

20 July, 2017

Palmerston North City Council  
Private Bag 11034  
**PALMERSTON NORTH**

**Attention: Kyle Whitfield**

Dear Kyle,

**RE: Aokautere Land Holdings Limited - Planning and Strategy Meeting**

- 1.0 The writer has been provided with the correspondence between the legal representatives (Dewhirst Law) for Aokautere Land Holdings Limited and (predominantly) Georgia Nolan, Senior Rates Officer pertaining to the rating classification (and more generally the MS/FL/FM rating policies) pertaining to Lot 694 (previously Lot 691 on DP 487580).
- 2.0 We have been asked to prepare a distillation of the issues which arise for our client company, consequent upon the application of the EML (miscellaneous) rating factor to this title in the 2016/2017 rating year.
- 3.0 This correspondence is provided on that basis (and is not by way of being in the nature of a legal submission) rather our purpose is to outline our clients concerns, elucidate the perceived anomalies of the current model, and to enquire whether the extant differential categories fully accord with the councillor's intent.

**The land**

- 4.0 Lot 694 (previously Lot 691 on DP 487580) comprises some 4.02 ha more or less (Lot 691 had comprised 5.28 ha more or less) of vacant/ land sited adjacent to a parcel of rural land, and proximate to the earlier stage residential subdivision undertaken by our client.
- 5.0 The land stands vacant and has no structures upon it, and generates no revenue.
- 6.0 While it is accepted that the land (or some part of it) may, at some time in the future have potential for subdivision, its present character is that of undeveloped land; being land which, as such, does not benefit from the availability of, nor any connection to, Palmerston North City Council services.
- 7.0 For ease of reference Annexure's **A** and **B** to this correspondence the relevant title, and EMAP for this land.

## **Classification**

- 8.0 The land was classified, as falling into the Miscellaneous (MS) differential for the 2016/17 rating year.
- 9.0 The criteria for classification in the Miscellaneous differential comprise annexure **C**.
- 10.0 The rating differential which was applied to the Miscellaneous (MS) category in the 2016/17 annual plan was 0.9236
- 11.0 Before turning to the issues which our client company has with the rating differential applied (and more generally with respect to the rating policy/schema as it was implemented in the 2016 2017 rating year) we comment that it is the view of our client company, that the subject land (for the reasons discussed below) is more properly aligned to classification as (or at least predominantly as) Rural & Semi-Serviced land (being differential classifications FL and/or FM).
- 12.0 For ease of reference, we have included in annexure **C** the classifications for FL, FPS and FM rates categories.

## **Rural and Semi-Serviced land (FL/ FM differential classifications)**

- 13.0 Our client company's perspective is that the land (either in full or predominantly) ought be classified as Rural & Semi-Serviced.
- 14.0 It comprises a larger parcel of land (circa 4.28 ha, formerly over 5 ha), on which there are no dwellings or improvements.
- 15.0 It therefore aligns with the Rural & Semi-Serviced classification in the 2016/2017 annual plan, save (from the rating officers perspective) to the extent that the potential availability of sewerage services is taken as the defining characteristic for its rating classification.
- 16.0 Differential rate category FL is drafted in such a way that it is only property which "does not have access to the city's sewage disposal system" which can fall within that classification.
- 17.0 Five (5) criteria are provided for the purposes of determining whether or not a property will be deemed to have access available to it, being:
- whether the Council will allow the rating unit to be connected to the sewage disposal system
  - whether the rating unit is capable of subdivision and if so, the ratepayer's intentions regarding subdivision
  - the scope of any sub-divisional plan deposited with the District Land Registrar
  - the portion of the property with access to services, which in the opinion of the Council,



- would form a reasonable first stage of subdivision
- the prevailing economic climate as it affects subdivision and the supply of serviced land within the City.
- 18.0 Differential rate category FM entails land that is 0.2 ha to less than 5 ha, and which would otherwise fall within category FS (land with 0.2ha and less in area, on which there is a residential dwelling or improvement). Annexure C includes a copy of these criteria.
- 19.0 As can be immediately observed, the rating classification is dependent in large measure upon anticipatory/contingent authorisations. The first criteria being whether or not the council "will allow the rating unit to be connected".
- 20.0 The second through fifth criteria for deeming access are, with the greatest of respect, somewhat difficult to reconcile as measures pertaining to the determination of availability (or otherwise) of sewage disposal access.
- 21.0 They would appear to speak, more to the intended future utilisation of the land (certainly the criteria as to the "prevailing economic climate" has little, conceptual, interface with the analysis of sewerage availability).
- 22.0 Upon our review, the plan does not appear to have (other than the Wastewater Disposal targeted rate (at part 5.3.2) a particular infrastructure rate related to the sewage disposal system, and therefore there is no specific guidance as to the criteria pertaining to rating for such purposes.
- 23.0 It is our client company's respectful view that the imposition of a rate, predicated upon the city's sewage disposal system costs most logically correlates to/and thus falls to be imposed when either (a) a specific infrastructure cost arises from the provision of a particular property (essentially onerous connections), or (almost invariably) (b) as a consequence of the utilities loading represented by the connection. Axiomatically land that does not, and is not proposes to utilise such services does not contribute to utilities loading and associated infrastructure costs.
- 24.0 Put simply, given the lack of infrastructure load/demand represented by land of this type (undeveloped land absent any residential unit(s) or occupiers) our client company asks whether it was the intention of the elected members to levy rates against such land on the basis that it is deemed to be serviced, when as a question of fact such land is not connected to, using or benefiting from such services (and indeed such services may not ultimately prove to be available to it, or be utilised if available to it for some (if at all).
- 25.0 Surely, the underlying schema of the rating legislation and the implementation policies promulgated by Council is directed at ensuring a reasonable/proportional share of the cost loadings incumbent upon providing the services utilised is met by each such user.

- 26.0 The current differential rating classification for FL, however, is largely driven by the potential for/deemed future availability of a connection to the "sewage disposal system" as opposed to any actual utilities tasking by landowners.
- 27.0 This is particularly problematic with respect to land which is not proposed to be developed at any time in the foreseeable future but which might otherwise lie proximate to Council's sewage disposal system. As such ratepayer will (under the present classification/policy) be levied at a differential rate of 0.9236, with respect to land which has no more functional services available to it than does Rural & Semi-Serviced Land where the differential applied as 0.1385.
- 28.0 These are substantive issues for our client; by way of illustration were the property to be rated in the FL category it would have incurred a differential rating cost in the 2016-2017 of or about \$4155.00 whereas in MS it was rated at \$28,479.00
- 29.0 Whilst the purpose of this correspondence is simply to outline our client's concerns, with respect to the existing schema, we take the opportunity to identify a number of perceived anomalies in the manner in which the rating classification has been arrived at (in this – and likely similar aligned –instances) as they speak to the wider concerns our client has with respect to the differential rating schema in the 2016/2017 annual plan.
- 30.0 One of the criteria which Council staff appear to be applying in determining the classification of the subject property in the Miscellaneous (MS) rate, is the availability of access to Council's wastewater services by way of the property being situated "within 30m of a Council sewer drain".
- 31.0 With the greatest of respect, there is only one reference (which we have been able to ascertain) to a 30m methodology within the plan.
- 32.0 That arises in 5.3.2 – Wastewater Disposal where there is a targeted rate set, differentiated upon the basis that land is either "connected or "serviceable".
- 33.0 There is no 30 m parameter/test applied in the Miscellaneous (MS) rate categorisation, nor does there appear to be any such reference to that measure in the Rural & Semi Serviced Land classification.
- 34.0 Council appears, within the FL rating classification to have stipulated the criteria that it will apply in determining whether or not access is deemed to be available (being those specified at para 17.0 above)
- 35.0 As is apparent, the methodology used for determining the targeted water disposal rate is not present within/does not form part of the criteria for the Rural and Semi-Serviced (FL)



classification.

- 36.0 Nor, to our clients mind, would it be proper for that methodology to be invoked as the criteria nominated in the Rural and Semi-Serviced (FL) are presumptively exhaustive; and all the more so as while this targeted rate speaks to "connected" and/or "serviceable" as its criteria, the Miscellaneous (MS) rating category specifically adopts the criteria of the land being (for our purposes) a "vacant, serviced property" as distinct from either connected or serviceable land.
- 37.0 The perspective of our client company is, given there is a clear distinction to be drawn between serviceable (i.e. prospectively available) and serviced (i.e. having actual/extant services) there thus appears to be an anomaly between the exclusionary definition used for Rural and Semi-Serviced (FL) (i.e. an absence of access to the "sewage disposal system") and the definitional requirements for falling within Miscellaneous (MS) on the ground contended for (vacant, serviced), necessarily being that there be a "serviced property".
- 38.0 For ease of reference, we have attached Miss Nolan's most recent correspondence of 6 June 2017, which distils Council's decision making with respect to rating classification for this property as MS.

#### **Intended Use as a Criteria**

- 39.0 Our client makes two enquiries of Council; firstly, is it the Councillor's intention that land which would otherwise comprise Rural & Semi-Serviced, and which is not actually connected to (and thus causing load on) any actual Council sewerage services/utilities should be rated at a significant premium to Rural & Semi-Serviced land upon the basis of deemed access to/potential for future availability of those services. Put simply is the properties possible future sewerage connection demand the intended basis of differentiating between Rural & Semi-Serviced and Miscellaneous land?
- 40.0 Secondly, our client company respectfully enquires on what basis property is being deemed to be "serviced property" for the purposes of Miscellaneous classification, given the plan itself draws a distinction between connected, serviceable and serviced property, and in particular where the criteria which appears to be relied upon for determining a property to have become a "serviced property" comprises (to our clients mind exclusively) the 30 meter proximity criteria pertaining solely to the wastewater disposal rate at 5.3.2.

#### **Classification**

- 41.0 Whilst classification as MS imposed a particular economic burden on our client company in the 2016/2017 year, the potential for future MS classification upon this basis, in the context of these perceived anomalies, is its primary concern.
- 42.0 Our client company respectfully invites the counsellors to give consideration to the criteria

which are employed for classification of Rural & Semi-Serviced property within the context of the 2017/2018 annual plan, and in particular as to whether the criteria of deeming the availability of a utility/service not utilised at time of rating is seen to be the appropriate trigger in these instances. Our client company respectfully submits that it is not, and such deemed availability schema will ultimately have a significant chilling effect upon the willingness of developers to acquire land for which there is no imminent prospect of development/subdivision.

- 43.0 As noted, our client has particular concerns that the rating classifications appear to be being fixed, with reference to criteria which pertain to 5.3.2 – our client has been unable to obtain any clarity as to why the 30 m criteria has been utilised in this instance – and is respectfully of the view that this is so, speaks to the level of anomalies within the 2016/2017 plan rating classification schema.
- 44.0 In a practical context the ability to submit with respect to the annual plan is not an overly useful tool for ratepayers in these circumstances as the rates not having been struck, the ratepayer is not necessarily aware of the category into which the land is to be placed.
- 45.0 Our client company notes that it has brought these concerns forward to Council staff on a number of occasions, including prior to the rating 2016-2017 rating year commencing.
- 46.0 There appears to be an absence of (practicable) process to formally advance concerns surrounding rating classification, and thus our client company is obliged of this opportunity to raise these issues at this planning and strategic meeting.
- 47.0 Finally, we would like to thank Council for this opportunity to speak to these issues; the above is by way of being a brief precis only of our client company's concerns to which we will speak.

Yours faithfully

**JACOBS FLORENTINE**



**Greg Woolaston**

Associate

[greg@jfl.co.nz](mailto:greg@jfl.co.nz)

GJW: SLW

"A"



# COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



  
R. W. Muir  
Registrar-General  
of Land

## Search Copy

**Identifier** 745189  
**Land Registration District** Wellington  
**Date Issued** 14 October 2016

### Prior References

702210

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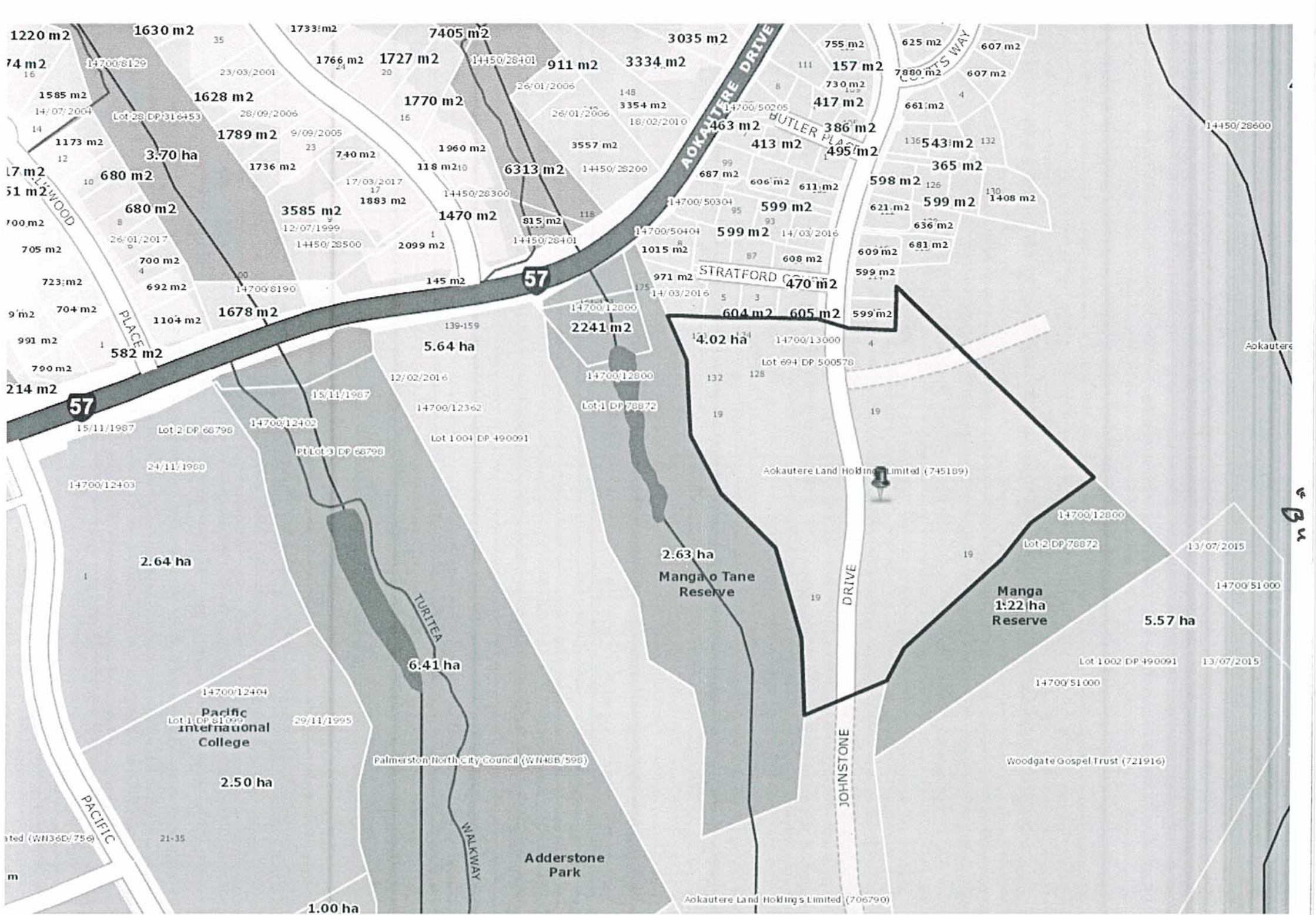
**Estate** Fee Simple  
**Area** 4.0202 hectares more or less  
**Legal Description** Lot 694 Deposited Plan 500578

**Proprietors**  
Aokautere Land Holdings Limited

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**Interests**  
10506875.1 Mortgage to CTS Investments LLC - 21.7.2016 at 4:58 pm







### 5.3.4 Warm Palmerston North

The Council proposes to set a voluntary targeted rate on properties that have benefited from the installation of insulation through the Warm Up Palmy Home Insulation Scheme. The rate is calculated as a percentage of the service amount (the cost of the installation) until the service amount and the costs of servicing the service amount are recovered. For 2016/17 the rate is proposed to be 16%.

## 5.4 Differential Matters and Categories

### 5.4.1 Objectives of Differentials for General Rate

The Council believes that a uniform general rate based on land value would not produce a fair and equitable allocation of rates and so operates a system of differentials based on land use. Descriptions of the land use categories are shown in 5.4.2.

The Council describes the relationship between the rates charged to each group in terms of a factor expressed as a percentage of the rate which would apply were there no differential rating in place i.e. the group described as Miscellaneous (MS). Each year the Council reviews the differential factors applied to each land use category. The factors proposed for 2016/17 are outlined in 5.1 and remain unchanged from 2015/16. The factors have been developed to address the following matters:

- rating units containing more than one residential unit will place an increasing demand on Council services as the number of units increase

- the land value for non-residential property is often driven by different influences than the land value for residential or rural land and therefore is not directly comparable as a rating base
- the Council's Revenue and Financing Policy identifies a number of activities where it believes non-residential users gain a greater benefit than other users so should bear a greater share of the cost
- for large rural rating units a pure land value system would produce rates charges, which were unsustainable
- rural and semi-serviced rating units generally have limited or in some cases no access to some Council activities funded through the general rate
- rating units containing multi-storey buildings gain more benefit from the provision of Council activities than is reflected by the application of a uniform rate in the dollar of land value.

### 5.4.2 Differentials based on Land Use

The Council proposes to differentiate the General Rate on the basis of land use. Properties which have more than one use (or where there is doubt as to the relevant primary use) will be placed in a category with the highest differential factor or if, in the Council's opinion it is fair and reasonable to do so, then the Council may partition the property into parts and allocate each part to the most appropriate category. Note that, subject to the rights of objection to the rating information database set out in sections 29 and 39 of the Local Government (Rating) Act 2002 the Council is the sole determiner of the categories.

The following differential categories will be used:

#### *Single Unit Residential (R1)*

Every rating unit not otherwise classified:

- Two hectare or less in area having a predominant or exclusive residential use and on which is erected one residential unit; or
- Two hectare or less in area and having no predominant use, on which no building is erected but upon which the erection of residential units is a permitted activity under the City's District Plan.

#### *Multi-unit residential (R2 - R8)*

Every rating unit not otherwise classified on which is erected:

- two residential units (R2); or
- three residential units (R3); or
- four residential units (R4); or
- five residential units (R5); or
- six residential units (R6); or
- seven residential units (R7); or
- eight or more residential units (R8).

#### *Miscellaneous (MS)*

Every rating unit (or division thereof) of the following types:

- non-rateable property as defined in the Local Government (Rating) Act 2002
- property which could be categorised in another group code but which is used for not-for-profit purposes or other community purposes, determined at the Council's discretion
- property that is used for parking that is available for public use in accordance with criteria determined by the Council

- where the ratepayer conducts or permits to be conducted a business, being a Home Occupation as defined in the City's District Plan, and which would otherwise qualify for inclusion in group code R1
- serviced property that is more than two hectare in area, having a predominant or exclusive residential use and on which is erected one residential unit
- vacant, serviced property not classified in group codes R1 or FL or elsewhere as follows:
  - property where non-residential use is a permitted activity under the City's District Plan
  - property over two hectare in area where residential use is a permitted activity under the City's District Plan
- property which, due to its location, would otherwise qualify for inclusion in group code FL, FS or FM but which is not used for predominantly residential, farming, military or not-for-profit community purposes. The Council may determine that only a portion of the property shall be classified as MS and that the remainder is classified as FL, FS or FM, as appropriate.

#### *Non-Residential (CI, CR & CA)*

CI – Every rating unit not otherwise classified which has not a predominant or exclusive residential use (except property used for parking and/or vacant serviced property as defined in group code MS). Multi-storey properties, four storeys and over will be levied an additional differential surcharge.

CR – Every rating unit not otherwise classified which is predominantly used for research purposes in accordance with criteria determined by the Council.

CA – Every rating unit on which is erected a licensed hotel or an apartment building or residential institution and including

a guest house, rooming house, boarding house, private hotel, motel, residential club or hostel. (Taverns which have no residential accommodation shall be included in group code CI).

#### *Rural & Semi-serviced (FL, FS & FM)*

FL – Every rating unit not otherwise classified which does not have access to the City's sewage disposal system and has either (a) an area of five hectares or more or (b) an area less than five hectares but on which there is no residential dwelling unit or non-residential improvements.

In determining whether for rating purposes access is deemed to be available the Council will have regard to the following:

- whether the Council will allow the rating unit to be connected to the sewage disposal system
- whether the rating unit is capable of subdivision and if so, the ratepayer's intentions regarding subdivision
- the scope of any sub-divisional plan deposited with the District Land Registrar
- the portion of the property with access to services, which in the opinion of the Council, would form a reasonable first stage of subdivision
- the prevailing economic climate as it affects subdivision and the supply of serviced land within the City.

Based on its assessment of the matters outlined above the Council will determine one of the following rating approaches:

- reclassify the full property to the higher rated group in the year immediately succeeding access to the system becoming available
- reclassify only a portion of the property to the higher rated group code with the circumstances being reviewed annually

- retain the present classification and review it annually.
- FS – Every rating unit which would otherwise qualify for inclusion in group code FL but which has an area of 0.2 hectares or less and on which there is either a residential dwelling or non-residential improvements.

FM – Every rating unit which would otherwise qualify for inclusion in group code FS but which has an area greater than 0.2 hectares and less than five hectares. The Council may consider reclassifying only a portion of the property into a higher rated group code once access is available to the City's sewage disposal system. In that event the same criteria as for group code FL will apply.

## 6. Early Payment of Rates

Sections 55 and 56 of the Local Government (Rating) Act 2002 empowers councils to accept early payment of rates.

The Council will accept any payment of rates for either the current or future years in advance of the due date.

## 7. Rates Payable by Instalment

The Council provides for rates to be paid in four equal instalments but it reserves the right to issue the first instalment as an interim one based on 25% of the rates payable in the previous rating year. For the 2016/17 year the due dates (i.e. final dates for payment without incurring penalty charges) will be:

|                   |                  |
|-------------------|------------------|
| Instalment One:   | 26 August 2016   |
| Instalment Two:   | 25 November 2016 |
| Instalment Three: | 24 February 2017 |
| Instalment Four:  | 26 May 2017      |