

26 February 2010

Jason Clarke
Te Puni Kokiri
PO Box 3943
WELLINGTON 6140

Dear Sir,

SUBMISSION TO THE RATING OF MAORI LAND BEST PRACTICE: DISCUSSION DOCUMENT

1.0 INTRODUCTION

1.1 Hamilton City Council (HCC) welcomes the opportunity to make a submission to Te Puni Kokiri on the 'Rating and of Maori Land Best Practice: Discussion Document' (referred to throughout this submission as the Discussion Document).

2.0 GENERAL COMMENTS

2.1 HCC generally endorses the comments made in the SOLGM submission to Te Puni Kokiri.

2.2 As a result of analysing the Discussion Document HCC is of the view that many of the current issues around rating of Maori freehold land would be more appropriately addressed through the introduction of appropriate provisions to the Local Government (Rating) 2002 Act.

2.3 HCC has provided responses and comments on the questions proposed in the Discussion Document in the following attachment.

3.0 CONCLUDING COMMENTS

3.1 HCC trusts that the points made in this submission are helpful to Te Puni Kokiri when considering all submissions to the 'Rating of Maori Land Best Practice: Discussion Document'.

3.2 HCC **does not wish to be heard** in support of this submission if Te Puni Kokiri is to hold hearings on submissions to the Discussion Document.

3.3 If you require clarification of the points raised in this submission, or additional information, please contact John Gibson (Revenue Manager) on 07 838 6747 or email john.gibson@hcc.govt.nz.

Yours faithfully



Michael Redman
CHIEF EXECUTIVE



Bob Simcock
HAMILTON MAYOR

EXEMPTIONS

Proposal: Removal of the Two Hectare Limit on Exemptions for Māori Land

Comments on removing two hectare limit on Māori burial grounds, marae, meeting places and meeting houses

The two hectare provision for Maori burial grounds is considered appropriate as it is the same size limit that applies to general title land. If the two hectare limit for Maori burial grounds is removed then it would need to be removed for general cemetery land as well to be consistent.

Remove the two hectare limit	Agree/Disagree	
On burial grounds	<input type="checkbox"/>	<input checked="" type="checkbox"/>
On marae	<input type="checkbox"/>	<input checked="" type="checkbox"/>
On meeting places	<input type="checkbox"/>	<input checked="" type="checkbox"/>
On meeting houses	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments on what types of Māori land should be part of the exemption for a burial ground, marae, meeting place or meeting house

HCC is concerned over the proposal to remove the size limit on land that applies for exemption from rateability.

Councils are already under pressure to make land adjacent to Marae non-rateable (including camping grounds, sports fields etc). By removing the two hectare limit, councils would be under more pressure to increase the amount of non-rateable land.

Under no circumstances should land that is being used for residential purposes be non-rateable. There are no grounds for Kaumatua or other residential property to be non-rateable. Meeting places or meeting houses not situated on marae should not be exempted as proposed in the Discussion Document.

Burial ground, marae, meeting place or meeting house includes:	Agree/Disagree	
Curtilage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parking	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Access	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kaumātua housing	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other residential	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Camping ground	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sports fields	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Proposal: Māori land that is wholly unoccupied and unused should be non-rateable

Comments on making wholly unused and unoccupied Māori land non-rateable

HCC supports this proposal provided that local authorities have the final power to determine whether a particular rating unit qualifies for exemption or not. HCC totally oppose the right of appeal to the Maori Land Court (MLC). HCC's experience with the MLC is that it appears to favour converting general land to Maori freehold land (without consulting the local authority of the change) even when there are outstanding rates, and avoids the use of its available powers to recover outstanding rates.

One point to note is that the Discussion Document refers to land that is not used for six months or more being able to be non-rateable. Under the current legislation, the rates are set on the basis of the land value as at 1 July in any year. The rates cannot be changed during the rating year regardless of the changes of status (Local Government (Rating) Act 2002 Clause 43 (3)).

The main issue is defining economic versus non-economic use of the land and whether it is rateable or non rateable. Specific conditions and criteria should be included in the Local Government (Rating) Act 2002 exempting Maori land from rates that is unable to be used or occupied because of its location or accessibility. This would result in a more consistent approach being used across the country.

Under no circumstances does HCC support the concept of a remission of rates where services are not used. Rates are a property tax based on the value of the property holdings as opposed to a charge for services. To suggest that Maori freehold land should have reduced rates because certain services are not used would undermine the whole basis of rating and result in an extremely divisive policy.

Making wholly unused and unoccupied Māori land non rateable	Agree/Disagree	
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Unused and unoccupied land non-rateable	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The threshold for use where land becomes rateable	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Proposal: the unused and unoccupied portions of Māori land should be non-rateable

Comments on making unused and unoccupied portions of Māori land non-rateable

HCC is of the view that councils should have the responsibility of making the final decision on whether land is rateable or non-rateable and that this decision should only be able to be changed by a District Court ruling.

Section 27 (5) of the Local Government (Rating) Act 2002 already allows councils to separate different parts of a rating unit if there is different treatment for rating purposes.

Making unused and unoccupied portions of Māori land non rateable	Agree/Disagree	
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Unused and unoccupied portions of Māori land non-rateable	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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RATES REMISSION POLICIES

Proposal: Encourage best practice in rating policies relating to Māori land

Comments on rating of Māori land best policies and practices	
<p>HCC does not agree with a 'best practice' policy for the remission of rates on Maori freehold land. Every district is different and has different needs and rating arrangements. Policies that suit some districts may well be totally unacceptable in other districts where the areas and use of Maori freehold land differ.</p> <p>HCC is of the view that the provisions in Schedule 11 of the Local Government Act 2002 provide sufficient guidance to ensure that the appropriate matters are considered and addressed in the council's policy or policies.</p> <p>If there is to be any generic relief then this should be enabled through legislation as policies are an inappropriate tool to manage this issue.</p>	
Rating of Māori land best policies and practices	Agree/Disagree
Minimum three year term (subject to unchanged use)	<input type="checkbox"/> <input checked="" type="checkbox"/>
Local authority able to make remission without an application	<input type="checkbox"/> <input checked="" type="checkbox"/>
Policy is for all Māori land	<input type="checkbox"/> <input checked="" type="checkbox"/>
Policy can apply to part of a property	<input type="checkbox"/> <input checked="" type="checkbox"/>
Policy extends to General land in special circumstances	<input type="checkbox"/> <input checked="" type="checkbox"/>
Rates related to land use	<input type="checkbox"/> <input checked="" type="checkbox"/>
Rates phased for economic development	<input type="checkbox"/> <input checked="" type="checkbox"/>
Remissions for conservation reasons	<input type="checkbox"/> <input checked="" type="checkbox"/>
Remissions for services not used	<input type="checkbox"/> <input checked="" type="checkbox"/>
Remissions for multiple payments	<input type="checkbox"/> <input checked="" type="checkbox"/>
Remissions for services not available	<input type="checkbox"/> <input checked="" type="checkbox"/>

RATES POSTPONEMENT POLICIES

Proposal: Provide greater clarity to the potential of postponement policies to encourage the utilisation of Māori land

Comments on rates postponement best practice	
<p>HCC disagrees with any rates postponement policies that relate specifically to Maori land.</p> <p>Postponing rates will still eventually result in rates being written off. It is better to focus on the rateability of the land at the outset.</p> <p>The most significant issues with postponed rates is that in the case of general land councils have the right to place a statutory land charge on the land to secure the rates. This is not possible with Maori freehold land so there can be little done to enforce the payment of the postponed rates in the future. Therefore any rates postponement policy is in reality likely to cause the same problems with rates collection as other Maori freehold land.</p>	
Rates Postponement Policy Best Practice	Agree/Disagree
Agreed term	<input type="checkbox"/> <input checked="" type="checkbox"/>

No penalties or charges during postponement period	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Policy can apply to part of a property	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Policy is for all Māori land	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Policy extends to General land in special circumstances	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Apply postponement to match income with rates	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Create separate provisions in the LGRA for postponements	<input type="checkbox"/>	<input checked="" type="checkbox"/>

LIABILITY FOR RATES ON MĀORI LAND WITH MULTIPLE OWNERS

Proposal: Liability for rates should be based on the owner's share or use of the land

Comments on liability issues	
<p>HCC is of the view that there should be no difference between general land in multiple ownership to Maori freehold land in multiple ownership. In both cases any identifiable individual should be liable for the total rates on a property, not just their share.</p> <p>Where land is used the rates should be paid by the person using the land, even if the land is in multiple ownership. However, it is often impossible to find out who is using the land and/or who the owners of the land are.</p> <p>HCC's experience is that the Maori Land Court (MLC) decisions and actions result in minimising the rating liability to the owners of Maori freehold land. This causes a conflict of interest in pursuing the collection of rates on behalf of councils. The MLC could have a stronger role in assisting councils with the recovery of rates arrears on Maori freehold land in multiple ownership.</p>	
Liability Issues	Agree/Disagree
Individual owners be liable for their share of rates based on ownership interest or occupation whichever is the greatest	<input type="checkbox"/> <input checked="" type="checkbox"/>
Trusts and incorporations be primarily liable for rates	<input type="checkbox"/> <input checked="" type="checkbox"/>
A greater role for the MLC	<input type="checkbox"/> <input checked="" type="checkbox"/>

RATES REBATES SCHEME

Proposal: Increase uptake of the Rates Rebates Scheme

Comments on improving access to the Rates Rebates Scheme	
<p>HCC supports providing more information about the eligibility requirements of the Rates Rebate Scheme (RRS). This can only be of benefit to Maori land owners.</p> <p>Benefits will accrue from councils working with other Government Agencies and leveraging off existing processes to increase the awareness of the RRS.</p> <p>It is doubtful whether Maori land in multiple ownership could ever qualify for a rebate given the current provisions of the Rates Rebate Act.</p>	
Improving access to the Rates Rebates Scheme	Agree/Disagree
Providing information to those who possess occupation orders	<input checked="" type="checkbox"/> <input type="checkbox"/>
Leveraging off existing processes to increase RRS awareness	<input checked="" type="checkbox"/> <input type="checkbox"/>
Encouraging increasing uptake of RRS best practice	<input checked="" type="checkbox"/> <input type="checkbox"/>

ENFORCEMENT

Proposal: dissemination of best practice, streamlining charging order processes and further work on issues relating to enforcement mechanisms.

Comments on improving enforcement	
<p>Currently charging orders are able to be placed on land to try and recover rates. However, this does not necessarily result in the payment of rates. This is a very weak enforcement tool and there needs to be a stronger mechanism in place whereby when land is being used, the owners or operators of the land can be forced to pay rates. The cost of obtaining a charging order is also a disincentive for councils to pursue this option with little or no result in recovery of rates in arrears.</p> <p>The best result HCC has experienced is obtaining an attachment order on the individual owners benefit through the District Court. In this case a regular amount is ordered by the Court to be automatically deducted from the owners benefit payment from Work and Income New Zealand (WINZ).</p> <p>Maori freehold land that has outstanding rates provides Council with limited options to recover arrears as the land cannot be sold through the courts. If the MLC would assist in permitting charging orders against the land this would be a benefit to councils.</p> <p>Maori land that has an economic use should be treated the same as multiple owned general land and councils should have the same enforcement powers to recover rates on each.</p>	
Improving Enforcement	Agree/Disagree
Information and best practice to the MLC and local authorities	<input checked="" type="checkbox"/> <input type="checkbox"/>
Improving and streamlining charging order processes	<input checked="" type="checkbox"/> <input type="checkbox"/>

INFORMATION FLOWS

Proposal: Develop processes to underpin improvement of information flows

Comments on improving information flows	
<p>HCC supports any improvement of information flows with Te Puni Kokiri, LINZ and councils (in particular information around details showing owners of Maori freehold land).</p> <p>HCC is of the view that general land should not be changed to Maori freehold land without the advice and agreement of the Local Authority.</p>	
Improving information flows	Agree/Disagree
LINZ identifier able to be utilised by local authorities and Māori	<input checked="" type="checkbox"/> <input type="checkbox"/>
Local authority and Māori access to the MoJ -Te Puni Kōkiri GIS	<input checked="" type="checkbox"/> <input type="checkbox"/>
Information sharing protocols to keep information up to date	<input checked="" type="checkbox"/> <input type="checkbox"/>