

THE RANGITIKEI DISTRICT
COUNCIL RATING AND
FUNDING REVIEW 1994 - 1995
AN OVERVIEW

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KELLOG COURSE PROJECT 1995

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and Funding Review 1994 - 1995

- an overview.

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Kellogg Course Project 1995.

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Executive Summary.

This research project provides an overview of the Funding and Rating Review undertaken by the Rangitikei District Council during 1994 - 1995.

The document provides an outline of the Rangitikei District itself. It gives an indication of the processes used throughout the review and discusses some of the relevant information the council took into consideration during the review process.

In any review of Funding and Rating the conclusions reached by different people will vary. However, in the case of the Funding and Rating Review of the Rangitikei District Council, 1994-1995, the author is of the belief that sound judgements were made on the basis of the material presented.

There are some basic concepts that need to be kept in mind when rates are being considered. The most important of these are -

1. Rates are a form of taxation - a property tax.
2. Rates are not a form of 'user-pays' payment for services recieved.
3. A rating system should be fair and equitable.

The analysis provided at the conclusion of this research comes to the conclusion that the Rangitikei District Council made a sound and justified decision to change the rating system for their district to one which included;

- a. A General Rate based on Capital Value
- b. A Uniform Annual General Charge
- c. Separate Uniform Annual Charges for water, sewage disposal and rubbish collection.

This however was not a popular decision with those members of the Rangitikei community who had a resultant rise in their rates. As a result a number of members of the council, particularly from the southern part of the district, were not re-elected to the council in October of 1995.

INTRODUCTION

The Rangitikei District Council stated its intention to complete a funding and rating review in its 1994/95 Annual Plan.

The funding and rating review is necessary to ensure that the burden of rating is fair and equitable to all ratepayers.

At the beginning of the review a set of principles were agreed upon mainly relating to who benefits from the services Council provides and subsequently how those people who do benefit could contribute to the cost of providing each service. This established the framework for conducting the funding and rating review.

Prior to a preferred rating option being put to the public, Council explained the existing rating system and sought comments on what people would like to see in a new rating system. Council produced a Rates Review Newsletter that was sent to all ratepayers and discussed the review at almost 40 public workshop sessions throughout the District.

Most of the people who attended the workshops agreed that the current rating system is not fair and not equitable because it results in some people paying twice as much as others for the same service. Most people felt that everybody should pay a minimum amount towards activities that everybody benefits from regardless of the size of their property. They also felt that a land value system would be better for the District than a capital value system.

As a result of the feedback received from the first newsletter and the public workshop sessions, a second newsletter was sent to all ratepayers showing what would happen to people's rates under a land value system with no differentials and a Uniform Annual General Charge of \$250.

A further 15 public meetings were held throughout the District in September 1994 to discuss the second rates review newsletter, and submissions were sought on a proposed system. On 2 and 3 November 1994 Council heard and considered the public submissions.

Through a series of Council workshops held at the beginning of the review each activity of Council was analysed in accordance with the funding review framework. The rating system that resulted was a capital value system with no differentials and roading as a district wide activity, a uniform annual general charge of between \$200 to \$250 and uniform annual charges for water supplies, sewerage disposal and rubbish collection for those people who receive those services.

Throughout the review process the basic arguments about who benefits from the services that Council provides have not changed greatly. Public comment offered a variety of ideas with differentials and separate rates applied to both land value and capital value systems.

The Rangitikei District -

A Description.

The History.

The Rangitikei District Council was established in November 1989 as a result of Local Government reorganisation. The number of local authorities was reduced from about seven hundred varying sized units to 87 larger districts, cities and regional councils. The Taihape Borough, the Marton Borough, the Rangitikei County and parts of several other authorities were merged to form the Rangitikei District.

The Place.

The Rangitikei covers a large geographic area. It is bounded by the Kaimanawa Mountains in the North, Ruahine Ranges and Rangitikei River in the East, Tasman Sea in the South and Whangaeu River in the West.

There is access to rivers, the coast and lakes within the District.

The terrain varies considerably throughout the District- from the flat sandy coastal lands, over river flats, fine terrace lands and upwards to the high hill country in Taihape. It is a highly fertile area. The population is predominantly rural although there are three principle centres in the District. These are the rural towns of Taihape, Marton and Bulls.

The District's facilities are many and varied. It is well served by sporting grounds and passive reserves. Children's playgrounds have been and continue to be developed for both community use and use of the travelling public. Other community facilities provided in the District are rural health centres, libraries, information centres, public toilets, a variety of halls, swimming pools, housing for the over 60's, rest homes, motor camps and cemeteries.

The People.

The predominantly rural population is scattered throughout the District in small Rural Communities and larger rural towns.

Rangitikei's population numbers 16,676 spread over the following areas;

Taihape	2054
Huntermville	495
Marton	4948
Bulls	1726
Rural	7347
Koitiata	106

The median age of the District's population is 31. Twenty-six per cent

of the District's population is less than 15 years old and 11 per cent are aged 65 and over.

The Economy.

Sheep and cattle farming predominate in the hill country with dairying on an almost equal footing with sheep and cattle on the flat country.

There is intensive fat lamb farming and cattle fattening. As well there is established deer farming throughout the District.

The soil and climate of the Rangitikei are well suited to cash cropping, predominantly wheat, barley and potatoes. In addition to these there is a small amount of kiwifruit, pear and apple farming with the central area being particularly well suited to forestry. There are significant plantings of pine forests throughout the District.

Rangitikei industry revolves around food processing and production. There is a strong timber industry as well as well known engineering electronics companies and a small amount of garment manufacturing.

The Future.

Rangitikei will be a strong rural area made up of farming activities, industries and residential developments that retain the unique qualities of the district. Busy towns that complement highly productive rural activities will provide a high standard of amenities and facilities.

The Rangitikei District will be well known as a place with good services and high environmental standards where people can enjoy a quality of life that typifies the clean green image, where the land is the mainstay and the environment is protected and preserved for the well-being of present and future generations.

Rangitikei District.

RUAPAHU DISTRICT

WAIKOURU.

TAHARU

MANGAWHEA

HUNTERVILLE

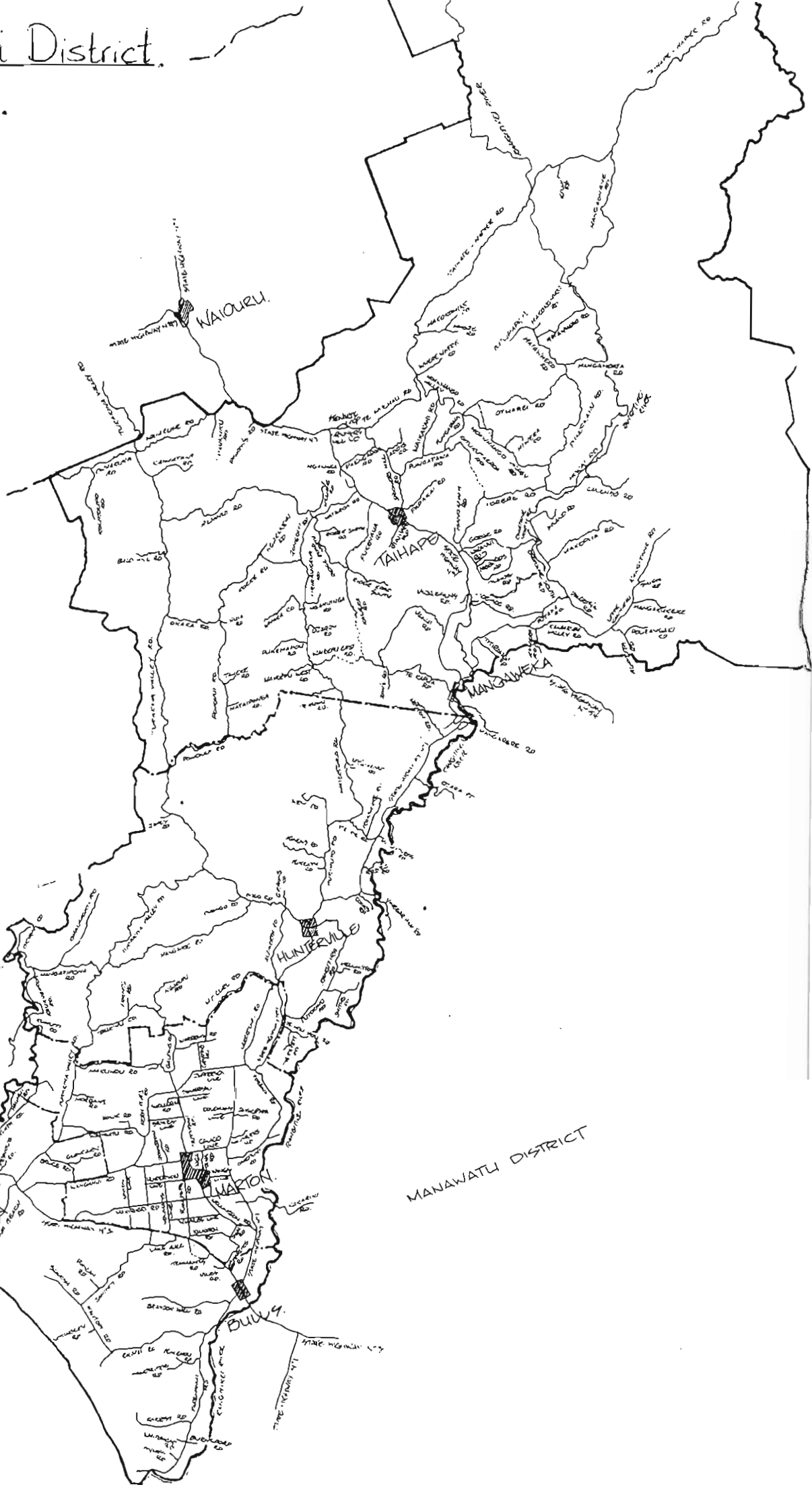
WAIKOURU

MANAWATU DISTRICT

BUCKLE

RATANA

TASMAN SEA



TERRITORIAL AUTHORITY RATING POWERS

- **general rates**
- **uniform annual general charge**
- **community general rate**
- **special rates**
- **separate rates**
- **separate uniform annual charges**
- **miscellaneous charges**
 - **Water**
 - **Sewerage**
 - **Refuse**
- **differential rates**
- **lump sum contributions**

**From "Principles and Guidelines for Local Government
Revenue Systems" October 1993**

Over the past few years there has been an upsurge of informal and formal challenges to local authority rating systems. Some challenges have involved Electricorp and other commercial and industrial ratepayers while others have been concerned with residential ratepayers.

Resulting Court Judgments have explored and suggested principles for local government revenue systems which are more advanced than those traditionally offered by local authorities. These judgements are constraining opportunities for local authorities to establish their own funding principles. It is becoming clear that some current funding practices may fall short of the level of sophistication that is being demanded by the Government and applied by the Courts.

Council is elected with a statutory responsibility to develop policy and make decisions that are in the best interests of its community as a whole as well as the individuals within it. Decisions on services to be provided, and how they will be funded, will reflect the particular and unique circumstances relating to each individual authority. This will involve trade-offs between competing demands and will never completely satisfy every member of that community or be easily compared to another District.

Features of a Good Revenue System

Council is responsible for deciding which services will be provided and for the design of an appropriate revenue system to finance them. Although there is already a revenue system in place, it is necessary to constantly review and evaluate it.

All Councils should regularly examine their revenue systems against specific economic, legal and financial management principles as well as a wider consideration of social goals.

Tax Principles

Efficiency

Equity

Administrative simplicity

Transparency and accountability

In designing revenue systems it is sometimes necessary to rank the criteria and to balance gains in one against losses in another. For example, a revenue system which imposed a very complex system of rates and charges which tried to match benefits received with taxes paid on a service by service basis might promote gains in economic efficiency, but would score poorly in terms of administrative simplicity.

Legal Issues

It appears, from recent decisions of the High Court, that Councils are required to:-

- (a) Give consideration from time to time as to what rating system should be adopted in their districts or regions.
- (b) Give consideration from time to time as to whether rates should be made and levied on a uniform or on a differential basis.
- (c) Determine the quantum of rates to be raised, the system to be adopted, and whether the rates should be on a uniform or a differential basis, having regard to the levels of services provided to ratepayers and categories of ratepayers, and to the relationship between the prospective incidence of rates on ratepayers, and the benefits the ratepayer can be expected to derive as a member of the community.
- (d) Give some consideration to the ability of ratepayers to meet the rate.
- (e) Be in a position to point to a credible justification for the decisions made.

Financial Management

Public sector reforms have introduced a new accountability regime for local authorities. To meet the new standards of accountability, local authorities will need to ensure that they determine their funding policies in an open and public manner, and that those policies are consistent with the objectives for each activity. Section 223C of the Local Government Act requires of a local authority that:-

- (a) Its business is conducted in a manner that is comprehensible and open to the public.
- (b) Clear objectives are established for each of its activities and policies.
- (c) Annual Plans state the rating policies of the Council.

Rates

There has been considerable discussion in recent times over whether rates are a tax, or a substitute for user charges. How rates are viewed in this way is important to developing a funding policy. The Collins English Dictionary provides the following definition:-

tax... 1. A compulsory financial contribution imposed by a government to raise revenue, levied on the income or property of persons or organisations, on the production costs or sales prices of goods and services, etc.

Rates are property taxes and form the major source of Council's revenue. Every review of local government finance has confirmed the importance of local authorities maintaining rates as an independent source of local authority taxation. There is considerable debate, however, concerning the reliance that should be placed on rates as opposed to other funding sources in a local government revenue system and on the extent to which local authorities should have discretion in altering the incidence or burden of rates - particularly through the use of differential rating and the remission and postponement of rates.

It is an important truth that changing the rating system does not itself alter the revenue of a local authority, it merely changes the incidence or burden of rates among different groups. Most property tax and rating systems applied overseas utilise some form of capital value as the appropriate valuation base.

Capital value is considered to provide a better measure of the benefits received and the ability to pay of different groups and has the advantage that changes to improvements are added to the valuation base as they occur. As areas become urbanised it becomes increasingly difficult to separate off and value the land apart from its improvements. Many, but not all, urban areas are on capital or annual value. Land area based rating is often used for some regional services such as flood control where the benefit may be proportional to land area.

There are a number of reasons which are offered as to why capital value is not suitable for rating purposes. There is little evidence that capital value will penalise ratepayers for improving their properties and reduce the rates on undeveloped land. Intuitively, because the rate in the capital value dollar is only a fraction of a cent, its effect on the vast majority of investment decisions will be negligible. While there are still a relatively large number of authorities who rate on land value, there is a general swing toward capital value.

A significant problem in applying property based rating systems is the three yearly cycle of valuations for territorial authorities. Changes in property values are "stored up" over three years causing major shifts in the incidence of rating and public dissatisfaction.

Differential Rates

Territorial authorities may vary the level of rating on different categories of property. This legislation is very flexible and allows authorities wide powers to vary the incidence of rating by territorial order from a straight valuation based regime.

Many local authorities that have utilised the differential rating provisions have based it on the use of land, using categories such as residential, commercial, industrial, rural and single or multi-unit properties.

The use of differentials to achieve what a council regards as an "appropriate" distribution of tax burden has generated strong debate and legal challenges. Any move away from a uniform rating basis, consistent across the community, must be explicitly considered on the basis of benefits received. The impact of externalities, including ability to pay, must be included in this consideration.

Councils must look both at their choice of rating system and to the establishment of differentials within that system as a means for achieving an equitable and efficient revenue system. Councils which have maintained land value systems have made greater use of differential rating to allow them to assign rating burdens in a way which better reflects both the benefits received and the greater ability to pay of commercial and industrial ratepayers.

Some councils are using differential rating systems to lock in historical relationships among land values. Where these practices cannot be justified in terms of the distribution of benefits among different groups, it will serve to undermine the valuation system and thereby the integrity of the rating system, and be susceptible to legal challenge.

Differential rating systems should be simple and transparent: systems which are not tend to undermine the role of valuations in determining rating ability, and are to be avoided.

It is inappropriate to impose differential rating to shift the burden of rates from residential to non-domestic ratepayers in cases where the higher rates on such properties cannot be justified in terms of benefits received and their ability to pay.

It is better to adopt a rating system which provides a distribution of the burden which is deemed appropriate rather than maintaining land value and using differential rating to mimic the effects of a capital value system.

The legislation does not set out any basis for determining the actual differentials which can apply between different types or groups of property either generally or in relation to actual dollars. The Rating Powers Act 1988 has conferred powers on democratically elected individual councils to determine a rating policy which suits their particular area and circumstances. Councils have considerable discretion to assign burdens in a way which they regard as fair, but must act responsibly in discharging their duties.

It is common for councils to use their rating systems to achieve particular policy objectives. An example is the use of differential rating on farmland which is located near to urban areas. It is clearly within the council's powers to make such adjustments, but in doing so the council should recognise that it is ignoring the value which the market places on that land and be mindful that such policies result in the council having to forego revenue from that source.

In the case of farmland close to urban areas, since the enhanced value has already been capitalised into land value, the council may consider it more appropriate to provide relief in the form of rate postponement provisions.

In making decisions about groups of disadvantaged ratepayers, it is important to remember that losses of revenue from one group must be obtained elsewhere. Therefore, it is unwise to allow the unfortunate circumstances of a few to result in the council conferring major benefits to a wider group of ratepayers at the expense of remaining ratepayers. For this reason it is best to allow the rating system to work without modification. Postponement and remission provisions are preferable to a differential rating system in such cases.

PROCEDURES

- **SPECIAL ORDERS**

- Instalment Rating
- Differential Rating
- Changing Rating System

Section 716B - Local Government Act 1974

Special requirements in the Rating Powers Act 1988

- **MAKING THE RATES**

- Adoption of Annual Plan
- Notice of Intention to Make Rates
complying with section 110
- Resolution

- **LEVYING THE RATES**

- Delivery of Rates Assessments complying
with section 122

From a Legal Opinion on a Particular Rating Review
Involving Electricorp New Zealand

In the Waimate decision Mr Justice Tipping makes an important point.

"A uniform rate on capital value, for example must, subject to overall considerations of reasonableness, be regarded as prima facie fair to all ratepayers. Historically in New Zealand rates were struck uniformly on either land value or capital value. They were not assessed nor were they capable of being assessed in relation to services rendered. Nor were they assessed on ability to pay. If one owned a valuable property one was deemed liable and able to pay the rate even if one received in return no more services than someone occupying a much less valuable property who accordingly paid a much smaller rate".

That statement by Mr Justice Tipping sets out what has for many years been the general understanding of the liability for rates. He goes on to give his views on the way in which, if a differential rate is made, different considerations must be brought into account. He says:-

"But in the differential context it seems to me that the differential must be related in broad terms to the different levels of services or amenities provided or the different obligations undertaken by the local authority in respect of one type or group of property as against another or others".

After dealing with certain examples put up in argument the Judge continues:-

"It follows therefore that in my judgment the Council failed to take into account a relevant consideration, namely that services aspect, when determining whether to introduce differential rating and later at what level....".

The Waimate case revolved around attempts by the Waimate District Council to apply to Electricorp properties rating on a differential basis using a rating system different to that used for the rest of the district. The rest of the district was on land value and an attempt was made to impose a differential rate on Electricorp on a capital value system.

Is it necessary for Council to reconsider its Rating System each year?

If Council is satisfied that there has been:-

- (i) no change in circumstances and
- (ii) proper observance with all statutory procedures in a previous year and
- (iii) an informed discussion had then taken place and
- (iv) a decision had been made and properly recorded as having been made.

There should be no requirement for the rating system to be reassessed each year.

In the McKenzie decision the Court of Appeal states "...this does not mean that having properly considered the appropriate basis for rating in one year the Council must reopen the whole issue each following year even though the relevant circumstances have not changed. But where as in this case there has been a major change then these issues must again be addressed".

It is clear from both the McKenzie and Waimate situations that in those cases Electricorp had become by far the majority ratepayer in quantum in the whole district. As is stated clearly in both decisions, the Council has a fiduciary duty to its ratepayers to have regard to their interests and it should be seen to be giving some consideration to those ratepayers or categories of ratepayers whose interest Council consider are deserving of particular attention.

This may not be just those who have individual properties of great value, but also for example, farmers, urban dwellers, retired people, etc.

It would be inappropriate to isolate and deal with only one category - (the value of property in the rural south/north of Rangitikei is only one such category).

The Court of Appeal's comments in the McKenzie case state:-

"In determining the quantum of rates to be raised, what rating system should be adopted and whether the rate should be on a uniform or a differential basis a local authority which is essentially engaged in supplying services for its district must have regard to the levels of services to ratepayers and categories of ratepayers. Clearly a local authority is not obliged to adopt a narrow user pays approach and to tailor the quantum of the rates and its incidence for ratepayers in general and categories of ratepayers in particular, to the immediate commercial value of the benefits referable either directly to particular services or more broadly to the enhancement of property values.

At the same time a local authority has a fiduciary duty to the ratepayers to have regard to their interests. Where, as here, a new ratepayer with landholdings dwarfing in value the total value of all other land in the district is being introduced, that duty must in our view include consideration of the interests of that new ratepayer. It must also involve some consideration of the relationship between the prospective incidence of rates on that ratepayer and the benefits that ratepayer could be expected to derive as a member of the community. In such a case...the local authority must seek to balance fairly the respective interests of the different categories of ratepayers and not cast an inordinate burden on the new ratepayer."

Mr Justice Tipping, in the Waimate case, says:-

"It can also be mentioned that a local authority owes a duty of a fiduciary kind, in essence a duty of fairness to all its ratepayers. In the context of this case Waimate owed a duty not only to all its other ratepayers but also to its ratepayer Electricorp to be fair and reasonable when considering whether to introduce a differential rate and if so on what basis and in what amount".

He is concerned in that case with a situation where a differential rate had been introduced and he discussed at length arguments as to unreasonableness and found that on the facts of that case the Council had been unreasonable in that it had:-

- (i) taken into account irrelevant considerations and had
- (ii) failed to take into account relevant considerations.

Further that:-

- (iii) the decisions made were such that no reasonable territorial authority directing itself in law could have made.

It is clear from both decisions that a Court examining matters is going to rely heavily on Council resolutions and contemporary documentation rather than subsequently drawn affidavits and statements which, as the Court of Appeal has stated, are likely to attempt to rationalise the situation.

The final Council resolution may well be the outcome of consideration of considerable reports and discussion.

Council resolutions should be clear and concise. They should refer to reports which may have been put to the Council. If decisions are made to effect no change from previous years then there is no reason why reasons and documents which were recorded in previous years should not be referred to.

Council should be satisfied however that the reasons and documents recorded in previous years do adequately address the issues which Council was statutorily required to address and were made after correct statutory procedures have been followed.

If there is to be a change then reasons for the change should be noted.

There is of course a danger in that everything that is recorded is open to examination in detail subsequently and can then be criticised if it is conflicting or incorrect.

In the Waimate decision five reasons were given for changing the rating method to a differential one for Electricorp. This then enabled criticism of those reasons which are all set out in the Judgment of Mr Justice Tipping.

He deals with the Court's powers to review and the matters that they look at and he says:-

"An application for judicial review is not an appeal upon the merit of the rates. It is a process by which the Court ensures that the decision or decisions involved were made in accordance with the law, fairly and reasonably. The focus of the enquiry is primarily upon the decision making process but the substance of the decision may be considered in the context of an allegation of unreasonableness.

That concept does not mean that the Court will substitute its own views on what is reasonable for those of the statutory decision maker. The Court's power to intervene on the ground of unreasonableness arises only if it can be shown that there was a failure to consider a relevant consideration or the taking into account of an irrelevant consideration or that the decision in question was so unreasonable that no reasonable rating authority could in all the circumstances have made it. The nature of the unreasonableness involved to justify judicial intervention is sometimes captured by saying that the decision must be shown to be perverse irrational or beyond the limits of reason".

10 “COMMON” MISCONCEPTIONS ABOUT RATES

- 1. It is generally lawful to have a different general rate in different parts or wards of a district.**
- 2. It is lawful to have a uniform annual general charge in some wards of the district but not in others.**
- 3. A special order is required if a council wants to introduce a new separate rate or new separate uniform annual charge in all or part of the district.**
- 4. “Special rate” and “separate rate” are two names for the same type of rate.**
- 5. A sewerage charge per connection (“a pan charge”) can include a half charge for every property which is not connected but is capable of being connected.**

6. The due date is the last day for payment before additional charges (penalties) are added to an unpaid instalment.
7. It is lawful to add additional charges (penalties) to instalments of rates levied before the section 132 additional charge resolution has been made for the year.
8. A council always has to change its differential rating system following a revaluation of the district.
9. As a result of recent Court cases, a council may only change the differential on a particular category of property if the level of services provided to that category of property has changed.
10. Rates are payments for services provided.

**From Comment by Claudia Scott, Professor of Public Policy
Group, Victoria University and Member of the Study Group
Established by the Local Government Association to
Look at Rating**

"The Use of Differential Rating in the Revenue Systems of Local Authorities.

Legal challenges have been won on procedural grounds and in cases where policies were not able to sustain scrutiny in terms of reasonableness.

Legal challenges must prove that a Council has acted unreasonably. In the cases involving Electricorp with both MacKenzie and Waimate, such grounds could be demonstrated but in my view courts will be far more reluctant to interfere in rating systems where differentials are not substantial. It is important when reading judgements to understand the circumstances of the case since the judgements are based on these. For example, the concept that differentials should be related to benefits received and that the decision on differentials should be made as a second and separate decision were modified in the Manukau case where Judge Thorp (correctly) acknowledged that in designing a revenue system both the particular valuation system and whether or not to impose differentials will be considered simultaneously.

Rates are an indirect tax on property. Like other indirect taxes, it is neither possible nor desirable to modify the burden of the tax for the characteristics of ratepayers. There are provisions - such as rates postponement - which provide scope to handling situations where there is limited ability-to-pay of an individual ratepayer.

Differential rates provide a vehicle by which councils can vary the rating burden on different groups of properties. Differential rates are more often used in land rather than capital value rating systems. Particularly common is their use in putting higher loadings on commercial and industrial properties (in relation to residential properties) under a land value system. When a capital value system is in place, there is a better relationship between the value of property and the level of benefits received from local government and therefore it is less common to see differentials being used.

Differentials are commonly based on zoning and land use. In the Manukau case Judge Thorp accepted value as a possible basis for differentiation though this was a guarded view. I am aware of a local authority which has obtained a legal opinion suggesting that it is not possible to use value as the basis for differentiation.

In general, I am in favour of capital value over land value and am conservative on the use of differentials. Differential rates let Council vary the burden which would be determined by the value of the property and this makes an individual's liability difficult to determine. Some differential rating schemes are so complex that ordinary citizens cannot understand them - they tend to politicise the revenue system and put the revenue system at risk. . . .the design of a revenue system should consider each of the activities funded by the Council and the kind and magnitude of benefits which flow from them. This will then give an indication as to how the burden of funding this activity should be approached. . . .

A very important point for Councillors to take aboard is that most if not all services funded by local governments occur because benefits extend beyond the direct user to others. If this is not the case, then there is a strong case for corporatisation or privatisation of the activity.

Examining activities one by one allows a judgement to be made about the extent to which the benefits accrue privately to the individual user and the extent to which "others" benefit as well. The relevant term is benefit and the estimate should try to approximate **the value or willingness to pay for services** by different groups. **In my experience, most Councils do not take sufficient account of the benefits received by different groups but rather focus on costs and assume that benefits should be set equal to average costs of providing a service. This is not a sound approach from an economic perspective.**

In designing a revenue system it is important to consider the degree to which funding should include user charges as opposed to general sources of revenue. **In my view the selection of a particular valuation system and whether or not to have differentials must relate fundamentally to which set of measures will be best in linking the funding arrangements to the benefit received** - where benefits include benefits to direct users and benefits to third parties. When differentials are being considered for core functions, then it is important to link the need for them to benefits received. **Where substantial differences can not be discerned then there is little basis for departing from the normal practice of letting the value of property determine rating liability. . . .**

In most cases councils have been imposing higher differentials on commercial and industrial property. **I do not know of any other authority on a capital value system which is proposing a differential to lower the burden of properties whose values exceeds a given amount.** Any threshold approach of this kind could lead to inequities whereby a property with a value just below the threshold (which attracts a higher rate) would pay more than one above the threshold which is subjected to the lower differential rate.

In dealing with the views of **Electricorp** and other commercial and industrial ratepayers, there is a very worrying tendency for them to **judge the fairness of their rating burden in terms of what they (as firms) get in the way of benefits from Council activities.** This view treats local government services as if they were private goods sold in the market and ignores the fact that **indirect taxes like rates can only tax property and indirectly tax the individuals who are using the property.** No other ratepayer or taxpayer is able to enter into a discussion as to what they personally are getting in relation to what they are paying. In general, local councils should avoid being dragged into this self-centred view of rates. **Rates are taxes and not user charges.** It is possible, however, where appropriate, to introduce user charges for some services. Once this is done, however, the remaining core services should be funded through general revenue and will **only be able to deal in a broad way with groups of properties rather than with the details of individual ratepayers."**

LEGAL PITFALLS OF RATING - AN OVERVIEW

1. The Rating Environment

In the past five years, it has become significantly harder for councils to make sound rating decisions. Reasons for this include:

- Expectations from reorganisation;
- Adjustments after reorganisation;
- New accountability requirements which make ratepayers and interest groups more aware of local government processes and of the opportunities for influencing council;
- Recent successful court cases overturning council rating decisions;
- The post-crash economy;
- Central government politicians who create an impression that rate increases could never be acceptable;
- The popular belief that rates are a payment for specific services.

2. Rates are a Tax

A major pitfall to be overcome in relation to rating is the current obsession with benefit. Lawful and rational rating decisions can only be made when councils and communities accept that rates are not simply a payment for services received.

Very few of the charging mechanisms authorised by the Rating Powers Act 1988 equate with user-pays. Charging for water by metered consumption is perhaps the only charge with a direct linkage to usage. Charges for refuse collection per container, charges for sewerage per connection, and uniform annual charges per property essentially equate to the availability of the service but not the usage of it.

There is a 30% limit on the amount of revenue which can be raised by way of uniform annual charges (excluding charges for water, sewerage and lump sum contributions), and the specific (miscellaneous) charging powers relate only to water, sewerage and refuse. Therefore, within the rating system, the bulk of revenue must be collected through rates in the dollar of property value.

There cannot be a direct relationship between property value based rates and benefit because there is no direct relationship between rateable value and benefit. Differential rating cannot realistically create a direct relationship.

This is not to say that property value based rating is an inappropriate revenue system. It is a relatively simple, certain and locally based system. And, after all, the benefit principle is just one of the economic principles that underlies a fair taxing system.

In any event, many of the services provided by councils produce essentially public rather than private benefits, and it is simply not possible to quantify precisely the level of benefit provided by overall council services to particular properties. Therefore, a local taxing system which is not solely based on charging for services received seems entirely appropriate.

The courts have traditionally held the view that rates are a tax, and the recent New Zealand cases have not overturned this view, they have merely expressed it in more sophisticated ways.

3. Legal Requirements

There are three basic legal grounds for making rating arrangements invalid:

1. Procedural irregularity.
2. Ultra vires.
3. Unreasonableness.

Procedural irregularity will occur where a council fails to follow the procedural requirements of the Rating Powers Act 1988. Traditionally the courts have invalidated rates where there has been any failure to follow procedures, no matter how insignificant. The courts have taken the view that public bodies must strictly follow statutory procedures if they are to have power to take money from ratepayers in a coercive way.

A court may decide not to invalidate rates where the procedural failure is minor and nobody has been disadvantaged by it, but this cannot be assumed.

Local authorities are created by statute, and as a matter of law have only the powers that are expressly conferred on them by statute. Where a council acts outside its powers it is said to act **ultra vires**, and its actions are unlawful. Therefore there must be an express statutory provision authorising every rate or charge that a council wishes to make.

In a recent series of cases, the courts have made it clear that rating arrangements which are otherwise procedurally correct and lawful may be invalidated where the outcome is determined by the court in judicial review proceedings to be unreasonable.

4. Recent Court Cases

The recent cases have highlighted the extent to which the courts are prepared to intervene to invalidate rating arrangements. Each of the cases was decided on its own unique facts but several general propositions can be drawn from the cases:

- It is for each council to decide what are fair rating arrangements for its district;

- There is no right of appeal from the council's decision, but it may be overturned by the courts in judicial review proceedings;
- If the council makes rates that are not authorised by the legislation, or fails to comply with statutory procedures, the rates may be invalidated;
- The courts may also invalidate rating arrangements which are, in the legal sense, unreasonable;
- The legal sense of "unreasonable" is - "so unreasonable that no reasonable body would have contemplated it", or "irrational";
- In determining whether or not arrangements are unreasonable the courts will also consider whether the council took into account irrelevant considerations or failed to take account of relevant considerations;
- In determining how the rating burden should fall, the council must endeavour to act fairly and equitably towards all ratepayers.
- The power to rate differentially is not unlimited. The differentials must be determined on some rational basis. The basis of the differentials must relate to the statutory criteria and the amount of the differentials must bear some reasonable relationship to the reason for, or the purpose of, the differentials. This does not have to amount to individually quantifiable or justifiable considerations.
- A significant consideration in determining differential categories and the level of differentiation will always be different levels of services and amenities provided, but other considerations, including matters of policy such as "ability to pay", can also be taken into account.

In the specific circumstances of particular cases, additional specific statements were made about lawful and unlawful arrangements.

The law created by the cases is quite sophisticated and is frequently misconstrued or misrepresented by ratepayers seeking to influence councils.

5. Risk Management

There are risks associated with any proposal to review rating arrangements, just as there are risks associated with continuing some existing arrangements. There is bound to be some political upheaval and public discontent. Highly motivated and articulate pressure groups can force councils into decisions which are less rational and less lawful than the arrangements being replaced. Ultimately, judicial review proceedings may result causing expense, inconvenience and uncertainty. Successful proceedings overturning rating decisions can cause upheaval and substantial expenditure of time, resources and funds over several years.

The following suggestions may help to minimise the risks:

- Undertake a legal audit of rating arrangements every year;
- When it becomes appropriate to change arrangements, identify the reasons for the changes, communicate these to the community, and gain community acceptance;
- Identify the principles underlying the proposed arrangements, communicate these to the community and gain community acceptance. Some changes may take more than one year to achieve;
- Avoid creating a public perception that the rating system will be perfect;
- Identify and spell out the rational basis for any differential rating system;
- Consult with any "stand out" ratepayers who will be especially affected by proposed changes (eg ECNZ where there is a proposal to change from land value to capital value rating);
- Check for legality before publicising any specific proposals;
- Avoid notifying ratepayers of the dollar value of rates increases or decreases affecting specific properties, until the underlying reasons and principles are understood;
- Ensure that all statutory procedures are followed to the letter.

Jonathan Salter
June 1994

Mackenzie v ECNZ

“In determining the quantum of rates to be raised, what rating system should be adopted and whether the rate should be on a uniform or a differential basis, a local authority, which is essentially engaged in supplying services for its district, must have regard to the levels of services provided to ratepayers and categories of ratepayers. Clearly a local authority is not obliged to adopt a narrow user pays approach and to tailor the quantum of the rates and its incidence for ratepayers in general and categories of ratepayers in particular, to the immediate commercial value of the benefits referable either directly to particular services or more broadly to the enhancement of property values.”

ECNZ v Waimate District Council

“...the basis for the differential and its amount must be reasonable and it seems to me that by necessary implication the quantum of the differential must be reasonably related to the amenities provided for or the demands of the differing classes of property.” (p.44)

“But in the differential context it seems to me that the differential must be related in broad terms to the different level of services or amenities provided or the different obligations undertaken by the local authority in respect of one type or group of property as against another or others.” (p.44)

Barton v Masterton District Council

"I should say immediately that it is no part of the Court's function to consider the merits of rival systems of rating. That is a matter for determination by the appropriately elected local authorities. I should like to make it clear at the outset that I am not in a position to, nor do I, express any preference for or against any of the possible systems of rating other than to say it would be impossible to devise a system which was acceptable to all ratepayers and it is clear there are advantages and disadvantages in any approach which might be adopted. The local authority has the obligation of recognising the particular requirements of the district it is obliged to administer and must be regarded in the end as the only judge of what is appropriate".

REVIEW OF KEY POINTS FROM THE FUNDING/RATING REVIEW

In Particular Benefits Received in Relation to Services Provided

At an early stage in the review process Council adopted a set of principles to be followed in determining how each activity Council carries out should be funded.

Council then analysed each activity into percentages that relate to private benefit, group benefit and/or district-wide benefit.

Private benefit is defined as:-

An individual who uses and therefore benefits from a service and can be easily identified so as to be charged for using the service.

Group benefit is defined as:-

A group or a community who uses or benefits from a service exclusively and can be identified so as to be charged for using a service or having a service available.

District-wide benefit is defined as:-

Everybody in the District who uses or benefits from a service or is capable of using a service that is not exclusive to any individual or group of individuals.

The district-wide activities identified by Council are listed on the last page of the pre-meeting handout. The figures represent the total amount to be collected from the general rate in addition to any user fees charged.

In some cases user fees charged to fund the private benefit portion of some activities is insufficient to cover the revenue requirements. In those cases where Council felt it was inappropriate to increase user charges the general rate was used to subsidise the private benefit. In total this subsidy represents about 8% of total rates revenue.

When reviewing every activity of Council the use of differential rating was considered to acknowledge and account for any differences identified between different areas and types of property. No particular circumstances were noted for any activity.

The general rate can be collected by a rate in the dollar, or in part by a rate in the dollar, and in part by a Uniform Annual General Charge. A Uniform Annual General Charge is an equal charge made on each rateable property to provide a minimum, uniform rate towards funding district-wide activities each property pays the same amount.

The charge is based on the belief that all ratepayers derive a similar level of benefit from particular identifiable services regardless of the value of their property. It ensures that all ratepayers contribute an equal minimum amount towards the cost of providing district-wide activities.

Section 25 of the Rating Powers Act 1988 states that in no case may the estimated total proceeds of any Uniform Annual General Charge and any separate Uniform Annual Charges made other than for sewage disposal or water supply services exceed 30% of the estimated total rates revenue for the year. Therefore if, at any time, the total rates required to fund activities that are funded by the Uniform Annual General Charges is more than 30% of the estimated total annual rates revenue, the balance will be transferred to and form part of the general rates.

WHAT THE GENERAL RATES FUND

The following list details the activities carried out by Council that are funded in part or in total by the general rates. The amount of general rates required for each activity exclusive of GST for 1994/95 is also shown.

Cemeteries	53,000
Civil Defence	58,000
Democracy	532,000
Dog Control (ie Dog Ranging)	44,500
Footpaths	62,000
Halls	84,500
Libraries	186,500
Parks, Reserves and Playgrounds	401,000
Public Toilets	89,000
Refuse Disposal (not including rubbish collection)	515,000
Resource Management	178,000
Roading	3,391,500
Rural Fire Control	62,500
Stormwater Disposal	82,000
Swimming Pools	160,500
	<hr/>
	\$5,900,000
	<hr/>

RANGITIKEI DISTRICT COUNCIL

MILESTONES OF FUNDING AND RATING REVIEW

October 1993	Need for a review of the rating system recognised and brought to the attention of the Council.
February 1994	<p>Draft discussion paper on a funding and rating review prepared by management detailing:-</p> <ul style="list-style-type: none">- What is a funding review?- Why a funding review is needed?- Legal ramifications- Local Government Association guidelines for carrying out a funding review
March 1994	Discussed draft discussion paper with Council at a Workshop session to get their input.
April 1994	Agreed the principles for the funding review (i.e. the benefits received in relation to the services provided) with Council at a Workshop session.
May 1994	<p>Analysed each activity of Council in terms of the funding review principles. That is:-</p> <ul style="list-style-type: none">- Is the benefit individual, group or district wide?- How is the activity best funded? - user pays, separate rates, general rates, land value or capital value.
June 1994	Summarised information from the activity templates into a non conclusive document to take to the public. Presented as many different arguments of how each activity could be funded. First developments of a new system began.
July 1994	<p>Posted a newsletter to every ratepayer explaining that Council was reviewing the rating system. Explained the existing system and gave indications of what could happen if a rating system was changed. Asked what people would like to see in a new system.</p> <p>Approached and spoke to six major ratepayers about the review.</p> <p>Sought input from ratepayers through a questionnaire in the newsletter.</p> <p>Held 41 public workshops throughout the District and on Maraes to explain the newsletter and seek feedback.</p> <p>Majority preference at that time was a land value system and the maximum UAGC. Council confirmed that preference and a proposed system was developed.</p>
August 1994	Council adopted for discussion a proposed rating system based on undifferentiated land value and a UAGC of \$250.

Second newsletter sent to all ratepayers recapping the review and explaining the proposed system and the effect on the District after the revaluation.

Called for submissions by 14 October 1994.

September 1994 Held 15 public meetings throughout the District to discuss the proposed system.

Analysed neighbouring rating systems and rates payable in those Districts for comparable properties.

October 1994 Submissions on proposed system closed.

November 1994 Council heard and considered submissions on 2 and 3 November 1994.

Submissions were 50/50 on land versus capital value.

Some submissions represented large groups of ratepayers e.g. Federated Farmers.

Council requested eight scenarios be developed; six on capital value, two on land value, and to look at effect on individual properties and groups of properties. Also requested investigations into:-

- Effect of capital value rating on growth and development.
- Tiered rating systems as advocated by Federated Farmers and others.
- Ward or compartmental accounting.

December 1994 Council considered the eight scenarios. Settled on a capital value system with no differentials and a UAGC of \$200 to be presented to the Council meeting of 15 December 1994 as Special Orders to change the system.

Special Orders first notified 20 December 1994.

Throughout the review process regularly sought guidance and advice from Simpson Grierson Butler White. Barristers and Solicitors of Wellington.

February 1995 Second notification of Special Orders 14 February.

Council meeting on 23 February considered submissions and confirmed the Special Orders. Resolved to "further explore" differential rating with a discussion group.

28 February first meeting of Discussion Group.

March 1995 9 March second meeting of Discussion Group. The Group suggested consideration of six differential rates (viz; industrial/commercial in urban areas, Bulls community, Taihape community, rural properties greater than 10 hectares with capital value \$2,501 - \$5,000 per hectare, rural properties greater than 10 hectares with capital value greater than \$5,001 per hectare and rural properties with capital value less than \$2,500 per hectare).

16 March Finance and Community Services Committee considered Discussion Group's outcome and resolved, by way of a recommendation to Council, that it confirm a capital value system without differentials as set out in the Special Order.

AN ANALYSIS OF THE RATING AND FUNDING REVIEW
CARRIED OUT BY THE RANGITIKEI DISTRICT COUNCIL.

Having decided that it was necessary to review the way in which the Rangitikei District Council gathered the revenue necessary to run the district, the Council carried out a thorough review of the system in 1994-95. The Council looked carefully at all of its activities and asked the important questions - "Who Benefits?" and "Who Pays?" using a template developed for this purpose (Appendix 1).

The writer has come to the conclusion that this was done in a fair and reasonable way and resulted in some clear indicators for the Council to work with.

Having come to a point where the above questions could be answered, the Council had to then look at which of the systems of revenue collection available to it under the Rating Powers Act 1988 would best fit with the way in which it wished to fund its activities.

It needs to be pointed out that the revenue systems available under the Rating Powers Act 1988 are limited and some systems Councils may wish to use are not lawful. An example of this is a Poll Tax as is possible in Britain - dividing the revenue required up to charge per resident is not a legal possibility.

At this point Councillors also must look to their personal philosophy on rates/tax issues. It has been demonstrated that rates are in fact a form of property tax and Councillors must then consider the question of upon which basis rates (i.e. general rates) should be calculated on.

It is the writer's belief that the capital value of a property better reflects the requirements of that property and its owners for Council services. The land value reflects only one aspect of the property and is not a good indication of the requirements on Council services generated there.

From a philosophical point of view, if one is to regard rates as a form of property tax, then it is better to consider the total value of the property for calculating the tax (rates) payable, not just the value of one part of the property.

The Rangitikei District Council is predominantly a rural district with large areas of pastoral and arable farming land within its boundaries. A system where the general rate is based upon land values would be a district disadvantage to the thousands of rural farming residents of the district. The writer believes this would place an unfair rating burden on one sector of the community of the Rangitikei District.

One of the options available to the Council under the Rating Powers Act 1988 is the use of differential rates. These are set for different categories of property to vary the incidence of rating from a straight valuation system. This was one of the most difficult areas at the time of review that the Council had to deal with.

The Rangitikei District Council has had a land-value based system of general rates with 22 differentials applied to it prior to this review. Differentials were an integral part of the historical system and people were very much used to them.

The decision to move to a capital based general rate removed the need for the historical differentials, and circumstances had changed enormously since they were introduced years ago. However, it was still an expectation that differentials should form a part of a rating system and this view was held by some Councillors as well as members of the public.

Case law has established that differentials must be used where there are different levels of services or amenities provided, or different types or groups of properties have different requirements of the Council services. This then is the issue.

It became increasingly difficult to separate out different categories of properties in the Rangitikei District which then warrant a differential rate. All services that the general rate funds are provided throughout the district.

The difference that resulted from the changes made to the rating system in the Rangitikei District in some property owners rates requirements were dramatic. Some people got a big increase in their rates bill while others got a large decrease. Some of those people whose rates bill increased significantly have objected strongly and called for differentials or other changes to reverse these increases. This however is not an option for the Council.

In conclusion, the writer is of the belief that the Rangitikei District Council carried out a thorough, lawful review of its revenue systems. The review was done with careful consideration and the resultant system of revenue collection which included:

- a) A General Rate based on Capital Value
- b) A Uniform Annual General Charge of \$200 per property
- c) Separate Uniform Annual Charges for water, sewage disposal and rubbish collection

was arrived at after a lengthy, objective process. Consultation with the ratepayers and residents of the district played a large part in the review and all points of views were taken into consideration.

Any system of rate collection will not find favour with all those who are required to contribute to it and changing a system of rating is of course not going to please everyone. This was indeed the case in the Rangitikei District. However, the review was carried out in a fair and thorough manner and the conclusions reached are well supported by the facts presented in the analysis of the review.

Caroline Lampp
September 1995

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Activity

Step 1 Why Does Council carry out this Activity?

- | | | |
|----|--|-----|
| 1. | Legal Requirement | Y/N |
| 2. | Permitted | Y/N |
| 3. | Consistent with Council Policy/Long Term Plans | Y/N |
| 4. | Community Expectation | Y/N |

Step 2 Total Cost of Providing Service	Total	\$.....
	Less any external assistance grants etc.	\$.....
	Net cost to fund	\$.....

Step 3 Define Proportion of Benefit from Service. Provide Reasoning behind definition.

- | | | | | |
|---|---|---------|------|---------------------|
| |% | \$..... | (P1) | |
| (a) <u>Private - Identifiable Individual</u>
Where the benefit received between individuals is perceived to be equal. | Comment | | | Go to Step 4.1 |
| |% | \$..... | (G1) | |
| (b) <u>Group - Identifiable</u>
Where the benefit is received by an individual group of users. | Comment | | | Go to Step 4.2 |
| |% | \$..... | (D1) | |
| (c) <u>Districtwide - External</u>
Where the benefit is to the community as a whole. | Comment | | | Go to Step 4.3 |
| |% | \$..... | (O1) | |
| (d) <u>Out of District - Out of Jurisdiction</u>
Where the benefit is to unidentifiable users/receivers of the Service beyond the District. | This will not be collected -
It will therefore always be a subsidy | | | Go to Summary Sheet |

Step 4

4.1 Private

Proportion of total benefit provided% (from Page 1)

Amount of funds required to provide this private Benefit

\$..... P1 (from Page 1)

Funds may be collected as one or more of: Entry Fee
Annual Charge
Rental
Account for Services
Fine

How are funds for private benefit collected at present?

How much is collected at present from? Entry Fees \$.....
Annual Charges \$.....
Rentals \$.....
Account for Service \$.....
Fines \$.....

Total \$..... P2

Does Council want to encourage use? Yes No

Does Council want to discourage use? Yes No

Is ability or inability to pay a consideration? Yes No

Is present funding sufficient? ie does P2 = P1 Yes No

If P2 not equal to P1 does Council wish to change the level of funding? Yes No Give Reasons

If yes what is the revised formula? Entry Fees \$.....
Annual Fees \$.....
Rentals \$.....
Account for Service \$.....
Fines \$.....
Total \$..... P3

\$..... P1

- \$..... P3

\$..... P4

(if formula is unchanged
put in amount from P2)

This is the amount required for private individual benefit from a source that receives none of that private identifiable benefit. i.e. a subsidy.

State amount to be collected from identifiable private users (i.e. P3)

\$.....

If it is different from the amount required at P1 justify the difference.

Test justification and reason against criteria:-

Written Comment Essential

Equity	Yes	No	.....
Efficiency	Yes	No	.....
Sustainable	Yes	No	.....
Consistency	Yes	No	.....
Simplicity	Yes	No	.....
Economical	Yes	No	.....

Transfer P 3 and P4 to summary sheet and go to Step 3(b).

4.2 Group (Consider each separate Group individually)

Proportion of total benefit provided% (from Page 1)

Amount of funds required to provide this group benefit

\$..... G1 (from Page 1)

Funds may be collected from group members as one or more of:-

Annual Fee
Rental
Account for Services
Separate Rate
UAC
LV
CV
Area
Annual Value

How are funds for Group benefit collected at present?

How much is collected at present from? Annual Fees \$.....
Rentals \$.....
Account for Service \$.....
Separate Rates \$.....
UAC \$.....
LV \$.....
CV \$.....
Area \$.....
Annual Value \$.....

Total \$..... G2

Does Council want to encourage use? Yes No

Does Council want to discourage use? Yes No

Is ability or inability to pay a consideration? Yes No

Is present funding sufficient? ie does G2 = G1 Yes No

If G2 not equal to G1 does Council wish to change the level of funding? Yes No Give Reasons

If yes what is the revised formula? Annual Fees \$.....
Rentals \$.....
Account for Service \$.....
Separate Rates \$.....
UAC \$.....
LV \$.....
CV \$.....
Area \$.....
Annual Value \$.....

Total \$..... G3

\$..... G1
- \$..... G3

\$..... G4

This is the amount required for a particular Group benefit from a source that receives none of the group benefit i.e. a subsidy.

State amount to be collected from group (i.e. G3)

\$.....

If it is different from the amount required at G1 justify the difference

.....
.....

Test justification and reason against criteria:-

Written Comment Essential

Equity	Yes	No	.....
Efficiency	Yes	No	.....
Sustainable	Yes	No	.....
Consistency	Yes	No	.....
Simplicity	Yes	No	.....
Economical	Yes	No	.....

Transfer G3 and G4 to summary sheet and go to Step 3(c).

4.3 Districtwide

Proportion of total benefit provided% (from Page 1)

Amount of funds required to provide this district benefit

\$..... D1 (from Page 1)

Funds may be collected from districtwide members as one or more of:-

Separate Rate
UAGC
LV
CV
Annual Value

How are funds for Districtwide benefit collected at present?

How much is collected at present from? Separate Rates \$.....

UAGC \$.....

LV \$.....

CV \$.....

Annual Value \$.....

Total \$..... D2

Does Council want to encourage use? Yes No

Does Council want to discourage use? Yes No

Is ability or inability to pay a consideration? Yes No

Is present funding sufficient? ie does D2 = D1 Yes No

If D2 not equal to D1 does Council wish to change the level of funding? Yes No Give Reasons

If yes what is the revised formula? Separate Rates \$.....
UAGC \$.....
LV \$.....
CV \$.....
Annual Value \$.....

Total \$..... D3

(if formula is unchanged put in Amount from D2)

Districtwide benefit will be collected from the community just as any subsidised benefit will be collected districtwide.

Test justification and reason against criteria:-

Written Comment Essential

Equity	Yes	No	.....
Efficiency	Yes	No	.....
Sustainable	Yes	No	.....
Consistency	Yes	No	.....
Simplicity	Yes	No	.....
Economical	Yes	No	.....

Transfer D 3 to summary sheet and go to Step 3(c).