IPART Review of the Local Government Rating System

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NSW Farmers' Association Background
The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

Executive Summary

The *Fit for the Future* reform agenda for Local Government Areas (LGAs), particularly its application in rural and regional areas, is a significant issue for the Association's members and their local communities. NSW Farmers was actively involved in the review of Local government and will continue to comment on issues directly affecting the farming community.

The core issue at the heart of the Government's reform agenda is the financial sustainability of local government. The controversy surrounding the KPMG assessment has not assisted, but nor has the ratings review addressed the fact that local government does not receive a fixed level of income tax. The Association holds that local government should receive a fixed share of tax revenue, such as through Specific Purpose Payments, to fund the essential services it provides.

We oppose the application of Capital Improved Value (CIV) to farmland on the basis that it would be expensive and intrusive to assess farms and is likely to add to the cost of services and the rates themselves.

We remind the Independent Pricing and Regulatory Tribunal (IPART) of our original recommendation that the NSW Government should establish an independent panel for ratepayers to appeal decisions in regard to rating structures. This will be particularly important in situations where a category of ratepayers are in the minority whilst paying a significant portion of the rates, as is typical for farmers.

We support amending Section 511 of the LGA to allow variations to accommodate communities suffering economic downturn, *e.g.* drought.

The Association believes that rates should be paid on the basis of those who most use local government services or amenities or receive the most value from their use relative to their contributions towards the provision of the services or amenities. However, we submit that the exemption from council rates of land that is below high water mark and is used for any aquaculture relating to the cultivation of oysters should remain.

We note the recommendation to allow farmland subcategories to be determined based on geographic location – this may be required to allow geographic rate differentials when amalgamated councils harmonise rates in their shire. We support the draft recommendation that any difference in the rate charged by a council to a mining category compared to its average business rate should primarily reflect differences in the council's costs of providing services to the mining properties. Such changes would allow councils to deal with production increases and for mining within different areas which can have a variable impact on public infrastructure.

Should the government consider taking up the draft recommendation to calculate the Emergency Services Levy on CIV, current modelling of the impact of the property levy would be irrelevant. The recommendation creates considerable uncertainty about the potential impact of the levy and creates the spectre of additional rises in the levy over time.

With regard to the recommendation that councils should be given the choice to directly buy valuation services from private valuers that have been certified by the Valuer General, we submit that this may well add to the cost of assessing CIV.

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Allow councils to use CIV as an alternative to UV in setting rates

Draft Recommendation 1 – Allow councils to use CIV

The Association holds that the method used for determining the valuation method should be fair and equitable and reflect the purpose of which the land is being used. With regard to IPART's draft recommendation that councils should be able to choose between the CIV and Unimproved Value (UV) methods as the basis for setting rates at the rating category level, we note that this could be a very messy way to value properties if one council is doing something one way and next door another council is following a different methodology.[1]

However in our previous submission, we noted that the current system is not ideal, and we particularly noted the issues faced by coastal councils with residential rate structures which did not allow councils to recoup the costs of providing services to them. We further note that the draft report states that for farmland properties "…the UV and CIV methods should produce a relatively similar outcome, to the extent that the value of buildings and other capital structures relative to land value is fairly low and stable across properties."[2] However, the basis for valuation is not the main concern, rather it is the rate applied to any category by a local council that is likely to drive the biggest inequities, as it currently does now.

The Association holds that farmland rates should be the lowest *ad valorem* rate given the relatively few services provided to them directly. Local government rates from rural landholders support local community infrastructure and services that those landholders do not derive full benefit from. By contrast, services such as road maintenance and infrastructure are often cited as poor and inadequate despite being essential to the productivity of farming enterprises.

Having noted above that it is the rate applied by council (rather than the valuation method) that is more relevant to an equitable system, our members nevertheless oppose the application of CIV to farmland on the basis that it would be expensive and intrusive to assess farms and is likely to add to the cost of services and the rates themselves. Using a dual methodology (UV for farmland and CIV for residential and commercial/industrial) would probably result in a more equitable distribution. However, our members judge that it would be unnecessarily complex, difficult to understand and expensive to administer.

We further note that IPART has recommended that CIV data should be collected in council areas that continue to use UV as the basis for determining rates – this seems a waste of money and resources unless the NSW Government has an agenda to shift all councils to CIV in the future, making a mockery of providing them with 'choice', as the draft recommendation is currently constituted.

The report is silent on what constitutes CIV – the elephant in the room – and until this is strictly spelt out, we are all flying blind.

[1] Noting that the draft recommendation stated that a council's maximum general income should not change as a result of the valuation method they choose.

[2] Independent Pricing and Regulatory Tribunal of New South Wales, *Review of the Local Government Rating System - draft report August 2016*, p. 29, fn 22

Draft Recommendation 2 – Remove minimum amounts from the rate structure

The Association holds that local councils need as much flexibility as possible to create an equitable rating system to provide for core functions:

1. provision and timely maintenance of essential services (water, sewerage, roads *etc*.) in the local community; and
2. provision of local planning services.

With regard to the recommendation to amend Section 497 of the LGA and remove section 548, even if most regional councils do not currently use these rates, removing the option may reduce a council's flexibility, noting that a base rate is not subjected to rate pegging.

Noting IPART's discussion of the 50 per cent limit on base rates[3], the Association's policy supports a base rate providing at least 30 per cent of required revenue, and it should be, per category, no less than 50 per cent.

However the core issue at the heart of the Government's reform agenda is the financial sustainability of local Government. The controversy surrounding the KPMG assessment not assisted, but nor has the ratings review addressed the fact that local government does not receive a fixed level of income tax. The Association believes that local government should receive a fixed share of tax revenue, such as through Specific Purpose Payments, to fund the essential services provided by local government. This will then cover those elements of cost that are or were state government's responsibility.

[3] *ibid*., p.40-41

Allow councils' general income to grow as the communities they serve grow

Draft Recommendation 3 – The growth in revenue outside the rate peg be based on increased supplementary valuations

The Association can see the value in a system that it not reliant upon special variations to manage growth. Applying a system, in accordance with the draft recommendation, that pegs revenue raising to the proportional increase in CIV and requires councils to employ expensive valuation projects may cancel out the proposed growth in rates revenue.

Rate pegging should continue in order to manage the rise of rate income, and our members believe that pegging is important to ensure that rate rises are equitable. Currently, once the rates and charges have been adopted for a particular year, they cannot be changed until the next year. Before the final amounts are fixed each year, councils must prepare a draft operational plan which details their proposed revenue policy for the following year. This policy must include details of all proposed rates and charges. The draft operational plan must be put on exhibition (around April or May each year) to give members of the public an opportunity to comment. Councils should consider any submissions by the public before adopting the plan.[4]

However, it is up to councillors to sign off on how sub-categories are treated in the rate base, and the existing consultation process is failing farmers. The constant appeals from farmers have fallen on deaf ears, *e.g.* Mid-Western Regional Council.

We remind IPART of our original recommendation that the NSW Government should establish an independent panel for ratepayers to appeal decisions in regard to rating structures. This will be particularly important in situations where a category of ratepayers are in the minority whilst paying a significant portion of the rates.

Whilst we understand the importance of allowing councils to grow their revenue bases, without more concrete control over councils with regard to farmers' rates, the Association cannot support draft recommendation 3. Amalgamations are leaving farmers subject to discrimination and we require additional legislative recourse.

One other option is a decision-making process that mandates that councils form a rating consultative committee chaired by the mayor or deputy mayor with representation from peak industries and community representatives at the drafting stage of council budgets so that councils fully understand the impact of their decisions.

Draft Recommendation 4 – Allow councils to levy a new type of special rate for new infrastructure

With regard to the proposal to allow councils to levy a new type of special rate for new infrastructure jointly funded with other levels of government, the Association is not opposed to this, provided that such infrastructure directly benefits the ratepayers in that local government area. Any such levy must be ring fenced so that it is not included in rate pegging calculations.

[4] https://www.olg.nsw.gov.au/sites/default/files/FAQ-rates-and-charges.pdf Accessed 23/09/2016

Draft Recommendation 5 – Allow councils more flexibility to reduce rates in drought or other economic downturns

In our original submission we highlighted that farmers in drought can often be in significant financial hardship for periods. The Association therefore supports amending Section 511 of the LGA to reflect that – however we would argue that councils need to be careful not to return to their trajectory too quickly as it can take many years to recover from drought.

Give councils greater flexibility when setting residential rates

Draft Recommendation 6 – Remove the requirement to equalise residential rates by 'centre of population'

With regard to this recommendation, councils should be allowed to determine a residential subcategory, and set a residential rate, for an area by a separate town or village, or a community of interest where this provides greater equity for ratepayers, this should occur.

Draft Recommendation 7 – Different 'communities of interest' within a contiguous urban development

With regard to the draft recommendation that an area should be considered to have a different 'community of interest' where it is within a contiguous urban development, and it has different access to, demand for, or costs of providing council services or infrastructure relative to other areas in that development, the Association recognises the need for councils to exercise such flexibility.

Draft Recommendation 8 – Rating structure within contiguous urban developments

The Association notes this recommendation to amend the LGA so that, where a council uses different residential rates within a contiguous urban development, it should be required to publish the different rates (along with the reasons for the different rates) on its website and in the rates notice received by ratepayers. This requirement for full explanation and justification in multiple venues should always be the case.

Draft Recommendation 9 – Establishing 'communities of interest' post the rate path freeze

We suggest that in the case of regional councils undergoing amalgamations, there would be very few cases where previous boundaries ran through the middle of a town.

Whilst recognising that this submission process does not encompass amalgamations per se, we feel compelled to note again that the Association is *strongly opposed* to forced amalgamations unless clear benefits can be demonstrated. We have been consistent in putting that case to government. Our members are primarily concerned that larger scale councils will dilute the farmer voice and therefore lose touch with the rural pulse.

Better target rate exemption eligibility

Draft Recommendation 10 – Exempt land on the basis of use rather than ownership

The Association believes as a general principal that rates should be paid on the basis of those who most use local government services or amenities or receive the most value from their use relative to their contributions towards the provision of the services or amenities.

As such, the Association's membership believes that government agencies, parks *etc*. should pay rates. In the case of Wellington approximately 30 per cent of the shire does not pay rates. Local government land-based rates should be tenure blind *e.g.* visitors and government agencies using National Parks or Crown Lands use roads for access, required to be maintained by local government, putting greater impost on Councils and consequently individual ratepayers in LGAs required to pay higher rates.

Therefore, in general the Association supports the draft recommendation that 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. However, see below for comments on oyster farmers.

Draft Recommendation 13 – Remove exemption for land subject to a mineral claim, or land below the high water mark, used for the cultivation of oysters

The NSW oyster industry accounts for nearly 70 per cent of the value of NSW aquaculture production and is invaluable in providing employment and economic opportunities to NSW coastal communities.[5] The Association is firmly of the view that, far from creating further service needs and costs for local government, the NSW oyster industry assists local councils in managing and monitoring estuarine water quality and in managing foreshore areas.

Therefore, the Association strongly opposes imposing local government rates on oyster leases, which are operated by the Department of Primary Industries (DPI). Pursuant to Section 555 (h) of the *Local Government Act 1993*, land that is below high water mark and is used for any aquaculture (within the meaning of the *Fisheries Management Act 1994*) relating to the cultivation of oysters, is exempt from payment of Local Council rates.

The Association also submits that the exemption from council rates of land that is below high water mark and is used for any aquaculture relating to the cultivation of oysters should remain.

The Association submits that IPART should also give recognition to the fact that the NSW oyster industry does not operate with a complete exemption from payment of Council rates. Rates are paid by the landholders on all land above the high water mark, including on all infrastructure.

It is submitted that imposing further rates on the industry would unfairly increase the operating costs for the industry. In addition, the Association also notes that the oyster industry pays the DPI for oyster leases and in return, DPI carries out NSW aquatic habitat

[5] *NSW Oyster Industry, Sustainable Aquaculture Strategy 2006*, NSW Department of Primary Industries, iv.

protection and compliance agency and develops policies and guidelines for the industry that are consistent with habitat protection objectives. By involving the DPI in this way, the industry further takes pressure off LGAs to manage and protect estuaries and foreshores.

Oyster farmers already pay fees and indeed subsidise the water quality testing that benefits the rest of the community. We ask that consideration be given to exempt oyster leases below the high water mark because the activity provides substantial public benefits to the community. We believe that our strict and vigorous testing regime does provide a benefit to the public ensuring water quality is maintained to a very high level, which in turn gives the community confidence in using these water ways. Therefore the Association cannot support the removal of the exemption for oyster farmers.

However, we would argue that land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim (*Local Government Act* 1993 (NSW) section 556(g)), should be subject to rates.

The Association's Oyster Section is providing its own standalone submission on draft recommendation 13. Please refer to that submission for further detail on the ability to value lease areas and apply rating.

Draft Recommendation 14 – Exemptions for Royal Agricultural Society to be removed from the LGA and perhaps funded from state taxes

The showground area should be considered of state significance and provides substantial public benefits to the community. This exemption should remain.

Draft Recommendation 15 – Remove exemptions for portions of land

We support the draft recommendation that where a portion of land is used for an exempt purpose and the remainder for a non-exempt activity, only the former portion should be exempt, and the remainder should be rateable.

Draft Recommendation 16 – Self assessment

IPART proposes that, where land is used for an exempt purpose only part of the time, a self-assessment process should be used to determine the proportion of rates payable for the non-exempt use. Councils should determine the proportion of time the land is used for non-exempt purposes. The Association considers that self assessment is open to rorting.

Provide more rating categories

Draft Recommendation 21 – A new environmental land category

In regard to this recommendation Section 493 should be amended to add a new environmental land category and a definition of 'Environmental Land' should be included in the *Local Government Act*: we support the principle that land which contains geographic factors making it virtually impossible to develop, or regulatory restrictions (including laws preventing development of property in order to 'conserve nature'), generally imposes lower costs on councils than inhabited land, and that councils should therefore have the flexibility to levy lower rates on environmental land to reflect these lower costs.

However, land under a conservation agreement with the Office of Environment and Heritage (OEH)[6] or like agreements, for example land that is preserved as a carbon offset in contract under the Federal Government's Emissions Reduction Fund (ERF), will not always be the most appropriate way to determine what land is deserving of a rate cut for environmental purposes, and there may be many reasons why those areas should not, in all fairness, be given a lower rating category. Certainly, there are many other areas of privately held farm land that are restricted because of state-wide protection or other legislation.

Given the current and proposed regulatory arrangement in terms of native vegetation (and biodiversity) protection on private land there are a number of particular concerns that IPART will need to address in order to apply equitable environmental discount levies on private land, and to potentially address some of the inequality of the current regulatory arrangements.

Currently, the *Native Vegetation Act* 2003 prevents clearing (for development or management purposes) of pre 1990 native vegetation (trees, shrubs, grasses *etc*.), aside from minor exemptions, such as 'routine agricultural management activities' (RAMAs). This prevents development over large areas of privately held rural (farm) land. The blanket restriction in the NVA means that there are many areas of farm land that would be considered appropriate for IPART's proposed 'environmental land' category, because regulatory restrictions prevent development of the property.

Further, the means by which farmers can apply to develop parts of these undeveloped areas is through the *Native Vegetation Act* 2003 Property Vegetation Plan (PVP) process, which is underpinned by an Environmental Outcomes Assessment Methodology (EOAM). If successful, a PVP will impose 'offset areas' at a ratio determined by the EOAM, for example, for every one hectare of scrub cleared, eight hectares are required to be 'offset' (the offset ratio varies). The PVP is registered on title, in perpetuity. This means those offset areas are permanently prevented from development. Furthermore, some areas freed up by the PVP require particular management obligations, *e.g*. maintenance of groundcover. For example, a PVP could require 50 or 70 per cent maintenance of groundcover save for times of flood or drought. Farmers currently pay the same local government rates on land under PVP as that for land unencumbered.

Since the commencement of the *Native Vegetation Act* 2003 many farmers who have applied for PVPs have been denied, because the EOAM produced an impossible offset ratio, or because the EOAM simply produced a red light. Those areas are therefore restricted. There are also many farmers who wish to develop their property but decline to

[6] Independent Pricing and Regulatory Tribunal of New South Wales, *op. cit.*, p. 99

enter into the PVP process because of the disproportionate offset ratios and the permanent effect on the title to the land.

The Association has been highly critical of the *Native Vegetation Act* 2003 and the PVP/EOAM process because of the unnecessary environmental restriction it has placed over private farm land (areas of native vegetation not actively managed will usually become overgrown and inhabited with feral pests and weeds), and the inequitable restrictions imposed on farm land are not imposed on other developers for example urban developers or mining companies. One of the reasons our members, particularly those with large tracts of native vegetation on farm, are critical of the Act is that farmers pay the same rates over the entire farm area, including areas where development potential is restricted or prevented by the *Native Vegetation Act* 2003/PVP/EOAM process. Our strong preference is to relax the regulatory controls, however draft recommendation 21 would address the inequity in the current local government rating system.

Further, there are areas on farm that are further restricted in their development potential because of geography, *e.g.* riparian areas, or steep or highly erodible land. As a general rule, these areas would never be able to be developed under a RAMA or the PVP process (see Section 11 of the *Native Vegetation Act* 2003). On top of this, some coastal LGAs, in their transition to use of the Standard Instrument Local Environmental Plan (SILEP) over the past five years, have chosen to apply environmental zones (E2,E3,E4) (e-zones) over private farm land. E-zones are controversial because they are seen as a further removal of property rights than the Act. Some councils even prescribe ‘biodiversity corridors’ across areas of the LGA which constitute another layer of restriction on the application of development. It is our submission that e-zones were never meant for private land let alone farm land. Applying an e-zone over private land has a serious impact on property value, and farmers continue to pay the same rates over e-zone land and that zoned rural (in many cases farmers have ended up with two or three zones over the one parcel of land). This is clearly inequitable.

It is our strong preference that e-zones are not applied over any privately held farm land. However, in instances where local councils continue to do so despite the Ministerial direction not to (*e.g.* using the ‘existing use’ loophole under the *Environmental Planning and Assessment Act*), it is more than appropriate that local rates are not paid over this land.

In 2017, the NSW Government intends to begin a new system of managing biodiversity. It is our understanding that this will largely reflect the mechanisms of the current *Native Vegetation Act* 2003 (pre 1990 growth is protected, RAMAs, *etc*.) except that instead of the PVP/EOAM process, the Government will introduce a number of Codes of Practice which will be administered and certified by the Local Land Service. Under these Codes, farmers may be able to develop certain areas, some Codes will require in-perpetuity offset areas, some Codes will not.

The Association has detailed positioning on the new proposed new system which is beyond the scope of this submission. However, where Codes are applied, and offset areas are maintained, it is our position that no rating should be paid over this land given its permanent ‘protection’. It is also proposed that farmers will be able to apply through the planning system for development that is not contemplated by the Codes. Where areas of the property are used in offsetting development within the planning system, again it is submitted that those areas should be subject to the reduced rating proposal as per IPART’s draft recommendation 21.

The issue of how to rate conservation agreements needs careful consideration. We submit that it may not be the most appropriate regulatory restriction on which to base the criteria for 'environmental land' when considering the contractual arrangements in place between the parties to these types of voluntary agreements (whether it be a Bio-Banking agreement with the OEH, or a carbon offset agreement under the ERF).

In fact, areas under such conservation agreements are usually very well-funded[7], it is not unusual for these agreements to amount to hundreds of thousands of dollars per year, and agreements in the millions of dollars are not uncommon. IPART have described these areas as having limited economic value. However, the income received by the beneficiary to these agreements would certainly far outweigh the farming potential of the land. It would therefore be perverse that areas under those very well paid agreements would not be required to contribute to the rate base. Furthermore, these areas are usually owned by absentee landholders (which granted, may change under future biodiversity arrangements in NSW) and are not well managed in terms of the feral species, fencing and fire hazard reduction work. This creates a far greater burden on both the local control authorities (for example county weeds officers) and the neighboring landholders.

We support the ability for a council to apply a lower rating category for land that cannot be developed with site improvements due to geographic or regulatory restrictions. However, in terms of equity, voluntary conservation agreements may not fall neatly into this draft recommendation.

Draft Recommendation 25 – Sub categories of farmland

With regard to the recommendation that 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, this may be required to allow geographic rate differentials when amalgamated councils to harmonize rates in their shire. In the past there have been some stark differences between ad-valorem rates from old shires next door to each other. Different sub-categories, based on geography, may allow councils to manage this harmonization process over a period of time to avoid rate shock.

However, if CIV is employed, then – eventually – differentials would be 'baked' into the rating system.

Draft Recommendation 26 – Rates charged to mining categories should be reflective of the cost of providing services

As noted in our original submission, the Association supports provision for allowable variations to be made within the mining category as exists within the residential category. We therefore support this draft recommendation that any difference in the rate charged by a council to a mining category compared to its average business rate should primarily reflect differences in the council's costs of providing services to the mining properties. This would allow Councils to deal with production increases and for mining within different areas which can have a variable impact on public infrastructure.

The ridiculous situation where you have an industry 20 times greater in gross production (in dollar terms) paying less than half the rates that farmers do must be redressed.

The Association supports such changes on the basis where they would allow better targeted infrastructure projects to ensure farmland ratepayers are not disadvantaged in

[7] See the NSW Bio-Banking and Offset Scheme at www.environment.nsw.gov.au/biobanking/

the provision of infrastructure maintenance and renewal. However, there should not be too many variations or sub-categories or the system becomes unwieldy.

Recovery of council rates

Draft Recommendation 28 – Reduce to three years the time before a property can be sold

Streamlining the existing legal and administrative processes should not occur without an exemption for drought and flood – therefore, draft recommendation 28 should not be applied without also applying (and guaranteeing) application of draft recommendation 5.

Other draft recommendations

Draft Recommendation 33 – Emergency Services Levy

Should the government consider taking up this recommendation, current modelling of the impact of the property levy would be irrelevant. The draft recommendation creates considerable uncertainty about the potential impact of the levy and creates the spectre of additional rises in the levy over time.

Draft Recommendation 34 – Using Private Valuers

The Association acknowledges the role of the Valuer General and believes it is a core function of government to provide impartial valuation advice. We also note that there has been a history of disputes in regard to appeals, particularly in relation to irrigation water. It is important that the appeals process is simple and fair.

With regard to the recommendation that councils should be given the choice to directly buy valuation services from private valuers that have been certified by the Valuer General, we submit that this may well add to the cost of assessing CIV - we do not support the use of private valuers unless a clear saving can be demonstrated. Should government take up draft recommendation 1, there would be a massive increase in costs overall and the logistics of valuing all land on a new criteria would require outside assistance. The costs of this will eventually be borne by the landholder.

Private valuers will certainly add to the cost of using CIV and delay the time taken to establish values. It will also raise the problem of appeals by the owner or the council and this would require a separate body for arbitration.

Conclusion

IPART has thrown up the possibility of CIV values for rating but hasn't addressed the core financial problem for local government, *i.e.* that councils have been asked to carry more of the sovereign burden without definite future funding. We note IPART's draft recommendation that pegs revenue raising to the proportional increase in CIV. We further note that this is designed to create a system that is not reliant upon special variations to manage growth. However, if the expense of applying such a system outweighs the benefits, this may cancel out the proposed growth in rates revenue. Therefore, IPART must provide more detail on what CIV system is envisaged and how the 'valuation projects' councils may need to employ will be cost effective.

As noted above, we oppose the application of CIV to farmland on the basis that it would be expensive and intrusive to assess farms and is likely to add to the cost of services and the rates themselves. Fundamentally, farmers want their local councils to be able to get on with the provision of infrastructure and to be self-sufficient – but not at the expense of continually using farmland rates as a cash cow. We are yet to be convinced that if councils take up the draft recommendation to move to CIV for residential and commercial that they will not continue to bleed the farmland category. There are many variables to consider, including what percentage of revenue the base rate of a given council covers.

We remind IPART of our original recommendation that the Government should establish an independent panel for ratepayers to appeal decisions in regard to rating structures. This will be particularly important in situations where a category of ratepayers are in the minority whilst paying a significant portion of the rates.