

STAFF REPORT

TO: Mayor and Councillors

FROM: Chief Executive

DATE: 23 October 2008

SUBJECT: Request to Rescind Targeted Rate Applying to Additional Costs of Operating Motueka and Golden Bay Community Boards

BACKGROUND

In the 2008/2009 Annual Plan, Council established a targeted rate of \$12.50 per rateable property for the purpose of funding the additional costs of operating the Motueka Community Board. A similar target rate of \$19.23 per rateable property was established to cover the additional costs of operating the Golden Bay Community Board. The targeted rate was specifically applied to the additional costs, in recognition of the Council's decision to allow the first \$14,560 of community costs to be funded from the district wide general rate, with only those additional costs above that figure being recovered by way of board specific target rates.

The decision to apply this hybrid system of targeted rate and general rate came about after considerable debate including questions as to legality of such a targeted rate. However, the Council had obtained two legal opinions and noted references in earlier determinations by the Local Government Commission all of which confirmed the legality of a targeted rate.

LOCAL GOVERNMENT COMMISSION

Subsequently in July 2008 the Local Government Commission released its review of the Local Government Act 2002 and the Local Electoral Act 2001. The Commission produced a very large list of recommendations. It is important to note that none of these recommendations have any force in law. The recommendations now "lie on the table" alongside the recommendations of other similar reviews such as the recent rates enquiry. At this point in time it is not possible to say whether any of these recommendations will ever pass into law. Because the recommendations have no legal effect, it will require some future Government to introduce legislation before anything can happen. Even then any draft legislation will then have to proceed through the legislative process prior to having any effect.

However, one of the Commission's recommendations was:

"We recommend Clause 39 of Schedule 7 of the Local Government Act be amended to preclude levying of targeted rates for the purpose of funding the administration of community boards."

This recommendation is likely to be strenuously opposed by most of Local Government. Targeted rates are commonly used by Councils especially in situations where one group of ratepayers is deemed to benefit from the service while other

groups of rates do not. The targeted rate allows the cost to be recovered from the group benefiting from the service. It is important to note that the use of targeted rates was encouraged by the recent rates enquiry as a means to adding transparency to the rating system. In the case of community board costs, many Councils around New Zealand recover the costs of community boards by way of a targeted rate. The Commission's justification for its recommendation was that the costs of democracy should be spread across the full general ratepayer base.

As a basic principle, this is reasonable and the Tasman District Council has taken this on board by introducing a hybrid rating system where the first \$14,560 of administration costs will be paid for by the general rate, in those two wards that have community boards. General rate funding is also made available in the other three wards to assist the operations of voluntary community associations and ratepayer groups. This process recognises that base costs are common to all five wards, while the additional costs are incurred in only two wards.

Subsequent to the Local Government Commission report and recommendation, both the Golden Bay and Motueka Community Boards have passed resolutions requesting that Council rescind the targeted rate set as part of the 2008/2009 Annual Plan, in light of the Commission's recommendation.

The relevant letters and minutes are attached as Appendix A.

The Chairman of the Golden Bay Community Board, Joe Bell, and Margaret and Adrian Maloney, have also written personal letters making similar requests.

These letters are attached as Appendix B.

LEGISLATION

The Local Government (Rating) Act 2002 and Section 23(2) requires that all Councils set rates as part of the annual plan process. That process was complied with by the Tasman District Council when it approved its 2008/2009 Annual Plan including the targeted rate for the additional costs of operating the two community boards.

Section 119 of the Local Government Rating Act 2002 sets out a procedure for "setting rates again". This section allows a Local Authority to set a rate again in the same financial year in which the original rate was set but it can only do so if it is determined that there was:

- (a) an irregularity in setting the rate; or
- (b) a mistake in calculating a rate; or
- (c) a relevant change in circumstances; and
- (d) even if all three of the above apply when the revised rate is set again, it will not increase the amount of rates assessed in any rating unit.

As previously outlined, the rate was legally established and there was no mistake in calculating the amount. The only possible argument is that the Local Government Commission recommendation is "a relevant change in circumstances." Given that the Commission recommendation has no status other than that of being a recommendation amongst many recommendations relating to Local Government and

rates, it is hard to see how in law there has actually been any change in circumstances.

There is also a significant problem in that if the targeted rate for the additional cost was removed from two wards, those costs would then be redistributed across the general ratepayer and this would increase the amount of rates assessed in the three wards that do not have a community board. This would appear to fail a test in Section 119(2)(b).

The obvious intention of the Act was to ensure that once rates are struck ratepayers can rely on there being no change in their rates during that financial year. Some extreme event is required before any change can be justified and that change cannot be implemented without the Council going through a significant set of process steps.

SUMMARY

From a legal perspective there appears to be no justification for removing the targeted rate. There is also the problem which would be highly unlikely that any change could be made quickly.

The most appropriate course of action would be to advise those who have requested the Council rescind its decision of 26 June 2008 to apply targeted rate to cover the additional costs of community boards, that request their has been declined.

However it is important to point out that rates are struck on an annual basis and that those who have concerns about the approach taken by the Tasman District Council in respect of the 2008/2009 Annual Plan, should make those concerns known as part of the 2009/2010 Annual Plan submission process, which will commence in March 2009. There is no legal reason why the Council cannot reconsider this matter (should it wish to) as part of the annual plan process for the 2009/2010 Annual Plan.

RECOMMENDATION

That the request from the Golden Bay Community Board and the Motueka Community Board that the Council rescind its decision of 26 June 2008 to set a targeted rate to cover the additional costs of operating community boards in the Golden Bay and Motueka ward areas, be declined.

P J Wylie
Chief Executive

<http://tdctoday:82/shared documents/meetings/council/full council/reports/2008/rcn081030 targeted rate.doc>