SUBMISSION: REVIEW OF THE LOCAL GOVERNMENT RATING SYSTEM – DRAFT REPORT

21 September 2016

1. Introduction

Queanbeyan-Palerang Regional Council (QPRC) welcomes the opportunity to make comment on the *Draft Report on the review of the Local Government Rating System*. Council would like to congratulate IPART on taking such a comprehensive approach to the review via:

- The release of an Issues Paper in April 2016
- Conducting public hearing to receive community feedback
- Releasing an Interim Report on the Rate Path Freeze Policy, and
- Release of this Draft Report

2. General Comment

QPRC believes the review of the NSW local government rating system is a long overdue exercise and welcomes it moving into its final phases. Council notes that it was a key finding of the Independent Local Government Review Panel's *Final Report* which had as some of its key recommendations:

> *Commission IPART to undertake a further review of the rating system focused on:*
> - *Options to reduce or remove excessive exemptions and concessions that are contrary to sound fiscal policy and jeopardise councils' long term sustainability (6.2)*
> - *More equitable rating of apartments and other multi-unit dwellings, including giving councils the option of rating residential properties on Capital Improved Values, with a view to raising additional revenues where affordable (6.3) (p.48 Final Report)*

Council agrees with the general thrust of the review and supports the majority of the recommendations being put forward by IPART. However, Council still wishes to express its concern over the impact of the Rate Path Freeze Policy which the Government has imposed on the newly merged councils. As noted in our submission in April 2016 on the *Rating Issues Paper*,

> *"…we have real concerns over what is essentially a 'bad policy' and its potential impact upon the long term viability of the newly established councils. Council questions why we need a rate path freeze policy in the first place. We realise that IPART is not the instigator of this policy but rather has been tasked by the Government to look at how it can be implemented.*
>
> *Council recognises that one of the most significant challenges faced by newly merged councils is to set in place a manageable program to allow for the integration of staff and systems as well as to allow for rate harmonisation across the new LGA. We strongly believe this needs to be achieved in the least disruptive way possible but also that councils need to be given maximum flexibility to achieve this outcome and be able to establish a sustainable business platform upon which to operate as soon as possible.*

The rate path freeze policy does not do this but rather introduces another layer of rigidities in respect of the operation of the newly established councils consisting of:

- *Freezing council rates to the rate peg level for their first four years, and*
- *Proposing a staged equalisation process (with a possible 5% ceiling limit) to be implemented from year 5 onwards*

The impact of these proposals needs to be seen in association with these other rigidities which will also apply to the newly merged councils to highlight the potentially devastating combined effect these will have on the new councils' bottom line."

Our view in respect of the Rate Path Freeze Policy has not changed since making that initial comment. We still strongly advocate that if the Government wishes to persist with some form of rate path freeze then the newly merged councils should be provided with some form of flexibility within this system to allow for them to commence a limited equalisation process from year two of their existence. We are concerned that restricting the commencement of the equalisation until the end of the four year rate path freeze period and then proposing to set limits on the level of equalisation will result in the newly merged councils not being able to fully achieve equalisation until well over a decade after their establishment. Such an approach may impact on the bottom-line viability of the new councils. Council asks that the Government needs to reconsider what is essentially a 'bad policy' if they are serious about creating sustainable councils.

3. Comment on Specific Recommendations

In respect of the individual recommendations in the draft report, Council would like to make the following comments.

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

Rec 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.

Council supports this recommendation as it believes this will allow individual councils to adopt the most appropriate rating method that best suits their local government area and their peculiar situation. Council notes that at the IPART Hearing in Sydney comment was sought on whether one method should be mandated by legislation. Council does not support such an approach as it believes that it should be left up to the individual councils to determine the method of rating that best suits their community and their particular circumstances.

Council believes that the option of CIV will bring NSW more into line with other state jurisdictions in terms of their rating methodology and is in line with international best practice.

Rec 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.

Council supports amending S497 of the Local Government Act to remove minimum rates. Council agrees that it would be more appropriate for councils to use base amounts.

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

Rec 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.

Council would welcome recognition of the ability to grow general income in response to growth pressures. We believe this recognises the need for growing councils to provide increased infrastructure and services. We agree with IPART's assessment that a council's rates income should be able to increase to match increases in its costs caused by servicing more people and businesses. QPRC is one of the fastest growing regional councils within the State and the ability to grow its rate base without the need to jump through unnecessary bureaucratic hurdles (i.e. having to apply for Special Variations) is very important. We agree with IPART's assessment that Special Variations should only generally be required when there is a significant shift in a local community's preferences for a higher level of service. Recognising the impact that growth has on the provision of services and infrastructure is very important and allowing councils to grow their general income to cater for this is logical.

Rec 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.

Council supports this recommendation. The whole thrust of the local government reform process is recognising the need for better partnerships within the entire 'System of Local Government' in order to deliver beneficial outcomes to our communities. Allowing councils to develop partnerships with other levels of government and for them to implement special variations without the need to obtain IPART's regulatory approval is a positive move in the direction of red tape reduction.

Rec 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.**

Council supports amending S511 as proposed.

Give councils greater flexibility when setting residential rates

Rec 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.

Rec 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.

Council sees merit in the removal of the 'centre of population' requirement and its replacement with the ability to determine residential subcategories of rates. We agree with IPART's assertion in the Draft Report that *'…councils require greater flexibility to set different residential rates within their area to better reflect differences in demand for, and cost of providing, council services.'* This is particularly so within regional and rural councils which cover wide areas. For example in QPRC the council now covers over 5300km². Within this area we have a highly urbanised compact community (Queanbeyan) and then a number of rural villages (Bungendore, Braidwood and Captains Flat). Each of the rural village has different levels of services and also to a certain extent different levels of service expectation compared to the urban community of Queanbeyan. Council needs to have the ability to rate according to the level of demand within these variable communities.

In respect of Recommendation 7 Council noted that at the Sydney Hearing it was pointed out that the Act currently does not have a definition of what is a *'community of interest'* and also that the 1987 Interpretation Act is lacking in a definition of such. We would support that if this amendment proceeds that there should be a very clear definition placed in the Act setting out what constitutes a 'community of interest'.

Rec 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 (i.e., 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.

Council supports this recommendation as it believes it will provide transparency for ratepayers as to how their residential rate is arrived at. We believe this proposal may address some of the concerns raised by critics at the Sydney Hearing where there was a minor view expressed that the introduction of residential sub-categories was the reintroduction of differential rating under another name.

Rec 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.**

Council does not support this approach. As noted in our general comments we strongly believe that the newly merged councils should be able to commence the equalisation process a lot earlier – preferably from year 2 of their establishment. What is being proposed here with a 10 % limit being imposed is bad policy. This means that many of the newly merged councils may not be able to achieve rate equalisation until well over a decade from their date of establishment.

Council agrees with the concept of trying to minimise the impacts of rate equalisation, however, by delaying the process until the commencement of year 5 of a new council's existence is dragging out the process. If councils were able to commence equalisation from year two then the overall impact could be lessened and the new councils would be able to move into their new rating structure a lot quicker. By drawing this process out we believe it will impact upon the long term financial sustainability of the new councils and will more than likely lead to a lot of ratepayer confusion and anger.

Better target rate exemption eligibility

Rec 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.

Council welcomes the review of rating exemptions and strongly supports the concept that exemption should be based around 'land use' rather than land ownership. We generally support the concept that land used for residential and commercial purposes should be rateable. However, it was interesting to note that at the Sydney Hearing there were a number of examples cited which may need clarification in particular:

- How commercial forests, which have a life-span of up to 20 years could be rated. It was noted that they don't generate income in their first 19 years until the trees are harvested in their final year (yr. 20).
- Universities being rated for student housing, despite being classified within legislation as 'not-for-profit' organisations whilst private hospitals (which are purely a commercial operation) were being deemed as exempt.

We believe more work may be required on the part of IPART to clarify these anomalies. In particular we believe that there may need to be very clear definitions placed in the legislation setting out the definition of ownership vs use.

Also, we believe some effort may need to be put into developing some sort of independent appeal mechanism to determine challenges to a property's rating status. If we don't have this type of mechanism set up then councils may find that they are spending an inordinate amount of time and money in the courts dealing with legal challenges.

Rec 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.

Council supports this recommendation. However, Council also requests that S555 should be amended to make it similar to S496(1) where councils are given authority to issue water and waste changes on these exempt categories of land.

Rec 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.

Council would request that a further examination of this proposal should take place. As noted previously, private hospitals constitute a commercial activity and if the principle as espoused by IPART is to be applied then technically private hospitals should be subject to rates.

Rec 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)).

Council supports this recommendation.

Rec 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 82
– 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.

Council supports this recommendation

Rec 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.

Council supports this recommendation.

Rec 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.

Council supports this recommendation.

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

Council supports this recommendation.

Rec 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).

Council supports this recommendation.

Rec 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.

Council agrees that this information could be published in its Annual Report and could easily be made available on its website.

Replace the pensioner concession with a rate deferral scheme

Rec 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.

Council welcomes IPART's recognition that the Pensioner Rebate Scheme as it is currently constituted is inequitable where ratepayers are being used to fund State social policy. Council believes this is a scheme which should be funded from the State Government level.

However, the proposal to introduce a rate deferral scheme may introduce new anomalies rather than solve the old ones. In particular, pensioners may be adverse to adding debt to their properties which would be a future encumbrance on their estate. Council believes more work needs to be done in this area to ensure it is achieving social justice principles.

Council would recommend that the Government needs to commit to an extensive education campaign if they introduce this option. Pensioners need to be made aware of the potential impact this deferral scheme could have on their estate and how councils would be able to claim this funding back.

Provide more rating categories

Rec 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.

Council supports this recommendation.

Rec 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.

Council welcomes and supports this recommendation.
Council would like to raise an issue in respect of Clause 122 of the Local Government Regulation 2005. This Clause states:

> *If the dominant use of land is for a retirement village, serviced apartments or a time-share scheme, the land is to be categorised as residential for rating purposes.*

Council would seek to have this clause altered in respect of serviced apartments. Serviced apartments run in direct competition with hotels and motels and as such they should be rated as a business not as a residential property. Council requests that this change be made in the interests of equality.

Rec 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.

Council supports this recommendation. However, Council would suggest that instead of the residual category not being subject to change for a '5 year period' that it should be reduced to a '4 year period'. The reason for this is that a four year period would better align to both a council's delivery program and the electoral term. If a 5 year term is adopted this will process will get out of sync with the development of a new delivery program and the election of a new council.

Rec 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.

Council supports this recommendation.

Rec 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.

Council supports this recommendation. However, it does recognise that there may be difficulties in assessing the proposed sub-categories of:

- Intensity of land use
- Irrigability of the land
- Economic factors affecting the land

More work may need to be undertaken to clarify these definitions and how they could be applied.

Rec 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.

Council generally supports the premise that mining rates should not be above the business rate for a council unless the council can demonstrate additional costs in providing services to the mining properties, and the higher rate primarily reflects these additional costs. Council believes that an important aspect of mining rates should also reflect possible rehabilitation costs which may end up being a burden on ratepayers into the future.

All too often there have been examples of mining companies ceasing their operation and vacating their site before adequate remediation works have been completed In these instances it has been the council and in turn their ratepayers who have had to bear the costs of rehabilitation. Council believes that there should be sufficient flexibility within the rating system to allow councils to cover possible rehabilitation costs.

Recovery of council rates

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

Rec 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.

Rec 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.

Rec 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.

In regard to Recommendations 27 – 30 Council questions why IPART is considering taking such a prescriptive approach to debt recovery. Much of what they are advocating here is already provided by most councils. In particular many councils see the courts as option of last resort and do have in place systems to encourage flexible arrangements for payment with ratepayers who are in arrears.

A significant proportion of councils also have in place Rate Hardship and Debt Recovery policies setting out how they will work with ratepayers in arrears to clear their debt. Council believes all that is required is for all councils to adopt a rates hardship policy and for the Office of Local Government to develop a guideline setting out what needs to be contained in this policy. We do not see the need to take a prescriptive approach for dealing with this issue as a lot of what is being advocated here is already being done by a large number of councils.

Rec 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, e.g., via email.

Council questions why is there a need to legislate to allow Council to offer a discount. When the review of the Local Government Act commenced one of the underlying principles was to move away from having a prescriptive Act to having an enabling one. This proposal is about introducing more prescription. Surely all that needed within the Local Government Act is a clause giving councils a 'general power of competence' which would mean that they could introduce such discounts without the need to have a specific clause within the Act allowing them to do so.

This recommendation is continuing the culture of prescription which is what the review of the Local Government Act was trying to get away from.

Rec 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.

Council agrees that the current provisions within the Act relating to postponement of rates are inconsistent with the taxation principles of simplicity, efficiency and equity. Council supports simplifying the rating system by reducing councils' administrative burden and also agrees that this would provide a better incentive to develop land and ensure a more equitable distribution of the rating burden.

However, Council does ask whether transition provisions would need to be put in place if Sections 585 and 595 are removed. How would those who have already received approval to postpone their rates be handled if these sections are removed?

Other draft recommendations

Rec 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.

Council supports this recommendation.

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

Council supports this recommendation. In line with IPART's report we believe that if this occurs there needs to be provisions to ensure the integrity of the data and to achieve efficiency in the valuation process.

Therefore we support as set out in the report that the Valuer General must retain responsibility for:

- Setting valuation standards
- Certifying valuers that can be engaged to provide valuations for councils
- Maintaining a database of valuations, and
- Requiring that valuations cannot be used for rates, levies or taxes until approved by the Valuer General as generally true and correct.

Other comment

Council notes in Section 10.4 of the *Draft Report* that the issue of local government being exempted from certain state taxes (such as payroll tax) receives a fleeting mention. We note that the Report states that:

> *"When analysed against the tax principles of competitive neutrality and sustainability, it may be appropriate for councils' exemptions from payroll tax to be removed."*

In our submission on the *Issues Paper* in April Council provided feedback on this matter. In that submission Council advocated:

> *As Council is calling for a refinement of rating exemptions rather than their abolition, it believes in the interests of 'equality' that a similar refinement of the local government taxation exemptions would be appropriate as well. Such a refinement process should be*

subject to an extensive consultation process with the sector to determine the bottom-line impact.

Part of this taxation exemption refinement should also involve an examination of councils being able to recoup the cost of collecting levies and charges on behalf of other arms of government. Quite often legislation is created where other arms of Government regulate or pass legislation requiring councils to be their collection agency without compensating councils for the cost of providing this service. The In Our Hands study notes, "…in recent years many state governments have introduced fire and emergency services and natural resources management levies which have the effect of being additional property taxes. Indeed in some cases these are collected via council rate notices." (2013 p.36) Councils should be given the right to recoup administrative costs in acting as the agencies collection agents. Council raised this concern within its submission on the reporting and compliance burdens on local government. In that submission we advocated councils being given a percentage of the fees/levies collected to offset administration costs.

We believe these comments are still relevant and as such would ask that they be given further consideration. Before removing any taxation exemption we would request that the sector be directly consulted so that the full impact of such a move could be considered. If the payment of payroll tax has an impact upon councils' bottom-line then we believe there needs to be an equivalent recognition that councils' nominal income should be allowed to increase to off-set this.

Also, as noted in the second part of our submission, we believe that if councils are acting as collecting agents for other arms of government then they should be given the ability to recoup administrative costs.

We trust his provides IPART with feedback on what is proposed in the Draft Report. We would like to thank IPART with providing QPRC with the opportunity to provide comment on its contents.

With kind regards

Paul Spyve
Acting Director Economic & Community
Queanbeyan-Palerang Regional Council