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Report To: Council Special
Meeting Date: 15 February 2012
From: General Manager Policy and Governance
Subject: Rates Review
Date of Report: 10 February 2012
Signed By: 
Glennis Christie

Summary and Conclusion

The Mangawhai Community Wastewater Scheme (MCWWS) is the most significant project that Kaipara District Council has undertaken to date. Over the life of the project there has been much debate and controversy around the scope and delivery mechanism of the project and the consequential cost, funding and financing of the scheme.

Council requested that a number of reviews be undertaken into the project. The reviews, in order of completion, were:

1. A search of Council records into the project from inception to 2010 which involved researching the material available to establish the substance of the project and decision-making processes involved (in-house review, completed in November 2011);
2. Valuation of the Mangawhai Community Wastewater Scheme (commissioned from MWH, completed in December 2011);
3. A review of rating issues, that includes the first principles review (commissioned from Jonathan Salter, Simpson Grierson, completed February 2012 and the subject of this report); and
4. Financial Review, including costs, financing and funding issues (in-house review in the first instance. This review has not been completed. It is now running in parallel with the Long Term Plan process and will inform both the Long Term Plan and the next steps in the rates review).

For some years, representatives from the Mangawhai Community have expressed a number of concerns, including those around the scope, consultation and funding, particularly the rates being charged. The results of our reviews to date indicate that the Mangawhai residents were right to be concerned, that Councillors have not been adequately advised in the past and that there have been a number of mistakes made over a period of several years.

The outcome of Simpson Grierson's review of the Mangawhai rates indicates that the Mangawhai wastewater Uniform Targeted rate for the years 2008/2009, 2009/2010, 2010/2011 and 2011/2012 lacks statutory authority as does the Mangawhai Wastewater Uniform Annual Charge for the years 2009/2010 and 2010/2011. There is also an issue with the Uniform Annual Charge in earlier years that we understand has been remedied but is subject to confirmation as part of the Financial Review that is currently underway. The Uniform Annual Charge for 2011/12 is less clear cut and may be compliant. Finally, the forestry targeted rate that was collected in the years 2009/2010 and 2010/2011 lacks

statutory authority. Simpson Grierson has been asked to check if there are any other rates that lack statutory authority or are invalid.

In regard to the MCWWS, while there clearly are legitimate costs that need to be collected, the execution of the intended rates was fundamentally flawed. In addition, with the benefit of hindsight, it is likely that a more conventional approach to the targeted rate may have been appropriate.

The actual quantum of the rates at risk needs to be reviewed in more detail. However, indicatively the amounts are \$2.2 million for the Mangawhai wastewater Annual Uniform Charges with an additional \$1.5 million for the 2011/2012 year, \$5.1 million for the Mangawhai Uniform Targeted rate and \$0.7 million for the Forestry targeted rate giving an indicative total in the order of \$9.5 million .

It is important that Council take steps to remedy the situation without making matters worse for both the Mangawhai residents who have paid or will pay wastewater charges and those who paid the forestry rate and for the Council as a whole. Council already faces financial challenges and the decisions regarding the forthcoming draft Long Term Plan for 2012 – 2022 and subsequent consultation will be difficult.

The remedy for the situation will need to be in two parallel streams.

Firstly, Council needs to get it right going forward. The revised assumptions, expenditure and revenue projections for the Mangawhai wastewater scheme need to be updated and incorporated into the council wide projections. These, together with revised Financing and Revenue policies for the District, need to be in the draft Long Term Plan so that consultation with the community can occur. The rating and rating processes and execution of these needs to be legally compliant.

Secondly, Council needs to remedy the outstanding issues from the past as expeditiously as possible. The remedy needs to be as efficient and effective as possible while endeavouring to meet the needs of different stakeholders and be as fair possible to the ratepayers of Mangawhai, the forestry ratepayers and the District as a whole. This will require considerable dialogue with a number of stakeholders and at different levels as the options available to council and the ratepayers are explored, chosen and executed. Key to this process will be dialogue with the Mangawhai ratepayers and the forestry ratepayers and with the Crown, both at elected representative and staff levels.

Recommendation

That Council

1. *Receives the report.*
2. *Determines that it believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provisions of Section 79 of the Act determines that it does not require further information prior to making a decision on this matter.*
3. *Notes that that the Mangawhai wastewater Uniform Targeted rate for the years 2008/2009, 2009/2010, 2010/2011 and 2011/2012, the Mangawhai Wastewater Uniform Annual Charge for*

the years 2009/2010 and 2010/2011 and the forestry targeted rate that was collected in the years 2009/2010 and 2010/2011 lacks statutory authority and that remedial action is required going forward.

4. *Takes a proactive approach to remedy the situation without making matters worse for both the Mangawhai residents who have paid or will pay wastewater charges and those who paid the forestry rate and for the Council as a whole, particularly given that Council already faces financial challenges and the difficult decisions regarding the forthcoming draft Long Term Plan for 2012/2022 process.*
5. *Approves the retention of Simpson Grierson to assist with the two parallel processes of ensuring that the processes are correct in the future and that the invalid rates from the past are remedied.*
6. *Delegates authority to the Mayor and Deputy Mayor to work with stakeholders to progress options for remedying the invalid rates for approval by Council in due course.*

Reason for the recommendation

Council has made mistakes with its rates and rate setting processes in the past with the Mangawhai wastewater and forestry targeted rates. Council needs to get it right for the future and remedy, or normalise the situation, for the past.

Reason for Report

The rates review into the Mangawhai Wastewater targeted rates has been completed by Simpson Grierson and is attached. The Simpson Grierson opinion is a standalone document and as such this report takes that as a given and moves on to set out the background, discuss the issues and indicates further work that needs to be undertaken going forward.

Attachment 1: Simpson Grierson Legal opinion dated 2 February 2011.

Background

The Mangawhai Community Wastewater Scheme (MCWWS) is the most significant project that Kaipara District Council has undertaken to date. Over the life of the project there has been much debate and controversy around the scope and delivery mechanism of the project and the consequential cost, funding and financing of the scheme.

Council requested that a number of reviews be undertaken into the project. The reviews, in order of completion, were:

1. A search of Council records into the project from inception to 2010 which involved researching the material available to establish the substance of the project and decision-making processes involved (in-house review, completed in November 2011);

2. Valuation of the Mangawhai Community Wastewater Scheme (commissioned from MWH, completed in December 2011);
3. A review of rating issues, that includes the first principles review (commissioned from Jonathan Salter, Simpson Grierson, completed February 2012 and the subject of this report); and
4. Financial Review, including costs, financing and funding issues (in-house review in the first instance. This review has not been completed. It is now running in parallel with the Long Term process and will inform both the Long Term Plan process and the next steps in the rates review).

For some years, representatives from the Mangawhai Community have expressed a number of concerns, including those around the scope, consultation and funding, particularly the rates being charged.

Terms of reference for a rates review and a process for selecting the provider were developed and revised over a number of months. The final terms of review and the process for selecting the provider are attached, as follows:

Attachment 2 Mangawhai Community Wastewater Scheme: Revised Terms of Reference for independent review dated 14 October

- o Report
- o Revised Terms of reference and scope
- o Supplementary material
- o Resolution

Attachment 3 Extract of email requesting an estimate/quote for the review

Attachment 4 Extract of email setting out agreed brief for the review

In essence, the review was to be a first principles review identifying any issues with the rates and if so the legal remedy required. A desk top exercise covering four years was completed.

Issues

The results of our reviews to date, and the rates review in particular, indicate that the Mangawhai residents were right to be concerned, that Councillors have not been adequately advised in the past and that there have been a number of mistakes made over a period of several years.

Set out below are key issues that arise from the review and the implications for Council.

Mistakes and indicative quantum

1. The Mangawhai Wastewater Uniform Targeted rate for the years 2008/2009, 2009/2010, 2010/2011 and 2011/2012 lacks statutory authority. While these costs are legitimate and need to be funded, the appropriate funding tool needs to be selected and be executed in accordance with the legislation. The implementation of the targeted rate that was chosen to fund these capital costs was fundamentally flawed. Further work is needed to confirm the exact amount involved, but indicatively the amount is in the order of \$5.1 million.

Council was aware that it had made a mistake in charging the targeted rate based on whether the households were connected before or after 23 March 2002. However, a remedy proposed under section 123 of the Local Government Rating Act (LGRA) appears not to be appropriate.

Further, in hindsight, the appropriate tool may have been an annual targeted rate with use of a lump sum contribution approach so that ratepayers who wished to fund the capital cost in one payment could do so. This option will need to be evaluated in assessing how the current issues might best be remedied.

2. The Mangawhai Wastewater Uniform Annual Charge for the years 2009/2010 and 2010/2011 also lacks statutory authority. Again, there are legitimate costs which were to be funded via the rate but the implementation of the rate was flawed. Again the quantum of rates at risk here is subject to review but indicatively the amount of these rates is \$2.2 million.

In the earlier years, there is also an issue with the Uniform Annual Charge, where a service that was delivered part way through the year received a part charge. We understand that this has been remedied but is subject to confirmation as part of the Financial Review that is currently underway.

The Uniform Annual Charge for 2011/2012 is less clear cut and may be compliant. The rate was included in the Funding Impact Statement for that year but was not well worded and may have lack appropriate detail. The amount for this year was \$1.5 million.

3. Finally, the forestry targeted rate that was collected in the years 2009/2010 and 2010/2011 also lacks statutory authority. The indicative amount here is in the order of \$0.7 million.

Simpson Grierson has been asked to check if there are any other rates that lack statutory authority and may be invalid.

Financial Implications

4. All up, there may be in the order of \$9.5 million of rates that are at risk. Council already faces financial challenges and the decisions regarding the forthcoming draft Long Term Plan for 2012/2022 and subsequent consultation will be difficult.

Financial Review and the Long Term Plan process

5. The remaining review that Council requested for MCWWS is the Finance Review. This review includes the historical costs, financing and funding issues of the project at a macro and micro level. This review is now being undertaken contemporaneously with the Long Term Plan work.

As part of this, it is being extended into reviewing the costs and funding required in the future. All the underlying assumptions are being reviewed and new projections will be incorporated into the draft Long Term Plan. Council is aware that the forecast growth didn't eventuate and with changes in other assumptions it is likely to mean that further funding adjustments are required. This may exacerbate the impact on ratepayers and needs to be kept in mind when reviewing options.

It is important to remedy the situation without making matters worse for both the Mangawhai residents who have paid or will pay wastewater charges and those who paid the forestry rate and for the Council as a whole.

Validity of rates

6. Only the High Court can declare rates invalid and until such time they are due and payable. However, it is clear from Simpson Grierson's advice that most if not all of these rates would most likely be considered invalid if the case were considered by the High Court.

Other Local Authorities, when faced with a similar dilemma have sort relief by a Local Bill through Parliament. The Bill once enacted would have the impact of validating all rates previously set as if they had been valid in the first place. A validating Bill can also empower a Local Authority to do something that is not currently envisioned in existing legislation.

In deciding what course of action should be promoted, among other things, Council will need to consider whether the rate set was appropriate in the first place. While the Uniform Annual Charge is straightforward there may be an issue around the "one-off" Uniform Targeted Rate.

Remedial Action

7. Several options have been put forward from a legal perspective and they are discussed in the Simpson Grierson opinion in Attachment 1. While the intention and the need for the rates is clear (albeit very poorly expressed in some cases), the execution was lacking to such an extent that Simpson Grierson are of the view that normalisation of funding to date will require a Local Bill to validate it.
8. Council will need to review its options and make a decision about how it wishes to proceed. It will need to do this in consultation with the key stakeholders. Additionally, appropriate expertise will need to be sourced from staff and consultants.
9. Firstly, while it is clear that Council needs to get the processes correct it is also important that the revised assumptions, expenditure and revenue projections for the Mangawhai wastewater scheme are updated. They will also need to be incorporated into the council wide projections and together with the revised Financing and Revenue policies be included in the draft Long Term Plan so that consultation with the community can occur. The rating and rating processes and execution of these needs to be legally compliant.
10. Secondly, Council needs to remedy the outstanding issues (potentially invalid rates) from the past as expeditiously as possible. The remedy needs to be as efficient and effective as possible while endeavouring to meet the needs of different stakeholders and be as fair as possible to the ratepayers of Mangawhai and the forestry ratepayers and the District as a whole. This will require considerable dialogue with a number of stakeholders and at different levels as the options available to council and the ratepayers are explored, chosen and executed. Key to this process will be dialogue with the Mangawhai ratepayers and the forestry ratepayers and with the Crown, both at elected representative and staff levels.

Options

In terms of remedying outstanding issues, the following options exist:

Option 1: Take a proactive stance, refund the rates in question and seek to remedy the situation in subsequent years

Option 2 - Take a proactive stance, working with key stakeholders to come up with a solution that will work for the respective Mangawhai and forestry ratepayers and for Council as a whole.

Option 3 - Take a proactive stance, agree on a preferred remedy and seek to implement the solution.

Option 4 - Take a reactive stance and do nothing

Assessment of Options

Option 1 - Take a proactive stance, refund the rates in question and seek to remedy the situation in subsequent years

This is a poor option that does not reflect the reality of the current situation or take into account the costs of implementing such a scheme or the financial risk. While the rates are likely to be declared invalid if the issue was pursued through the Courts this is because of technical and legal compliance deficiencies, rather than an inappropriate charge for services.

Option 2 - Take a proactive stance, working with key stakeholders to come up with a solution that will work for the respective Mangawhai and forestry ratepayers and for Council as a whole. Under this option Council would consult with the effected ratepayers and with Crown authorities that are key to implementing a preferred solution.

It recognises that the respective Mangawhai and forestry ratepayers deserve the courtesy and is consistent with the values and culture that Council wishes to promote.

This option has the highest probability of reaching a mutual agreement with stakeholders and is likely to lead to a better outcome than any of the other options.

Option 3 - Take a proactive stance, agree on a preferred remedy and seek to implement the solution.

While this is potentially an expedient approach, it is unlikely to generate a good outcome because consultation is not an explicit part of the option. This would be a backward step that is unlikely to be supported by Council or any of the key stakeholders.

Option 4 - Take a reactive stance and do nothing

Under this option Council would do nothing and deal with issues as they arise. This is the least favoured option as it would generate more bad feeling and in the long run would be the most expensive option and would most likely lead to the poorest outcome.

Preferred Option

The preferred option is **Option 2**.

Degree of Significance

The issue is of some significance given that there has been long standing issues with technical and legal non compliance. The indicative quantum is a concern and any remedy has the potential to impact on all residents and ratepayers. Hence, this matter is considered to have a high degree of significance.

Consideration of the Four Well-beings (Community Views)

Remedying this situation in consultation with stakeholders will mean that consideration of the community views is an integral part of the solution.

Policy Impacts

Policy impacts will be worked through as part of getting it right going forward. Revised policies will be part of the draft Long Term Plan and will be consulted on as part of the process.

Financial considerations

There will be modest costs, in relation to the need to take action, associated with this issue. Provision has been made for legal costs in the 2011-2012. The quantum will need to be reassessed for the first years of the Long Term Plan.

Legal Considerations

Applicable legislation is set out in the financial management provisions of the Local Government Act 2002 and in the Local government Rating Act 2002.

References-Tabled/Agenda Attachments

1. Simpson Grierson Legal opinion dated 2 February 2011
2. Mangawhai Community Wastewater Scheme: Revised Terms of Reference for independent review dated 14 October
 - a. Report
 - b. Revised Terms of reference and scope
 - c. Supplementary material
 - d. Resolution
3. Extract of email requesting an estimate/quote for the review
4. Extract of email setting out agreed brief for the review



2 February 2012

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Dear Glennis

Independent Review of Mangawai Rates

1. I have now undertaken the review of statutory documents relating to rate setting by the Council in the period from 2008/09 to the present with particular reference to rates relating to the Mangawhai Wastewater Project.

Methodology of Review

2. The essential elements for setting rates are prescribed in section 23 of the Local Government (Rating) Act 2002 (LGRA) as follows:
 - Rates must be set by a resolution of the local authority relating to a financial year; and
 - In accordance with the relevant provisions of the local authority's long-term plan and funding impact statement for that financial year.
3. At the relevant time, section 5 of the LGRA provided that for the first financial year to which a long-term plan relates, the funding impact statement (FIS) is that included in that plan under clause 10 of Schedule 10 of the Local Government Act 2002 (LGA), and that in any other year it is the FIS included in the annual plan under clause 13 of Schedule 10 of the LGA. In any year, the primarily relevant provision in the long-term plan will be the revenue and financing policy which states the Council's policies in respect of the funding of operating expenses and capital expenditure from various sources which include general and targeted rates.
4. Clauses 10 and 13 of Schedule 10 prescribe the particular details of all rating matters which must be set out in a FIS.
5. Accordingly, the methodology I adopted was to obtain from you and review the following documents:
 - revenue and financing policies in 2006/16 long-term plan and in 2009/19 long-term plan;
 - funding impact statements in the 2008/09 annual plan, 2009/19 long-term plan, 2010/11 annual plan and 2011/12 annual plan; and
 - rates resolutions for each of the years 2008/09 to 2011/12.

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6. I also sought clarification about whether or not a capital project funding plan under Schedule 3A of the LGRA existed which would have been relevant to compliance with the lump sum contribution provisions of Part 4A of the LGRA. I was not provided with such a document.
7. My review of these documents has enabled me to form opinions on compliance with section 23 of the LGRA, being the statutory procedure for setting rates, and on whether or not targeted rates, as resolved, are authorised by the provisions of sections 16 to 19 and Schedules 2 and 3 of the LGRA. It has also enabled some assessment of compliance with section 43 of the LGRA which relevantly provides that rates must be assessed in accordance with the rating units, rateable values and factors which exist (as corrected) immediately before the commencement of the relevant financial year, and that rates are not affected by a change in rateable value or factors during the financial year in which the rates are set.

Conclusions on Mangawhai Wastewater Project Rates

8. The attached Appendix A contains my working notes on the review of the relevant documents. My conclusions on validity issues are set out below.

Uniform Targeted Rate

9. For each of the years 2008/2009, 2009/2010 and 2010/2011 the mechanism referred to as "Uniform Targeted Rate" in the rates resolution lacks statutory authority as a rate. Section 23 of the LGRA requires rates to be set by resolution in accordance with the relevant provisions in the FIS for that year. In each of these years, the relevant FIS contains no provision for this rate.
10. For each of the above years, the Uniform Targeted Rate appears to be intended to be assessed as a fixed amount per rating unit (or perhaps per allotment or household unit) of amounts which differ depending on the date the allotment or household unit was created. This is a basis for differentiation that is not authorised by the LGRA, as it cannot be defined by reference to any of the matters specified in Schedule 2 of that Act.¹
11. In addition, for allotments or household units created on or after 24 March 2002 there appears to be a choice of a one-off amount or an annual amount for 25 years. This option might be authorised under a lump sum contribution arrangement under Part 4A of the LGRA, but I have not seen evidence of such a scheme being put in place. Amongst other requirements, a capital project funding plan that complied with Schedule 3A of the LGRA would be required. I note a reference at page 14 of the 2006/2016 LTCCP to a "Statement of Proposal which included options for financing the scheme" but I have not been provided with that proposal to be able to establish whether or not a lump sum contribution scheme was intended. Even if a compliant lump sum contribution scheme had been established, the foregoing issues with the validity of the rate setting would still apply.
12. In the 2011/2012 FIS a one-off targeted rate for each separately occupied or inhabited residential property is identified in the narrative and the amount specified is \$8,397. This is marginal compliance with the requirements of clause 13 of Schedule 10 of the LGA. More particularly, it does not directly correlate to the terms of the rates resolution which appears to differentiate on the basis of "within or outside the original scope of

¹ Under the Rating Powers Act 1988 which applied until 30 June 2003, this basis of differentiation would have been authorised.

servicing in Mangawhai". There is also reference to "first 50%". The "Uniform Targeted Rate" for 2011/12 is not set in accordance with the FIS and therefore is in breach of section 23 of the LGRA.

Uniform Annual Charge

13. For the 2009/2010 and 2010/2011 years the "Uniform Annual Charge" lacks statutory authority as a rate due to the absence of any reference to it in the relevant FIS.
14. For all the other years there is a degree of uncertainty created by the use of a narrative description in one part of the FIS describing a "uniform annual connection fee" for residential properties, a "uniform annual pan charge" for commercial and a "graduated scale of pan charges" for certain educational establishments, which is then followed by a schedule which merely refers to a pan charge. Despite this undesirably vague drafting, the intention is reasonably capable of being understood although the wording of the 50% fee for residential properties is inappropriate.
15. For the 2008/2009 year, the Uniform Annual Charge (set at \$173.23 and \$86.61) may have been lawfully set but it would have been unlawfully assessed on any residential properties that were not connected to this scheme as at 30 June 2008. This is because section 43(2) and (3) of the LGRA prohibits the changing of a factor on which a rate is set during the financial year. In the case of the residential properties the relevant factor was connection to the scheme or capability of connection and if that did not exist as at 30 June 2008 there was no basis for assessing the rate to the relevant rating unit.
16. For 2011/2012, the FIS Schedule refers to an "annual fee" of \$773 which is a modification of the vagueness noted in paragraph 14 above.

Scale of Issues

17. As a general comment, throughout the period there is an inherent lack of clarity of drafting which is highly undesirable. The lack of certainty about the intended rates which arises from this would, on its own, be sufficient to warrant a rates replacement proposal.
18. The failure to provide any provision in the relevant FIS for a particular rate is a serious statutory breach. This breach occurred in 2008/09, 2009/10 and 2010/11 in respect of the Uniform Targeted Rate, and in 2009/10 and 2010/11 for the Uniform Annual Charge.
19. In 2011/12 the Uniform Targeted Rate was in breach of section 23 because the resolution was not in all respects in accordance with the provisions of the FIS.
20. The differentiation of the Uniform Targeted Rate in each year based on the date an allotment or household unit was created is not on the face of it authorised by Schedule 2 of the LGRA. This aspect invalidates the rate, irrespective of the process by which it was purportedly set.
21. The assessment of the Uniform Annual Charge based on connection to the scheme where this occurs after the commencement of the relevant financial year is a clear breach of section 43 of the LGRA.

22. Section 60 of the LGRA provides:

"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."

23. In my opinion if such proceedings were brought it is highly likely that all of the rates identified would be invalidated. In a real sense, the rates cannot be regarded as enforceable by the Council. Therefore the situation is serious and remedial action is required, assuming the Council is not disposed to simply refund the rates received.

Options

24. There are three main options for addressing rating irregularities.

Rates replacement

25. Under section 120 of the LGRA a local authority may decide to set replacement rates if it has received an opinion from a barrister or solicitor that concludes that the rates in question are likely to be set aside or declared invalid by a court, or otherwise determines it is appropriate to set rates again.

26. The process for replacing the rates under section 120 is somewhat complicated, and requires compliance with the statutory process set out in sections 120 to 130. This process would include giving public notice that the rates are to be replaced, adopting a rates replacement proposal prepared in accordance with the special consultative procedure, assessing the total liability for replacement rates in respect of each rating unit, and assessing and allocating any excess or deficit in the rates.

An Order in Council

27. Section 133 of the LGRA authorises the Governor-General by Order in Council to:

- (a) *extend the time for completing an action, step, or procedure that is required by or under this Act and that is not done or cannot be done by the time required;*
- (b) *validate an action, step, or procedure that is required by or under this Act and that is done after the time required;*
- (c) *validate an irregularity of form in an action, step, or procedure that is required by or under this Act;*
- (d) *make a provision for a situation for which sufficient provision is not made by or under this Act."*

28. Recourse to this mechanism involves the support of the Department of Internal Affairs as advisers to the Minister of Local Government, who in turn would have to recommend the required action to the Governor-General.

Local bill to validate

29. A local bill can validate a range of irregularities, and even authorise arrangements that go beyond the LGRA. There is a detailed public notification process prior to introduction and the Select Committee would invite submissions. In our experience, a

local bill, if not opposed by the Government, can take approximately 6 to 9 months from introduction to enactment.

30. The process for a local bill is set out in Appendix B.

Consideration of Options

31. I am aware that rates replacement proposals have been prepared. However, given the scale of issues I have identified I have not reviewed these proposals. It is not clear to me that the rates replacement process is an appropriate mechanism in the present case.
32. In the first place, there would be an extremely cumbersome consultative process given the number of financial years involved. Secondly, it is unclear whether the process was intended to be available where there is a total failure to provide for the relevant rate in the FIS. Finally, and most importantly, the rates replacement process cannot legitimise the rate that is not authorised (eg the invalidity described in paragraph 20 above) or validate the assessment of rates contrary to section 43 (refer to paragraph 21 above).
33. In my opinion and experience, it is extremely unlikely that the Department of Internal Affairs would recommend an Order in Council to its Minister where the irregularities are of this scale and nature. The thrust of section 133 is to validate irregularities of form rather than major issues of substance. However, it would be appropriate to discuss this further with the Department of Internal Affairs.
34. The remaining option is a local bill. The primary advantage of this option is that it can validate all aspects of the situation (and incidentally any other identified issues). This is the strongest option for ensuring that all revenue received to date and in the future is able to be applied to the intended purpose. The logic to such an approach would be that although serious irregularities have occurred in both setting and assessing the Mangawhai Wastewater Project rates, those rated for it are receiving the benefit of the project and would expect to contribute to its funding. The making of refunds would ultimately add to the cost to current ratepayers. In the circumstances this would appear to justify the validation of the rates as they have actually been assessed.
35. Any validation mechanism would likely require the identification of all related irregularities for inclusion in the validation process.
36. I would also note that a local bill is likely to be the most expensive of the identified options to implement, and of course, ultimately depends on the support of Parliament.

Next Steps

37. The first priority for the Council should be to ensure that the provisions of the 2012/22 long-term plan make valid provision for the future rate funding of the Mangawhai Wastewater Project.
38. The Council will also need to identify its preferred option for addressing the rates funding to date and take steps to implement it. If the intention is to regularise funding to date, for the reasons identified in the preceding section, I am inclined to the view that validation by local bill would be the best available option.

39. I would be happy to meet with the Council to clarify any aspect of this advice.

Yours sincerely

PP. 
J M T Salter
Partner
SIMPSON GRIERSON

Appendix A

2006/16 LTCCP – Revenue and Financing Policy

The policy is broadly compliant with the requirements of section 103 of the LGA 2002.

There are references relevant to targeted rating of the Mangawhai EcoCare Project at pages 75, 82, 85 and 102. There is reference to a uniform annual wastewater charge on property serviced for wastewater plus a one off uniform targeted rate.

There are also references to the debt funding of the project at pages 78 and 80.

Funding impact statement 2008/09 – Annual Plan

In relation to targeted rates, the FIS is not fully compliant with the requirements of clause 13 of Schedule 10 of the LGA 2002.

There is extensive use of non-rating terminology in relation to rates for example reference to "fees" and "charges". More particularly the use of a narrative on pages 100 and 101 and then a schedule on pages 104 to 106 creates uncertainties. The principal non-compliance is a failure to state with particularity the categories of property liable for certain rates and some differential categories. More particularly, there is a failure to define the differentials themselves. Therefore, the primary non-compliance is with clause 13(d)(ii) and (iv) of Schedule 10.

In relation to Mangawhai EcoCare specifically:

- There is a statement at page 101 referring to the "re-timing of the commencement" of Mangawhai EcoCare as creating a variation from the LTCCP but without explaining what the variation is.
- In relation to wastewater disposal generally (at page 100) there is reference to a:
 - (i) *"uniform annual connection fee per separately occupied or inhibited residential property, differentiated by location", with a 50% fee for separately unoccupied or uninhibited residential property capable of being effectively connected, again differentiated by area;*
 - (ii) *a uniform annual pan charge per commercial WC or urinal, other than for educational establishments, and differentiated by area; and*
 - (iii) *a graduated scale of pan charges for certain educational establishments.*
- The Schedule at page 104 merely refers to a Mangawhai pan charge of \$693.
- Literally the reference to "pan charge" might be seen as a reference to the targeted rate on commercial properties, (coinciding with paragraph (ii) of the narrative on p 100) but was possibly meant to refer to the so called "uniform annual connection fee" for residential properties as well.

Rates resolution 2008/09

Generally the resolution corresponds with the requirements of the FIS with the following exceptions:

- In the water supply rates there is provision for a minimum rate of \$10 per meter reading and additional conditions applying to Maungaturoto water supply area which are not provided for in the FIS.
- For the Mangawhai urban drainage district there is a "uniform targeted rate" of three different amounts depending on when household units were created which is not provided for at all in the FIS. There is also a charge which roughly equates to the \$693 figure specified in the FIS with amounts of \$173.23 for residential three twelfths and non-residential three twelfths per annum and on-residential three twelfths per pan per annum and the amount of \$86.61 for vacant lots. The problem with this latter differential charge is that it appears to be predicated on the proposition that properties will connect at some time during the year which, depending on how the charge is actually authorised would be expressly contrary to sections 43(2) and (3) of the LGRA which provides that the factors on which rates are set are those that exist as at the close of the previous financial year and no rate can be affected by a change in factors during the year. (In the preamble to the resolution there is a statement that "2008/09 will also see the first levying of EcoCare wastewater rates at Mangawhai for those properties where there will be connection availability before 30 June 2009".)
- As expressed in the resolution the forest owners roading impact rate appears to be unlawful as the factor on which the rates are calculated appears to have no correlation to any of the lawful factors set out in Schedule 3 of the LGRA.

Long term Council Community Plan 2009/19 – Revenue and Financing policy

All relevant provisions are identical to those in the 2006/16 revenue and financing policy.

2009/19 LTCCP – Funding Impact Statement

The narrative parts relating to targeted rates are identical to the 2008/2009 annual plan FIS, but the schedule of targeted rates on pages 97 to 99 does not include any targeted rate for Mangawhai.

Rates resolution 2009/10

Notwithstanding the absence of any provision in the FIS, there is provision in the resolution for targeted rates for Mangawhai urban drainage district expressed to be "*applicable only to those properties for which connection to the reticulation network will be available before 30 June 2010*".

"Uniform Targeted Rate", for allotment or household units created:

40. *On or prior to 23 March 2002 - \$1,366.85 (first 50%);*

41. *On or after 24 March 2002 - \$7,742.10 (one off);*

or

42. *On or after 24 March 2022 (but see note 1 which follows) - \$533.20 per annum for 25 years.*

Note 1: The \$533.20 is the first year charge only, and will subsequently increase in line with inflation.

Uniform annual charge

Residential: per pan per annum - \$713.70

Non-Residential: per pan per annum - \$713.70

Vacant lots - \$356.85

The so called "uniform annual charge" is in a form which could be authorised under the LGRA, however in the absence of any provision for it in the relevant funding impact statement it is an unauthorised rate by virtue of section 23 of the LGRA.

The so called "uniform targeted rate" is also unauthorised by virtue of section 23 because of the absence of provision in the FIS. It is unclear what purported authority this "rate" was made under.

2010/11 Funding Impact Statement

Identical wording is used to previous funding impact statements in relation to narrative of targeted rates for wastewater disposal, but no reference at all is made in the Schedule of targeted rates on pages 124 to 126 of targeted rates for Mangawhai wastewater. This is notwithstanding the fact that the Schedule of income from rates on page 123 shows a very substantial increase for wastewater rates (presumably as a result of the intention to assess Mangawhai wastewater).

Rates Resolution 2010/11

Notwithstanding the absence of any provision authorising such rates in the Funding Impact Statement, the resolution provides under the heading Mangawhai Urban Drainage District:

- *(The Following charges are applicable only to those properties for which connection to the reticulation network will be available before 30 June 2011) One off Uniform Targeted Rate, for allotment or household units created:*

1. *on or prior to 23 March 2002 - \$1,251.41 (first 50%);*

2. *on or after 24 March 2002 - \$7,088.35 (one off);*

or

3. *on or after 24 March 2002 (but see note 1 which follows) - \$488.18 per annum for 25 years.*

Note 1: the \$488.18 is the first year charge only, and will subsequently increase in line with inflation.

Note 2: this would change dependent upon the Council decision in item 5.2.

- *Uniform annual charge:*

residential: per pan per annum - \$652.44

non-residential: per pan per annum - \$652.44

vacant lots - \$326.22

Refer to comments on previous year's resolution.

Funding Impact Statement 2011/12

The Wastewater Disposal narrative is altered from previous years by the addition of:

- "(iv) *A one-off targeted rate for each separately occupied or inhabited residential property, differentiated by location, for the Mangawhai Community Wastewater Scheme and any other new scheme.*"

The schedule then specifies:

"Mangawhai – Annual Fee	\$773.00
Mangawhai – One-off Targeted Rate	\$8,397.00 "

Rates Resolution 2011/12

- (f) *Mangawhai Urban Drainage District*

(The following charges are applicable only to those properties for which connection to the reticulation network will be available before 30 June 2012)

Uniform Targeted Rate, based on location only. The deciding location is either within, or outside, the original scope of servicing in the Mangawhai Community Wastewater Scheme Contract.

- | | | |
|---|----------|--------------------|
| (i) <i>Within original contract scope</i> | 1,482.50 | <i>(first 50%)</i> |
| (ii) <i>Outside original contract scope</i> | 4,198.50 | <i>(first 50%)</i> |

Uniform Annual Charge	2011/12
	\$
<i>Residential: per pan per annum</i>	<i>773.00</i>
<i>Non-Residential: per pan per annum</i>	<i>773.00</i>
<i>Vacant Lots</i>	<i>386.50</i>

Appendix B

The Legislative Process - Promoting a Local Bill

1. General Information

- (a) The types of legislation and procedures for enactment are set out in the Standing Orders of the House of Representatives.
- (b) The current version came into force on 21 October 2011.
- (c) Standing Order 250 provides for the classification of Bills as follows:
 - (i) a Government Bill;
 - (ii) a Member's Bill;
 - (iii) a local Bill; and
 - (iv) a private Bill.
- (d) A local Bill is a public Bill promoted by a local authority which affects a particular locality only. A local Bill cannot amend a public Act (for example the Local Government Act 2002), except purely consequentially.
- (e) The support of a Member of Parliament is necessary to introduce the Bill into the House. It has been a convention that the local Member of Parliament is in charge of the Bill.

2. Procedure for Introducing a Bill

- (a) The Council (as promoter of the Bill) is responsible for drawing up the Bill. Legal drafting assistance is usually employed.
- (b) The Bill is scrutinised by the Parliamentary Council Office (PCO). PCO may be approached directly or through the Office of the Clerk.
- (c) PCO look at the draft:
 - For conformity to parliamentary drafting style; and
 - To ensure that matters of form or substance are dealt with at the preparatory stage.
- (d) All Bills must have the following format:
 - Explanatory note (stating the policy the Bill seeks to achieve);
 - A prescribed enacting formula;
 - The title in clause 1;
 - A commencement clause; and

- A prescribed style and layout.
- (e) Once the text of the Bill is finalised, the Council must arrange for public notification of the Bill as set out in Appendix C to the Standing Orders, as outlined below.

3. Public Notice

- (a) The Council must give written notice of the intention to introduce the Bill.
- (b) The notice must be published at least once in each of two successive calendar weeks in a newspaper which has a daily publication and circulation in the locality. In addition, the Council or the Council's solicitor or agent must ensure that the notice is publicly available on a Council maintained website for at least two calendar weeks after the day on which the notice is first published under paragraph (a).
- (c) The notice must state:
- That it is the intention of the local authority to promote the Bill;
 - The objects of the Bill;
 - The postal address of the local authority, or the local authority's solicitor or agent, to which communications may be sent;
 - The address of the local authority, or other place, at which a copy of the Bill may be inspected;
 - The website on which a copy of the bill is publicly available;
 - The dates of the period during which the Bill will be available for inspection.
- (d) Separate notice must be given to every person who, to the knowledge of the local authority, has a direct interest in the subject-matter of the Bill or in the exercise of any power proposed to be given by the Bill. The Standing Orders include a specific list of people to whom notice must be given.
- (e) Separate notice to the appropriate Members of Parliament is also required at the time of notification. These are members of Parliament for the General and Maori electoral districts whose constituents may be affected by the provisions of the Bill. A certificate is required that notice has been served to the appropriate Members. The certificate must state that notice was served on each such member by name and must specify the date on which notice was given. The certificate must be signed by the local authority's chief executive.
- (f) When public notification of the Bill is first given, the Bill must be available for public inspection without charge for 15 whole working days. The Bill must be available for inspection in the Council's public library or service centre. If the Bill is deposited or uplifted during public office hours, that day does not count towards meeting the 15 working day requirement. In addition, the Council or the Council's solicitor or agent must ensure that a copy of the bill is publicly

available on a Council maintained website for a period of not less than 15 whole working days.

- (g) Where the local Bill takes power to deal with any land, a legal description of that land must accompany each copy of the Bill together with a true copy of the plan of the land, both certified to be correct by the chief executive of the department of state responsible for the Cadastral Survey Act 2002. There are some exceptions to providing a copy of the plan, such as where the Bill proposes to deal with the whole or residue of land comprised in a certificate of title issued under the Land Transfer Act 1952 or any computer register created under that Act.
- (h) When the Bill is uplifted following public inspection, the Council or the Council's chief executive, solicitor, or agent must complete a certificate to the effect that the 15 working day public inspection period has been undertaken.
- (i) Once all these preliminary procedures have been completed, the local authority must forward each deposited copy of the Bill, copies of notices, and certificates to the Office of the Clerk within 6 months of the first publication of the notice of the Bill. The documents are to be attached to a prescribed form declaration (Appendix C to the Standing Orders). The declaration outlines the reasons for the Bill, the objects of the Bill and confirms that notification has taken place. A fee of \$2,000 (including GST), payable to the Clerk of the House of Representatives, is also required.
- (j) The Clerk of the House will then examine the Bill and the other documents to ensure that Standing Orders have been complied with. If all the documentation complies, the Bill is then ready for introduction.

4. **Passage of a Bill**

- (a) The Bill is introduced when notice of intention to introduce it is given by any member by delivering a signed copy to the Clerk on any working day, or by 1pm on any sitting day. The member in charge must provide printed copies of the Bill to the Clerk for circulation. After its introduction, the Bill is set down for its first reading on the third sitting day following.
- (b) **First Reading:** The Bill is read for a first time in the House and there is a debate on the Bill.
- (c) **Select Committee Consideration:** The Bill will be referred to the Local Government and Environment Select Committee for consideration after it is read for a first time, unless it is accorded urgency. The select committee examines the Bill and may recommend amendments that are relevant to the subject matter of the Bill and consistent with the objects and principles of the Bill. Relevant Government Departments and the Council are usually called on to make reports on the Bill to the Committee. The Select Committee will usually also advertise in the locality to invite interested persons to make submissions. The Council will be informed by the Clerk of the Committee and will be given the opportunity to make an oral submission.
- (d) **Select Committee Reports:** The Select Committee must report to the House on a Bill within six months of the Bill being referred to it, or by another time fixed by the House.

- (e) Following the presentation of the Select Committee report, the Bill is set down for its second reading on the third sitting day following. In the case of a special or interim report, the report is set down for consideration on the third sitting day following that presentation.
- (f) **Second reading:** After debating the Select Committee report, the Bill is read a second time and the House votes on the amendments recommended by the majority of the Select Committee.
- (g) **Committee Stage:** The committee of the whole House considers the Bill. Amendments may be made to the Bill by way of Supplementary Order Paper.
- (h) **Third reading:** No local Bill that contains any provision affecting the public revenues or the rights or prerogatives of the Crown may be passed unless the Crown has, by message, indicated its consent to that provision. When a Bill has been read a third time, it has been passed by the House.
- (i) **Royal Assent:** The Act then officially comes into being once it has received Royal Assent.

File Number: 4505.0
Report To: Council
Meeting Date: 26 October 2011
From: General Manager Policy and Governance
Subject: **Mangawhai Community Wastewater Scheme: Revised Terms of Reference for Independent Review**
Date of Report: 14 October 2011
Signed By:

Glennis Christie

Conclusion

Concerns have been raised by a group of Mangawhai ratepayer representatives about the legality of rates in relation to the Mangawhai Community Wastewater Scheme (previously Mangawhai EcoCare project).

Council wishes to gain further assurance that the rates and rating processes are legally compliant and, where they are not, that the appropriate action is taken.

Council is aware of one area of non-compliance with the Mangawhai Community Wastewater Scheme Uniform Targeted Rates and has prepared a statement of proposal to remedy this. Prior to undertaking the special consultative procedure on this, Council requires legal signoff that the Statement of Proposal is in order and that there are no other areas of non-compliance that would require special consultation.

An independent review of the Mangawhai Community Wastewater Scheme rating issues has been mooted and agreed in principle for some time. However agreement had not been reached around the provider for this service and the scope and terms of reference.

The current situation is that Council and the Mangawhai ratepayer representatives wish to progress this review in a timely and cost efficient manner. For this review, it is appropriate that only significant legal compliance issues are addressed. Going forward it is acknowledged that there are improvements that can and should be made as part of the Long Term Plan process leading into the next rating year. It is accepted that we should focus on getting it right for the future.

The recommended revised Terms of Reference build on previous versions of the Terms of Reference, take into account current fiscal constraints and recognise that there are a number of stakeholders concerned about these issues.

The revised Terms of Reference and the recommended provider have been discussed with Councillor Blackwell. They have also been sent to the Mangawhai ratepayer representatives for their comment.

Recommendation

That Council proceeds with the Mangawhai Community Wastewater Scheme Independent review in accordance with the revised Terms of Reference as set out in the "Independent Review for Mangawhai Community Wastewater Scheme Rating Issues Revised Terms of Reference and Scope " dated October 2011; and

That Jonathan Salter, Graeme Palmer, Grant Hewison or John Shepherd associated with the Simpson Grierson and Kensington Swan firms be asked if they can to undertake the review, and if so provide a quote; and

That the Chief Executive be delegated the authority to approve the final Terms of Reference and the provider.

Reason for the recommendation

Council wishes to be sure that Council's processes for setting and levying rates for the Mangawhai Community Wastewater Scheme are in order and those stakeholders' concerns are addressed to the extent possible.

Reason for the report

Council wishes to progress the independent review that has been mooted and agreed in principle for some months. This requires a revised Terms of Reference and Scope and a recommended provider.

Background

At its meeting held 27 July 2011 Council agreed to proceed with the Mangawhai Community Wastewater Scheme (previously Mangawhai EcoCare Project) independent review, amended as requested by three Mangawhai ratepayer representatives (Mr Boonham, Mr Dickie and the Mangawhai Ratepayer and Residents Association). The issue was considered again at the 28 September 2011 meeting as agreement was still outstanding. At that meeting Council passed the following resolutions:

That Council asks the Chief Executive to prepare a revised Terms of Reference and Scope (including a recommended provider) for an independent review of Mangawhai Community Wastewater Scheme and other relevant rating issues taking into consideration the previous revised Terms of Reference and other stakeholders; and

That the revised Terms of Reference, Scope and recommended provider be brought back to Council for consideration.

Council representatives (both elected representatives and staff) have met with the Mangawhai ratepayer representatives on a number of occasions to discuss the issues and a way forward. The most recent meeting was on 11 October 2011.

At that meeting there was an agreement in principle to progress the review in a timely manner, deal with any essential legal compliance issues, focus attention on getting it right for the future and the need to do this review in a cost efficient and effective manner. There is a recognition that improvements can be made as part of the Long Term Plan for the next rating year.

Issues and Options

The key issue is that there is a measure of uncertainty or lack of confidence in some areas about the Council rate setting and processes in regards to the Mangawhai Community Wastewater Scheme.

Options have been addressed in previous reports and on balance it has been accepted that a review is appropriate.

The revised Terms of Reference and Scope are set out in the attachment.

Recommended providers are potentially Jonathon Salter, Graeme Palmer, Grant Hewison and John Shepherd. Jonathan Salter and Graeme Palmer are both from Simpson Grierson and Grant Hewison and John Shepherd are both associated with Kensington Swan. Each of these individuals are specialists in this area and are known to have the qualifications and expertise to undertake the review. If none of these individuals are available it is recommended that the Chief Executive be authorised to approve an alternative provider.

Degree of Significance

While this issue does not trigger Council's Policy on Significance, it is important to maintain confidence in Council processes. There are also opportunities to improve going forward.

Consideration of the Four Well-beings (Community Views)

This issue is of some concern to the Council and the Mangawhai Community.

Policy Impacts

There are no policy impacts.

Financial Implications

At this stage it is not known what the cost of this review will be. The Terms of Reference are intended to limit the scope to the essentials and so assist in keeping costs down. However, given current fiscal constraints and in accordance with good practice it is appropriate to obtain a quote from each of the firms prior to proceeding.

A focus on the future may mean that some aspects of the review that was intended as part of the Long Term Plan process will be reduced or no longer be required.

Legal Considerations/Delegation

Council is already required to consult on the Statement of Proposal for the Mangawhai Community Wastewater Scheme Uniform Targeted Rate. The legal review of the Statement of Proposal will be part of the review.

Independent Review for Mangawhai Community Wastewater Scheme Rating**Issues: Revised Terms of Reference and Scope****Background**

Council wishes to undertake an independent review into the Mangawhai Community Wastewater Scheme rates and obtain assurance that the rates and rating processes are legally compliant. Council is concerned on its own account and on behalf of other stakeholders' because it wishes to maintain or instil confidence in Council's processes.

Mangawhai Ratepayers Representatives (principally Mr Boonham, Mr Dickie and the Mangawhai Residents and Ratepayer Association) are particularly concerned and, over a long period, have asked Council and other stakeholders to review and/or remedy the situation. These have included the Ombudsman and the Office of the Auditor General.

In August 2010, the Auditor General made the following recommendation:

As a result of our review we have recommended that the Council commission an independent "first principles" review of its approach to the wastewater rate for 2010-11 against the requirements of the Local Government ("Rating) Act 2002 and the Local Government Act 2002.

Council has undertaken reviews and is aware of one area of non-compliance with the Mangawhai Community Wastewater Scheme Uniform Targeted rates. Council has prepared a statement of proposal to remedy this. Prior to undertaking the special consultative procedure on this, Council requires legal signoff that the Statement of Proposal is in order and that there are no other areas of non-compliance that would require special consultation.

The requirement to obtain legal signoff on the draft Statement of Proposal and the recommendation from the Office of the Auditor General to commission an independent "first principles" review of its approach to the Wastewater rate for 2010/2011 form the basis of the Terms of Reference and Scope.

Further, the following principles will inform the Terms and Reference and Scope:

- 1 Council is focused on improving the rates and rating processes for the future.
- 2 Where possible, improvements to the rates and rating processes will take place as part of the Long Term Plan process leading into the next rating year.
- 3 Material legal compliance issues that cannot be addressed as part of the Long Term Plan process will be addressed separately.
- 4 Reliance will be placed on previous legal opinions unless there is good reason not to.
- 5 Consideration will be given to cost effectiveness and efficiency where possible.

Scope of the review

Part 1

Review the draft statement of proposal for the replacement of the Mangawhai Community Wastewater Scheme Uniform Targeted rate for legal compliance.

Part 2

- 1 To undertake a "first principles" review of its approach to the wastewater rate for 2010/2011 against the requirements of the Local Government ("Rating) Act 2002 and the Local Government Act 2002. First principles means a review of the Mangawhai Community Wastewater Scheme rate setting processes, culminating in the rates resolution, assessment of rates and issue of rates assessment notices. For the purposes of this review it also includes the Mangawhai Community Wastewater Scheme Development Contribution setting processes, his will require a review of the appropriateness of the relevant areas of the Funding Impact Statement, the Long Term Council Community Plan and the Development Contributions Policy.
- 2 In the event that a material error concerning legal compliance that necessitates legal remedy is found as a result of the review in Part 2, item 1 as set out above, a review of prior years (2008/2009 and 2009/2010) and the current year (2011/2012) will also be conducted. Following that, the identification of the appropriate steps for legal remedy is required.
- 3 Review of the legality of the setting and apportionment of the Uniform Annual General Charge in the first year of connection to the wastewater network.
- 4 Review the appropriate date of commencement of charging the Uniform Targeted Rate.

Documentation to be provided

In accordance with the Mangawhai Ratepayers Representatives request, a copy of the Mayor's letter of 17 July 2009 and copies of the Mangawhai Ratepayers & Residents Association letters of 16 March 2010, 30 October 2010 and 16 May 2011 (as set out in the appendix).

In addition, Council will provide relevant documents and policies, reports, rates resolutions and legal opinions together with a sample of rate assessment notices and rates records plus any other relevant document requested by the reviewer.

In response to the letter received from the Mangawhai Ratepayers and Residents Association dated 10 July 2009, in which concerns were raised over rating and some other issues. This memorandum provides an explanation on the rating issues.

Issue

A letter dated 8 April 2009 saying that there will be a rebate in the final instalment for the year, but the rates demand due date's list shows it in the 5th instalment.

Response

The credit adjustment was made earlier than previously expected.

Issue

The confusing terminology - a letter which uses terms: Uniform Annual Charge and Uniform Targeted Rate (one off) but a rates assessment notice which says EcoCare Rate-units.

Response

It is accepted that the terminology may be confusing, although it is consistent with the legislation. The Uniform Targeted Rate and the EcoCare Rate are one and the same:

Shown below is a table which explains the nature of the Mangawhai EcoCare Wastewater Scheme charges.

Wastewater - EcoCare	Uniform Annual Charges		Other charges	
	\$ per annum inc GST		inc GST	
	Residential	Non Residential per pan charge	Uniform Targeted Rate	Development Contribution (one-off)
Allotment or household unit created on or prior to 23 March 2002	\$713.70	\$713.70	\$2,733.70 (one-off) ¹	\$0
Allotment or household unit created 24 March 2002 to 30 June 2006 (inc)	\$713.70	\$713.70	\$533.20 pa for 25 years or \$7,742.10 (one-off)	\$0
Allotment or household unit created on or after 1 July 2006	\$713.70	\$713.70	\$533.20 per annum for 25 years or \$7,742.10	\$12,549.30

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(2)

Issue

Calculations of rate instalments are based on .20 and two monthly and EcoCare rates based on .25 and quarterly.

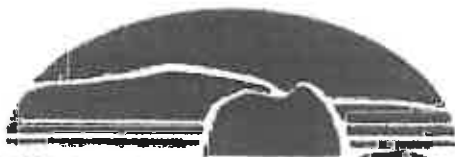
Response

Rate instalments are based on 6 payments per year which equates to 0.1667 per instalment. With regards the EcoCare rate, for calculation purposes, once the service has become available, the rate is based on a quarterly basis. For example, for a connection made in the period July - September, the charges would apply from the commencement of the next quarter namely 1 October, which equates to 0.75, a period of nine months from October - June. For a connection made in the period October - December, the charges would apply from the commencement of the next quarter namely 1 January, which equates to 0.50, a period of six months from January - June.

At the start of each year, a schedule is prepared that identifies properties that are to be connected and when. The rates are then calculated and the total split over the year's six instalments.

In the previous financial year, it had been expected that a number of connections would be made, and consequently, a rate was applied. However, no connections were made, and it was necessary to make credit adjustments to ratepayers' accounts. At this point in time, there is not expected to be any delays over the next six months. However, if the unforeseen happened, and there were delays with connections, it would be necessary to make the necessary credit adjustments.

It is important to note that all ratepayers, including ratepayers of vacant sections, have to pay the appropriate charges based on the availability of the service.



**MANGAWHAI RATEPAYERS
& RESIDENTS ASSOCIATION**

P.O. Box 225, Mangawhai Heads, Northland. 0505

16 March 2010

Jack McKerchar
Chief Executive
Kaipara District Council
Private Bag 1001
Dargaville 0310
Northland

Dear Mr McKerchar

Complaint on behalf of the Mangawhai Ratepayers and Residents Association regarding various issues associated with EcoCare

We write on behalf of the Mangawhai Residents and Ratepayers Association.

We refer to the following correspondence between the Association (through Helen Curreen) and the Kaipara District Council (KDC).

- 25/11/09 Email from Helen Curreen to KDC
- 27/11/09 Letter from KDC (J McKerchar) to Helen Curreen (MRRA)
- 24/12/09 Letter from KDC (Linda Osborne) to Helen Curreen (MRRA)

We note that we have written to the Ombudsman lodging a complaint about the Council's handling of a number of issues relating to Eco Care. The Ombudsman has recommended we write to you seeking a direct response to our specific concerns prior to her considering if a formal investigation into our complaint is required.

We attach a copy of our letter to the Ombudsman dated 20/1/10.

For the sake of clarity we specify the particular issues on which we seek a clear response from Council.

Our specific issues are:

1. Amount of credit due on EcoCare Sewerage Annual Charge (aka Uniform Annual Charge) for subsidised properties not connected prior to 1/10/09

We seek clarification on the amount of the credit due to subsidised ratepayers not connected to the sewer by 1/10/09.

We believe the understanding of the community is that the EcoCare Sewerage Annual Charge was to be applied on a quarterly basis to reflect the period the service would be available.

Letter to ratepayers dated 3/7/08 from Melanie Smith, EcoCare Community Liaison Officer [0122175800, 4505.01E1, Rates Letter Update 03072008]: "The Uniform Annual Charge will be levied in July 2008, but it will only be a partial charge to reflect that service will only be available for the last 3 months of the rating year (i.e. 3/12 of the year)."

As stated in the letter above the Uniform Annual Charge (EcoCare Annual Sewerage Charge) was charged for one quarter (0.25) in the 2008/9 rating year. However, this charge was subsequently removed from that rating year and a three quarter charge (.75) was applied in the 2009/10 rating year.

Letter to ratepayers dated 8/4/09 from Trevene Stafford, EcoCare Community Liaison Officer [0122175800, 4505.01 E 1 Rates Letter update 03072008]

"Although our original projected date for completion was to be staged between April and August 2009, we have recently expanded the scope of sewerage which has subsequently extended the programme overall. We now expect sewers for your property to be available by October 2009, that is for 9 months of the 2009/10 rating year.

In the 2008/9 rating year a portion of the annual charges was levied to reflect the 3 months of service which you were originally programmed to receive. This will be rebated in the final instalment of your 2008/9 rates."

"The Uniform Annual General Charge will be reduced to \$535.30 to reflect the 9 out of 12 months of wastewater service that will be available to you. "

Both these letters imply that the first annual charge will be a pro-rata charge on the basis of the number of quarters the sewer will be available to a property. We therefore believe this implies that any credit due to those not connected by 1/10/09 will be a full credit of 0.25, not a daily portion of the quarterly charge.

However, your letter of 27/11/09 indicates that ratepayers charged the .75 Annual Sewerage Charge (EcoCare Sewerage Annual Charge) in 2009/10 rating year (for connection from 9/12 months from 1/10/09) but who were not connected by 1/10/09 will receive a credit adjustment, based on a daily calculation, for the days they were not connected, not a full quarterly charge.

This appears to contradict the intent of paragraph 3 of your letter dated 27/11/09 that the annual sewerage charge was to be proportioned on a quarterly basis, either from October 2009 or January 2010.

"The annual sewerage charge was proportioned from either October 2009 or January 2010 so some ratepayers had two months' service while not paying the annual sewerage charge. Others that are to be connected in December 2009 will have one month free annual sewerage charge."

The implication of the quoted sentences is that ratepayers would be levied the annual charge on a proportional basis from the quarter commencing after their connection to the sewer.

This interpretation is reinforced by the Response in the Document 4505.0 Mangawhai Issues Mayor Fact Sheet 17072309:

"With regards the EcoCare rate, for calculation purposes, once the service has become available, the rate is based on a quarterly basis. For example, for a connection made in the period July-September, the charges would apply from the commencement of the next quarter namely 1 October, which equates to 0.75, a period of nine months from October to June."

Therefore to ensure equity between ratepayers and to be consistent with the Mayor Fact sheet we understand that the credit due to those who were not connected by 1/10/09 but before 1/1/10 is .25 of the Uniform Annual Charge, not a daily rate calculation as explained in the first paragraph.

- a. Please clarify how the credit to ratepayers not connected by 1/10/09 will be calculated. If the credit is to be calculated on a daily basis rather than a quarterly basis please explain why the credit is not on a quarterly basis, to be consistent with the quarterly charge basis of the rates assessment and the Mayor Fact Sheet 4505.0/17072309
- b. Please confirm that any credit due will be automatically included in the final rates assessment for the 2009/10 rating year for all affected ratepayers and that individual ratepayers will not need to apply for the credit.
- c. We request that clarification of the credit due to ratepayers be clearly advised to ratepayers in the next rates assessment notice.

In addition to the above issue raised with the Ombudsman and in response to a number of complaints and queries from local residents we seek further information on:

2. The date of commencement of charging the Uniform Targeted Rate.

We note that the One-Off Uniform Targeted Rate is the ratepayer's contribution to the capital cost of constructing the entire scheme and may only be levied if the property is developed with sanitary plumbing and wastewater facilities, or the ratepayer has been granted a building consent including wastewater facilities for the property. [Ref: 0122175800, 4505.01 E/CC Properties Levied EcoCare in 2008-9]

We refer to Page 61 of the 25 page document attached to your letter of 27/11/09, Ref 2302.10 *Mangawhai EcoCare Wastewater Treatment Scheme*

This states that the Uniform Targeted Rate is an 'availability charge' for services to the property and access rights to the reticulation network, treatment and disposal process. In the letter sent to ratepayers dated 8/4/09 it stated that "Where applicable, the one-off uniform targeted rate will be levied in July 2009."

In fact the Uniform Targeted Rate (EcoCare Rate-units pre Mar 02) was levied in the 2008/9 rating year. While the Uniform Annual Charge (EcoCare Sewerage Annual Charge) was also originally levied in the 2008/9 rating year at .25 (reflecting the intended availability date of 1 April 2009), this was subsequently removed from the final rates assessment for the 2008/9 rating year due to the deferred availability date.

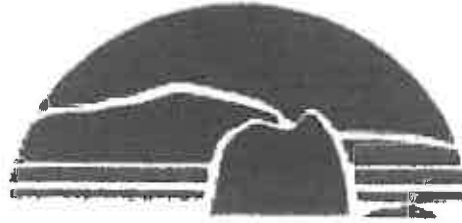
As the Uniform Targeted Rate is specifically referred to as an 'availability charge' we seek clarification on why the Uniform Targeted Rate was not similarly removed from the 2008/9 rating year and applied on a proportional basis in the 2009/10 rating year. The validity of this rate being applied in the 2008/9 year in the context of the construction programme and its completion has been raised with us by concerned residents.

While the application of the Uniform Targeted Rate in the 2008/9 year, rather than 2009/10 year may simply be a timing issue for most ratepayers, it is not for those who have sold their properties prior to the 'availability' of the service. The interest the money may have earned individual ratepayers is also a consideration.

- a. We seek clarification and justification for applying the Uniform Targeted Rate from the 2008/9 year and not from the 2009/10 rating year.
3. We request a list of the month in which each street (or part thereof) in the EcoCare area was connected to the sewer. This will assist ratepayers to determine if they are entitled to a refund. We look forward to your clarification and advice on these matters.

Yours sincerely

Helen Curren for the MRRA



MANGAWHAI RATEPAYERS & RESIDENTS ASSOCIATION

30 October 2010

Mayor and Councillors
Kaipara District Council
Private Bag 1001
Dargaville

Dear Mayor and Councillors

Re Complaint to Ombudsman regarding EcoCare charges

As you will be aware the Mangawhai Ratepayers and Residents Association made a complaint to the Ombudsman late in 2009 in relation to EcoCare when a late connection rebate, promised in a Mayor's Fact Sheet, was not forthcoming.

As the Ombudsman unravelled the issues and several other complaints were made, it became clear that the Council had not complied with the Local Government (Rating) Act 2002 and that even striking a connection fee rate in the 2008/9 year when no connections were possible was dubious. The Ombudsman began a dialogue with the Association about whether we would want the connection fees charged in that year refunded and how much interest we would want for money held inappropriately. Mindful of escalating EcoCare costs the Association was more concerned to receive an apology than actual money refunded, although clearly affected ratepayers were owed interest and late connection rebates.

When additional complaints were made to the Office of the Auditor General the Ombudsman indicated that it was not appropriate for there to be two concurrent investigations and suggested that she forward all our complaint material to that office, which after receiving our consent she did.

Since then the Auditor General's office has suggested to the Kaipara District Council that an independent review be held into the striking of the 2010/2011 rate. We replied that this was not broad enough to meet our needs or to look at our issues.

In order for the independent review to have the confidence of the Mangawhai community we request that the review – who does it, how they are briefed and the release of results - is managed by the elected council or a committee of the council. It is essential that the terms of reference for the review are clear and unambiguous and address all the concerns that have been raised by many in the community, not simply the narrow terms suggested by the Auditor General.

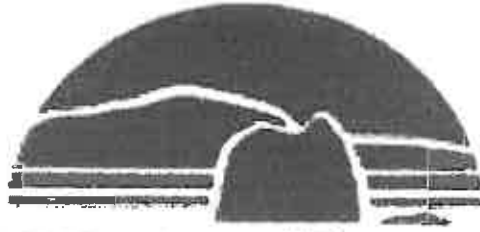
In her correspondence to us the Ombudsman commented in relation to the widespread community concerns relating to the financial modelling of EcoCare that *"it seems reasonable to surmise that your Association may have little difficulty in persuading an incoming council to respond to this need and to agree to a review which is sufficiently broad in its terms to include your specific concerns."*

We hope that the anticipated response from the incoming Council is forthcoming. We would like to receive a copy of the terms of reference of the review and to be able to forward our material to the review. We would also anticipate contact from those conducting the review and to receive a copy of the final report.

Yours sincerely

H M Curreen

Helen Curreen
On behalf of the Mangawhai Ratepayers and Residents Association
PO Box 225
Mangawhai 0540



MANGAWHAI RATEPAYERS & RESIDENTS ASSOCIATION

Secretary: Belinda Vernon

Chair: Martina Tschirky

P.O. Box 225, Mangawhai Heads, Northland. 0505

16 May 2011

**Kaipara District Council
Mayor and councillors and CEO**

Re Independent Review of EcoCare Rates

The Mangawhai Ratepayers and Residents Association are not willing to sign a letter and "agree to accept these findings as full and final, allowing the matter to end there."

Nevertheless, the MRRA will not attempt to re-litigate the inquiry so long as we and the other complainants are satisfied *before it starts* that the investigator and his terms of reference are appropriate. The MRRA cannot not agree to take no further action regardless of the outcome of the inquiry, because if the inquiry recommends a course of action that is not followed simply because it would embarrass council and its staff, the MRRA will not let the matter rest there.

We think the MRRA has been very moderate and patient in attempts to resolve these matters and we are confident that if the investigation is done properly and thoroughly we will accept its findings.

Council needs to recognise and feel responsible for the very considerable level of distrust ratepayers have towards executive council. We use the council minutes relating to this decision as an example.

1. The MRRA decided to wait until the minutes were available on the website so we could check what they said. This, the result of repeated experiences where the elected council's decisions were modified or negated by the subsequent actions of executive council.
2. Not only the letter from the CEO, but the minutes themselves took a very long time to arrive- neither is acceptable, but again typical.
3. We read:

That Council commissions an independent review of the Mangawhai Wastewater rating in a manner agreed between Council and the complainants, Mr Clive Boonham, Mr John Dickie and the Mangawhai Residents and Ratepayers Association in accordance with 06 January 2011 meeting;

and

That Council asks for a formal agreement from Mr Clive Boonham, Mr John Dickie and the Mangawhai Residents and Ratepayers Association that they will accept the findings of the independent review.

1. We note that the first part of this resolution ("in a manner agreed") was not relayed to us and that the second is not faithfully recorded by the CEO's letter.

2. In addition we note the *reason for the resolution* below. This is a serious misrepresentation of the issue.

Reason for the Resolution

Council commissioned Bell Gully to provide independent legal advice on Mangawhai Wastewater Rating. This has been acted upon and any remedial actions necessary have been implemented. As a result the Minister of Local Government has indicated the Council has acted properly and met his requirement for an independent first principles review. However, in recognition of continued concerns expressed by three parties in particular, Council has agreed to carry out a further independent review in a manner acceptable to all parties and that all parties concerned must then accept these findings as full and final.

3. The Bell Gully provided advice was called "privileged legal advice" by the CEO and we were not party to the brief nor the results despite a request under the official information act. The Ombudsman, the Auditor General and the Minister for Local Government all anticipated an "independent review". The "privileged legal advice" cannot be both.
4. The implication that you are only doing this to placate us is patronizing. The council needs to have a full understanding of all the errors. We note above "in a manner acceptable to all parties concerned". We are concerned to note that this somehow precludes input to the Terms of Reference and briefing. We would dispute that any remedial actions have been undertaken. The current Statement of Proposal minimises and further confuses the issues.

We met with Deputy Mayor Julie Geange and Councillor John Blackwell and appreciate their efforts and wish to resolve this matter. However:

1. We are unconvinced that the elected council grasps the Issues sufficiently to understand the nuances as experienced by Mangawhai Ratepayers.
2. We understand that all engagement and briefing will be in writing including the initial contact with the Law Society seeking advice re suitable reviewers. Also that all subsequent contact will be in writing and all documentation including the briefing and results will be available to us. While we applaud a process which will ensure that council is not in a position to influence the outcome, this is obviously a cumbersome and potentially ineffectual way of engaging with Ratepayer complaint. We would prefer the reviewer have an inquisitorial role.
3. We have seen a paper written by Clive Boonham and given to Deputy Mayor Julie Geange which contains a "Scope of Review" list. We are comfortable with its contents. We also would like it noted that the MRRRA did not enter this complaint process primarily concerned about technical and legal issues, but the confusion around connection, pan charges and changing terminology experienced by our membership. Accordingly we would specifically like to ensure that the briefing materials include the Mayoral Fact sheet dated 17 July 2009, a letter to council (30 Oct 2010) and a copy of a letter written (16 March 2010) at the request of the Ombudsman to the CEO who claimed not to know what the issues were. Copies are attached. Some of the council's documentation results in a moral rather than technical obligation.
4. There is a considerable risk that a purely technical and more legal analysis of a limited range of material will result in a review which fails to consider the issues that concern ratepayers

and this will be a waste of time, money and effort. (Indeed this is the result thus far from Bell Gully)

We strongly feel that the council needs to make a full disclosure to the community about the process currently being undertaken and why. The publication of a recent "Statement of Proposal" in the media considerably under represented the problem. We do not believe such minimization to be helpful, furthermore such material should have been in the draft Annual Plan.

Thank you for agreeing to undertake this review, done properly, it will enable a sound foundation to the resolution of the many problems and repairs that will be necessary to gain community confidence in the EcoCare scheme.

We await the copies of documentation and result with interest.

H M Curreen

**Helen Curreen
For Mangawhai Ratepayers and Residents Association.**

Please note - All correspondence specific to MRRRA, requesting comment or response should be via email to helen@fourwinds.org.nz and the Secretary Belinda Vernon at belindav@xtra.co.nz as well as regular mail and all copies of documentation should be sent to our Post Office Box address as above.

**Ordinary Meeting Of Kaipara District Council In The Council Chambers, Station Road,
Dargaville On Wednesday 26 October 2011 Commencing 1.00 pm**

Minutes

Extract: Item 5.2

**Mangawhai Community Wastewater Scheme: Revised Terms of Reference
for Independent Review**

General Manager Policy and Governance 4505.0

A report by the General Manager Policy and Governance dated 14 October 2011 was circulated.

Concerns had been raised by a group of Mangawhai ratepayer representatives about the legality of rates in relation to the Mangawhai Community Wastewater Scheme (previously Mangawhai EcoCare project). Council wished to gain further assurance that the rates and rating processes were legally compliant and, where they were not, that the appropriate action was taken.

Council was aware of one area of non-compliance with the Mangawhai Community Wastewater Scheme Uniform Targeted Rates and had prepared a Statement of Proposal to remedy this. Prior to undertaking the special consultative procedure on this, Council required legal sign-off that the Statement of Proposal was in order and that there were no other areas of non-compliance that would require special consultation.

An independent review of the Mangawhai Community Wastewater Scheme rating issues had been reported and agreed in principle for some time. However agreement had not been reached around the provider for this service and the scope and terms of reference.

The current situation was that Council and the Mangawhai ratepayer representatives wished to progress this review in a timely and cost efficient manner. For this review, it was appropriate that only significant legal compliance issues were addressed. Going forward it was acknowledged that there were improvements that could and should be made as part of the Long Term Plan process leading into the next rating year. It was accepted that Council should focus on getting it right for the future.

The recommended revised Terms of Reference build on previous versions of the Terms of Reference, took into account current fiscal constraints and recognised that there were a number of stakeholders concerned about these issues.

The revised Terms of Reference and the recommended provider had been discussed with Councillor Blackwell. They had also been sent to the Mangawhai ratepayer

representatives for their comment.

Moved Blackwell/McEwing

That Council proceeds with the Mangawhai Community Wastewater Scheme independent review in accordance with the revised Terms of Reference as set out in the "Independent Review for Mangawhai Community Wastewater Scheme Rating Issues Revised Terms of Reference and Scope " dated October 2011; and

That Jonathan Salter, Graeme Palmer, Grant Hewison or John Shepherd associated with the Simpson Grierson and Kensington Swan firms be asked if they can to undertake the review, and if so provide a quote; and

That the Mayor, Deputy Mayor and Wastewater Portfolio Holder be delegated the authority to approve the final Terms of Reference and the provider.

Carried

Reason for the decision

Council wishes to be sure that Council's processes for setting and levying rates for the Mangawhai Community Wastewater Scheme are in order and those stakeholders' concerns are addressed to the extent possible.

unconfirmed

Attachment 3

Extract of email requesting an estimate/quote for the review

From Glennis Christie to Jonathan Salter, 8 November 2011
From Glennis Christie to Grant Hewison, 8 November 2011

"Further to our conversation on [], could we have an estimate/quote for the work set out in the attached terms of reference please.

Given that there are two parts to it (the SOP and the first principles review), would you mind separating the estimate please. We are looking for a ball park figure based on estimated time to complete and an hourly rate. As discussed we need to complete the first part of the first principles review to see how much is involved as a consequence.

The Terms of Reference and background material is attached as follows:

1. report that went to Council
2. terms of reference
3. proposed attachment
4. unconfirmed minutes
5. statement of proposal report from September
6. confirmed minutes for the statement of proposal item.

If you could get back to me in the next day or so with the estimate, it would be much appreciated."

Extract of email setting out agreed brief for the review

From Jonathan Salter to Glennis Christie, 14 November 2011

"I have scanned the material you sent me and have had some difficulty reconciling aspects of it with normal rating practice. I would have some difficulty undertaking Part 1 without first reviewing the rating years involved as the rates replacement proposal is only meaningful by reference to what it is correcting. In addition, it may not even be the appropriate vehicle as some rating irregularities cannot be rectified by that mechanism.

What I propose is to undertake a review of the relevant statutory documents that mandate the rate setting for each of the years in question. These documents are the Revenue and Financing Policy (initially this would be the policy in the 2006/16 LTCCP, then the one in the 2009/19 LTCCP along with any amendments), the funding impact statements for the relevant years (in 2008/09 annual plan, 2009/19 LTCCP, 2010/11 and 2011/12 annual plans), and the rates resolution for each of the years 2008/09 to 2011/12. I assume there is no Lump Sum Contribution scheme under Part 4A of the LGRA, but if there was, I would also require the capital project funding plan under Schedule 3A.

From these documents I will be able to report on the validity of the Mangawhai Community Waterwater scheme rates, and this will enable me to address the draft rates replacement proposal as a response to the issues identified. It will also incidentally enable me to address the issues in Part 2.

Issues around the commencement of charging for the rate may be able to be addressed from the information I already have but may also require some further information from you.

I do not propose to review the legal opinions already received (at this stage)."