Purpose

This guidance is intended to provide practical assistance to council officials implementing the Local Government (Rating of Whenua Māori) Amendment Act (the Act).

Disclaimer

This guidance is provided for information only. It does not constitute legal advice and cannot be relied on as such. After reading this document, if you consider you need further guidance, you should seek formal legal advice.

Introduction

This guidance is produced by the Department of Internal Affairs (DIA) and provides a series of steps and actions you may need to take to implement the changes introduced by the Act. This guidance is not intended to be comprehensive. It aims to address the key matters in each step but does not go through every detail that may be required to implement particular provisions for your district.

The steps are outlined in this table, and then described in more detail below. The steps are shown in order, although some actions may overlap.

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Identify the Māori land in your district</td>
</tr>
<tr>
<td>2.</td>
<td>Establish your communications plan</td>
</tr>
<tr>
<td>3.</td>
<td>Establish internal processes and protocols about use of the write off power</td>
</tr>
<tr>
<td>4.</td>
<td>Prepare for making unused land non-rateable</td>
</tr>
<tr>
<td>5.</td>
<td>Prepare for making land subject to Ngā Whenua Rāhui kawenata non-rateable</td>
</tr>
<tr>
<td>6.</td>
<td>Establish internal processes to provide for separate rate assessments</td>
</tr>
<tr>
<td>7.</td>
<td>Review other Māori land that is currently or partially non-rateable</td>
</tr>
<tr>
<td>8.</td>
<td>Review your abandoned land and rating sale procedures</td>
</tr>
<tr>
<td>9.</td>
<td>Familiarise yourself with new section 20A – be ready to respond</td>
</tr>
<tr>
<td>10.</td>
<td>Familiarise yourself with new section 114A – be ready to respond</td>
</tr>
<tr>
<td>11.</td>
<td>Establish your timeline for reviewing your funding and financing policies</td>
</tr>
</tbody>
</table>
Step one – Identify the Māori land in your district

Advising you to understand which land this legislation applies to may seem a little obvious, but in many parts of the country there is so little Māori land left that it may not have been a priority for you to identify it.

Your valuation service provider (VSP) should be able to provide you with a list of Māori land rating units in your district as there are special provisions relating to the rating valuation of this land. If you have not separately identified these properties in your Rating Information Database (RID), it may help you to do that now.

Another approach is to use Māori Land Online. You can search this site to identify Māori land in your district, although this would be quite a tedious process if you have more than a few properties.

Step two – Establish your communications plan

You will need to ensure that council staff and service providers who may be affected are aware of what is happening. There will likely be other council officers that need to know about at least some of the provisions in this Act. For example, your chief executive now has a power to write off rates and will likely need advice on how to exercise that power.

You may have different forms of liaison with Māori in your district, and people operating in that area are likely to need to know about the new provisions and how they can help relationships between your council and Māori. You may want to discuss with your VSP how they are going to assist you with some aspects of the Act. Getting a communications plan in place early will likely smooth the implementation process for this Act.

Step three – Establish internal processes and protocols about use of the write off power

The Act introduces the power for chief executives to write off rates arrears. In practice, this functions as two different powers.

Power to write off rates that cannot reasonably be recovered
This is a more general power – your chief executive now must write off any outstanding rates that “in the chief executive’s opinion, the rates cannot reasonably be recovered”. If the chief executive is satisfied that the test is met, they must write off the outstanding rates.

Your chief executive can write off rates either:

• on their own initiative; or
• on application by the ratepayer.

The power is available to all land, but we expect in practice that it would be used almost always in relation to Māori land.

Power to write off rates of deceased land owners
This second write off power is limited to Māori land. It applies to a situation where a property has accrued rates arrears and after the owner died, a member of the whānau
inherits the land and is interested in developing the block and willing to take responsibility for the rates going forward.

The build-up of rates arrears from the previous owner would act as a disincentive to develop the land, so the Act now gives the chief executive the ability to write off the rates arrears existing at the time the previous owner died.

**Internal protocols needed**

On top of general communications and advice to your chief executive about how these powers works, we suggest that your council should develop some internal guidelines. In particular, you would likely find it helpful to agree with your chief executive criteria and tests to apply that will help determine when rates “cannot reasonably be recovered”, so that you can take a consistent approach to use of this power.

The chief executive can delegate these powers to another specified officer, so you may wish to consider whether a delegation should be made.

It’s important to note also that you have to disclose the amount of rates written off in your annual report, so you will need to put in place internal procedures to keep track of these write-offs.

**Step four – Prepare for making unused land non-rateable**

From 1 July 2021 unused Māori land is non-rateable. You will have to identify this land and change its rating status in your RID.

We suggest the following approach to this:

1. Run a report from your RID of all Māori land properties in your district and identify those with less than say $10,000\(^1\) in improvements.
2. Use your GIS system/aerial photography to visually inspect the properties from these images, identifying those that are in a land use that does not generate improvement values (e.g., those with plantation forestry).
3. The residual list is likely to be properties that are unused and are therefore now non-rateable. Note that vacant residential sections in an urban area would be non-rateable unless there was some active use being made. As with other non-rateable properties, these would still be liable for any water and sewer charges being assessed.

Note that if you haven’t already used the write off power to write off any rate arrears on these properties, once these properties are made non-rateable in your system, any arrears outstanding need to be written off.

---

\(^1\) This amount is only illustrative, you will want to determine what is an appropriate improvement value for your particular district that would help effectively indicate if the land was being used.
Step five – Prepare for making land subject to Ngā Whenua Rāhui kawenata non-rateable

From 1 July 2021, land subject to a Ngā Whenua Rāhui kawenata becomes non-rateable. You will have to identify this land and change its rating status in your RID.

The first step in our suggested approach is to check with your VSP whether they already have a record of land subject to Ngā Whenua Rāhui kawenata as part of their valuation work.

DIA is also currently trying to arrange with the Department of Conservation to get each local authority a list of the kawenata in your district to assist with this.

The next step is to determine whether these kawenata cover the whole or part of a property. If they cover the whole site, then it is simple to make the land non-rateable and at the same time to write off any outstanding arrears.

Where kawenata cover only part of a site the approach is more complex:

1. For each of these sites ask your VSP to split the rateable value between that part of the site covered by the kawenata and the balance that will remain rateable.
2. Set up the site in your RID and rate records as you would other sites that are partly rateable.
3. If there are arrears on these sites, you will need to calculate the proportion of the rates attributable to the now non-rateable part of the property and write that off. We suggest you keep a good clear worksheet of how you have done this, as you may well need to explain how you have calculated this to the owners of the property.

Step six – Establish internal processes to provide for separate rate assessments

The Act allows the occupier of a home on Māori land, with the agreement of the Trustees for a property or the incorporation concerned (if either exist), to apply to establish a separate rating area for their property.

Note that this is not an all or nothing requirement. If a block has six houses, you might be asked to provide separate rating areas for three of them.

You will need a system for this, similar to the system you use when part of a rating unit is rateable and part is non-rateable. Be careful not to treat each separate rating area as a separate rating unit. The original rating unit remains and is shown in the District Valuation Roll as such. The separate rating areas exist only in your RID and rate records.

The Act requires you to commence a separate rating area from the financial year after the request is received and gives you a discretion to commence it in the year it is received. We encourage you to take a positive approach to exercising that discretion.
Trustee agreement

Upon receiving an application to establish a separate rating area that does not have a trustee/incorporation agreement already established, the first step is to determine if one is needed.

We suggest you do a block search on Māori Land Online. Each block has a separate record of the title details for the property, showing the management structure type, which will show if there is a trust or incorporation for the property. If there is a trust or incorporation for the property, both the trustees and the house occupiers need to sign the application.

Calculating the separate rating areas

To calculate the rates for each separate area, you will need to arrange with your VSP to take the values for the whole block and split them between the separate rating areas and the residual rating areas.

You will need to split uniform charges also. If you have uniform charges per rating unit, you will end up applying part charges to the separate rate areas. Remember, the total rates charged cannot increase because there are separate rate areas.

You already have procedures to do this for properties that are partly rateable and partly non-rateable (e.g., the church with a house on the same rating unit). You should be able to adapt your systems for dealing with those properties to handle this.

Transition

Clause 3 of new schedule 1AA allows you to do the preparatory work to establish separate rating areas on a property before 1 July 2021 and apply SRAs from 1 July 2021. You can expect owners of Māori land to approach you quite soon, so you need to make sure your front-line staff are aware of this.

Ratepayers of separate rating areas will be able to apply for rates rebates for rates assessed from 1 July 2021, but not for rates assessed earlier than that.

Step seven – Review other Māori land that is currently or partially non-rateable

The Act makes other minor amendments to other types of Māori land that is currently non-rateable:

- removing the two-hectare limits on rates exemptions for marae and urupā; and
- marae and meeting house rating exemptions are clarified to exclude land used primarily for agricultural or commercial activity or as residential accommodation.

You may wish to review your treatment of these properties and evaluate if they are affected by the changes.

Step eight – Review your abandoned land and rating sale procedures

In 1967 the Māori Affairs Act was amended to require the Registrar of the Māori Land Court to reclassify some Māori freehold land as general land (1967 land). This was sometimes done without the knowledge or agreement of the owners.
The Act provides that if a local authority wishes to carry out an abandoned land or rating sale, it cannot sell 1967 land that is beneficially owned by the persons, or by the descendants of the persons, who beneficially owned the land immediately before the land ceased to be Māori land.

In the Court proceedings that are a part of the sale process, you will now need to produce evidence to the Court that the land you are wanting to sell is not 1967 land. The change in status is clearly shown on the title, so absence of any such status change provides the evidence you need.

**Step nine – Familiarise yourself with new section 20A (Rating units of Māori freehold land used as a single unit)**

New section 20A of the Local Government (Rating) Act 2002 deals with the situation where one or more people are trying to develop a group of Māori land blocks as one economic unit (most likely some form of agricultural business). This would arise where a block of Māori land has been subdivided over time into lots that are now too small for individual economic development.

By treating the blocks of land as one rating unit, the uniform charges (and therefore the overall rating liability) will be reduced. The “person” using the land must apply to the local authority for the land to be treated in this way.

Upon receiving application, your local authority must treat the rating units ‘as one’ for assessing a rate if:

(a) the units are used jointly as a single unit by the person; and

(b) your local authority is satisfied the units are derived from, or are likely to have been derived from, the same original block of Māori freehold land, meaning the first Māori land block that was held in an instrument of title and that included the land that became the rating units.

When your council is assessing the second test, the Act says: “it is sufficient evidence that 2 or more rating units of Māori freehold land are derived from the same original block of Māori freehold land if the rating units share a name in common according to the permanent record of the Māori Land Court”.

The easiest way to assess this is to use Māori Land Online. Almost all Māori land has a title with a name in it, e.g. the title is “Ngaiotonga B”. In this case, if the application involves other blocks with the name “Ngaiotonga” as part of the title, that is sufficient evidence that the blocks concerned are likely to have been derived from the same original block and no further inquiry is required for you to approve the application. DIA expects that almost all applications can be resolved by this form of simple check.

**Step ten – Familiarise yourself with new section 114A (Remission of rates for Māori freehold land under development)**

New section 114A of the Local Government (Rating) Act 2002 provides a statutory right for ratepayers to apply for a remission of rates on Māori freehold land where they or another
person are developing, or intending to develop, the land. This section is particularly relevant to councils that may have relatively small amounts of Māori land and quite limited existing remission policies in respect of that land.

New section 114A is quite flexible but requires a local authority to consider the potential benefits to its district and to Māori from developing land. It gives local authorities discretion as to whether any remission is granted, and on the conditions that may be imposed, such as what has to happen before a remission commences and how long a remission lasts for. If a development is staged, remissions may be granted relating to those stages.

**Step eleven – Establish your timeline for reviewing your funding and financing policies**

The Act also amends the Local Government Act 2002 to require the following policies to support the principles set out in the Preamble to Te Ture Whenua Maori Act 1993:

- Policy on remission and postponement of rates on Māori freehold land
- Revenue and financing policy
- Development contributions policy
- Any general rates remission and postponement policy

The Act includes a transition provision to give local authorities time to consider what changes, if any, are needed to their current policies.

The relevant dates are:

<table>
<thead>
<tr>
<th>Policy</th>
<th>Date policy needs to comply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy on remission and postponement of rates on Māori freehold land</td>
<td>1 July 2022</td>
</tr>
<tr>
<td>Revenue and financing policy</td>
<td>1 July 2024</td>
</tr>
<tr>
<td>Development contributions policy</td>
<td>The next review after 1 July 2021</td>
</tr>
<tr>
<td>Any general rates remission and postponement policy</td>
<td>Whichever is earliest:</td>
</tr>
<tr>
<td></td>
<td>• The next review conducted after 1 July 2021; or</td>
</tr>
<tr>
<td></td>
<td>• 1 July 2024</td>
</tr>
</tbody>
</table>

We suggest you ensure the relevant staff conducting these reviews are aware of these requirements and the timeline for carrying them out.

Note that your policy on remission and postponement of rates on Māori freehold land must be considered **next year** (by 1 July 2022) to decide whether it meets the new statutory requirement.

**We are happy to help**

If you have further questions we can be contacted at councils@dia.govt.nz
How can I access the Act?


Please note: The Act makes amendments to several pieces of legislation. Some parts of the Act are already in force, and some will come into force on 1 July 2021. Keep in mind that any Acts amended by the legislation will not show those amendments until they come into force.

For this reason, we suggest using the Act as the primary resource as the changes referenced may not yet be included in the published versions of the local Government (Rating) Act 2002 the Local Government Act 2002 and the Rates Rebate Act 1973.