



## CONTROLLER and AUDITOR-GENERAL

**KEVIN BRADY**

5 August 2003

Ref No: LG03-0002-C

Ms Gwen Bull  
Chairperson  
Auckland Regional Council  
Private Bag 92012  
AUCKLAND

Dear Ms Bull

### **AUCKLAND REGIONAL COUNCIL 2003-04 RATES**

As you are aware, we have received a number of requests from ratepayers asking the Auditor-General to investigate aspects of the Auckland Regional Council's (ARC) rating decisions for 2003-04.

These requests have asked us to investigate matters associated with:

- the options available for payment of rates;
- whether Councillors were open to public views on the proposed rates in their decision-making;
- whether the rates adopted are fair and equitable and complied with statutory requirements;
- in particular, the fairness of the transport rates for areas such as the North Shore and that the ARC ought to have considered clause 8 of schedule 3 of the Local Government Rating Act 2002 (LGRA) in setting these rates; and
- material issued by the ARC containing errors that were not corrected through a public notice process.

I have decided because of the high public interest in many of these questions that I should report my findings on this matter through you as Chairperson, to the ARC.

## **1. Background**

- 1.1 This year will be the first that Regional Councils are required to have their rates set in accordance with the relevant provisions of their long-term and annual plans, and funding impact statement.
- 1.2 In the past, the territorial authorities in the Auckland Region have collected rates on behalf of the ARC. In many instances this has resulted in the ARC's rates being effectively re-levied by the territorial authorities rather than collected as set by the ARC. This is because the territorial authorities have applied their own rating policy in collecting the ARC rates for their district. Therefore, the ARC rates had appeared as a single item within territorial authorities' own rates invoices.
- 1.3 With the passing of the LGRA this approach ceased to be available, as:
  - section 23(2)(b) requires local authorities to set their rates in accordance with the relevant provisions of their long term and annual plans, and their funding impact statement;
  - section 44(1) requires a local authority to deliver rates assessments to ratepayers to give notice of their liability for rates; and
  - section 45 sets out what must be included in a rates assessment.
- 1.4 The effect of these sections is that regional councils are required to set rates and ensure that invoices and assessments show the method of rating and liability of ratepayers for each of the activities of the regional council. Therefore, the ARC could no longer assess its rates through a single line levy as had been done in the past.
- 1.5 Consequently, the ARC has had a significant communication issue to address to ensure that ratepayers were aware of the ARC and its role.
- 1.6 The change to assessing the ARC rates as set (rather than being reset by the collecting territorial authorities) has had a significant impact on the incidence of rates for individual ratepayers. Two other factors have also had an impact on the incidence of ARC rates. These are changes in property valuations and increases in public transport spending.
- 1.7 Communicating the impact of these matters has been a complex task. The ARC has been preparing for the changes to the rating legislation since late-2001, and has also had to take account of the passing of the Local Government Act 2002 (LGA) in December 2002 (with the major impacts of this Act taking effect for the 2003-04 year).

## **2 Information We Sought**

- 2.1 We visited and obtained from the ARC information to allow us to assess the ARC's processes for setting the 2003-04 rates. In particular, we sought information regarding:

- the ARC's consultation with the public and the communication strategy undertaken;
- the information prepared for Councillors by officers and other advisers (such as legal advice) to ensure that its statutory responsibilities were met; and
- the Council agendas and minutes of meetings and records of workshops held to ensure that Councillors were aware of the considerations they were required to take account of in setting the rates.

### **3 What We Found**

#### **The options available for payment of rates**

- 3.1 A concern has been raised that the ARC has determined that it will make instalment payments of rates available only where these payments are made by direct debit. Some correspondents have expressed a preference for payment of instalments by cheque.
- 3.2 We are conscious that in many instances there are high administrative costs involved to councils - and therefore to ratepayers - in making a number of payment options available. The ARC has had to weigh up providing flexibility in payment options with cost-effectiveness of the collection process used. Councillors considered a range of options, and the costs associated with each, before making their decision.
- 3.3 We note that the LGRA makes the use of instalments and the methods of payment a matter of choice for councils.

#### **Councillors' openness to public views**

- 3.4 Some of the people who wrote to us have provided media reports of comments made by Councillors in meetings, suggesting that these provide evidence of pre-determination. We note that it is the responsibility of the Council to prepare a draft annual plan for consideration of the public and to communicate the intent of the plan and the reasons for decisions taken within it. Therefore, while it is the duty of Councillors to explain the rationale behind their decisions, it is also the duty of Councillors to keep an open mind in consulting on the draft plan and considering submissions.
- 3.5 Whether Councillors had pre-determined views on the outcome of the rates to be set is not an issue that can be considered by the Auditor-General. Ultimately only a court could determine this question. However, we note that there are instances in which the Council changed the draft annual plan proposals in response to public feedback received during the consultation process.

## **Fairness of rates and compliance with statutory requirements**

- 3.6 Many people asked us to consider the fairness and the equity of the ARC's rating decisions. The Auditor-General is not able to form views on these matters, because they are for the judgment of elected members. Therefore our inquiries with the ARC concentrated on compliance with the process requirements of the LGA.
- 3.7 One of the significant reasons for changes in rating incidence is a result of the ARC choosing not to differentiate rates on the basis of different uses of property (under section 13(1)(b) of the LGRA). This is a matter for each council's judgment having regard to the considerations set out in section 101(3) of the LGA. Just as it is not for us to consider the appropriateness of some territorial authorities' decision to make use of a differential – we cannot consider the appropriateness of the regional council's decision not to use one. However, these decisions can create large incidence-shifting effects. (It is worth noting that amongst the Auckland Region territorial authorities in respect of the general rate, no commercial differential is used in Franklin and commercial differentials are applied ranging to over 8 in the North Shore.)
- 3.8 Local authorities are operating under the provisions of two new pieces of legislation for their annual planning and rating in 2003-04 - the LGA and the LGRA. In order to set a rate a council must:
- Under clause 13 of Schedule 10 of the LGA, provide a Funding Impact Statement in its Annual Plan.
  - Under section 23 of the LGRA, adopt the rates by resolution in accordance with its Funding Impact Statement.
  - Under section 102 of the LGA, adopt a Revenue and Funding Policy to be included as part of the Annual Plan. Under section 103 this policy must show how the council has, in relation to its identified sources of funding, taken a number of specified considerations into account in relation to each activity to be funded (see section 101(3) for these considerations).
- 3.9 In particular, in our review of ARC information, we looked to see that ARC had:
- Met the requirements for public consultation set out in section 83 - Special consultative procedure as it relates to the annual plan in accordance with sections 85 and 95 - and considered the Consultation principles set out in section 82 of the LGA.
  - Taken account of the considerations set out in section 101(3) in adopting its Revenue and Financing policy under section 102 and 103 of the LGA. This sets out the funding mechanisms proposed to be used and the revenue required to fund the ARC's activities.
- 3.10 We did not consider as relevant a suggestion that the ARC ought to have considered clause 8 of Schedule 3 of the LGRA (which lists the factors that may be used to calculate liability for targeted rates) because it is up to each council to decide which factors are appropriate to apply for each targeted rate. We note, however, that section 101(3) of the LGA requires consideration of the distribution of benefits.

- ***Public consultation requirements of the Local Government Act 2002***

- 3.11 The ARC was aware that communicating the information surrounding its rating decisions for the first time would be complex and undertook an extensive public information and consultation process. Indeed, our review of the documents suggests that the ARC made a greater effort in this regard than in our experience is normal practice for many local authorities.
- 3.12 Information and consultation opportunities were provided across the region as a whole, and targeted information was prepared for particular districts within the region as well as for a range of interest groups. This consultation and information process extended over a longer period than that required by the LGA Special consultative procedure.
- 3.13 Notwithstanding this extensive public consultation process, it is apparent from the response to their rates assessments that many members of the public had not realised the impact on their individual rates as a result of:
- ARC's rates being collected as set by the ARC's resolution;
  - property valuation changes; and
  - increases in public transport expenditure.
- 3.14 Because of the complexity of these changes, several publications prepared by the ARC provided a table to allow individual ratepayers to calculate their liability under the proposals of the draft annual plan. The ARC's public information, in most instances, does not appear to have explicitly pointed out that there would be significant changes to the level of rates paid by individual ratepayers, nor encouraged them to complete the table. Nevertheless we note that some media reports at the time did identify that large increases were likely for many ratepayers.
- 3.15 In a previous report<sup>1</sup> (in which we considered how councils should communicate rating decisions) we suggested that councils ought to either provide information about the rates that would be required under the proposals of a draft annual plan or a means for ratepayers to calculate their liability. In that ARC provided a table to allow individual ratepayers to calculate their liability, it has met this expectation. The usefulness of the material would have been enhanced if the magnitude of the rates incidence change was more clearly identified in ARC's own communication material.
- 3.16 One correspondent raised a concern that the March edition of *Region Wide* contained a table to allow ratepayers to calculate their own rates that contained incorrect information. Officers of the ARC advised us that when the error was identified, advertisements were run in the suburban newspapers through which the incorrect version of *Region Wide* had been distributed, as the quickest and most effective way to reach the audience that would have read the incorrect version. The issue of *Region Wide* was reprinted with the correct information and copies distributed through a wide range of outlets.

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<sup>1</sup> Reviewing a Long Term Financial Strategy and Funding Policy – Experiences of the Early Nine, October 2000

3.17 In our view, while a retraction may have alerted readers to the problem, the error should not affect the validity of the rates, because:

- the information was not a public notice;
- the error was promptly corrected; and
- the error did not relate to the accuracy of the information about rates proposals.

3.18 Officers of the ARC advised us that despite the error, a number of ratepayers forwarded submissions showing that they had managed to correctly calculate their rates using the table containing the error.

- ***Considerations required by the Local Government Act 2002***

3.19 Records of meetings (including workshops) and Council meeting papers, and the ARC's adopted Revenue and Financing policy show that the Council has considered the matters that are required by section 101(3).

3.20 However, not all of these considerations were subsequently reflected in the ARC's adopted Revenue and Financing Policy, especially the requirements for disclosure of the reasons for the selection of general and targeted rating mechanisms.

3.21 In this respect, the ARC is no different to a number of local authorities that, in adopting an Annual Plan for the first time under the LGA, appear to have overlooked this new requirement. However, as there is no direct statutory link in the LGA 2002 from the information requirements of section 103 to the Funding Impact Statement and, thereby, to the rates set, we are not able to comment on the possible impact of any omission for the validity of the rates.

3.22 In particular, we asked for documentation to show us whether the ARC - and correspondents suggested to us that the ARC should have - considered using a transition approach to move toward its proposed funding allocation decisions as set out in its Revenue and Financing Policy.

3.23 However, while this is an option that is available to the ARC in the legislation, it is difficult to know whether this could have been effectively achieved in the ARC's particular circumstances. This is because, as has been noted, three factors had an impact on the ARC's rates.

- Firstly, the increase in public transport costs could only have been mitigated by slowing down the programme for improving public transport service by spreading the work over a greater number of years. This would have affected the time over which improved public transport services became available to the public.
- Secondly, changes in the value of properties could only be addressed by differentiating the general rate between either districts or categories of properties to smooth this change over time. In any event, introducing a differential to smooth valuation changes would not necessarily have resulted in a gradual change in the overall incidence of rates. This is because the ARC's rates in the past had been levied on the general rating system in use in the territorial authorities.

Changes in property values would only coincidentally have been similar to changes in the incidence of rates as a result of rates being assessed as set in 2003-04. Therefore mitigation of changes in property values may not have significantly affected the overall magnitude of rates incidence changes. ARC officers have further advised us that it was not possible to undertake such an analysis as valuation information does not include the reasons for changes in property values (for example, increase in existing property value, value increase due to improvements to existing properties or new subdivisions).

The ARC considered whether it should use an estimate of projected valuations under section 131 of the LGRA. This allows a regional council, where its territorial authorities have different valuation cycles, to obtain from a registered valuer an estimate of values across the region at the same date. The ARC decided not to obtain this information, as it would still have been necessary to differentiate the general rate by location to bring the valuation dates of the territorial authorities to a common date, and it was seen that this could complicate the application of rates.

- Finally, the impact of the requirement for the ARC's rates to be collected as set may have been mitigated by adopting a commercial differential to reduce the shift in incidence from commercial to residential ratepayers resulting where territorial authorities had in previous years set a differentiated rate on commercial properties. The ARC did consider setting a differential that would have increased commercial rates by a factor of 2, which is at the lower end of the range used by territorial authorities in the Auckland region that use such differentials. But following analysis, its view was that the effect of this approach showed that the reduction in the shift of incidence to residential ratepayers was unlikely to be sufficient to effectively mitigate the change.

The ARC would also have had the difficulty of imposing a differential on some commercial ratepayers whose rates had not previously included a differential when, in its judgment, use of a differential was not appropriate.

### **Public transport rates**

3.24 The ARC has based its public transport costs on a Local Government Commission recommended approach dating from 1984 (this approach along with the variations adopted by the ARC to it are set out in the Council's Revenue and Financing Policy for the Passenger Transport activity). For 2003-04, the ARC determined to collect these public transport rates using capital value rather than land value as the rating system in the following proportions:

- 10% of all public transport costs are collected from the region as a whole through general rates. This recognizes that there are benefits to the region as a whole from public transport.
- 10% collected from the passenger transport ratable area. This recognises that the passenger transport system is an integrated network and that improvements to any

component of that network also provide network-wide benefits as it increases the travel options or accessibility of everybody within the network area.

- The remaining 80% of the passenger transport services rates requirement is allocated to each local council area, with contracts being split into 15 geographic bundles, relating to different services. The total cost of subsidised contracts within each bundle is calculated and then census journey-to-work data is used to assign each geographic bundle costs in the following proportions:
  - 55% to the passenger transport service origins (the council area where a journey starts). This recognises that there are localised benefits from enhanced passenger transport services as well. The origins component recognises that many of the benefits of passenger transport funding relate to the improved accessibility it provides to individuals to engage in social, cultural, recreational and occupational activities.
  - 25% of the costs to passenger transport service destinations (the council area where a journey finishes). The destination component recognises that there are benefits to destinations, such as businesses and retail outlets, from improving their accessibility for their employees and customers.

3.25 While there will be a range of views about how public transport costs might be allocated, in our view the ARC has met its statutory responsibilities to consider the relevant range of factors set out and to select funding mechanisms to give effect to its policy intentions. As a result, we see no reason to question the ARC's decisions in this regard.

3.26 We note that the ARC has determined that it will undertake further work during 2003-04 to analyse other options for public transport costs to identify the fairest basis for passenger transport rating for the future.

## **4 Conclusion**

4.1 Overall, we believe that the ARC conducted a thorough process that has involved:


- consideration of the relevant aspects of the LGA and the LGRA; and
- a significant consultation and communication programme that appears to have reasonably taken account of both the Consultation principles and the Special consultative procedure requirements in respect of the Annual Plan provisions in the LGA.

4.2 We appreciate that the impact of the rates has resulted in a large public outcry in the Auckland region and we are not insensitive to the views that many ratepayers have expressed. However, it is not our role to question the political judgment of elected members who have reached decisions they are entitled under statute to make. It is also not for us to express any opinion on the lawfulness of ARC's decisions - only a court can do this. Nevertheless, we are satisfied that the ARC has made thorough efforts to meet its legal obligations and see no reason to question the ARC's decisions.



Please pass on our thanks to the staff that assisted us with our inquiries.

Yours sincerely

A handwritten signature in black ink, consisting of a horizontal line that curves upwards and loops back to the left, ending in a small flourish.

Kevin Brady  
Auditor-General

CC: Jo Brosnahan, Chief Executive