	\$3,077	100%

The way Rates are distributed must be displayed on the Rates Invoice. Although the icons on the bottom of our Hamilton City Council Rates Invoice for 2018-2019 add up to 100%, there is no icon for interest payments or repayments of debt. What they do show (Table 7) is that almost 40% of Rates are spent on “non-core” activities.

**Table 7 How Rates are Distributed to fund Activities in Hamilton City**

<b>How Rates are Distributed to fund Activities in the City</b>		
<b>Hamilton City Council Rates Invoice 2018-2019</b>		
<b>Core infrastructure</b>		
Water management	31.1%	
Transport	18.9%	54%
Rubbish and Recycling	4.0%	
<b>Core Services</b>		
City Planning and Safety	5.0%	5%
<b>“non-core”</b>		
Attractions and Venues	16.3%	
Park and Recreation	14.6%	39.5%
Arts and Community	8.6%	
<b>Council Support</b>		
Democracy	1.5%	1.5%
	<b>100%</b>	

Events such as the Rugby Sevens have free use of the Waikato Stadium on the rationale that this brings extra customers to Hamilton businesses. Hamilton City Council provide all staff for the venue

Previous Councils have allowed large shopping complexes to develop outside the CBD, therefore although properties within the CBD are charged high Rates they now have fewer customers. The “drink-drive” laws have led to many restaurants opening in suburbs rather than the CBD. To try to increase foot traffic within the CBD Hamilton City Council have forgone \$1million in parking meter fees within the CBD and are not charging Developer fees for the construction of Apartment buildings in the CBD.

Despite about 65% of replies voting against the “River plan”, the Council is determined to open the river up to the CBD. To that end they have purchased (for demolition) a group of buildings between the main street and the river, for which they have paid \$2million above valuation.

The Council have allowed the City’s main theatre (Founders Theatre) to “founder”. The building has been declared unsafe and left unused and unmaintained, although the alterations required were (reportedly) not major. Instead the Council have pledged \$30 million to a Private Trust that will build a new Theatre in the CBD. The Council has also pledged to pay the maintenance costs of the new, privately owned Theatre.

## Conclusion

The “business-friendly” Hamilton City Council has forgotten that, unlike businesses, residential ratepayers usually have no way of increasing their income or offsetting costs.

## Question 16

**Q16**

**How effective are councils’ Long-term Plan consultation processes in aligning decisions about capital investments and service levels with the preferences, and willingness and ability to pay, of residents, businesses and other local organisations?**

The latest 10 year plan for 2018-2028 prepared by the Hamilton City Council was greeted with derision by many Hamiltonians. The Consultation document was confusing and misleading; it asked ratepayers to make decisions about choices that had already been made and work started on; in some questions a tick in a box meant “yes”, in the next section a tick in a box meant “No”.

Although fewer than 4% of ratepayers made a submission on the Consultation, the number of responses was almost 4 times more than in past Consultations. Ratepayers are willingly pay rates to employ local councils to maintain the essential services and amenities required to run a town or city. Until recently Rates did not represent a large portion of earnings and being charged in 4 instalments throughout the year they were not seen as burdensome. Those who are working are too busy to take interest except when another waste of money is reported in the news<sup>2</sup>. They expect that the Council will be governed by laws and Statutes that are enforced.

See the Reference 2 and Appendix A1 for a selection of News articles about bad decisions of Hamilton City Council.

The people who are now finding the rates excessive did respond to this Consultation mainly in negative terms. On this basis I think the Council decided that the more than 96% of ratepayer who did not respond were, in effect, approving of the Councils aims, and therefore the Council could ignore the responses to the Consultation.

Asked if investment of \$70.7 million in community projects was the right option 86% of respondents answered “No” and 1038 respondents wrote “stop spending on nice-to-haves”, or “restrict spending to essentials”.

Asked to select one of 6 options for increasing Rates (all options increased Rates by 24-26%) 71% selected the options that did not include a UAGC of \$500 per year, and 820 wrote “none of the above”, or “where is the option to stick with the old 10 Year Plan that increased Rates by 3.8% each year?.”

Submissions from 50 small businesses complained that as a result of huge increases in the Capital Value of the Shopping Malls where their businesses were located their Rates would increase by 76% -140%. Many pointed out that they had made forward decisions based on the previous 10 year Plan with annual increases of 3.8%.

In the end the results were barely analysed by the Council and the choices of respondents largely ignored.

The Audit Office report on the 2018 Consultation process<sup>8</sup> considered “all 2018-28 consultation documents to be fit for purpose. However, many of the opportunities for improvement we had outlined in our 2015 report have not been realised. In our view, there are still opportunities for councils to improve the content, structure, and presentation of their consultation documents and we encourage councils to do so”.

I sent a letter to the Auditor General’s Office expressing the doubts we had about the Consultation process and pointing out that the way Rates were calculated was illegal under Section 13 (3) of the Local Government (Rating) Act. (Appendix –Letter to the Auditor General).

The Audit Office reply to my complaint assured me that the HCC Consultation made all the required disclosures, and that ratepayers could work out their liability for Rates (from 3 pages of complex tables!). The Audit Office commented that they “could not provide assurance that the forecasts in the plan would be achieved” and also added that they “do not express an opinion on the merits of the plan’s policy content. (Appendix – Reply from the Office of the Auditor General)

Thus we observe that what is important to the Auditor General’s Office is the PROCESS, the OUTCOME is not their concern.

## Question 21

Q21

**What incentives do councils face to improve productivity as a means to deal with cost pressures? How could these incentives be strengthened?**

There do not seem to be any significant incentives to improve productivity. Tables 1 and 4 above demonstrate the ease with which Rates can be increased and the powerlessness of ratepayers to object to or refuse to pay the increases.

## Question 22

Q22

**What are the most important barriers to local government achieving higher productivity?**

1. The time and cost of having elections every three years to elect Councillors who have very little power to influence the Council executive direction.
  2. The time and cost of preparing 3 year plans and Long Term plans, a Consultation document to inform the ratepayers about the 10 year Plan, a Voting form so that the ratepayers can have their say and analysis of the voting (fewer than 4% of Hamilton ratepayers participated in the latest consultation).
  3. The costs of auditing these plans.
  4. There is no accountability. The CEO is responsible for all council staff - neither the Mayor nor any of the elected Councillors are allowed to have any input into staff management. The Mayor, who employs the CEO, is elected for a 3 year term. The CEO has a contract with a 5 year term, which spans 2 election terms and creates an accountability gap where blame can be levelled at previous representation. Therefore the CEO is effectively accountable to no-one.
2. One of the stated governance roles of the elected Councillors is to ensure that management is performing satisfactorily. The Mayor and Councillors are not elected for their management, accounting or legal expertise and must maintain an effective relationship of trust with the chief executive, and therefore are unlikely to interfere with his management of Council staff.
  3. Another of the stated roles of the elected Councillors is to set direction and policy, to make important decisions and oversee the functioning and health of the organisation including its long-term capability and sustainability, and its compliance with the law. This is all well beyond the scope of most elected Councillors, and in effect, because the Councillors must approve all decisions of the Council, considerable time is spent informing Councillors of policy that the Mayor and Council wish to have passed and persuading a majority to vote for it.

## Conclusion

The contract for the CEO should be reviewed more regularly, maybe in the second or third year of an electoral cycle when the Councillors have had a chance to evaluate the performance of the CEO and his senior staff. Some legislation around maximum pay rates for Council executive staff is required.

## Question 26

Q26

**What measures do councils use to keep services affordable for specific groups, and how effective are they?**

Complaints about unaffordable Rates to the Council or to the Minister for Local Government (Hon. Nanaia Mahuta) are always answered with the suggestion to apply for the Rates rebate. This is particularly popular with the Council since it is paid by the Government not the Council. However Rates are now so high that a rebate of \$630 is not sufficient to make Rates affordable. A retired couple on the married pension of \$32,069 per annum after tax must have no other income to receive the full rebate. It is likely that even with the Rebate their Rates may be 9-10% of their income, and continue to increase by 10% each year under the current plan of increased debt. It has therefore become unaffordable in the long term for a retired couple to live in Hamilton if they have no income other than the pension, even if they have retired into a mortgage-free, low maintenance house.

Even worse, should one of them die or have to go into care, the pension for a single person is just \$20,845 per annum after tax.

## Question 23

Q33

**What is the rationale underlying councils' approach to levying rates? What are the costs and benefits of shifting from a capital value system to a land value system?**

### Definition of a SUIP

The current Local Government (Rating) Act (LGRA)<sup>4</sup> was written when Rates were set on Land Value. The provision to define a Separately Used or Inhabited Part (SUIP) has been added to allow extra charges to be made when a Rate set on Land Value only does not recognise the extra services provided when a single dwelling is replaced by multiple units. There are a number of features in the LGRA that indicate it is not the intention of the Act to calculate residential Rates on the number of people, number of rooms or number of toilets. Also, Section 20 – Rating units in common ownership – shows that it is the intention of the Act to set Rates on the basis of family, not number of buildings.

Hamilton City Council has a very wide definition of a SUIP<sup>5</sup> that goes against the spirit of the Act and has elicited some very angry submissions to the Consultation. The Gisborne District Council SUIP<sup>6</sup> is a more acceptable document.

### Are Rates a Cost for Service or a Tax

Rates are primarily a charge for provision of services such as potable water, waste water and rubbish collection, also footpath and road maintenance. Various other services like transport, swimming pools and

community assets have a user pays portion that varies, but is never likely to recover all costs. Charges for Council services, and maintenance of the services may justifiably have GST added.

Repayment of Loans and interest on loans should not have GST added. No other person or business pays GST on loans (mortgages) and especially not GST on interest on loans. Some other mechanism needs to be applied for funding expensive infrastructure and Capital assets. I am not sure about Public/Private ownership, I think it transfers public money to private interest.

My opinion is that Land Value is (generally) a fairer way of calculating the liability for Rates. Land in desirable areas has a higher value than land in less “desirable” areas or land located further from the amenities. Land with unimpeded views of lakes, rivers, oceans will always command a high value no matter the size of the section.

Same size sections in the same street with similar size houses of different quality or age may be valued for example at \$350,000, \$550,000 and \$750,000, but do not use different amounts of Council resources. Of course, if one of the houses is rented and has several occupants who all own cars, then it may use more water and create more waste and possibly annoy the neighbours. However the LGRA does not allow Rates to be calculated on the number of people or the number of rooms or number of cars.

There is no justification in charging higher Rates for a more expensive house on the assumption that the owners of the more expensive house are in a better financial position than the people in the cheapest house. Currently it is more likely that they have high debt, low equity and no ability to pay high Rates.

Parliament has provided local authorities with a power - The Local Government (Rating) Act, 2002<sup>1</sup> - to levy a coercive tax to fund its lawful activities. (Collins Dictionary - Coerce – compel by force or authority without regard to individual wishes or desires). It may be time to review this Act as the large debt held by younger house owners may soon render coercion ineffective, especially if house prices fall or stagnate. However at the moment it is very effective against older people with low or no mortgages.

The Rating Act (LGRA) devotes 10 pages to the ways in which a local authority can recover unpaid Rates. If there is a mortgage on the property they may persuade the mortgagee to pay the Rates and add the cost to the mortgage, or the local authority may sell the property and take the unpaid Rates, penalties and legal fees out of the proceeds. However, if property prices fall so that the debt is close to or exceeds the value of the property Councils may find that the bank will not increase the mortgage or allow the sale of the property. In the case of a general loss of value in property or increases in bank interest when many people cannot or will not pay their Rates it may become politically unacceptable to enforce the sale of large numbers of properties, and income from Rates could fall considerably.

Rates based on Capital Value are a Tax on assets and are best applied by the IRD, since there may be complicated calculations of ownership, mortgage debt and costs of maintenance. Valuations are also likely to become a contentious issue.

## Question 49

Q49

**How effective are the current oversight arrangements for local government funding and financing? Are any changes required, and if so, what is needed and why?**

There does not seem to be any effective oversight of Local Government. My letter addressed to the Prime Minister (see Appendix - Letter to The Prime Minister regarding Unlawful setting of Rates) was answered by

Hon. Nanaia Mahuta, Minister of Local Government, who says that I should raise the matter with the Council. She did however helpfully refer me to your inquiry. (Appendix – Reply from Hon. Nanaia Mahuta MP).

When I questioned the Hamilton City Council Mayor and Councillors and pointed out the illegality of the way that Rates were being set, the answer was “all Councils are doing it that way”, as if that made it lawful.

The reply to my complaint to the Audit Office assured me that the HCC Consultation made all the required disclosures, and that ratepayers could work out what their liability for Rates was from the information supplied. The Audit Office added that they “could not provide assurance that the forecasts in the plan would be achieved”.

I therefore wrote to SOLGM (Society of Local Government Managers) because their publication, “Rating Know How”, which provides advice to Local Authorities states quite clearly the illegality of calculating Rates on a mix of Land Value and Capital Value. “**Combinations of bases, such as 50 percent land value and 50 percent capital, are not permitted for a general rate**”. (Appendix – Letter to SOLGM regarding Unlawful setting of Rates)

Your Productivity Commission Issue Paper (p50) reprints the law around the setting of Rates,

Section 13 (3) For the purposes of this section, the **rateable value** of the land—

(a) must be—

- (i) the annual value of the land; OR
- (ii) the capital value of the land; OR
- (iii) the land value of the land; AND

However in reply to my questions the reply from SOLGM seems to suggest that it is alright for the Council to calculate Rates unlawfully (illegally) as long as “the council has met the relevant disclosure requirements for a targeted rate in its funding impact statement and rate resolution”. (Appendix – Reply from SOLGM regarding Unlawful setting of Rates).

## Who is Responsible for Oversight of Local Body Decisions

After a lot of reading I have finally found the answer - the Auditor’s Office states that the elected Councillors are responsible for oversight of Council.

Elected Councillors, who are not chosen for their legal, accounting, governance or management expertise, are apparently responsible for all decisions made by the Council.

The Audit Office makes a report each year summarising the results of the annual audits. Excerpts from the **Local government: Results of the 2012/13 audits**<sup>3</sup> are essential reading, especially if you are an elected Councillor.

### Controller and Auditor-General

#### Local Government: Results of the 2012/13 audits

#### Excerpt 1 - page 5

Elected members are responsible for what the local authority does and how it does it – they are responsible for “getting it right”. It is the elected members who the public hold accountable for those decisions and actions.

In December 2013, I released my report on an inquiry into the Mangawhai community wastewater scheme. This report detailed the woeful saga of the Kaipara District Council’s poor management and governance oversight of the scheme, with failings at almost every stage of the project, as well as highlighting shortcomings and inadequacies by other parties. I encourage all public entities to read the report and take heed of the lessons learned, and consider the messages about the importance of having robust accountability, governance, and management controls in place.

Local Government New Zealand’s partnership with the Institute of Directors and the development of training modules focusing on governance, leadership, and strategy skills for elected members are positive moves. And many local authorities are putting in place audit and risk committees as part of their framework for managing uncertainty and risk.

#### **Excerpt 2 – page 6**

##### **Setting rates**

During the year, it became apparent that there were several widespread problems with rating practices. Our audit work on rates revenue found that most local authorities had some level of compliance failure. Problems ranged from potentially serious legislative breaches, which created a significant financial risk to the local authority’s revenue, through to low-risk legal breaches.

The problems we saw were related to all aspects of the rating legislation. Many of the problems seem to have arisen because of insufficient attention to legal requirements. The power to rate comes with obligations that need to be given the appropriate level of attention. It is important that local authorities use their legal powers to impose rates on their communities properly.

Local authorities need to lift their game and improve their processes and practices for setting rates.

I am encouraged by the positive response to the issues we have raised. Most local authorities sought legal advice and either took corrective action to rectify the errors or drew the errors to the attention of their communities. Local Government New Zealand and the Society of Local Government Managers have undertaken to work with local authorities to provide training and support to ensure that rating practices improve.

#### **Excerpt 3 – page 10 What is the role of an elected member?**

The last paragraph, section 1.11, of this snip from the Audit Office report on the 2012/13 audits highlights the impossibility of the elected members fulfilling any of the bullet points in section 1.10. if they are unable to independently seek the information that they require from Council Staff. Hamilton City Councillors have been reprimanded for “harassing” staff for information. There is an article in the Waikato Times this morning (23/01/2019) about Code of Conduct investigations of Councillors..

- 1.6 Generally, the roles are for:
- the governing body to set direction and policy, make important decisions, report to the public, and oversee the functioning and health of the organisation including its long-term capability and sustainability, and its compliance with the law; and
  - management to focus on putting policies and decisions into effect, carrying out the organisation's functions, and providing information and advice to the governing body.
- 1.7 Elected members ensure that management is performing satisfactorily. The elected members are responsible for acting if problems emerge. Being able to identify risks early and manage them well is a vital skill for effective governance, helping to avoid pitfalls and keep an organisation on track.
- 1.8 In the end, elected members are responsible for "getting it right". To meet that responsibility, they need to receive high-quality information and advice from local authority officers and external professional advisors. Elected members need to know when to ask questions of their advisors, what questions to ask, and when to insist on expert advice to ensure that their questions are answered satisfactorily.
- 1.9 We encourage elected members to use common sense in their work. Common sense is a legitimate governance tool and a good way of testing technical and complex advice.
- 1.10 In November 2013, we noted in our report, *Inquiry into the Mangawhai community wastewater scheme* (our Kaipara District Council report) that the governance role is about maintaining the broad view. It involves:
- setting direction and policy;
  - making significant decisions;
  - testing and challenging advice to ensure that it is sound;
  - monitoring the work of management to ensure that what is being done will achieve the local authority's objectives;
  - keeping an eye on risks; and
  - safeguarding the overall quality of the relationship between the local authority and its community.
- 1.11 When members of a governing body become too involved in operational matters, the risk is that nobody holds the broad view for the organisation and checks that the overall direction remains appropriate. Conversely, if elected members take too little interest in what the organisation is actually doing on the ground, they can become distant and disempowered. The art of effective governance is being able to find the right balance between these two extremes and understanding that the balance will change depending on the circumstances.

## Final Conclusion

Finally I understand why the system is out of control. There are many people and groups (Audit office, SOLGM, Local Government New Zealand, Members of Parliament, Institute of Directors ,etc) with qualified and highly paid staff, who advise Local Bodies and comment on their various failings. Their suggested solutions usually involve providing more information to ratepayers in already over-complicated consultations.

In theory all the responsibilities for the extremely complex business of Local Body management lie in the hands of the disparate group of "amateurs" who are elected to council. In practice the elected Councillors can only make decisions on the (often selective) information that is provided to them. Staff members are invited to Council meetings to answer questions from Councillors, but the Councillors have to know what question to ask, and understand the significance and consequences of the answer.

So it is all a Fake Democracy, the money spent on elections and Consultations is wasted because the elected representatives have no power, the power is all in the hands of the CEO and his executives. The Mayor may try to rein in the excesses of the management with limited success.

"It is hard to imagine a more stupid or dangerous way of making decisions than by putting those decisions in the hands of people who pay no price for being wrong" Thomas Sowell

## References

1. <https://www.dia.govt.nz/Policy-Advice-Areas---Local-Government-Policy---Better-Local-Government-brochure>
2. [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=10765862](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10765862)
3. <https://www.oag.govt.nz/2014/local-govt/docs/local-govt.pdf>
4. <http://www.legislation.govt.nz/act/public/2002/0006/latest/DLM131394.html>
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8. <https://www.oag.govt.nz/2018/ltp-consultation-documents>

## Appendix

### A1 Newspaper Articles

<https://www.stuff.co.nz/waikato-times/90793349/max-christoffersen-the-tuesday-night-ambush-at-city-hall>

March 2017 This month, a line was crossed at City Hall when a \$12 million rate hike was proposed (\$17m was actually needed) to get the city back to "business as usual".

Ratepayers are confused, councillors are confused and the only one who seems comfortable with the shock 11th hour rates hike (presented without supporting evidence) is council chief executive Richard Briggs.

Even more concerning are the flip-flop statements coming from chief executive Briggs, who, in advising candidates in October 2016, reported the following: "I can confidently say that we are approaching the new council term in a much stronger financial position than at the start of the last term. We aim to work within the council's financial limits of keeping residential rates increases to 3.8 per cent annually, balancing the books and reducing our debt, and we are achieving on all three."

Five months later, Briggs says the council needs a one-off 17 per cent rate rise which the mayor describes as a "recalibration" to get council back to where it should always have been

The revelation that council was now suddenly millions of dollars in the hole demonstrates a disturbing level of communication mismanagement and systematic dysfunction from the chief executive down.

Councillors believed they were working in the black, following the good news of the city's books being in surplus at the finance committee meeting held only seven days earlier.

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Hamilton council CEO pulls finance chair's monthly report

[https://www.nzherald.co.nz/hamilton-news/news/article.cfm?c\\_id=1503366&objectid=12058380](https://www.nzherald.co.nz/hamilton-news/news/article.cfm?c_id=1503366&objectid=12058380)

Councillor Mallett says not revenue problem, but a spending problem

He targets the council-operated H3 groups which is responsible for Hamilton's event facilities, such as the Claudelands Events Centre and FMG Stadium.

In his report he says that the additional rates revenue council collected via the 8 per cent rate increase in 2012, the subsequent 3.8 per cent annual increase plus the rates collected from new ratepayers over the period of 2012-2018 is \$47,271,000."

Over that same period, H3 delivered losses of \$116,876,062.

"That means every single additional dollar council collected from the rates increase in that period has been swallowed up by H3. H3's losses were \$69,605,062 more than the additional rates collected.

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[https://www.nzherald.co.nz/hamilton-news/news/article.cfm?c\\_id=1503366&objectid=12070682](https://www.nzherald.co.nz/hamilton-news/news/article.cfm?c_id=1503366&objectid=12070682)

Hamilton's two-hour free parking will continue for another 12 months, despite a hung vote from Hamilton City Council.

The trial will continue until June 2019, but only after a casting vote was used to push through continuation of the trial. hung vote and councillor Dave Macpherson, chair of the growth and infrastructure committee, to use his casting vote to continue with the trial.

"This does come at a cost of \$1.1 million, and an \$11 million cost in this 10-year plan."

The \$1.1 million cost comes as a combination of revenue loss and reduced infringement notices.

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[https://www.nzherald.co.nz/hamilton-news/news/article.cfm?c\\_id=1503366&objectid=12079571](https://www.nzherald.co.nz/hamilton-news/news/article.cfm?c_id=1503366&objectid=12079571)

Hamilton City Council has signed off on the city's 10-year plan after 18 months of debate, controversy and public outcry.

It began last December with Mayor Andrew King proposing a 16 per cent rates increase, and ended today with ratepayers being hit by a 9.7 per cent rates increase.

A record number of public submissions was made to the council, as a proposed central city park development raised eyebrows, a redevelopment of Garden Place received overwhelming backlash from the public and the Waikato Regional Theatre slipped through, despite some concerns over its location and cost.

Councillors Paula Southgate, Siggie Henry and Angela O'Leary voted against the 10-year plan.

Mayor Andrew King, Deputy Mayor Martin Gallagher and Councillors Dave Macpherson, Ryan Hamilton, Geoff Taylor, Mark Bunting, Leo Tooman, James Casson, Garry Mallett and Rob Pascoe voted for it.

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Media release by HCC indicate Finance Committee reports trend of strong growth in city

Mr Briggs says the accounting result shows the city is still in a period of strong growth.

"We received \$30m more from vested assets than budgeted to this point, and \$12.4m more in development contributions," Mr Briggs says.

Asked to comment on the media release, Mr Mallett says: "It's important to separate the Hamilton City Council from Hamilton City.

"They are different entities. The council is a subset of Hamilton City.

"Yes Hamilton City has enjoyed strong growth."

"The problem I believe council faces is that its activities have strayed miles away from being a provider of core infrastructure," Mr Mallett says.

"Rates (and a small amount of user pay fees) which are meant to cover the day-to-day expenses and to maintain and replace that core infrastructure, have not been enough to cover the cost of the many assets/services that council has decided to provide.

"H3's budgeted annual \$16.9m loss is a very good example," Mallett says.

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### **Councillors with no opinions preferred!**

Councillors silenced by Council staff. The no-submissions advice to councillors is to "prevent the perception that they have predetermined the outcome", a statement from council governance manager Lee-Ann Jordan said.

<https://www.stuff.co.nz/waikato-times/news/104497449/retracted-submission-banned-report-opinions-create-problems-for-two-hamilton-city-councillors>

A strongly-worded finance chair's report from Councillor Garry Mallett, was barred from a recent agenda. It would be absurd to say he had a predetermined view because he was concerned about council spending, he said. OM LEE/STUFF

Cr Siggie Henry retracted a submission she made on Hamilton City Council's long-term plan

Henry's submission was on the city's proposed long-term plan which she and fellow elected members were due to consider.

"It was just an exercise in seeing what it's like from the ratepayers' side," Siggie Henry said

Mayor Andrew King had previously said the city needed an increase of up to 16.5 per cent, and on Wednesday he moved a 16 per cent jump. The massive rates rise flagged for Hamilton ratepayers has been spread across two years.

Hamilton City councillors voted to have a 9.5 per cent increase for two years, before going back to 3.8 per cent increases.

The 8-4 vote was taken at Wednesday night's meeting, after a marathon few days of debating which city projects should go ahead.

Councillors voted 8-4 for two years of 9.5 per cent rate increases.

Those opposed were Crs O'Leary, Southgate, Taylor and Tooman.

**Cr Dave Macpherson, who doesn't live in Hamilton and pay Rates in Hamilton) thinks it will make a difference to ratepayers to spread the increase over 2 years (Yeah right!)**

"I think that 16 per cent - or 15.5 per cent, as it was before - is too much in one hit. We need to spread it over two years

## **A2 Letter to the Office of the Auditor General**

Are the City Council 10 Year Plans audited every three years when the Council reviews the Plan?

The Rating Act does not set a limit to the Rates that may be set, and there seems to be no limit to the debt that can be imposed on Ratepayers. The elected Councillors do not act as a team and have shown no ability to represent the interests of Ratepayers. I am hoping that maybe the Office of the Auditor General can have some influence.

The Hamilton City Council has "thrown out" the 2012 and 2015 Plans. The Draft 2018 – 28 Consultation Document was neither transparent nor informative as to what was in fact already decided. It was written in a manner that was deceptive and designed to confuse with many "choices" and "options". Within a few weeks of the public submissions, and before the elected Councillors had voted on the proposals, there were announcements in the Waikato Times about work going ahead on 2 of the subdivisions that we were supposed to be choosing between.

The 10 year plan set in 2012 -2022 had rate increases at 3.8% per year and debt remaining below \$400 million in 2022. In the newly proposed 10 year Plan for 2018 – 2028 the Hamilton City Council intends to increase debt to \$760 million in 2022/23 and increase Residential Rates by about 34% over the next 3 years. Despite 50% of ratepayer submissions being against increasing debt and preferring to stay with the previous 10 Year plan the new Plan has been passed.

In the Hamilton City Council Annual Report for 2017 Hamilton's population was 165,000 there were about 50,000 Residential Ratepayers and total revenue was \$258.9 million (\$100 million from residential rates, \$53.6 million from commercial rates and \$105.3 million other income). The Council's total debt was \$362 million (1.4 times income).

Hamilton City Council state in their revised 10 Year Plan 2018 - 2028 that the rates revenue does not cover the costs of running the city, however instead of looking at ways to cut costs the Council is looking for more inventive interpretations of the Rating Act in order to increase Rates. They have come up with a very wide definition of a SUIP<sup>3</sup> and decided that each room or unit in an apartment block, boarding house or private

hospital is a “Separately used or inhabited part of a rating unit (SUIP)” rated at a Uniform Annual General Charge (UAGC) of \$500 per annum (see page 3, Waikato Times, Friday May 18, 2018, Braemar Private Hospital faces rates hike of 676%).

The Councillors, elected to present ratepayers, have voted the rate increase down to 27% and for the \$500 Uniform Annual General Charge is to be phased in over 3 years. However this is a hollow victory for the Councillors because if debt increases to \$760million the rates will have to increase by at least 34%, in order to keep the debt to revenue ratio below 250%.

<b>Hamilton City</b>	<b>2017*</b>	<b>2020/21<sup>t</sup></b>	<b>2022/23<sup>t</sup></b>	<b>2027/28<sup>t</sup></b>
Population	165,000	174,000	180,000	200,000
Number of Ratepayers	49,722	50,442	51,522	53,500
Total Rates Revenue	\$259million	\$286m (14% increase from 2017)	\$310m (27% increase from 2017)	\$392 million
Total Debt	\$362million	\$720million	\$760 million	\$700 million
Interest on Debt (5.75%)	\$21million	\$22m (\$340m interest free loan for 10 years )	\$24m (\$340m interest free loan for 10 years)	\$42 million (Interest at 6%)
Debt per Ratepayer	\$7,280	\$14,273	\$14,751	\$13,000
Debt per Population	\$2,193	\$4,138	\$4,222	\$3,500

\*From Hamilton City Council Annual Report

<sup>t</sup> From Hamilton City Council 10 Year Plan 2018 -2028 (Population growth estimated from past trend)

If the Council has the authority through the Local Government (Rating) Act, 2002<sup>1</sup> to sell a ratepayer’s property to claim unpaid (unaffordable) Rates then it should be obliged to stick to the rules laid down in the Rating Act.

Our Rates are not being calculated according to the rules in the Rating Act.

1. For the last 4 years Hamilton City Council Rates have been calculated on a mix of Land Value and Capital Value.

Section 13 (3) of the Local Government (Rating) Act 2002 states that the rateable value must be annual value OR capital value OR land value. This is laid out more clearly in the Guide to The Local Government (Rating) Act<sup>2</sup> published by the New Zealand Society of Local Government Managers (SOLGM) stating that combinations of bases, such as 50 percent land value and 50 percent capital, are not permitted for a general rate. Moreover this calculation of Rates is “double dipping” because the Capital Value includes the Land Value.

2. On our Rates Invoice the part of the Rates calculated against Capital Value is described as a Targeted or Transitional Rate. As it is charged against all ratepayers I think it is a General Rate. However if it is a Targeted rate then it violates the 30% rule, Section 21 of the Local Government (Rating) Act, 2002.

3. We have a property with 2 houses and a single Certificate of Title and are being rated as though each house is a Rating Unit. This infringes Section 20 (Rating units in common ownership) of the Local Government (Rating) Act 2002.

It is all very well to make cities safe for older people and consider their well-being, but if the rates become so unaffordable that old folk have to move out then all that will remain are young people with such high debt that the coercive nature of the Rating Act will be of no use.

1. <http://www.legislation.govt.nz/act/public/2002/0006/latest/DLM131394.html>

2. [https://www.solgm.org.nz/Folder?Action=View%20File&Folder\\_id=90&File=Rating%20Guide%20final%20-%20web%20version.pdf](https://www.solgm.org.nz/Folder?Action=View%20File&Folder_id=90&File=Rating%20Guide%20final%20-%20web%20version.pdf)

3. [https://www.hamilton.govt.nz/our-council/10-year-plan/Pages/Separately-used-or-inhabited-part-of-a-rating-unit-\(SUIP\).aspx](https://www.hamilton.govt.nz/our-council/10-year-plan/Pages/Separately-used-or-inhabited-part-of-a-rating-unit-(SUIP).aspx)

## A3 Reply from the Office of the Auditor General

AUDIT NEW ZEALAND  
Mana Arotake Aotearoa

### To the reader:

#### Independent auditor's report on Hamilton City Council's 2018-28 Long-Term Plan

I am the Auditor-General's appointed auditor for Hamilton City Council (the Council). Section 94 of the Local Government Act 2002 (the Act) requires an audit report on the Council's long-term plan (the plan). Section 259C of the Act requires a report on disclosures made under certain regulations. We have carried out this work using the staff and resources of Audit New Zealand. We completed our report on 28 June 2018.

#### Opinion

In my opinion:

- the plan provides a reasonable basis for:
  - long-term, integrated decision-making and co-ordination of the Council's resources; and
  - accountability of the Council to the community;
- the information and assumptions underlying the forecast information in the plan are reasonable; and
- the disclosures on pages 110 to 113 represent a complete list of the disclosures required by Part 2 of the Local Government (Financial Reporting and Prudence) Regulations 2014 (the Regulations) and accurately reflect the information drawn from the plan.

This opinion does not provide assurance that the forecasts in the plan will be achieved, because events do not always occur as expected and variations may be material. Nor does it guarantee the accuracy of the information in the plan.

#### Emphasis of matter – assumptions relating to efficiency savings

Without modifying our opinion we draw your attention to the disclosures on pages 74 -75, which outline the assumptions made in relation to planned efficiency savings and the forecast financial impacts of these savings. The Council has forecast to achieve \$94.498 million (inflation adjusted) of savings over the 10 year plan period. Council expects the savings to be made through changes in current procurement and service delivery models. However, there is uncertainty as to whether savings will amount to the levels estimated and in the years expected. If the savings are not realised the Council has stated that it would need to increase rates or reduce the capital programme to stay within its debt-to-revenue limits. If the savings are not realised, and no changes are made to rates or the capital programme the Council would breach its debt-to-revenue limits.

## **Basis of opinion**

We carried out our work in accordance with the International Standard on Assurance Engagements (New Zealand) 3000 (Revised): *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information*. In meeting the requirements of this standard, we took into account particular elements of the Auditor-General's Auditing Standards and the International Standard on Assurance Engagements 3400: *The Examination of Prospective Financial Information* that were consistent with those requirements.

We assessed the evidence the Council has to support the information and disclosures in the plan and the application of its policies and strategies to the forecast information in the plan. To select appropriate procedures, we assessed the risk of material misstatement and the Council's systems and processes applying to the preparation of the plan.

Our procedures included assessing whether:

- the Council's financial strategy, and the associated financial policies, support prudent financial management by the Council;
- the Council's infrastructure strategy identifies the significant infrastructure issues that the Council is likely to face during the next 30 years;
- the information in the plan is based on materially complete and reliable information;
- the Council's key plans and policies are reflected consistently and appropriately in the development of the forecast information;
- the assumptions set out in the plan are based on the best information currently available to the Council and provide a reasonable and supportable basis for the preparation of the forecast information;
- the forecast financial information has been properly prepared on the basis of the underlying information and the assumptions adopted, and complies with generally accepted accounting practice in New Zealand;
- the rationale for the Council's activities is clearly presented and agreed levels of service are reflected throughout the plan;
- the levels of service and performance measures are reasonable estimates and reflect the main aspects of the Council's intended service delivery and performance; and
- the relationship between the levels of service, performance measures, and forecast financial information has been adequately explained in the plan.

We did not evaluate the security and controls over the electronic publication of the plan.

## Responsibilities of the Council and auditor

The Council is responsible for:

- meeting all legal requirements affecting its procedures, decisions, consultation, disclosures, and other actions relating to the preparation of the plan;
- presenting forecast financial information in accordance with generally accepted accounting practice in New Zealand; and
- having systems and processes in place to enable the preparation of a plan that is free from material misstatement.

I am responsible for expressing an independent opinion on the plan and the disclosures required by the Regulations, as required by sections 94 and 259C of the Act. I do not express an opinion on the merits of the plan's policy content.

## Independence

In carrying out our work, we complied with the Auditor-General's:

- independence and other ethical requirements, which incorporate the independence and ethical requirements of *Professional and Ethical Standard 1 (Revised)*; and
- quality control requirements, which incorporate the quality control requirements of *Professional and Ethical Standard 3 (Amended)*.

In addition to our audit, we have carried out engagements in the areas of the debenture trust deed reporting certificate, assurance work over aspects of decision-making related to the Victoria on the River Precinct, and assurance work over the procurement of professional services consultants for the Housing Infrastructure Fund project in the Peacocke area. The work which we have carried out on these engagements is compatible with those independence requirements.

Other than these engagements we have no relationship with or interests in the Council.



Leon Pieterse, Audit New Zealand  
On behalf of the Auditor-General, Auckland, New Zealand

## A4 Letter to the Prime Minister regarding Unlawful Setting of Rates

### Regarding the Ability of Local Authorities to Enforce Unlawful Rates

Parliament has provided local authorities with a power - The Local Government (Rating) Act, 2002<sup>1</sup> - to levy a coercive tax to fund its lawful activities.

(Collins Dictionary - Coerce – compel by force or authority without regard to individual wishes or desires).

The Rating Act devotes 10 pages to the ways in which a local authority can recover unpaid Rates.

For example:

If there is a mortgage on the property the local authority may ask the mortgagee to pay the Rates and add the cost to the mortgage

The local authority may sell the property and take the unpaid Rates and penalties out of the proceeds.

A ratepayer must take the local Authority to the High Court if they wish to contest the way that Rates are applied to their property.

Councils are flouting the Rules because they know that few Ratepayers have the resources to take them to Court.

**Local Government (Rating) Act 2002<sup>1</sup>**

**60 Invalidity of rates not ground for refusal to pay rates**

A person must not refuse to pay rates on the ground that the rates are invalid unless the person brings proceedings in the High Court to challenge the validity of the rates on the ground that the local authority is not empowered to set or assess the rates on the particular rating unit.

Compare: 1988 No 97 s 138

**If a Council has the authority through the Rating Act to sell a ratepayer's property to claim unpaid (unaffordable) Rates then it should be obliged to stick to the rules laid down in the Rating Act.**

**Unlawful Calculation of Rates**

Calculating Rates on a mix of Capital and Land value is not allowed under the Local Government (Rating) Act. Many local authorities have been making a gradual change from Land Value to Capital Value for setting Rates on a mix of Land Value and Capital Value and changing the percentage each year.

While this may be lessening the shock to Ratepayers with high value properties, it is not lawful. Moreover it is "double dipping" because the Land Value is included in the Capital Value.

Section 13 (3) of the Local Government (Rating) Act 2002 states that the rateable value must be annual value OR capital value OR land value.

**Local Government (Rating) Act 2002<sup>1</sup>**

**13 General rate**

(3) For the purposes of this section, the **rateable value** of the land—

(a) must be—

- (i) the annual value of the land; OR
- (ii) the capital value of the land; OR
- (iii) the land value of the land; AND

(b) must be identified in the local authority's funding impact statement as the value for setting a general rate.

This is laid out more clearly in the Guide to The Local Government (Rating) Act<sup>2</sup> published by the New Zealand Society of Local Government Managers (SOLGM). The Guide states clearly that combinations of bases, such as 50 percent land value and 50 percent capital, are not permitted for a general rate.

**Guide To The Local Government (Rating) Act 2002<sup>2</sup>** SOLGM November 2013

RATING KNOWHOW Page 21

**4. Rating Tools**

General rates

**Value based general rates**

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

Local authorities have the choice of three valuation bases (systems) for the general rate.

Your local authority could use one of:

- the land value
- the capital value
- the annual value

**Combinations of bases, such as 50 percent land value and 50 percent capital, are not permitted for a general rate.**

1. <http://www.legislation.govt.nz/act/public/2002/0006/latest/DLM131394.html>

2. [https://www.solgm.org.nz/Folder?Action=View%20File&Folder\\_id=90&File=Rating%20Guide%20final%20-%20web%20version.pdf](https://www.solgm.org.nz/Folder?Action=View%20File&Folder_id=90&File=Rating%20Guide%20final%20-%20web%20version.pdf)

## A5 Reply from Hon. Nanaia Mahuta MP

### Hon Nanaia Mahuta

Associate Minister for the Environment

MP for Hauraki-Waikato Minister for Māori Development Minister of Local Government

25 OCT 2018

NEWS

#### Tēnā koe

Thank you for your email of 11 September 2018 to the Prime Minister, Rt Hon Jacinda Ardern, about the Hamilton City Council's (the Council) financial management. I am responding to you as the matters raised relate to my portfolio as Minister for Local Government.

I acknowledge your concern about the Council's spending, including its decision to contribute funding towards regional facilities such as the planned Waikato Regional Theatre. I understand the Theatre would be funded through contributions from the Council, Waikato Regional Council and Momentum Waikato.

I should explain that under local government legislation councils are accountable to their communities, rather than to Ministers, for their actions and decisions. This includes decisions about rates and spending. I do, however, expect councils to make spending decisions in consultation with, and for the benefit of, the local communities they represent.

If you have not done so already, you may wish to raise your concerns about the Council's spending and rates increases directly with the Council. It is important that your council is aware of your views in its decision making. Contact information for your council, including your local elected members, can be found on the Council's website at [www.hamilton.govt.nz/Pages/Contact Us.aspx](http://www.hamilton.govt.nz/Pages/ContactUs.aspx).

I too am concerned about the rates increases experienced by some ratepayers around the country. I am particularly concerned about the impact on householders on low or fixed incomes. You might be interested to know that the Government has recently announced an inquiry into local government funding and financing. The New Zealand Productivity Commission will look at how local government can fund its activities most effectively and fairly, including rates affordability. Information about the inquiry and its terms of reference is available at [www.productivity.govt.nz/news/TORlocalgovt](http://www.productivity.govt.nz/news/TORlocalgovt).

Thank you again for writing.

Heoi ano

Weeral 89

**Hon Nanaia Mahuta Minister of Local Government**

+64 4 817 8711

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

[@n.mahuta@ministers.govt.nz](mailto:@n.mahuta@ministers.govt.nz)

B beehive.govt.nz

## A6 Letter to SOLGM regarding Unlawful setting of Rates

I think the advice provided in the Guide to The Local Government (Rating) Act published by the New Zealand Society of Local Government Managers (SOLGM) has encouraged local authorities to set Rates that will fall in the category of "unreasonable" and "perverse".

For example -

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

Targeted Rates

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

Unfortunately the LGRA requires a ratepayer to go to the High Court if they object to the way Rates are calculated.

#### **60 Invalidity of rates not ground for refusal to pay rates**

A person must not refuse to pay rates on the ground that the rates are invalid unless the person brings proceedings in the High Court to challenge the validity of the rates on the ground that the local authority is not empowered to set or assess the rates on the particular rating unit.

#### **Question 1 – What is the purpose of a SUIP?**

A SUIP seems to have changed from a charge on a tenant holding a lease on part of a farm or commercial building (Rating Powers Act 1988) to a charge per “Room” in the advice given by SOLGM.

#### **Rating Powers Act 1988 (1988 No 97)**

24 (2). In this section, "separately used or inhabited portion of a property or building" includes any portion of a separately rateable property used or inhabited by any person, other than the rateable occupier, having a right to use or inhabit that portion by virtue of a tenancy, lease, licence, or other agreement.

24. (3) Every separate uniform annual charge levied under this section shall be included in the rates assessment delivered to the occupier of the separately rateable property.

#### **Page 24 of the SOLGM Knowhow**

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

Following the advice from SOLGM that Councils should make their own definition of a separately Used or Inhabited Part of a rating unit our local council has defined every room in a boarding house, every unit in a block of flats, single dwellings with a flat attached and every “granny flat” as a SUIP.

[https://www.hamilton.govt.nz/our-council/10-year-plan/Pages/Separately-used-or-inhabited-part-of-a-rating-unit-\(SUIP\).aspx](https://www.hamilton.govt.nz/our-council/10-year-plan/Pages/Separately-used-or-inhabited-part-of-a-rating-unit-(SUIP).aspx)

A Uniform annual general charge (UAGC) has been set at \$500 per SUIP - this has caused such consternation in the community that the charge will be phased in over 3 years starting at \$165. However it is a huge addition to the Rates for the owners of boarding houses and those flats providing accommodation to low wage earners and beneficiaries; and in 3 years it will be \$500.

Neither Schedule 2 nor Schedule 3 lists an individual room (even if it does have its own ensuite bathroom) as a basis for defining a rating unit or for calculating liability for Rates.

#### **Question 2 – Is a Unit occupied by a parent, a son or daughter a SUIP?**

In the case of a part of the rating unit (such as a “granny flat”) used by a member of the family this advice from SOLGM seems to go against section 20 of the LGRA.

#### **Rating units in common ownership**

(Section 20, LGRA)

Two or more rating units that are:

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

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

#### **Question 3 – Who is responsible for paying the UAGC charged on a SUIP?**

In the original Rating Act "separately used or inhabited portion of a property or building" (SUIP) - is inhabited by any person, other than the rateable occupier, having a right to use or inhabit that portion by virtue of a tenancy, lease, licence, or other agreement. (see Rating Powers Act 1988 Section 24). The lease or licence holder was named on the Rates database and was liable for the Rate charge.

#### **Rating Powers Act 1988 (1988 No 97)**

24 (2). In this section, "separately used or inhabited portion of a property or building" includes any portion of a separately rateable property used or inhabited by any person, other than the rateable occupier, having a right to use or inhabit that portion by virtue of a tenancy, lease, licence, or other agreement.

24 (3) Every separate uniform annual charge levied under this section shall be included in the rates assessment delivered to the occupier of the separately rateable property.

Under the LGRA, 2002 who is responsible for the UAGC charged against the flat, room or basement that is occupied by some-one other than a member of the family? If it is intended as a charge for the provision of the services provided by the Council, then do the Owners have no liability for Rates if they do not live on the property? What powers do the Council have to enforce such a Rate on tenants?

#### **Question 4 –Can a Targeted Rate be charged on a SUIP**

The Rating Act does not include “Separately used or inhabited part of a rating unit (SUIP)” in Schedule 2 as a category for setting a targeted rate.

Local Government (Rating) Act 2002 <sup>1</sup>

## 17 Categories of rateable land for setting targeted rate

For the purposes of section 16(3)(b) and (4)(b), categories of rateable land are categories that—

### Question 5 – Is it lawful to calculate Rates on a Mix of LV and CV?

Section 13 (3) of the Local Government (Rating) Act 2002 states that the rateable value must be annual value OR capital value OR land value. This is laid out more clearly in the Guide to The Local Government (Rating) Act published by the New Zealand Society of Local Government Managers (SOLGM) stating that combinations of bases, such as 50 percent land value and 50 percent capital, are not permitted for a general rate.

#### Local Government (Rating) Act 2002 <sup>1</sup>

##### 13 General rate

(3) For the purposes of this section, the **rateable value** of the land—

(a) must be—

- (i) the annual value of the land; OR
- (ii) the capital value of the land; OR
- (iii) the land value of the land; AND

(b) must be identified in the local authority's funding impact statement as the value for setting a general rate.

#### Guide To The Local Government (Rating) Act 2002<sup>2</sup> SOLGM November 2013

RATING KNOWHOW Page 21

##### 4. Rating Tools

###### General rates

###### Value based general rates

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

Local authorities have the choice of three valuation bases (systems) for the general rate.

Your local authority could use one of:

- the land value
- the capital value
- the annual value

**Combinations of bases, such as 50 percent land value and 50 percent capital, are not permitted for a general rate.**

## A7 Reply from SOLGM regarding Unlawful setting of Rates

Raymond Horan <Raymond.Horan@solgm.org.nz>

10 Jul 2018,  
18:04

Thank you for your email of 9 July asking a number of questions regarding rating on separately used or inhabited portions of a rating unit (or SUIP), particularly as applied by the Hamilton City Council.

Please note that what follows is the perspective of someone who helped write the present legislation and was primary author of the current edition of the rating guide. It is not legal advice and should not be relied upon as such. You are advised to contact a lawyer should you want a legal opinion.

In order of asking:

#### Question One

The Rating Powers Act 1988 was repealed in 2002 and no longer has any legal force. The advice that council may define SUIPs reflects the legislation as it stands. The requirement to define SUIPs comes from the Local Government Act 2002 – I refer you to Schedule 10 and the contents of a funding impact statement. Council's definition of SUIP is a matter for it to explain and justify.

#### Question Two

The circumstances where section 20 applies are quite different from a SUIP. The granny flat example is an example of a SUIP within a single rating unit. Section 20 covers multiple rating units that have the same owner and meet tests of joint use and contiguity.

Our advice on section 20 therefore reflects the law as it stands.

#### Question Three

While you appear have correctly stated the presumption of liability as it applied under the Rating Powers Act 1988, there was a policy decision in 2001 to reverse that presumption. This was incorporated into the rewrite of the legislation in 2002.

The person who is identified as the ratepayer on the rating information database is the person who is ultimately liable for rates. This is the owner of the property unless the circumstances in section 11(2) of the Act apply. As the person most aware of your own circumstances I leave it for you to judge whether this applies to you.

I add that it is not for the local authority to interpolate itself into any dispute between the owner and occupier of a property, their recourse is to whoever is identified as the ratepayer. It is for the ratepayer to determine what action they take in respect of recovery the rates from any occupier.

#### Question Four

A targeted rate may be set and assessed on a SUIP. SUIPs are a matter used to calculate a rate and not a category of land. The authorising provision is therefore section 18 of the Act, which refers to Schedule Three. SUIPs are the seventh item on the list in Schedule Three. You are correct in suggesting SUIPs are not a category of land – but this would be relevant only if the council were intending to set and assess a different rate across different categories of SUIP.

#### Question Five

I have been aware of the council's approach to phasing in a shift to capital value for several years. A targeted rate may be used to fund more than one activity, over the entire city, and this is essentially what the council has done. As long as the council has met the relevant disclosure requirements for a targeted rate in its funding impact statement and rate resolution, I would regard the transitional rate as a targeted rate. I observe that levying a targeted rate over an entire district is common practice, though this is more usually to fund one activity or a small number of activities.

Raymond Horan

Manager, Sector Improvement

NZ Society of Local Government Managers (SOLGM)

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[www.solgm.org.nz](http://www.solgm.org.nz)

## A8 Correspondence with Hamilton City Council about Rates Calculation

7 Aug 2018 (6 days ago)

We would like a recalculation of our Hamilton City Council Rates. Our Rate number is 50576, Parr St, Frankton.

We are being charged as though we have a "separately used part", this is not so. All of the property on our Title is used for a single use - that is residential occupation by myself, my husband and my daughter.

**Rates Enquiry** <[ratesenquiry@hcc.govt.nz](mailto:ratesenquiry@hcc.govt.nz)>Reply 7 August 2018

Thank you for your email.

Each self-contained dwelling is deemed to be 1 SUIP regardless of occupancy.

Council's SUIP definition can be found here:

[https://www.hamilton.govt.nz/our-council/10-year-plan/Pages/Separately-used-or-inhabited-part-of-a-rating-unit-\(SUIP\).aspx](https://www.hamilton.govt.nz/our-council/10-year-plan/Pages/Separately-used-or-inhabited-part-of-a-rating-unit-(SUIP).aspx)

Regards,

**Andrew Judson**  
Rates Coordinator

Phone: 07 838 6688 | Email: [rates@hcc.govt.nz](mailto:rates@hcc.govt.nz)

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Sent 7 August 2018

Can you direct me to the part of the Rating Act that makes that lawful?

Regards

Judy

**Rates Enquiry**

7 Aug (6  
days ago)

Hi Judy,

The Local Government (Rating) Act 2002, 15(1)(b), allows Councils to set a uniform annual general charge based on separately used or inhabited parts of a rating unit (SUIP).

The Local Government Act 2002, Schedule 10, 15(3)(b)(ii) specifies that a Council must define SUIPs if used as a basis for setting rates.

We obtain legal advice for all aspects of our rating policy and also believe that our application is consistent with the approach taken by most Councils. Some Councils apply a Uniform Annual General Charge per rating unit, but then have fixed sewerage and water rates that are applied per connection.

Regards,

**Andrew Judson**  
Rates Coordinator

DDI: 07 838 6920 | Email: [andrew.judson@hcc.govt.nz](mailto:andrew.judson@hcc.govt.nz)

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