Department of Primary Industries

OUT16/36705

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Dear Sir/Madam

IPART - Review of Local Government Rating System – Draft Report

The Department of Primary Industries (DPI) is part of the Department of Industry, Skills, and Regional Development, also known as the Department of Industry.

DPI works to increase the value of primary industries and drive economic growth across NSW. DPI manages a broad range of initiatives from resource to industry, including natural resource management, research and development, pest and disease management, food safety, industry engagement, and market access and competition.

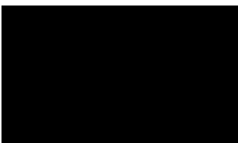
The DPI Strategic Plan for 2015 to 2019 outlines the role DPI plays in driving economic growth and increasing the value of primary industries in NSW. The plan has a focus on three key strategic outcomes:

1. Innovation that improves resilience and boosts productivity,
2. Sustainable use of, and access to, natural resources, and
3. Mitigating and managing risks to community and industry confidence.

Further to our submission dated 13 May 2016 to the Issues Paper for the Review of Local Government Rating System, please find attached the DPI submission to the Draft Report of this review for your consideration. Please note that the submission encompasses advice from the DPI Divisions of Fisheries, Water and Agriculture. Additionally, while the NSW Department of Industry sections of Lands (Forestry) and Local Land Services are no longer within DPI, comments from these organisations have also been included in this response.

For further information please contact Simon Francis, Senior Policy Officer (Planning Policy) on (or via email at

Yours sincerely



Mitchell Isaacs
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7 October 2016

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Attachment A

NSW Department of Primary Industries Submission

IPART Review of the Local Government Rating System - Draft Report

Draft Recommendation 10

Sections 555 and 556 of the *Local Government Act 1993* NSW should be amended to:

- exempt land on the basis of use rather than ownership, and to directly link the exemption to the use of the land, and
- ensure land used for residential and commercial purposes is rateable unless explicitly exempted.

Department of Industry – Lands (Forests)

Lands (Forests) considers that the option to give councils the authority to make decisions on exemptions in unoccupied (those without buildings, structures, etc) State forests may lead to inequities between operators in different local government areas. The economic importance of forestry within regional areas varies across the State, ranging from 'insignificant' in some localities to 'primary employer' in local government areas such as Oberon, and the treatment of forestry by the relevant councils is likely to differ accordingly. This may create operational complexity and confusion for individuals operating in different council areas and provides competitive advantages to those who receive exemptions from one council where their competitors in other councils do not.

State forests are managed for multiple purposes (including harvesting for forest products) and provide a public good. This in-kind, public good, contribution includes the provision of services such as: water catchment protection; fire management; provision of tourism revenue and the delivery of functions and services (e.g. public recreation facilities). The in-kind contribution includes a significant investment in State forest roads which complement the main and local road networks. These roads provide public thoroughfares and access to public recreation opportunities within State forests. The capital costs and ongoing maintenance of these roads is (generally) covered by the Forestry Corporation of NSW. The impact on local council roads by trucks during harvest has been raised. Noting that funding for public roads is primarily provided by State and Federal governments through registration fees and diesel fuel excise, haulage contractors do make a financial contribution.

Draft Recommendation 13

Removal of exemption for land that is below the high water mark and is used for the cultivation of oysters (*Local Government Act 1993* (NSW) section 555(h))

DPI – Fisheries

DPI notes potential difficulties and negative outcomes should the rate exemption for 'land that is below the high water mark and is used for the cultivation of oysters (*Local Government Act 1993* (NSW) section 555(h))' be removed. DPI recommends that IPART consider three key reasons for maintaining the *Local Government Act 1993* rate exemption for the oyster industry as follows:

1. **Equity of Commercial Uses** – other commercial businesses are not required to pay local government rates for the commercial use of "water land", and unlike a lease for land, an aquaculture lease for "water land" does not afford the lease holder exclusive possession of the lease area.
2. **Public Costs for Industry** - that unlike lease for land, aquaculture lease areas incur significant public costs associated with shoreline and catchment water pollution caused by other land and water users.

3. **<u>Revenue Recovery Challenges and Impacts</u>** - depending on the various scenario used, the modelled revenue may be either too small to justify implementation or so large that a significant oyster industry restructure may occur. Three scenarios (and the associated rates structures) are presented in Table 1.

A more detailed explanation of these reasons is contained hereafter.

1. **Equity of Commercial Uses**

Commercial fishers, marine contractors and tourism operators conduct business in and over 'water land'. These businesses are not required to pay local government rates for the use for commercial purposes of "water land". Similarly commercial moorings do not pay council rates. Removal of the exemption for oyster aquaculture leases would therefore create an inequitable disadvantage for aquaculture businesses.

This inequity is relevant to the commercial use of all water land, but becomes most obvious when oyster leases themselves are considered. Under the IPART proposal, the oyster industry would be required to pay rates to use a leased area, while other businesses using exactly the same area would not. This arises because oyster leases do not confer exclusive possession.

Oyster leases (aquaculture leases) are issued under the *Fisheries Management Act 1994*, in which section 164 (Rights conferred by a lease) specifies that:

> *1) An aquaculture lease vests in the lessee, the lessee's executors, administrators, and assigns:*
>
> > *(a) the exclusive right during the currency of the lease to undertake the type of aquaculture specified in the lease, subject to the provisions of or made under this Act and the provisions of the lease, and*
> >
> > *(b) the ownership of all fish or marine vegetation specified in the lease that are within the leased area.*
>
> *(2) An aquaculture lease does not confer the right of exclusive possession of the leased area.*
>
> *(3) An aquaculture lease is subject to the public right of fishing and to any right recognised by the regulations, except as provided by subsection (1) and the other provisions of or made under this Act.*
>
> *(4) Nothing in this section authorises a person to interfere with or damage anything on the leased area*.

Wild harvest rights and public rights to fishing co-exist with the lease area. As a result other businesses and individuals can operate at the same location – for example there are wild harvest shellfish businesses operating in Wallis Lake, Shoalhaven River and Merimbula Lake. These businesses can and do gather shellfish from aquaculture lease areas for subsequent sale. In addition, recreational fishers and boaters and tourist operators can use leased areas.

<u>Public Costs for Industry</u>

Public costs for industry should be considered as well as public benefits. IPART proposes that where an activity provides substantial public benefits to the community it may be equitable and efficient to exempt it from paying rates. DPI recommends that IPART should also consider that where an industry incurs significant unavoidable public costs it may be equitable and efficient to exempt it from paying rates.

Under the *Fisheries Management (Aquaculture) Regulation (2012),* Section 53 confers additional public rights over aquaculture leases as follows:

> *(1) The right of the owner or the lawful occupier of any land adjoining a leased area to drain the surface water off the land on to the area is a recognised right for the purposes of section 164 (3) of the Act.*

(2) A lessee is not entitled to compensation for any damage to the leased area or to the stock on the area caused by the reasonable exercise of such a right.

(3) To avoid doubt, this clause does not apply to water accumulated by an act of the owner or lawful occupier of land adjoining a leased area, or an agent of either of them, or as a result of works on the land carried out by or with the approval of that owner or occupier.

The oyster industry incurs significant unavoidable public costs associated with shoreline and catchment water pollution. These costs include the costs of monitoring programs and harvest area closures required to ensure that their products can be certified safe for sale. NSW oyster growers pay monitoring costs of between $800,000 and $1 million per year. These costs are considerably higher than incurred in other parts of the Australian oyster industry and are a consequence of the lease areas being adjacent to or downstream of urbanised, residential or otherwise developed areas.

NSW oyster growers are regularly forced to close down their leased harvest areas as a consequence of water pollution incidents. In the period 2012-2015 there have been 122 sewage spills and 3 fuel spills reported adjacent to oyster leases. These spills impose significant and ongoing management and monitoring costs on the industry as well as the requirement to withdraw shellfish product from sale.

In regional NSW local government generally manages the local water utility and operates the sewerage treatment plants and reticulation. In addition they have a statutory role in the approval to install and operate on-site sewage systems for residential/commercial premises not connected to reticulated sewerage.

NSW oyster farmers can do nothing to reduce catchment pollution and requiring oyster farmers to pay Local Government rates for' water land' would create a perverse price signal.

Revenue Recovery Challenges and Impacts

DPI is uncertain how the rating of oyster aquaculture leases is intended to be implemented. Three possible scenarios are considered:

1. That rates are charged to DPI as the landlord by each council, with each set of leases in a council area treated as a single rateable property. Under this scenario DPI would receive 17 accounts. Discussions with IPART indicated that this is a likely scenario but DPI is not aware that other Crown Land leases are rated in this manner.
2. That rates are charged to each lessee with each lease treated as a single rateable property. This is similar to how rates are charged for other residential commercial and farmland.
3. That rates are charged to each oyster farming business (aquaculture permit holder) with the businesses lease holdings treated as a single rateable property.

An analysis of the potential cost to the oyster industry under these three scenarios is given in Table 1. It is assumed for this analysis that the rateable value of an oyster lease would be a blanket $5,000 per hectare. A sensitivity analysis using $5,000 and $7,500 per hectare is given in Table 2. Note that we have only included data from the eight councils that have the highest number of hectares of oyster lease. These councils hold 88% of the total NSW oyster lease area. For each of the councils analysed, the rate includes the base rate, *ad valorum* rate and any mandatory environmental, waste, water safety (Central Coast) and Hunter Catchment (Port Stephens) levies and charges. The cost of the Emergency Services Property Levy is not included.

Scenario 1 generates the least revenue and once the costs of valuation and administration are considered, the net revenue would be small. Under this scenario DPI would pass on to the oyster industry the full cost of the rates and the costs attributable to administration. Scenario 1 is highly sensitive to the valuation of the leases with a tripling of the value resulting in close to a tripling of the cost to industry.

Scenario 2 would raise revenue of approximately $1M per annum, a value that is likely to have significant economic and employment impacts on the NSW oyster industry. For comparison DPI

levies approximately $220K in lease rent per annum. Significant industry restructure is anticipated under this scenario. Scenario 2 is not sensitive to the valuation of the leases because the total cost is dominated by the base rate applied to all 2234 leases.

Scenario 3 revenue is of a similar magnitude to the annual DPI rent. This option would be difficult to administer as many leases are held in multiple different names or in names that are different to the permit that authorises the lease.

Valuing Oyster Aquaculture Leases

Valuing oyster aquaculture leases for the purpose of *ad valorem* rating may not lend itself to mass valuation methodologies due the complexity of factors that affect lease productivity. These are outlined in our Submission to the Issues Paper. Rent is not an indicator of land value as it is applied uniformly across the State at $56/ha.

In addition, valuing the capital improved value for the purpose of the Emergency Services Property Levy would require knowledge of the type of infrastructure on the lease and the age of the infrastructure. Oyster culture infrastructure deteriorates rapidly in the marine environment making capital improved value highly variable.

Table 1: Estimated Total Council Rates on Oyster Aquaculture leases for the eight Councils with the highest number of hectares of oyster lease (88% of all lease area), based on a rateable value of $5,000 per ha, under different scenarios.

Council	Leases	ha	Permits	Rates charged to DPI as one rateable lot per Council	Rates charged to lessee, each lease a rateable lot	Rates charged to permit holder as one rateable lot
Port Stephens Council	265	497.8312	48	$9,278.37	$118,046.37	$25,963.37
MidCoast Council - Great Lakes	424	451.2729	60	$7,877.19	$161,637.69	$26,934.19
Bega Valley Shire Council	340	451.0186	65	$9,432.93	$169,779.93	$39,704.93
Eurobodalla Shire Council	297	371.1101	40	$5,931.46	$162,249.06	$23,871.46
Central Coast Council	120	218.7027	32	$2,549.19	$62,763.19	$18,235.19
Port Macquarie-Hastings Council	229	194.5058	35	$3,446.66	$128,732.66	$21,211.66
MidCoast Council - Manning	191	155.2107	18	$2,919.23	$131,686.03	$13,301.47
Shoalhaven City Council	118	153.4962	14	$1,975.49	$61,060.49	$8,540.49
The Council of the Shire of Hornsby	60	91.3494	12			
Kempsey Shire Council	78	77.2115	12			
Nambucca Shire Council	39	59.543	8			
Sutherland Shire Council	12	21.4308	3			
Ballina Shire Council	10	20.6496	3			
Tweed Shire Council	11	20.1066	4			
Clarence Valley Council	13	17.9432	4			
Bellingen Shire Council	18	10.2067	3			

Byron Shire Council	9	6.1433	3			
Totals	2234	2817.732	364	$43,411	$995,955	$177,763

Table 2: Estimated Total Council Rates on Oyster Aquaculture leases for the eight Councils with the highest number of hectares of oyster lease (88% of all lease area), assuming a rateable value of $2,500, $5,000 and $7,500 per ha, under different scenarios.

Rateable value per hectare	Rates charged to DPI as one rateable lot per Council	Rates charged to lessee, each lease a rateable lot	Rates charged to Permit holder as one rateable lot
$2,500	$23,713	$976,258	$158,065
$5,000	$43,411	$995,955	$177,763
$7,500	$63,108	$1,015,653	$197,461

Draft Recommendation 18

The Local Government Act 1993 (NSW) should be amended to remove the current exemptions from water and sewerage special charges in section 555 and instead allow councils discretion to exempt these properties from water and sewerage special rates in a similar manner as occurs under section 558(1).

DPI – Water

- DPI supports the draft recommendation 18 proposing removal of the current exemptions from water and sewerage special rates in section 555 of the *Local Government Act 1993* and instead allow for councils discretion to exempt these properties from water and sewerage special rates in a similar manner as occurs under section 558(1).
- In DPI's view, a comprehensive list of the properties that may be exempted from the water and sewerage special rates, along the lines of the Schedule 4 of the *Water Management Act 2000*, will assist councils to apply these exemptions in a consistent manner. IPART may include such a list in its final report, which then could be included in the new Local Government Act.

Draft Recommendation 20

The current pensioner concession should be replaced with a rate deferral scheme operated by the State Government.

DPI – Water

Under the section 575(3) of the *Local Government Act 1993* an eligible pensioner is allowed reductions for ordinary rates and domestic waste management services, and also for water and sewerage special rates or charges.

The IPART draft report (including the Box 7.1) refers only to the ordinary rates and domestic waste management services and remained silent on the water and sewerage pensioner concession.

DPI recommends all concessions for pensioners under the section 575(3) of the *Local Government Act 1993* are treated in a consistent manner.

Draft Recommendation 21

Section 493 of the *Local Government Act 1993* (NSW) should be amended to add a new environmental land category and a definition of 'Environmental Land' should be included in the LG Act.

DPI – Water

The draft report notes the current rating system includes four rating categories (residential, business, farmland and mining) which reflect the primary use of the land. It notes land that cannot be developed due to geographic or regulatory restrictions is currently categorised as one of these categories. The report proposes to add a new environmental land rating category for this land that cannot be developed.

It is unclear if the environmental land category will apply to residential land that can in part be developed as a residential property but also partly includes environmental land, or if the environmental category will only apply for example to residential zoned land that can't be developed as a residential property due to geographic or regulatory restrictions. The final report should clarify this.

DPI recommends the examples/definition of environmental land in the report is amended to include:

- waterways (watercourses, creeks, wetlands etc),
- riparian land (as determined by DPI Water Guidelines for Controlled Activities on Waterfront land or the relevant planning instrument)
- land not able to be developed in accordance with the proposed new Biodiversity Conservation legislation.

DPI notes that while the draft report refers to environmental land as having 'limited economic value', consideration should be given to emphasise the economic, social and environmental value derived from protecting, enhancing and maintaining environmental land, including waterways and riparian land. Environmental land is an asset and the report should reflect this. Healthy functioning/rehabilitated riparian land, for instance, provides benefits to social/urban amenity, biodiversity, water quality, bed and bank stability, improving overall waterway and catchment health, aesthetics etc.

It is unclear if consideration has been given as to whether lots that front on to, or include environmental/riparian land increases the value of the land and therefore direct economic value, for instance:

- DPI is aware of anecdotal evidence from the development industry that where a riparian corridor has been rehabilitated with riparian vegetation this may increase the value of the lot.

The report indicates environmental land imposes lower costs on a council and they should be able to levy lower rates on environmental land to reflect the lower costs. The adoption by council to levy lower rates on environmental land should be on the proviso that the individual landholders protect and maintain the environmental land for its environmental purpose. DPI has found riparian corridors which have been revegetated by a developer are sometimes cleared and mown once the land comes under private ownership, particularly if the vegetation has not grown adequately (to reach the height, trunk circumference, etc) to be protected by a Council Tree Preservation Order.

To prevent the clearing of environmental land/riparian vegetation by private landholders, it is recommended that the council's website and the rates notice received by ratepayers explains a lower rate levy has been applied to the environmental land on the basis that the landholder protects and maintains the environmental land.

<u>DPI – Fisheries</u>

IPART suggests that environmental land could include land that has limited economic value and cannot be developed with site improvements due to geographic or regulatory restrictions could be classed as environmental land. Geographic factors could include water areas, mud flats, swamps marsh lands steep slopes and other terrain on which residential or commercial development is virtually impossible because of physical limitations.

Clearly "water land" (and the intertidal areas where oyster aquaculture leases are located) would have to fit into this category should it be introduced. As a result it can be expected the revenue generated by proposed rates on 'water land' would be expected to be small and may exceed the cost of collection.

Draft Recommendation 25

Section 529 (2) (a) of the *Local Government Act 1993* (NSW) should be replaced to allow farmland subcategories to be determined based on geographic location.

DPI – Agriculture

DPI notes difficulties with Recommendation 25, based on the following:

- DPI's original comments describing the administrative difficulties and high probability of confusion in calculating subcategories remains.
- The suggested change to a geographic assessment simply shifts the problem to a regional or geographic scale.
- A "geographic location" brings further problems in effectively redefining the geography that would be applicable i.e. should it be based on local government boundaries, catchment area, soil type, etc., not to mention changing climatic conditions.
- Some parts of NSW are now referred to as having micro climates. The recent 10 year plus drought has been replaced in 2016 by some of the worst flooding on record making it very difficult to make a consistently fair evidence based assessment.
- The factors affecting the value of farmland are numerous and simple calculation of this value may not be representative in terms of accuracy. Any assessment criteria would be subject to the risk of legal challenge.
- Most councils in NSW do not use Section 529 (2) (a). This is very likely because of the subjectivity of the existing subcategorization. The difficulties in defining the geographic location of farmland are likely to result in a similar issue with subjectivity.
- The level of farm debt (DPI administers the *Farm Debt Mediation Act 1994*) is a concern and linked to mental health of fulltime farmers. DPI Agriculture is concerned that the use of subcategories will increase rates within targeted farming communities and result in additional stress. Note that the Agricultural Competitiveness Green Paper (p 35), also confirms rising debt levels as an issue, and the Senate Economics Legislative Committee March 2015 (p28) states "Based on the evidence before it, the committee observes that levels of debt and the ratio of rural debt-to-income clearly increased significantly between 2003 and 2008, and have remained high since then."

Department of Industry - Local Land Services (LLS)

Regarding the proposed changes relating to farming sub-categories the report should consider linking/aligning any changes with LLS' rates, where relevant. This is important to ensure:

- There are no significant changes to the LLS ratepayer base as a result of the changes.
- The impacts on LLS ratepayers are minimised; preventing financial burdens for shared ratepayers.
- Ratepayers are not levied for the same services twice, for example if LLS is using rates to provide weed management services in an area there is no need for local government rates to be expended on weed management. LLS are prepared to engage with local government to avoid duplication.

End Attachment A