

# Undercharging of Greater Wellington Regional Council Rates in Porirua City 2005/06

## 1. Aim

To identify options for dealing with the \$230,321 shortfall in Greater Wellington Regional Council rates that will be collected from ratepayers in Porirua City as a result of an error in the capital value information supplied to Greater Wellington by officers at Porirua City.

## 2. Background

Under section 53 of the Local Government (Rating) Act 2002 (the Act) Greater Wellington may appoint a person or a local authority to collect the rates they assess.

Greater Wellington appointed Porirua City Council as collection agent to assess, invoice and collect the rates which Greater Wellington sets in respect of the rating units within the district of Porirua City. Greater Wellington delegated to Porirua City Council the power to maintain that part of Greater Wellington's rating information database that falls within their district.

Greater Wellington and Porirua City Council entered into a Memorandum of Agreement (MOA) in 2003. This MOA outlined expectations and obligations on both parties.

Clause 15.6 of the MOA states that:

By 20 June each year, the TA must certify to the WRC, an estimate at 30 June of:

- 15.6.1 The total net rateable capital value; and
  - 15.6.2 The net rateable capital values for all categories of property notified by the WRC in accordance with this agreement; and
  - 15.6.3 The number of rating units for each category of property in the RID.
- 15.7 The certificate referred to in clause 15.6 must be signed by a senior executive officer of [PCC]

Greater Wellington received and accepted an estimate from Porirua City Council. The estimate was relied on by Greater Wellington to calculate regional rates in Porirua City for the 2005/06 year.

After Greater Wellington had set its rates for the 2005/06 year, advice was received in late August that Porirua City Council had made an error in its estimate. Porirua City supplied this advice immediately they became aware of the error. The advice was that the estimate was incorrect because Porirua City Council had incomplete knowledge of their new computer system and the report they generated counted some rating units twice. The effect of this error is a \$230,321 (GST incl) shortfall in the amount of regional rates Greater Wellington had anticipated receiving. Details of the valuation amounts and impacts on Greater Wellington rates are shown in attachments 1 and 2.

### **3. Breach of the MOA**

Clause 2.3 in the First Schedule of the MOA states:

If the WRC becomes aware of a material breach of the terms of this agreement the WRC reserves the right to withhold part of the rate collection fee until the material breach has been remedied

There are two possible material breaches. They are:

1. PCC provided an incorrect estimate which was used by Greater Wellington to assess its rates.

Clause 9.14 states:

[PCC] must advise the WRC as soon as practicable of any changes made to the RID that may materially impact the amount of WRC rates to be assessed, invoiced and collected as a result of a ratepayer objection, or [PCC] amending rating categories or valuation details.

While there had not been any changes to the RID there had been a change to the way the estimate report had been generated. Because no change had been made to the RID it would be difficult to establish that a material breach had occurred.

2. Porirua City Council provided Greater Wellington with an incorrect estimate

Clause 15.6 states:

By 20 June each year, the TA must certify to the WRC, an estimate at 30 June of:

- 15.6.1 The total net rateable capital value; and
  - 15.6.2 The net rateable capital values for all categories of property notified by the WRC in accordance with this agreement; and
  - 15.6.3 The number of rating units for each category of property in the RID.
- 15.7 The certificate referred to in clause 15.6 must be signed by a senior executive officer of [PCC]

Greater Wellington can claim there had been a material breach in that the assessment which was provided was incorrect due to an error in the way the information was reported. Porirua City Council accepts that this was a material breach of the agreement.

The MOA provides a dispute resolution process if a dispute relating the MOA cannot be resolved. If Greater Wellington and PCC are unable to resolve this issue they will need to undertake a formal dispute resolution process.

### **4. Options**

Six options have been identified for dealing with the shortfall in Greater Wellington rates to be collected in Porirua City for 2005/6. These options are identified and discussed below.

**a) Do nothing**

Greater Wellington could accept the loss of \$230,321 taking into account the fact that some years we receive money over the anticipated budget in regional rates.

Rates are set based on a set of assumptions. While Councils endeavour to, it is not always possible, to set the rates to get the amount required in the Annual Plan. For example a new subdivision can increase regional rate takes. However the loss under consideration occurred as a result of a mistake in the reporting of the information the rates system. If money were received over the anticipated amount due to a mistake Greater Wellington could simply reset the rates.

**b) Withhold collection fee**

Greater Wellington pays Porirua City Council a collection fee for the assessment and collection of its rates. The total collection fee for 2005/06 is \$136,962 (excl GST). Greater Wellington pays Porirua City Council one twelfth or \$11,413 per month. Greater Wellington has not paid any of the collection fee for the 2005/06 year.

One remedy for the current situation is for Greater Wellington to withhold the collection fee for the current year. Under this option Greater Wellington would be \$76,239 (GST excl) out of pocket Porirua City Council would lose revenue of \$136,962.

**c) Porirua City Council reimburse Greater Wellington for the shortfall**

Porirua City Council could simply reimburse Greater Wellington for the shortfall in the collection of regional rates in Porirua City that arises from the error made. Porirua City Council could fund this payment through an increase in its rates for the 2006/7 year or through reserves.

**d) Replacement rate**

Another option is to set a replacement rate. The Local Government (Rating) Act 2002 (the Act) sets out a mechanism for local authorities to replace invalid rates. The Act states that a local authority may reset the rate if, among other things, there has been a mistake in calculating the rate. There is a strict process that would need to be followed by Greater Wellington if it elected to set replacement rates. An outline of the process Greater Wellington would need to follow is set out below:

- Determine that there had been a mistake in calculating the rate
- Notify the Secretary of Local Government of a decision under subsection (2)(b) within 14 days after the decision is made
- Give public notice that the rates will be replaced and which rates will be replaced
- Note on the rates record to which the replacement rates apply notice that the rates will be replaced and which rates will be replaced
- Adopt a rates replacement proposal prepared in accordance with the **special consultative procedure** and give specific notice of this proposal to every ratepayer in the district.

While this option is available, employing it would come at significant cost both in time and money to Greater Wellington. Greater Wellington is likely to be seen by ratepayers in Porirua City as increasing their rates (which is actually what would be done).

With this option Porirua City Council would have to engage consultant assistance from their software supplier to do the necessary setup work to both calculate and show the replacement rate in their rate records. There would also be cost involved in printing and sending out new assessment notices and invoices. This cost would be borne by Porirua City Council.

**e) Greater Wellington recover the shortfall in the 2006/07 Annual Plan**

Greater Wellington has the possibility of recovering the \$230,321 shortfall in the Porirua Regional Rates 2005/06 through its Annual Plan 2006/07. Section 103(2) of the Local Government Act 2002 (the Act) sets out sources a local authority is able to fund from, included in these are:

103. Revenue and financing policy—

(2) The sources referred to in subsection (1) are as follows:

(a) general rates, including—

(i) choice of valuation system; and

(ii) differential rating; and

(iii) uniform annual general charges:

(b) targeted rates:

Greater Wellington already differentiates the General rate but only to the extent of using an “estimate of projected valuation”. Greater Wellington would need to amend its current statement in the Funding Impact Statement.

Proposed statement:

**Differential on the General Rate**

Other than using an “estimate of projected valuation under section 131 of the Local Government (Rating) Act 2002 to recognise that valuation dates across the region vary, the Council does not differentiate the General rate, except for Porirua City which was underrated in the 2005/06 financial year due to a mistake in the calculation.

Targeted rates currently set out in the Funding Impact Statement already allow for a differential based on where the land is situated so Greater Wellington.

Greater Wellington is able to assess both the General and Targeted rates specifically for Porirua City to account for the shortfall in the 2004/05 regional rates.

The main shortfall in the 2005/06 Porirua City regional rates occurred in the Regional Transport targeted rate. The shortfall amounted to \$149,757. Regional Transport rates across the region

are projected to increase in the next financial year, and indeed for the duration of this current LTCCP.

While Porirua City has been underrated for the 2005/06 year recovering the shortfall in the 2006/07 year will cause an increase in the regional rates and Greater Wellington will no doubt receive adverse publicity on the issue.

**f) Porirua City Council pay Greater Wellington the shortfall from its insurance**

Porirua City Council have been advised by their insurance brokers that even if they were covered for this situation, their insurers would be entitled to minimise the risk. Because there are procedures set out under the Local Government (Rating) Act for dealing with this type of situation it would be likely that the insurers would advise Porirua City Council to go down that avenue first.

**EVALUATION OF OPTIONS:**

Options d & e (those that involve recovering the money explicitly from Porirua ratepayers) both have implementation difficulties and are likely to undermine relationships between the two Councils and the rate paying community. Option f is unlikely to resolve the problem.

It is a matter of political judgement as to which of options a to c are appropriate. Both Council's work in partnership on matters of common interest. Porirua City is contributing \$265,000 to the purchase of land for the Belmont Regional Farm Park, and both Council's have jointly funded investigations into water quality and biodiversity issues for the Pauatahanui Inlet and Porirua Harbour. There is also ongoing partnership at an operational level on many matters.

## LOCAL GOVERNMENT (RATING) ACT 2002

### PART 5 - REPLACEMENT OF RATES AND MISCELLANEOUS MATTERS

#### Replacing invalid rates

#### 120. Replacement of invalid rates

(1) A local authority must set replacement rates if a court of competent jurisdiction orders the local authority to do so.

(2) A local authority may decide to set replacement rates if—

(a) it has obtained an opinion from a barrister or solicitor that the rates in question would be likely to be set aside or declared invalid if they were subjected to judicial review by the High Court; or

(b) the local authority determines that it is desirable to set the rate again because of—

(i) an irregularity in setting the rate; or

(ii) a mistake in calculating the rate; or

(iii) a relevant change in circumstances.

(3) A local authority must notify the Secretary of Local Government of a decision under subsection (2)(b) within 14 days after the decision is made.

#### 121 Notice that rates will be replaced

(1) The local authority must, as soon as practicable after the court order or its decision to set replacement rates is made, give public notice that the rates will be replaced.

(2) The notice must specify the rates that will be replaced.

(3) In addition, the local authority must, as soon as practicable, note on the rates records to which the replacement rates apply—

(a) that the local authority will set replacement rates; and

(b) the rates that will be replaced.

#### 122 Matters relevant to setting replacement rates

(1) The total revenue sought from the replacement rates must not exceed the total revenue sought from the rates to be replaced.

(2) For the purposes of setting replacement rates, the local authority has all the powers, duties, and responsibilities that it had under any enactment on the date on which the rate to be replaced was set, even though the law may have changed since that date.

### 123 Rates replacement proposal

(1) Replacement rates must be set by the adoption of a ra

(a) identify the relevant year; and

(b) for each of the rates set and assessed by the local authority in the relevant year, state—

(i) the date on which the rate was set; and

(ii) whether it is a general rate based on rateable value, a uniform annual general charge, or a targeted rate; and

(c) identify which of the rates referred to in paragraph (b) are proposed to be replaced and the reasons for their replacement; and

(d) for each proposed replacement rate, state whether it is a general rate based on a rateable value, a uniform annual general charge, or a targeted rate; and

(e) identify any difference between the revenue sought from the rates to be replaced and that proposed to be sought from the replacement rates and the reasons for that difference; and

[(f) explain any departure from the revenue and financing policy under section 103 of the Local Government Act 2002 and the reasons for that departure; and]

(g) explain any difference in basis or type of rates between the rates to be replaced and the replacement rates; and

(h) describe the general effect that the rates replacement proposal is expected to have on the overall liability of ratepayers or groups of ratepayers within the district for rates for the relevant year.

(3) In giving notice of the rates replacement proposal under the special consultative procedure, the local authority must give specific notice of the proposal to every ratepayer of the district.

(4) The notice must include—

(a) a summary of sections 126 and 127; and

(b) a statement that the proposal will not affect rates set and assessed in years after the relevant year and, if a rates replacement proposal is intended for any of those years, a statement of that intention.

### 124 Adoption of rates replacement proposal

(1) On the adoption of a rates replacement proposal,—

(a) the replacement rates identified in the proposal are set; and

(b) the rates to be replaced cease to have effect.

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