

IPART – Review of the Local Government Rating System

Local Government – Draft Report, August 2016 (Report)

Submission – Mid-Western Regional Council

14 October 2016

Mid-Western Regional Council (MWRC) supports the recommendations which afford flexibility to councils without imposing requirements. Flexibility will allow each local government area to develop a set of structures which are appropriate to the unique circumstances within each local government area.

MWRC is silent in its response to draft recommendations where there is general agreeance in principle with the draft recommendations made by IPART.

MWRC's submission, commenting on a number of draft recommendations where MWRC does not agree in principle with the recommendations, follows:

Draft Recommendation 3.3 – Removing the minimums from the rate structure

The focus of this finding appears to be directed to the current inequity of the rating of residential units particularly in the cities and larger regional areas and, while findings might to valid in this context, the recommendation is not considering how the removal of the minimum would affect lower valued properties in rural areas.

In the MWRC area there are precincts where values are low (within towns and rural areas). If the option to rate on a minimum was removed, these properties would pay very little rates above the base amount. The rates on these very low valued properties would go down, as would the rates on the very highly valued properties, with the properties attracting a middle-range valuation left burdened with an increase, notwithstanding that the same services are utilised by all property owners. The removal of the minimum would not produce an outcome in the MWRC area which was any more equitable than the current structure based upon minimums.

The proposed removal of the minimum is viewed as being counter-productive in the context where two of the major premises of the Review of the Local Government Rating System are to provide flexibility and equity.

Draft Recommendation 5.2 - Give councils greater flexibility when setting residential rates

MWRC advocates the abolition of the reference to the *rural residential* definition of 2-40 ha in order to pursue the principle of simplicity. The abolition will allow councils to set rural-residential sub-categories to capture all non-urban (or rural properties) which do not conform to the *Farmland* category definition. It is onerous to work within the constraints of the current definition for the *rural residential* sub-category.

Draft Recommendation 6 - Better target rate exemption eligibility

Sections 555 (1)(b1) and (b2) LG Act - MWRC advocates conservation agreements – 555 (1)(b1) and (b2) – should be removed in response to the equity principle.

Conservation agreements are undertaken on the premise the land is of some ecological or historical importance to the larger Australian community and not just to the immediate local community where these sites are located. However, single-entity property owners who enter into such agreements still enjoy the entitlements and lifestyle which ownership affords at the expense of other local ratepayers who subsidise those who pay little or no share of the community's rate burden.

The agreement is with a State body (not the local government body) and MWRC advocates that the State body should bear the burden or the relevant legislation should be more flexible to allow significant land to be transferred to National Parks.

Additionally, as part of environmental offset programs and provision of buffer areas, mining companies are putting land under State conservation agreements. The agreements make the land non-rateable, even though often mining is occurring under this land or, the mining company requires this land to be set aside for buffer purposes between their mining operations and their near-by neighbours. In the majority of cases, mining activities would not be able to proceed without the buffer areas or environmental offsets in place. The mining companies are complying with operating consents but, at the same time are able to avoid paying Council rates on these land parcels that they are required to own in order to operate.

Again, it is reiterated that there needs to be a complete and detailed review of the legislation relating to the circumstances as outlined above in relation to mining operations entering into conservation agreements so that there is no impact on all other landowners within the region who currently bear the burden of subsidising mining companies through their rates.

Draft Recommendation 7 - Replace the pensioner concession with a rate deferral scheme

It is difficult to fully agree in principle to this draft recommendation due to the lack of clarity as to what is being proposed, how the scheme is to be delivered at the local government and State levels and the responsibilities of each entity.

It is assumed any deferral amount will be remitted to council by the Government and the deferral amount will then become a debt to the Government to collect. It is however, not clear in the draft recommendation of the complexity of the administration required to achieve this outcome. If the premise is correct, it is considered that councils would be effectively administering another scheme which would prove to be onerous and complex to manage. As such, it is advocated that the *administrative fee* recommended to be collected by the Government, should be remitted to councils.

It is acknowledged that the scope of the Review in relation to pensioner concessions considered changes and impacts to the general purpose rate only. Rural councils also grant pensioner concessions in relation to water access charges, water usage charges, sewer access charges etc. Further consideration must be given to including these charges in the deferral scheme, otherwise rural councils would be substantially burdened administratively and it is suggested that there would also be confusion amongst pensioner ratepayers regarding same.

Local Government Cost Index and the Deferral Scheme - It is submitted that under current arrangements, the pensioner rebate is an expense to councils. If this expense is removed by implementing the deferral scheme, the Local Government Cost Index should exclude the reduction in costs. If this situation was to occur, it is advocated that mechanisms be put into place so that the amount is not lost to councils through the rate-capping process. Currently, councils are forced to pay for welfare and should be able to spend that money providing services and not lose it.

Review of Section 575 LG Act - It is also considered that Section 575 of the Act be reviewed and the legislation changed to make it clear that the only rebates allowed are for those types of rates and charges and for the amounts specifically mentioned in Section 575(3).

The literal interpretation of Section 575(2) is to allow a rebate for Section 501 charges up to one half, without a maximum limit. Charges specifically mentioned at Section 575(3) are for domestic waste management services (made under Sections 496 & 502 of the Act) and not charges raised under Section 501.

The Office Local Government will not approve a 55% subsidy payment to Council for the one-half amount rebated on Section 501 charges.

Draft Recommendation 8.2 - Introducing a new Environmental Land category

At 8.2.1, it is suggested that certain land, due to regulatory restrictions may fall under a proposed Environmental Land Category.

It is advocated, under the principle of equity, that any consideration to classify land under this proposed category should take into account the purpose for those restrictions, particularly in the instance of land identified as environmental offset lands or buffer lands specifically required as part of mining operations - refer to comments *at Draft*

Recommendation 6 - Better target rate exemption eligibility, above. These lands are required for the business of a mine and not purely for conservation for conservation sake, but conservation for the mines purpose ie mining and to operate within the consent approved.

At 8.2.2, *Stakeholder comments*, it is noted that the NSW Mineral's Council has stated that environmental buffer land is charged the mining rate although in many cases the land can't be developed and the introduction of an environmental land category would address this concern.

It is contended, based upon judgments handed down in the NSW Land & Environment Court, that councils can only categorise and rate parcels of land as mining if the Valuer General has included them in the mining valuation ie formally part of the mining project and mining lease area. Any other environmental land held by a mining company which is not valued in the mining valuation currently cannot be categorised or rated as mining, notwithstanding its purpose for ownership ie must be held in order for the mine to operate.

It cannot be ascertained as to which situation the NSW Mineral Council is referring to in its statement ie environmental buffer land valued in the mining valuation (which currently warrants and should be categorised and rated as mining) or environmental buffer land held outside the mining project/lease area. In either case, it is advocated that such land parcels should not eligible under the proposed Environmental Land category.

Alternatively, it is argued, again under the principle of equity, that flexibility be allowed to sub-categorise the proposed Environmental Land category as it is contended, for example, that un-useable mud flats are not the same as offsets for the purpose of a mine.

Draft Recommendation 8.3 - Introducing a new Vacant Land category

It is suggested that it is easier in metropolitan areas for councils to identify vacant land. Many rural councils find it administratively hard to identify and maintain records in relation to vacant land. If it is proposed that a Vacant Land category be introduced, it would be mandatory for all councils to comply to identify vacant land and this mandate would not suit every council.

It is advocated under the principles of equity and simplicity, that Vacant Land should be a sub-category of the other categories to give the flexibility to levy differential rates. It would not then be compulsory for councils to identify vacant land if a council does not so desire.

Review of Section 519 LG Act - In addition, a full and comprehensive review of Section 519 of the Local Government is considered necessary with the view of clarifying and simplifying this area of legislation.

Vacant land is to be categorised, in part, according to the zoning and taking into account any improvements and the nature of surrounding development.

Under this current legislation, it is possible that a parcel of land devoid of any agricultural pursuits and surrounded by land used and categorised for mining activity, to be deemed vacant land and subsequently categorised as Farmland based upon the zoning. The zoning of the land may allow for farming, but also may allow for mining and business pursuits.

It is considered that the default Business category would be more appropriate. This consideration is based upon the premise that properties conducting some agricultural pursuits, but lacking the scale or capacity to have significant and substantial commercial purpose or character, do not qualify under the Act to be categorised as *Farmland*. Instead, such properties are categorised as either Residential or Business.

There appears to be a real inequity in allowing vacant land to be categorised as Farmland when there is no scale or capacity to have significant and substantial commercial purpose or character whatsoever, and accordingly it is submitted that this area of legislation needs to be reviewed.

Draft Recommendation 8.7 - Mining rates to reflect cost of council services

Council disputes this recommendation in response to the principle of equity.

Rates are a tax imposed at a local level and not purely a fee for service. Councils need the flexibility to set appropriate rates for their communities and it is therefore suggested that the Minerals Council's view is one opinion only. The IPART enquiry found evidence that supports the Mineral Council's view, but the analysis appears to be based predominantly on pure rating data and there seems to be no other enquiry as to why the ratios may be in place within individual LG areas.

The basis for MWRC's argument for flexibility and equity rests on the impacts mining operations have on the local community and economy.

Mining companies buy agricultural land and permanently take these lands out of production and by doing so affect the future long-term prospects of the local economy forever. It is because of these long-term or permanent effects on the economy in relation to the demise of previously stable and sustainable farmland land use, that it is submitted mining operations should be contributing over and above their draw on services as when the mining activity is finished, that land remains unproductive and as such, reduces its ability to contribute to the local economy permanently.

The majority of the draft recommendations made in the Report are recommending changes to increase flexibility – this recommendation is eliminating flexibility on a local level all for the benefit of reducing costs for a very small number of relatively short-lived/volatile mines. The mining activity is taking away an existing asset from the local community and it is considered only reasonable that the local community benefits from the mines occupation now.

It is acknowledged that there is a boom when mining companies are operating to full capacity but, conversely the operations are reducing a council's future earning capacity – local government areas are left with unproductive land and no minerals – that local wealth is gone.

A mining operation in a local government area is not a contribution, it is an impact or result because of its operation. When the mining operation ceases, there is a down-turn and it effects all aspects of the local community and everyone living in the local community. By regulating rates as recommended at 8.7, it takes away local ability to put a price on mining activity.

Review of Section 517 LG Act - Further, it is suggested a full and comprehensive review of Section 517 of the Local Government Act is considered necessary in relation to the tight definition of the word "mine"

Judgments made by the NSW Land & Environment Court in 2013 substantially narrowed the definition of "mining" for rating purposes, severely restricting the ability of local government to rate mining land holdings in accordance with their dominant use. Council's have been left with no alternative but to use the Chief Judge's ruling that reliance upon the definition from the Act's Dictionary for the word "mine", is irrelevant; bearing in mind that the word "mine" is only used within the Act at Section 517 (other than reference to a mine safety location). It is suggested that we now have a difficulty in local government as an industry, if we are unable to rely on definitions within the Act's Dictionary for the purposes of interpreting and applying the Act.

The word "mine" is defined in the Dictionary of the Act as follows:

"means land on or below the surface or partly on or partly below the surface used or held for mining purposes".

The word "mine" was taken from the 1918 Act and transposed directly into the 1993 Act. It is clear that circumstances have changed considerably in relation to how mining now operates since 1918.

Mining companies purchase land for noise, dust and visual attenuation as well as for environmental offsets. All the land is part of the wider mine site ie the land that is required for the mine project, without which, a mine cannot operate. The agricultural purposes of the lands are taken away and it is submitted that as the lands were purchased for mining purposes it is appropriate to categorise and rate these lands as Mining.

It is suggested that the definition of the word "mine" should be amended and defined to incorporate **all** activities which incorporate a mining activity on land including land used or

held for stockpiling, noise, dust and visual attenuation and for offsets, whether within the project/mining lease area or not - all of which are required for mining operations to occur.