

14 October 2016

Review of Local Government Rating System  
Independent Pricing and Regulatory Tribunal  
P.O. Box K35  
Haymarket Post Shop NSW 1240

By website: [www.ipart.nsw.gov.au/Home/Consumer Information/Lodge a submission](http://www.ipart.nsw.gov.au/Home/Consumer%20Information/Lodge%20a%20submission)

Dear IPART

**Re: Submission of Western Sydney University to IPART's Draft Report  
"Review of the Local Government Rating System – August 2016 "  
(IPART Report).**

Western Sydney University ("**the University**") welcomes the opportunity to review and comment on the IPART Report.

As a publicly funded institution and the leading provider of higher education to Greater Western Sydney, the University provides substantial public benefit through widening participation in tertiary education, lifting the region's skills base and improving labour market participation. The University's footprint encompasses some 1,800 hectares of land, across eight local government areas and the proper and effective management of this portfolio to support the University's teaching and research responsibilities is matter of critical importance.

In making this submission to the IPART Report we note that:

- Diluting universities' entitlement to rates exemptions based on land use is arbitrary and contrary to the original public policy objectives intended by NSW Government in providing rates concessions to universities. The exemption from rates should apply to all university land, regardless of use, given that the benefit of such exemption ultimately accrues, either directly or indirectly, to universities' core teaching and research functions and the substantial public benefit derived from this.
- In light of the current trend of some Councils' to seek to erode the existing exemptions available to university land, there is a substantial argument for Government to make appropriate legislative amendments to ensure that all university land is exempt from Council rates regardless of the use of that land.
- If the above arguments are rejected, and any university land is deemed to be rateable, Councils should not have an unlimited discretionary power to adopt a Capital Improvement Valuation (CIV) method in assessing rates. Such an adjustment will result in a significant increase in the rates imposition in most cases. Any discretion to apply a CIV method should be limited to those circumstances where it is considered that the unimproved value method creates inequities i.e. apartment developments.

## **Public policy reasons for university land being exempt from Council rates**

Section 556(1)(l) of the Local Government Act, 1993 currently provides:

*“556 (1) The following land is exempt from all rates, other than water supply special rates and sewerage special rates...*

*...(l) land that is vested in a university, or a university college, and is used or occupied by the university or college solely for its purposes...”*

The University notes that the IPART report states on page 75:

*“General exemptions should be based on land use not land ownership, and land used for commercial or residential purposes should not be exempt, regardless of who owns it. This will help ensure that land used mainly to deliver private benefits is not exempt from rates”.*

Further, Table 6.1 of the IPART Report on page 80, proposes that *“University student or other residential accommodation”* become rateable.

The University strongly opposes any reduction in the rates exemption applying to land “used or occupied” by universities as proposed in the IPART report. When enacting section 556(1)(l) to exempt university land, the legislature made the public policy decision that the activities of universities were of such public benefit to warrant the granting of concessions in relation to rates impositions.

The simple rationale is that for each dollar saved by a university in respect of land charges, an extra dollar is available for a university to allocate to its core public services of teaching and research. It is the character of the owner of the land that justifies the exemption, not the nature of the activity being conducted on the land. As stated in the IPART report at page 76 *“Where any activity provides substantial benefits to the community, it may be equitable and efficient to exempt it from paying rates”.*

The public benefit that is gained by the promotion of education within the wider community is seen to be of such value to the overall society as to warrant encouragement through a number of avenues, including concessional treatment in relation to taxes and charges.

Regardless of whether the University is using the land directly for teaching or research facilities, or for the provision of commercial services or residential accommodation for its staff or students, any reduction in expenditure on rates and taxes means a corresponding increase in the amount of University funds available for core teaching and research functions.

Any process that seeks to arbitrarily exclude the concession in respect of certain uses of university land undermines the original public policy goal made by Government that university activities were of such public benefit to warrant receiving appropriate concessions.

Further, any analysis that seeks to exclude the local council rating system from making a contribution to the public benefit which is achieved through the promotion of education solely because the public benefit extends beyond the boundaries of the immediate local government area, is simplistic and overlooks the desirability of all levels of society participating in promoting educational standards.



## **Recognition of commercial activities as “purposes” of the university – *Ryde Municipal Council v Macquarie University***

The case often cited in relation to whether rates are able to be imposed on university land that is used for commercial activities is the High Court case of *Ryde Municipal Council v Macquarie University* (1993)139CLR637 (“***Ryde v Macquarie University***”). In that case, the Court considered it necessary to look at Macquarie University's objects and purposes as a university to determine whether the “use” of land was for its “purposes”.

The *Ryde v Macquarie University* case considered whether university premises leased to external operators for food and beverage services for students and staff could be regarded as being for the “purposes” of the university. The court concluded that land could still be solely for the purposes of the university even if the land was leased to a third party for a commercial activity provided the commercial services were for the benefit of staff and students.

It is important to note that since the *Ryde v Macquarie University* the legislature, in recognition of the increasingly commercial environment in which universities are required to operate, has amended universities’ enabling Acts to expand university functions to specifically include a range of commercial activities within those functions. These amendments make it clear that a commercial activity undertaken by the University is still a “purpose” of the University, even if the nature or subject matter of the activity is not directly teaching or research.

Section 8 of the *Western Sydney University Act*, sets out the “objects and functions”, of the University. These provisions are replicated in the enabling legislation of most universities. The University’s overall object is “...the promotion, within the limits of the University’s resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.” To achieve this object, the University has various specific functions or “purposes”, including the following set out in section 8(3) (a) and (a1) as follows:

- (a) *the University may exercise commercial functions comprising the commercial exploitation or development, for the University’s benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others, with particular regard to the need to contribute to the development of Greater Western Sydney,*
- (a1) *without limiting paragraph (a), the University may generate revenue for the purpose of funding the promotion of its object and the carrying out of its principal functions,*

This expansion of university functions since the *Ryde v Macquarie University* case make it clear that Government has determined expressly that the commercial exploitation of property and the generation of revenue are stand-alone functions of universities. The activity itself does not necessarily have to have the character of teaching or research provided the ultimate beneficiary of the activity is the university’s core functions of teaching and research.

Consequently, the apparent limitations referenced by the court in *Ryde v Macquarie University*, that the commercial activity itself must be predominantly for the benefit of university staff or students have been overridden by legislation and as such those limitations are no longer applicable.



There can be no other basis for the University to undertake an activity on its land, whether classified as teaching, research, commercial or residential, unless it is for the purposes as outlined in the University's enabling Act. More fundamentally, the University would not be authorised to undertake the activity unless it was permitted under the functions granted under its enabling Act.

Consequently, any activity conducted on university land for the purpose of raising revenue for the University's education and research functions is clearly a "*purpose*" of the University as defined by the various universities' enabling Acts and should attract the rates exemption.

Further, the University considers that the presumption in the IPART report that rating an activity on the basis it is a "*commercial activity*" is overly simplistic and imprecise when applied to the operation of a modern university. The statement at page 77 of the IPART report that "*..commercial activities generate private benefits and revenue..*" has no application in the context of universities. Certain 'commercial activities' of the University directly support teaching and research activities. For example the University has adopted a 'commercial approach' to the management of farming activities (livestock, grazing etc.) at the Hawkesbury campus with a focus on productivity and financial sustainability to support the provision of services to specific teaching and research programs. A similar approach has been taken to the management of horticultural assets at the campus, such as greenhouses. If land is deemed rateable merely because the activity has a "*commercial*" flavour, there is potential for activities with direct benefit to core teaching and research functions of the University to be rateable. Again, this would be contrary to the wider public policy objective of the existing legislation.

If, as a matter of public policy, the legislature recognises that universities are the type of organisation that are deserving of concessional treatment because of the nature of their core activities, then, provided the activity falls within a university's statutory functions, and the benefit of the concession ultimately flows through to the university, there is no logical basis for artificially splitting universities' activities between teaching, research, commercial and residential. Any reduction in a university's liability for rates or other charges increases the amounts available to the university to allocate to its core teaching and research functions for the benefit of the wider public.

### **Additional public benefits provided by universities – public facilities and infrastructure**

In addition to the public policy benefits universities provides to the community at large through their teaching and research activities the nature of university campuses are such that provide additional public amenities and services at a local level which, at university cost, alleviate the burdens on local infrastructure and services such that justifies concessional treatment.

The University provide significant areas of public accessible open space and recreation and community facilities. These include:

- Fitness centres;
- Sporting ovals and facilities;
- Space for community groups with synergies with the university's teaching and research functions;
- Child care centres patronised by the local community;
- Research and teaching facilities focusing on issues of significant public interest for the benefit of current and future communities;
- Research links to community organisations and industry;
- Schools engagement, partnerships and pathway programs;
- Multi-faith religious centres;
- Performing arts facilities;



Lecture rooms and other teaching facilities for wider public use.

The availability of these amenities and services on campus, which are maintained by the University, reduces the demand on public amenities outside campus.

### **Operation of commercial activities and residential accommodation by external organisations – unique character of the university market**

The justification for allowing the exemption for any activity conducted on university land, applies equally regardless of whether the activity is undertaken directly by the university or by an external third party operator.

The business model of external operators, who are engaged to provide university based enterprises such as student accommodation and 'food & beverage' services, will always budget for any charges relating to Council rates imposed on the land. If the University is obliged to meet the additional expenditure, this results in a corresponding reduction in its teaching and research funds. Even if the University is able to negotiate for the external party to meet the rates liability as an outgoing it will generally result in a reduction in the net rent offered for premises and again reduce the amount the University has available for teaching and research.

In either scenario, the imposition of the rates charge has an adverse impact on revenue available for the University's teaching and research activities.

University campuses constitute a unique type of market for external operators providing commercial services or student accommodation. With student and staff not present for the whole of the calendar year as a result of semester breaks and study periods, commercial operators must adopt a unique business model which cannot be compared with the business model of a traditional commercial environment. The uniqueness of the university market is emphasised even further when it is recognised that in many instances university campuses are situated remote from CBDs and service hubs.

The University has a number of campuses across various local government areas that do not have immediate access to the agglomeration of amenities of a local centre or central business district. This means on the one hand, that staff and students do not have access to services available to the community at large, and on the other hand means that the businesses within the campus do not have immediate access to general public passing trade. These unique market factors highlight why it is inappropriate to attempt to place university commercial activities and university residential accommodation in the same category as commercial activities within the broader business environment. Similarly, arguments seeking to justify the imposition of rates on university land which are based on competitive neutrality are flawed because of the inherently unique character of the university market.

### **Need for legislative adjustments to ensure councils do not dilute existing exemptions by extending rates liability to commercial activities and student accommodation**

The University has campuses situated in the following local government areas:

- Penrith
- Parramatta
- Bankstown
- Blacktown
- Campbelltown
- Hawkesbury
- Bathurst
- Lismore



Most councils recognise the public policy objectives of exempting university land from rates pursuant to section 556(1)(l), however, some councils are already seeking to erode that public policy objective by seeking to refuse application of the exemption in relation to any activity with a commercial flavour. As noted, this approach is contrary to the original public policy. This diluting of the concession undermines the fundamental public policy reasons for the exemption in the first place.

As a result, the University is of the view that there is a significant case for the legislature adjusting section 556(1)(l) to make it clear that university land is exempt from rates regardless of the activity being conducted on that land provided the benefits accrue to the University's core teaching and research functions.

### **IPART report's proposal to integrate the use of the Capital Improved Value (CIV) valuation method into the local government rating system**

While the University maintains that university land should continue to be exempted from Council rates charges, regardless of the activity being conducted on the land, if Government seeks to limit the exemption, the University also disagrees with the proposal to allow councils to use the Capital Improved Value as the basis for assessing rates in relation to university land. In virtually all cases such an adjustment to the rating base will result in a significant increase in the rates imposition.

This approach would have material impact on an organisation such as Western Sydney University, given the relative size of our asset base. Commercial activities that directly contribute to teaching and research programs, such as farming activities at Hawkesbury campus, are often land intensive which is likely to have implications for the rates imposed. If such land lost its exemption status, and was then rated at its capital improved value, the impact on the viability of such programs would be jeopardised.

One of the specific justifications for allowing Councils to adopt a Capital Improved Valuation (CIV) valuation method is that *"allowing its use would overcome the major shortcoming of the current system – that the mandatory use of UV inhibits council's ability to equitably and efficiently raise rates revenue from apartments."* (page 1- Executive Summary).

If addressing this shortcoming is legitimately seen as a central reason for adopting the CIV valuation method, it is submitted that this could be achieved by only allowing the CIV method in relation to apartments, rather than seeking to impact on all land. Significant carve outs would be required to ensure inequities did not occur.

### **Conclusion**

The University strongly opposes any reduction in the rates exemption applying to land "used or occupied" by universities as proposed in the IPART report. It contradicts the public policy objectives the legislature sought to achieve by recognising the public benefits that accrue from supporting the teaching and research functions of universities.

The University welcomes the opportunity to engage further on this issue.

Yours sincerely



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Vice-Chancellor and President