Submission

Independent Pricing and Regulatory Tribunal Inquiry
into Local Government Rating System

PORT STEPHENS
COUNCIL

Independent Pricing and Regulatory Tribunal
Review of the Local Government Rating System

Port Stephens Council Submission

Port Stephens Council (PSC) would like to thank the Independent Pricing and Regulatory Tribunal (IPART) for this further opportunity to provide input into the Review of the Local Government Rating System through commentary on the August 2016 IPART Draft Report.

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

1. **Councils should be able to choose between the Capital Improved Value (CIV) and Unimproved Value (UV) methods as the basis for setting rates at the rating category level. A council's maximum general income should not change as a result of the valuation method they choose.**

PSC agrees with this recommendation. This is potentially the most beneficial aspect of the rating reforms as far as providing councils with sustainable revenue.

2. **Section 497 of the Local Government Act 1993 (NSW) should be amended to remove minimum amounts from the structure of a rate, and section 548 of the Local Government Act 1993 (NSW) should be removed.**

PSC agrees with this recommendation.

In addition to the removal of s.548, s.497(a), s.518B(4) and s.548A(1) *Local Government Act 1993* (the Act) and cl.126 and cl.201 *Local Government (General) Regulation 2005* may require removal of references to minimums.

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

3. **The growth in rates revenue outside the rate peg should be calculated by multiplying a council's general income by the proportional increase in Capital Improved Value from supplementary valuations.**
   - **This formula would be independent of the valuation method chosen by councils for rating.**

PSC agrees with this recommendation.

4. **The Local Government Act 1993 (NSW) should be amended to allow councils to levy a new type of special rate for new infrastructure jointly funded with other levels of Government. This special rate should be permitted for services or infrastructure that benefit the community, and funds raised under this special rate should not:**
   - **form part of a council's general income permitted under the rate peg, nor**
   - **require councils to receive regulatory approval from IPART.**

PSC agrees with this recommendation.

5 Section 511 of the Local Government Act 1993 (NSW) should be amended to reflect that, where a council does not apply the full percentage increase of the rate peg (or any applicable Special Variation) in a year, within the following 10-year period, the council can set rates in a subsequent year to return it to the original rating trajectory for that subsequent year.

PSC agrees with this recommendation.

Give councils greater flexibility when setting residential rates

6 The Local Government Act 1993 (NSW) should be amended to remove the requirement to equalise residential rates by 'centre of population'. Instead, 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.**

PSC generally agrees with this recommendation however, it could be enhanced by adding discretion for councils to choose to use geographic locations for subcategory boundaries by referring to a map reference such as a locality or zoning boundary. This will avoid potential merit arguments with ratepayers about subcategory boundary locations. So an alternate wording could be:

Councils should be allowed to determine a residential subcategory and a residential rate, for an area by:
- *a separate town, village, or*
- *a community of interest.*

Councils may at their discretion determine the location of boundaries for such subcategories using geographic references, locality boundaries or zoning boundaries.

7 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.

PSC agrees with this recommendation as community of interest is not currently defined in the *Local Government Act 1993*, or the *Interpretation Act 1987* leaving its meaning potentially very broad without a definition. If a definition were not created this might leave councils open to challenge as to the reasonable location of the boundaries it determines. See for example the discussion in *Barrak Corporation Pty Ltd v Parramatta City Council [2014] NSWLEC 1077* about centre of activity. It might be helpful if the definition makes it clear that councils can choose the location of the boundaries as it deems appropriate.

8 The Local Government Act 1993 (NSW) should be amended so, where a council uses different residential rates within a contiguous urban development, it should be required to:

- **ensure the highest rate structure is no more than 1.5 times the lowest rate structure across all residential subcategories (ie, so the maximum difference for ad valorem rates and base amounts is 50%), or obtain approval from IPART to exceed this maximum difference as part of the Special Variation process, and**
- **publish the different rates (along with the reasons for the different rates) on its website and in the rates notice received by ratepayers.**

At IPART's recommendation 22, PSC supports the creation of a new category for vacant land. Council is unsure that limiting the residential differential for vacant residential land to 1.5 times the lowest rate for the residential category, if that is what is intended, is sufficient as the introduction of CIV may result in total rating values increasing by more than 1.5 times, in turn causing the rate in the dollar to decrease by half or more. Assuming that the vacant land base amount is set at the same dollar amount as for occupied land to recover fixed costs, then vacant land under CIV might actually pay lower rates than it did under land value.

PSC would prefer:

- *The highest **base amount** is no more than 1.5 times the lowest base amount across all residential subcategories (ie so the maximum difference for base amounts is 50%); or obtain approval from IPART to exceed this maximum difference as part of the Special Variation process; and*
- *The highest **ad valorem rate** is no more than two (2) times the ad valorem rate across all residential categories (ie so the maximum difference for ad valorem rates is 100%); or obtain approval from IPART to exceed this maximum difference as part of the Special Variation process; and*
- *publish the different rates (along with the reasons for the different rates) on its website and in the rates notice received by ratepayers.*

9 At the end of the 4-year rate path freeze, new councils should determine whether any pre-merger areas are separate towns or villages, or different communities of interest.

- **In the event that a new council determines they are separate towns or villages, or different communities of interest, it should be able to continue the existing rates or set different rates for these pre-merger areas, subject to metropolitan councils seeking IPART approval if they exceed the 50% maximum differential. It could also choose to equalise rates across the pre-merger areas, using the gradual equalisation process outlined below.**
- **In the event that a new council determines they are not separate towns or villages, or different communities of interest, or it chooses to equalise rates, it should undertake a gradual equalisation of residential rates. The amount of rates a resident is liable to pay to the council should increase by no more than 10 percentage points above the rate peg (as adjusted for permitted Special Variations) each year as a result**

of this equalisation. The Local Government Act 1993 (NSW) should be amended to facilitate this gradual equalisation.

PSC generally agrees with this recommendation however, after the 4-year rate path freeze general revaluations will follow at three yearly intervals, and a 10% limit at the rate assessment level may distort the normal land value relativity and rate adjustments associated with a general revaluation. It would be preferable to apply the 10% limit at the pre-merger category or subcategory level so that relativity adjustments between properties within that pre-merger category or subcategory are unaffected. A preferred wording for the second part of this recommendation might be:

- *In the event that a new council determines they are not separate towns or villages, or different communities of interest, or it chooses to equalise rates, it should undertake a gradual equalisation of residential rates. The amount of rates* ***raised from the pre-merger categories and subcategories adjusted for proportional increase in Capital Improved Value from supplementary valuations*** *should increase by no more than 10 percentage points above the rate peg (as adjusted for permitted Special Variations) each year as a result of this equalisation. The Local Government Act 1993 (NSW) should be amended to facilitate this gradual equalisation*.

This would also be more cost effective for councils to implement than restricting increases at the individual ratepayer level as it would involve less scenario modelling and software changes.

Better target rate exemption eligibility

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.**

PSC believes rate liability is also an important consideration in determining rate exemptions. Land that is used for an exempt purpose might be leased by a charity, Public Benevolent Institution (PBI) or religious organisation from a ratepayer. If land ownership is removed from the rate exemption criteria, then landlords renting premises to organisations for an exempt purpose may enjoy a rate exemption on their commercial property, even though that rate exemption might not be passed on through reduced rent.

Council is aware of charities and PBIs renting office space within Port Stephens LGA and if the land is "used" for the purposes of the charity (which appears likely), Council might find it difficult to refuse an application from the landlord for a rate exemption, even if the landlord lodges an exemption application without the knowledge or co-operation of the charity, PBI or religious organisation.

Any contemplated legislation should make it clear that a rate exemption only applies where the entity carrying on the exempt land use is liable for payment of rates.

PSC believes this recommendation might benefit from clarity surrounding land used by charities and public benevolent institutions and vacant land, or land that has been purchased by a charitable or religious organisation for the purpose of a future exempt use such as a church, school, hospital or other non-residential or non-commercial purpose. Appeals have been heard on what constitutes "use" of land. For example in Aboriginal Hostels Ltd v Darwin City Council (1985) 75 FLR 197 at 210 Nader J said "The question whether the land is used or occupied for the purposes of a public charity is determined by comparing the purposes of the trust as evinced in the relevant instruments with the actual use to which the land is put. If the land were used for purposes falling outside the ambit of the trust it could not be said to be used for the purposes of a charity even though its legal title might be vested in the trustee."

So potentially, if a charitable or religious organisation had included in its objects and articles to procure land for the purposes of building schools, then it might argue that the land is "used" for the purpose of a school and a rate exemption sought, even though the land appears to be unused.

To avoid potential unproductive land banking of vacant land and disagreements over what constitutes "use" of land in relation to vacant land, it might be beneficial to include a sunset clause that stipulates that rate exemptions on vacant land expire after say 10 years if the land is not yet developed for the purpose attracting the exemption.

There might need to be some careful thought about the wording of the exemption for charities and public benevolent institutions. At present the s.556(1)(h) says "land that belongs to a public benevolent institution or public charity and is used or occupied by the institution or charity for the purposes of the institution or charity." Simply removing the reference to belonging doesn't reduce the scope of the exemption. It would simply truncate it to:

"land that is used by a public benevolent institution or public charity for the purposes of the institution or charity". This might potentially lead to more disputes about what is a charitable "use". The legislation should clearly specify the uses which are not eligible for an exemption, eg:

"land that is used by a public benevolent institution or public charity for the purposes of the institution or charity, for which it is liable to pay rates, not being land:

- used for residential purposes including social housing and university student accommodation; or
- used for commercial purposes; or
- used as a retirement village, nursing home or residential aged care facility; or
- used as a centre based education and care service; or
- that remains vacant 10 years after acquisition by the charity or public benevolent institution."

In relation to registered community housing providers, PSC sees little difference between a former NSW Land and Housing Corporation residence transferred to a registered community housing provider (which remains rateable under the current legislation) and a residence purchased by a registered community housing provider

utilising government funds (which is exempt under current legislation), given that the NSW Government's $1.1 billion Social and Affordable Housing Fund is a partnership between government and community housing providers. This potentially negates the argument from the community housing providers that their low rents are dependent upon containing costs, including rates, if their capital costs are met by the government.

In relation to child care centres, it may be difficult to distinguish between a child care centre, pre-school, or occasional care centre except in name. If there is to be a distinction based on the level of fees, are market rates to be established by councils or determined annually by IPART or the Chief Executive of the OLG? Nominal consideration of 50% of the market rate still needs that market rate benchmark established by someone, and in the absence of legislation, it is left for councils to resolve and argue with the applicant.

At the moment only charitable or PBI child care centres receive a rate exemption. Without careful wording of the exemption, the charitable operator of a child care centre might potentially change the name of their service to a pre-school, set their fees to below the market rate and gain a rate exemption.

To ensure the principle of efficiency, and avoid the potential situation where a children's service might change aspects of their operation to gain an exemption, and simplicity in administration and to ensure competitive neutrality, PSC recommends that there be no reference to "charging market rates" or "child care centres" rather refer to "centre based education and care service" to be consistent with *Children (Education and Care Services) National Law (NSW) No 104a* and *Children (Education and Care Services) Supplementary Provisions Act 2011 No 70*.

PSC thinks there might need to be some more thought about what constitutes the definition of "commercial activity" particularly in relation to charitable second hand clothing stores such as St Vincent de Paul and Salvation Army. Under the ATO definition of nominal consideration for charities the consideration received for the supply must be below 50% of market value of the supply or below 75% of the cost of acquiring the supply under ss.38-250(1)(b)(ii) and 38-250(2)(b)(ii) of the *A New Tax System (Goods and Services Tax) Act 1999*. Market value is different to the value of equivalent new goods in a retail store; rather, in this example, it is the market value of second hand clothing that may also be sold in non-charitable (for profit) second hand clothing stores. If a charitable second hand clothing store sells clothing at a similar price to non-charitable second hand clothing stores, then, although both stores sell clothing at lower than half of the cost of equivalent new clothing retailers, the lack of differential in market value between the two second hand stores would mean both are undertaking a commercial activity under the proposed definition. As goods are usually donated to charitable clothing stores the "below 75% of cost" definition would not assist to gain an exemption. PSC believes that the definition of "commercial activity" should be more explicit in excluding charitable second hand stores. For example the definition of "commercial activity" could be:

An activity is considered to be a commercial activity if it:

- involves the selling of goods and/or services (other than charities or public benevolent institutions selling predominantly second hand goods);

- is provided at more than a nominal consideration;
- is undertaken on an ongoing basis;
- is not the provision of a public service.

In relation to retirement villages, people also live in residential aged care facilities and nursing homes that are provided by charities, PBIs and private providers. To achieve competitive neutrality it may be desirable to broaden the reference from retirement village to include other forms of non-hospital long term accommodation and use a definition from the appropriate aged care legislation.

11 The following exemptions should be retained in the Local Government Act 1993 (NSW):
- **section 555(e) Land used by a religious body occupied for that purpose**
- **section 555(g) Land vested in the NSW Aboriginal Land Council**
- **section 556(o) Land that is vested in the mines rescue company, and**
- **section 556(q) Land that is leased to the Crown for the purpose of cattle dipping.**

PSC generally agrees with the aims of this recommendation in relation to s.555(e) and s.555(g). PSC is unaffected by s.556(o) and s.556(q) and has no comment. Refer to PSC's discussion on rate liability and the term "use" in recommendation 10 above. PSC favours retaining a definition similar to s.555(e) of the Act rather than broadening the definition of "religious use":

(e) land used by a religious body, for which it is liable to pay rates, for the purposes of:

(i) a church or other building used or occupied for public worship, or

(ii) a building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or

(iii) a building used or occupied for the purpose of religious teaching or training, or

(iv) a building used or occupied solely as the residence of the official head or the assistant official head (or both) of any religious body in the State or in any diocese within the State.

Unless either "religious body" or "religious purpose" is defined somewhere in the Act, then they will take on their ordinary dictionary meaning. This might lead to private individuals or groups making claims for rate exemption on premises that are not used for "public" worship, making assessment of exemptions difficult. The wording should be framed to prevent an individual ratepayer making a claim that land that is not used for residential or commercial purposes is used for a private religious purpose meeting the needs of that single individual.

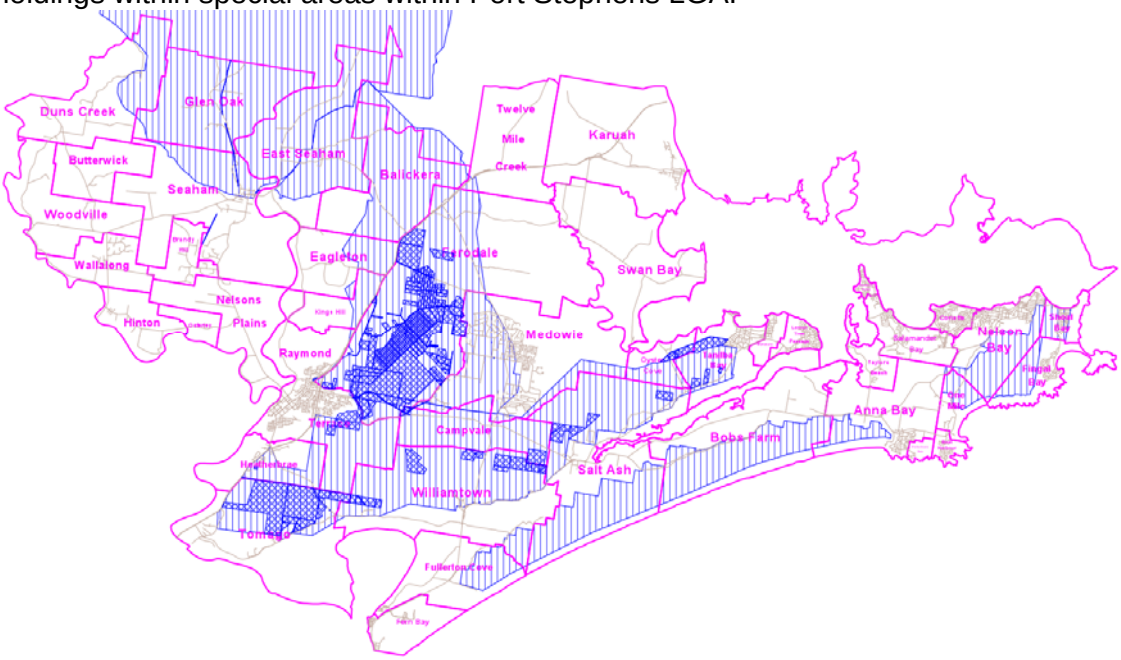
12 Section 556(i) of the Local Government Act 1993 (NSW) should be amended to include land owned by a private hospital and used for that purpose.

PSC is unaffected by this inclusion and has no comment.

13 The following exemptions should be removed:

- **land that is vested in, owned by, or within a special or controlled area for, the Hunter Water Corporation, Water NSW or the Sydney Water Corporation (Local Government Act 1993 (NSW) section 555(c) and section 555(d))**
- **land that is below the high water mark and is used for the cultivation of oysters (Local Government Act 1993 (NSW) section 555(h))**
- **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)), and**
- **land that is managed by the Teacher Housing Authority and on which a house is erected (Local Government Act 1993 (NSW) section 556(p)).**

PSC agrees with this recommendation. Hunter Water Corporation has large land holdings within special areas within Port Stephens LGA.



Vertical hatching represents Special Areas under the *Hunter Water Act 1991*; cross hatching represents Hunter Water Corporation owned land.

PSC sees no distinction between crown land leased for oyster growing and crown land leased for other agricultural pursuits. Both could argue they receive similar access to Council services and as such both should be rateable.

14 The following exemptions should not be funded by local councils and hence should be removed from the Local Government Act and Regulation

- **land that is vested in the Sydney Cricket and Sports Ground Trust (Local Government Act 1993 (NSW) section 556(m))**
- **land that is leased by the Royal Agricultural Society in the Homebush Bay area (Local Government (General) Regulation 2005 reg 123(a))**
- **land that is occupied by the Museum of Contemporary Art Limited (Local Government (General) Regulation 2005 reg 123(b)), and**

– **land comprising the site known as Museum of Sydney (Local Government**
(General) Regulation 2005 reg 123(c)).

The State Government should consider whether to fund these local rates through State taxes.

PSC is unaffected by this inclusion and has no comment.

15 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.

PSC agrees with this recommendation.

16 **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.**

PSC agrees with this recommendation as the approach sounds reasonable.

17 A council's maximum general income should not be modified as a result of any changes to exemptions from implementing our recommendations.

PSC would prefer a different approach to this issue. One of the reasons some councils have limited financial sustainability is partly attributable to having large geographic areas to service with many historical rate exemptions constraining income.

In the case of Port Stephens Council, which has not received a special variation to its general income (apart from annual crown land adjustments for newly rateable property) for eight years, the proposed exemption changes represent an opportunity to grow total rate income to compensate for the high historic levels of non-rateable properties, without increasing rates for existing ratepayers. Charitable retirement villages for example have contributed to increased population and demand for Council's services, while being rate exempt. When it becomes time to have discussions with formerly exempt ratepayers about the reasons why they are now paying rates and their service level expectations, they might be surprised and disappointed to discover that:

- the issue is mainly about equity and the size of the rate base and there is no net financial benefit to Council;
- they are receiving a substantial rate bill so that all other ratepayers can enjoy a small reduction to their rates;
- there will be no additional services funded for the community;
- the Council will not become any more financially sustainable;
- the Council will have to absorb the administrative costs of making these rating changes; and
- there are no additional funds to target any additional services in the direction of their newly rateable property.

PSC would prefer that Council's maximum general income may be optionally modified in the first year of making changes to exemptions as a result of amendments to the *Local Government Act 1993*. This would be consistent with the financial effect of changes proposed in relation to removal of water and sewerage special charge exemptions, which lie outside of rate pegging. Making the modification optional might potentially cater for a council where the rate income lost from private hospitals exceeds rate income gained from removal of other exemptions.

PSC has a reduced appetite for responding to the anticipated complaints from many newly rateable properties if there is no proposed additional rate income as a result of the changes. The Special Variation application process is too onerous to follow to capture the relatively modest increase in rate income that would follow these exemption changes. If a streamlined process was available, similar to the existing crown land adjustments, then this would be manageable for Port Stephens Council given the small amounts involved.

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).

PSC agrees with this recommendation but is not a water authority.

19 At the start of each rating period, councils should calculate the increase in rates that are the result of rating exemptions. This information should be published in the council's annual report or otherwise made available to the public.

PSC understands the justification for this inclusion but suggests that rather than calculating the ad valorem rate twice as proposed, a simpler approach might provide a similar notional result.

Councils could apply the current year's average residential rate structure to the known values of each exempt property and sum the notional rate amounts, apply a discount factor to the result and this would provide sufficient indication to the public of the value of rate exemptions. The reason this is favoured is threefold:

1. Calculating a notional ad valorem with exempt properties included is unnecessarily onerous with little difference in reported exemption total;
2. The Valuer General does not always provide values of exempt land parcels if they are not needed for rating or taxing purposes, resulting in an estimated cost in any event;
3. As pointed out by another Council at the Sydney public hearing, exempt land is not already categorised, necessitating hypothetical categorisation.

The discount factor referred to above could be the percentage that total exempt value bears to the total rateable LGA value and would arrive at virtually the same figure as the notional ad valorem calculation.

A worked example for Port Stephens:

$6,954,606,991 total land value at 30 June 2016 (a)
$252,676,048 total exempt land value at 30 June 2016 (b)
1,005 exempt properties
3.77% (b) / ((a) – (b)) total exempt land value as a percentage of total rateable LGA value.

Applying Current Average Residential Rate Structure to Exempt Properties
0.003444 + $355 base amount
Exempt property rates
($252,676,048 x 0.003444) + (1,005 x 355) = $1,226,991.30

Proposed Method:
Notional Residential Rate Structure (with exempt properties included) to achieve similar yield
0.00330452 + $344
Exempt property rates
($252,676,048 x 0.00330452) + (1,005 x 344) = $1,180,693.05

Alternative Method:
Applying Discount to Current Average Residential Rate Structure Calculated Result
$1,226,991.30 / 1.0377 = $1,182,414.28

The notionally calculated exempt rates total is close to the simple current average residential rate structure applied to exempt property values and counts and discounted as suggested. The difference is not material for the additional effort for reporting purposes, given that there may be omitted land values for some exempt properties.

Replace the pensioner concession with a rate deferral scheme

20 The current pensioner concession should be replaced with a rate deferral scheme operated by the State Government.
- **Eligible pensioners should be allowed to defer payment of rates up to the amount of the current concession, or any other amount as determined by the State Government.**
- **The liability should be charged interest at the State Government's 10-year borrowing rate plus an administrative fee. The liability would become due when property ownership changes and a surviving spouse no longer lives in the residence.**

PSC would prefer that pensioner rate concessions continue to be provided, be indexed to increase with the Consumer Price Index (CPI) and be fully funded by the state and federal governments.

PSC has had individual rate deferral agreements with a very small number of aged pensioners for more than a decade. The formally drafted and signed agreements

have allowed the rates to accrue unpaid on around six pensioners' properties at any one time. PSC sends the ratepayer a letter each year and they sign and return a copy acknowledging that they still want the agreement in place. A number of the agreements have concluded when the ratepayers have passed away and the rates and interest have been paid without incident.

PSC's experience has been that aged pensioners are reluctant to leave a rate debt for their beneficiaries to pay and would prefer to manage the rate payment themselves.

The experience in other states appears to indicate a very low take up of deferral options, and so it may not be an attractive alternative to a concession for the majority of ratepayers. The advantage of the deferral option however is that those pensioners living in a single dwelling house on land zoned to allow industry, commerce, residential flat buildings or subdivision, who previously had access to postponed rates under s.585, which is proposed to be discontinued under IPART's draft recommendations, will have a way of managing what will become an increased rate liability.

PSC is unsure how it is intended that the State Government fund the deferral in practical terms. Given the recent transfer of Emergency Services Property Levy responsibilities to councils, the management of these rate deferrals would share the same merit arguments as to why councils are appropriately set up to manage this task.

Presumably the deferred amount would remain recorded in council rate records and council would need to add interest and track the balance and report the balance periodically to the ratepayer. This would necessitate separate identification from the rates that are payable by the ratepayer, similar to what presently occurs with s.585 postponed rates, which IPART is proposing to discontinue in response, in part, to council concerns about onerous administration. If council retains the deferred amounts within its rating system, then the anticipated way the State Government could fund the deferrals is by a council providing to the Government regular returns detailing the balances of deferrals granted and deferrals repaid by ratepayers, with the State Government advancing funds and adjusting those advanced funds to match the deferred balance.

The concept of deferring only $250 or $500 per year might need further thought. If a pensioner is living in a valuable waterfront property for example and is asset rich and cash poor then deferring $250 out of a $3,000 (or more) rate bill may be of little benefit. The South Australian system of requiring the ratepayer to pay the first $500 annually and deferring the balance might be more beneficial.

Consideration should be given to limiting the deferral system to pensioners over a certain age. The compound effect on the debt of a deferral decision of a young pensioner might adversely impact their re-sale and housing options in future decades.

Provide more rating categories

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.

PSC agrees with this recommendation.

22 Sections 493, 519 and 529 of the Local Government Act 1993 (NSW) should be amended to add a new vacant land category, with subcategories for residential, business, mining and farmland.

PSC supports the creation of new subcategories for vacant land so that an incentive for land to be developed can be built into the rate structure. Refer to Council's discussion on this issue at Recommendation 8.

PSC believes a review of what constitutes the definition of "residential" would be beneficial as the contemplated definition is difficult to assess in practice. It is difficult to determine from inspection whether premises are predominantly used as a place to live or the period of time a resident has resided at the premises. In the absence of a residential lease or other evidence provided by the ratepayer, council have to accept at face value that a property that might gain a rate exemption is not used or occupied for periods exceeding three months if that is what the ratepayer asserts.

Further councils have to accept at face value that a property that might otherwise attract a business rate is occupied for residential purposes for periods exceeding three months if that is what the ratepayer asserts.

Queensland legislation reveals a definition of residential property that avoids assessing the historical or current use of a property; rather it examines the structure of the building and whether it is of a type that would ordinarily be used as a residence.

Section 38B of the *Local Government Act 2009 (QLD)* in relation to party houses defines a residential property:

> *"A **residential property** is a property of a type that would ordinarily be used, or is intended to be used, as a place of residence or mainly as a place of residence.*

There is comprehensive discussion on what constitutes residential premises under the GST legislation in *GST Ruling GSTR 2012/5* that might assist legislators in drafting sound definitions to assist councils.

If a building is obviously adapted for residential occupation, then it should be rateable, regardless of whether it is occupied or unoccupied. This would provide for easier administration by councils as it would remove from a council the onus of monitoring occupation of residential premises by organisations that would otherwise

be entitled to claim an exemption on the basis of the premises being currently unoccupied.

This Council's experience in the past has been that ratepayers are often prompt in advising Council about a change in their circumstances that gives rise to a reduction in their rating liability, but sometimes less prompt in advising Council about a change in their circumstances that gives rise to an increase in their rating liability.

In the context of residential property occupied for more than three months by the same resident, that is owned by an organisation that would otherwise enjoy a rate exemption, there will periodically be occasions when the residence is vacated due to end of lease or other reasons. If a council is advised that the premises is vacant, it is then reliant upon the goodwill and efficiency of the now exempt entity to inform the council when the premises next become occupied for more than three months continuously by the same resident. The ongoing rate liability associated with a definition unrelated to the three month term should encourage the organisation to lease the premises to recoup the rates and thus potentially reduce the quantity of unoccupied residential premises and promote better utilisation of existing housing stock across the state.

The definition of residential should also cater for exclusion from the residential category on occasions where a building that appears to be residential in character is actually used for a non-residential purpose, eg a display home, health treatment rooms, financial advisors, etc.

PSC would prefer a definition of residential similar to:

> ***Residential*** *means:*
> - *property of a type that would ordinarily be used, or is intended, or adapted to be used, as a place to live and is not used for a commercial purpose or temporary shelter for vulnerable persons; or*
> - *Vacant land zoned as residential under a LEP.*

The above definition might cater for the desire of IPART to retain the rate exemption for temporary shelters for presumably youth, homeless persons, women's refuges and other vulnerable persons.

It is envisaged that residential buildings owned by charities, PBIs and religious bodies that are in a state of disrepair remain rateable and be either repaired to enable re-occupation or demolished to potentially obtain an exemption, depending upon the intended future use of the land.

23 Section 518 of the Local Government Act 1993 (NSW) should be amended to reflect that a council may determine by resolution which rating category will act as the residual category.

- **The residual category that is determined should not be subject to change for a 5-year period.**
- **If a council does not determine a residual category, the Business category should act as the default residual rating category.**

PSC agrees with this recommendation as it has the potential to overcome inequitable application of higher rates to development constrained land.

24 Section 529 (2)(d) of the Local Government Act 1993 (NSW) should be amended to allow business land to be subcategorised as 'industrial' and or 'commercial' in addition to centre of activity.

PSC agrees with this recommendation. Again, similar to Council's comments in relation to the residential category, councils should be allowed to determine a business subcategory and a business rate for an area by:

- industrial land use; or
- commercial land use; or
- centre of activity; or
- locality; or
- zoning under a LEP.

Should councils wish to avoid merit arguments about the placement of boundaries, reference to locality or zoning boundaries might be helpful in some situations.

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.

PSC agrees with this recommendation. Again reference to locality boundaries as well as other geographic features might be helpful.

26 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.

PSC is unaffected by this proposal in relation to mining categories, but the arguments presented appear sound.

In relation to providing more rating categories, **there is currently a parliamentary inquiry of the NSW Legislative Assembly Committee on Environment and Planning into *The adequacy of the regulation of short-term holiday letting in NSW***. The terms of reference of this inquiry are:

a) The current situation in NSW and comparison with other jurisdictions;
b) The differences between traditional accommodation providers and online platforms;
c) The growth of short-term and online letting, and the changing character of the market;
d) The economic impacts of short-term letting on local and the state economies;
e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing ***and taxation***;
f) Any other related matters.

The current *Review of the Local Government Rating System* presents an appropriate and rare opportunity to make changes to the rating system to complement land use

controls and generate additional rate income to fund councils in regulating what is currently a difficult area to regulate activity. It would appear appropriate that as these two NSW Government initiated reviews are happening concurrently that they reference each other rather than make recommendations in isolation.

PSC would like to raise the possibility of a short-term accommodation sub-category of the residential category. Properties that are rented for short-term accommodation may sometimes be used for purposes inconsistent with residential zones in terms of amenity in the local neighbourhood, creating impacts on neighbours and generating higher demand for council services; or lacking suitable fire safety or other considerations.

At the same time short-term accommodation premises in holiday areas often derive benefits from local economic development and tourism initiatives, but do not make the same contribution that other business rate assessments make. Unregulated residential homes and units rented for short-term accommodation often use online providers, charge commercial tariffs and compete with hotels, motels, guest-houses and backpacker hostels but pay residential rates instead of higher business rates.

A possible solution might be to require registration with the council under the *Local Government Act.* Following registration the Act could require a registration reference to be displayed at the premises, including any conditions such as number of persons permitted to sleep in the premises, noise or fire safety considerations. The registration reference could be required to be included in any advertisements, including online advertisements, offering the premises for rent, in a similar way that the NSW Office of Liquor, Gaming and Racing require a NSW Permit Number to be displayed in any advertisements promoting lotteries as required by Cl 34(f) of the *Lotteries and Art Unions Regulation 2014* to which penalties apply for failure to comply. Letting agents could be required to obtain a registration reference prior to offering the premises for rent and to make such information available to the council.

When registered, the rate assessment would be rated under the short-term accommodation subcategory of the residential category. When a ratepayer cancels a property's registration it could be returned to its former rate category. Self-registration could mirror the state land tax registration obligations on certain property owners. To enable enforcement, councils should be empowered to issue infringements to property owners, letting agents, and advertisers (if jurisdiction permits) who fail to comply with their responsibilities.

PSC's proposal meets IPART's horizontal equity and competitive neutrality principles by applying a potentially higher rate to the emerging short-term accommodation providers as well as traditional commercial providers. It is simple to understand and administer and would grow over time as traditional accommodation providers are disrupted into the future.

PSC has had some experience with the difficulties in ascertaining the dominant land use of apparently residential property. In 2000 Council re-categorised 1,100 holiday homes and units from residential to business for rating purposes in order to share the cost of tourism promotion amongst the beneficiaries. Ratepayers were able to opt out at the time if they stated their property was not rented for short-term

accommodation. The business rate was competitive with the residential rate at that time. Over the next four years the business rate increased substantially above the residential rate. Council received 350 statutory declarations during that time, declaring that those properties were not rented for short-term accommodation. Council conducted some external and internal property inspections, which were ultimately unhelpful in determining whether a property was used by the ratepayer for their own purposes or rented to others for short-term accommodation. A couple of appeals to the Land and Environment Court were lodged by ratepayers which were discontinued when Council decided that the current legislation made it too difficult to determine the dominant internal use of premises that externally appeared to be residential in nature.

Some ratepayers changed their mailing address to the rateable property, applied for re-categorisation to residential and then changed their mailing address back to their former address after re-categorisation. Council was concerned that attempting to rate short-term accommodation as business under the current legislative framework was inefficient and as a result Council re-categorised the remaining 750 rate assessments as residential in 2005. At the same time, Council re-categorised all holiday units with development consent prohibiting long term residency, as residential as well, as it could not see, from an equity perspective a justification for a rating differential between a DA approved restriction and a holiday unit with approval for permanent residency, but rented for short-term accommodation.

PSC suggests that IPART make contact with the NSW Legislative Assembly Committee on Environment and Planning to inquire as to whether they see any merit in potential changes to the rating system to provide solutions in their inquiry into *The adequacy of the regulation of short-term holiday letting in NSW.*

Recovery of council rates

27 Councils should have the option to engage the State Debt Recovery Office to recover outstanding council rates and charges.

PSC agrees with this recommendation as long as it is optional and not compulsory. Debts that are paid off slowly through the State Debt Recovery Office may become hard to reconcile with councils' rate balances where multiple years of rate arrears are referred for collection.

28 The existing legal and administrative process to recover outstanding rates should be streamlined by reducing the period of time before a property can be sold to recover rates from five years to three years.

PSC agrees with this recommendation.

29 All councils should adopt an internal review policy, to assist those who are late in paying rates, before commencing legal proceedings to recover unpaid rates.

PSC is uncertain of the intention of this recommendation. Debt collection is a process and a debt recovery policy or hardship policy that specifies each step in the

process appears to be sufficient to ensure fairness. The name "internal review policy" implies there will be some review of a debt prior to commencing legal action; however the stated purpose of the policy appears to be in the form of a process map. "The policy would clearly specify, prior to commencing legal action, the other methods a council will pursue to recover outstanding rates." This may be difficult as some customers are reluctant to engage with a council about their debt. Although PSC attempts to telephone all ratepayers prior to referral to a collection agency, and uses email and text where appropriate, it has not built these requirements into a policy as a required step prior to commencing legal action, because some ratepayers do not have or disclose these communication details. If a council required verbal discussion with a ratepayer prior to implementation of legal action, it might be constrained by its own policy and an inability to make contact with a ratepayer by that alternate method.

30 The Local Government Act 1993 (NSW) should be amended or the Office of Local Government should issue guidelines to clarify that councils can offer flexible payment options to ratepayers.

The main challenge for councils in relation to offering flexible payment options is that the *Local Government Act 1993* specifies four instalment due dates in section 562 and provides that interest shall accrue on overdue amounts on a daily basis under section 566. Any agreement with a ratepayer to repay overdue rates usually occurs after the debt is already overdue and interest has accrued. Council has discretion over the interest rate it may charge and could conceivably apply a rate of 0%, but this would not be appropriate for rates significantly in arrears.

By default councils must apply interest to overdue rates. The application of section 564 of the Act in agreeing to periodical payments necessitates monitoring compliance with the agreement in order to write off or reduce interest. As a result, in PSC's case, retrospective interest adjustments require manual intervention such as processing adjustments.

PSC would prefer an amendment to the Act to introduce monthly instalment due dates that complement the current prescribed quarterly instalment due dates as outlined in PSC's May 2016 submission.

An example of a rate assessment for $1,200 with quarterly and monthly payment options:

Due date: 31 August	***30 September***	***31 October***
$100 or $300	**$100 or nil**	**$100 or nil**
Due Date: 30 November	***31 December***	***31 January***
$100 or $300	**$100 or nil**	**$100 or nil**
Due Date: 28 February	***31 March***	***30 April***
$100 or $300	**$100 or nil**	**$100 or nil**
Due Date: 31 May	***30 June***	***31 July***
$100 or $300	**$100 or nil**	**$100 or nil**

Interest would then only apply if a payment was missed, making administration more efficient.

31 The Local Government Act 1993 (NSW) should be amended to allow councils to offer a discount to ratepayers who elect to receive rates notices in electronic formats, eg via email.

PSC might be unlikely to utilise a discount system if it required manual processing of discounts, which is probably the case with our current software. The individual cost savings per notice are small at around $1 due to the bulk postage pricing and relatively low mailing house costs. If a ratepayer paid all of their rates in full with the first rate instalment, they might seek a discount for the three remaining notices that would no longer need to be sent. In PSC approximately 15% of rate instalments remain unpaid three weeks after the due date and are sent an overdue notice. There is no price signal to the ratepayer for the cost of issuing an overdue notice, nor is there a reward for the 85% of ratepayers who pay their instalment before the issue of an overdue notice.

Email, MyPost Digital Mailbox, BPAY View and other electronic presentment platforms are becoming slowly more popular, but a $1 incentive may be unlikely to significantly change customer behaviour.

In the area of cost containment, payment processing fees charged by financial institutions and other payment providers can be more significant. There can be cost variations between in-person payments and direct debit for example that far outweigh the differential between email and paper bill costs. The way PSC incentivises the use of low cost direct debit for example is by a trade promotion prize draw under the *Lotteries and Art Unions Act 1901*, which might have contributed to PSC's 11% ratepayer take up of direct debit.

32 The Local Government Act 1993 (NSW) should be amended to remove section 585 and section 595, so that ratepayers are not permitted to postpone rates as a result of land rezoning, and councils are not required to write-off postponed rates after five years.

PSC agrees with this recommendation. In addition to the removal of s.585 and s.595, ss.586, 587, 588, 589, 590, 591, 592, 593, 594, 596, 597 and 598 all relate to postponed rates and would no longer be required. Note Council's comments at recommendation 20 in relation to deferral of pensioner rates effectively becoming another postponed rates arrangement with onerous administration for councils.

Other draft recommendations

33 The valuation base date for the Emergency Services Property Levy and council rates should be aligned.

- **The NSW Government should levy the Emergency Services Property Levy on a Capital Improved Value basis when Capital Improved Value data becomes available state-wide.**

PSC agrees with this recommendation. Further it would be helpful in meeting some of the key principles sought under this review if the classification system and definitions in the ESPL and ordinary rates were identical if this is possible.

34 Councils should be given the choice to directly buy valuation services from private valuers that have been certified by the Valuer General.

PSC agrees with this recommendation. The main concern PSC has is in relation to the valuation enquiry and objection process. Should Council buy valuation information directly from private valuers, who would be responsible for answering enquiries about the valuation and responding to objections?

PSC does not want to own the valuation objection process. An initial cost saving in the contracted provision of private valuations might become eroded if Council has to meet the costs of answering valuation enquiries and responding to objections and court appeals.

SUMMARY

Port Stephens Council views the proposed reforms as a package and overall is very supportive of what IPART is recommending. We have proposed a small number of suggested refinements and amendments to enhance the efficiency of the system overall.

We again thank IPART for the opportunity to participate in and contribute to this once in a generation reform.

Wayne Wallis
General Manager
Port Stephens Council

10 October 2016

PORT STEPHENS
COUNCIL