
RE: Question re meeting 25 November – Farmland Rating Policy

The Local Government Amendment Act 2021 gave immediate effect to allowing all councils to set farmland rates based on geographic location. Was application of this provision considered by the administration and if so why isn't it.

I would assume Councillor Ring is talking about sub-categorisation. The Local Government Amendment Act 2021 at Section 529 provides as follows:

(12) Section 529 Rate may be the same or different within a category

Omit section 529(2). Insert instead—

(2) A sub-category may be determined as follows—

- (a) for the category “farmland”—according to—
 - (i) the location of the land, or
 - (ii) the intensity of land use, or
 - (iii) the irrigability of the land, or
 - (iv) economic factors affecting the land,

The current criteria to determine farmland is that any property over the size of 40 hectares was included in this rate. There is currently no application form to determine whether a property should be classified and rated as farmland.

Sub-categorisation based on geographic location is not considered warranted at this point in time. As act states “may” there is no requirement for Council to look at sub-categories for farmland.

An extract from the Revenue Raising Manual is included below:

6.2 Sub-categories of the farmland category of ordinary rate

Before making the ordinary rate, council may determine a sub-category or sub-categories for the "farmland" category: section 529(1).

By virtue of section 529(2)(a) of the Act, a sub-category may be determined according to the **intensity** of land use; **economic factors** affecting the land or **irrigability** of the land.

Insofar as intensity of land use is concerned, it is submitted that, once again, council will need to look beyond the actual extent or area of land used and to focus especially on the actual intensity of the particular use.

In relation to economic factors affecting the land, it should be noted that abnormal climate conditions (such as drought) are not economic in nature, but may give rise to economic factors e.g. abnormal input costs. Revaluation of land is also not an economic factor; it is merely a statement of the economic value of the land.

It is more important to put in a farmland rating policy and application form that requires ratepayers to show that they are using their property for a business of farming.

The Local Land Services Act 2013 allows the LLS to charge rates on rateable land above 10 hectares regardless of the rating category – so residential Lithgow can have resident paying two sets of rates. How has the Administration considered the proposal will result in a fair and equitable rater structure when one takes into account the LLS rates and the minimal services provided to rural residents.

Not sure of the relevance of this question. This scenario not only applies to Residential Lithgow. Could be any property that is 10has or above located anywhere in the area.

The raising of charges by Local Land Services is done in accordance with their legislation. Rates and charges are raised in accordance with LGA legislation.

All properties 10has and above will be paying 2 sets of rates. There is nothing that can be done to resolve this situation unless Council wishes to reduce rates for all properties 10 has and above.

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Approximately what percentage of your household income is derived from farming activities? %

This question is inconsistent with TR97/11 para 14 – in that residents does not need to derive all his/her income from the activity

Nor does the scale and size of operation determine if an activity is defined as a primary producer refer to paragraph 78 of TR97/11 which references the case of JR Walker and five angora goats – was determined to be a primary producer in that it was a profit making purpose, with repetition and regularity. Research showed that profit could be made from the capital allocated to the breeding stock

This ruling also brings into question why individuals need to list number of stock as this has no relevance from a tax purpose.

TR97/11 is a tax ruling by the ATO. It does not relate to the Local Government Act as regards Farmland Rates which requires they show the farming is a dominant use that is carried on in a continuous and repetitive basis.

The Revenue Raising Manual provides the following example of what occurs when determining a properties eligibility for farmland rating.

“In order to determine whether the **dominant use** of the land in question is for farming, council must look not merely at the amount of land used for the particular activity carried on, but also at the intensity of that use.

Thus, merely because the greater part in area of a parcel of rateable land is used for farming does not necessarily mean that the "dominant" use of the land is for farming. Each case depends on its merits; in some cases the area of land used for farming may be determinative, whilst in other cases the intensity of use may be the decisive factor. In *EA & JM Clarke v Hawkesbury SC* (LEC, O'Neile A, 30331/87, 24/11/87) the Court found that the main use of the subject land was as a residence. The goats kept on the land were an "incidental use" which might or might not develop into a business in the future.

For land to be used for farming it must be used for one or more of the activities specified in section 515(1) of the Act (eg grazing, pig-farming, etc.) and must also be a business or industry.

To be a business, the activity or activities carried on must be carried on systematically as a commercial venture organised for profit. The carrying on of a business implies repetition of acts with a somewhat permanent character

In order to determine whether a business is being carried on, it must be kept in mind that:

- the activity or activities carried on must be a business within the ordinary meaning of that word as a word in the English language;
- a small farming business is still a business;
- a new business does not always produce profits in the initial year or years;
- an activity can be considered to be a business even though it is in an early stage;
- the fact that, for income tax purposes, the applicant is regarded as a primary producer has little or no significance for what is required to be decided by council under section 515 of the Act.

In order to determine whether the farming has a **significant and substantial commercial purpose or character**, it is legitimate for council to enquire whether the particular activity or activities carried on are "too slight" or "too minor" to be reasonably regarded as having the requisite degree of commercial purpose or character. Thus, in the case of farming activities producing very small returns, it may be difficult, if not impossible, to designate those activities as a business having a significant and substantial commercial purpose or character. In addition, as mentioned above, there should be present in the activities some element of continuity and repetition.

Although section 515(1) makes it clear- that the question of whether or not a profit is actually made is immaterial to the question of whether the farming is **engaged in for the purpose of profit on a continuous or repetitive basis**, it is still reasonable for council to enquire, more or less objectively, as to whether there is evidence to support a conclusion that the activities will be economically viable in the future. In other words, the farming carried on must be "on a sufficient scale to have some element of independent viability".

Admittedly, the use of the word "purpose" (plus the express inclusion of the words "whether or not a profit is actually made") makes it clear that the question is to be answered by asking "for what reason", "with what intent" or "to achieve what result" is the activity carried out. However, the necessary purpose will not, it seems, be easily established subjectively (by mere statements of intent) in the absence of an income profit being derived but will need to be established more-or-less objectively (by inferences or conclusions drawn from primary facts), having regard to the likelihood of an income profit being derived in the foreseeable future: Thus, in *Satchwell v Lake Macquarie CC* (LEC Bly A 30104/91 24/5/91) the Court concluded that the requirement for the farming to be engaged in for the purpose of profit on a continuous or repetitive basis was not satisfied as the property was not likely to be profitable for the future 5 year period nor had it been profitable in the past.

In many Land and Environment Court decisions, the interpolated need for some element of "independent viability" appears to have been treated as if synonymous with the "significant and substantial commercial purpose or character" requirement. In other cases, the emphasis has been on the need for evidence of a "going concern" as indicative of the fact that the farming is engaged in for the purpose of profit on a continuous or repetitive basis.

However, matters such as "the magnitude of profits made", "costs incurred" and whether the applicant has any other sources of income have been held to be irrelevant or extraneous considerations.

One thing is clear the "significant and substantial commercial purpose or character" is an attribute of the "farming use" as identified and is not to be measured or assessed by reference to the size of the land on which the farming activity is undertaken. What is relevant is the fact and degree of the commercial purpose or character and not merely the area of the property used.

There is no authority under the Act for council to adopt a practice involving the setting of an arbitrary income or profit threshold as criteria for the grant or refusal of "farmland" applications.

It is also important to note that the use of farmland categorisation as a method of providing rate concessions is not justifiable. It is recommended that councils have some form of policy as to what factors it will use in determining whether any particular parcel of land satisfies the "tests" of "business or industry", "dominant use", "significant and substantial commercial purpose and character" and "engaged in for the purpose of profit" etc. These policies do not have to be formal but an internal set of guidelines would be a minimum. It is important that any policies be flexible to take account of the different natures of farming "industries" in different areas, and so that any changes in the nature of the industries are able to be considered".

I do not consider that taxation rulings have any correlation to how Council determines or applies Farmland Rating to properties.

As outlined in the report the Farmland Rating Policy and Application Form have been done in consultation with other authorities and Councils.