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Review of Local Government Rating System,
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Dear IPART

Review of Local Government Rating System

On 13 April 2016 IPART issued to all NSW Council's a 'Fact Sheet – Review of Local Government Rating System'. In the fact sheet IPART stated that they are seeking feedback from 'councils, ratepayers and the community, NSW government agencies, and other stakeholders on a number of questions raised in the Issues Paper, and any other issues stakeholders think are relevant'. Along those lines Clarence Valley Council provides the below responses to questions raised in the Issues Paper.

Taxation principles

1. *Do you agree with our proposed tax principles? If not, why?*

Yes the principles of Efficiency (benefits principle, minimisation of behavioural changes), Equity (Ability to Pay), Simplicity, Sustainability and Competitive Neutrality should apply to Local Government Rating.

Assessing the current method for setting rates

2. *What valuation method should be used as the basis for determining the ad valorem amounts in council rates? Should councils be given more choice in selecting a valuation method, as occurs in other states, or should a valuation method continue to be mandated?*

Land Values should remain as the mandated method to determine rates. The use of Land Values satisfies simplicity requirements, and thus is more cost effective to implement than Capital Improvement Values (CIV). CIV fluctuates more than land values and would require more intensive and frequent valuations increasing the cost burden to local government.

3. *Should councils be required to use the Valuer General's property valuation services, or should they also be able to use a private valuation firm (as occurs in Victoria and Tasmania)?*

NSW Valuer General's property valuation services are sufficient and should be retained. However, if valuation is to be outsourced to private firms quality assurance of this work should be undertaken by the NSW Valuer General.

- 4. What changes (if any) should be made to the Local Government Act to improve the use of base and minimum amounts as part of the overall rating structure?*

There should be a removal of the restriction that revenue generated from the base amount cannot exceed 50% of the total revenue and the removal of the maximum minimum amounts from any particular rating category, as this limits adherence to equity and benefits principles.

- 5. What changes could be made to rating categories? Should further rating categories or subcategories be introduced? What benefits would this provide?*

There should be no further changes to rating categories. The rating system in its present state which provides discretion for Council's to have multiple subcategories within categories and for each of those subcategories to have a different mix between base, minimum and ad valorem amounts already makes for a complex taxation system.

- 6. Does the current rating system cause any equity and efficiency issues associated with the rating burden across communities?*

Resource sharing arrangements between LGA's rather than the rating systems should address these issues of inequity.

- 7. What changes could be made to current rate pegging arrangements to improve the rating system, and, in particular, to better streamline the special variation process?*

Remove rate pegging. Because NSW Rate Pegging was introduced across the Board and applicable to all Councils regardless of their immediately prior efforts to drive efficiencies, there is likely to be a wide divergence of just about any measure of rating revenue between councils. The annually produced comparative data, which compares, among other things, average residential rates levied by councils within classifications, demonstrates that this data almost defy comparison. This divergence probably indicates many things, including the widely differing positions of councils immediately prior to the introduction of rate-pegging thirty eight years ago. If rate pegging is to remain then there should be an opportunity for Councils to re-establish their individual rating bases, in an attempt to normalise the rating bases of Councils.

On the assumption that rate pegging remains the current provision for Councils to catch up lost income due to properties becoming non rateable needs to be extended to changes in category e.g. when a property moves from Business to Residential (change in use not in value), the revenue lost because of this change is lost to Council forever and a Council should be able to recoup the difference as part of this process in the same way it recoups revenue due to changes in rateability.

Our view on removing rate pegging is based on the belief that a Council should be responsible for determining its own level of rate income in consultation with its community as part of the long term decision making process. We also recognise that the majority of the states in Australia do not have rate pegging and Councils in those

states are able to function successfully. Ultimately democracy prevails and Councils are held accountable by their constituents through the election process.

In relation to the special variation process where a Council strongly believes that their rejected plan for special variation is in the best interests of their community, an appropriate avenue for appeal should be established, outside of a judicial review.

8. What changes could be made to the rating system to better encourage urban renewal?

No changes are required. The ability to use special variations, and the levying of special rates in distinct areas, to collect additional rates revenue to fund urban renewal projects that provide benefits to discrete areas is sufficient.

9. What changes could be made to the rating system to improve councils' management of overdue rates?

Section 604 of the Local Government Act 1993 (Notice of transfer of Land) needs strengthening so that penalties do apply. Councils are aware that properties have been sold but for various reasons the Notice of Sale/Transfer has not been lodged. This creates difficulties for Councils when attempting to collect overdue rates and charges notwithstanding Section 571 of the Local Government Act 1993 (What happens if land is transferred?).

There also should be the implementation of a provision under Division 4 of the Local Government Act 1993 with a power to serve notice of default payment with cost of recovery payable by the ratepayer. At present the only method for recovery is through the local court via lodgement of statement of claim. The implementation of such a provision will alleviate the Local Courts being overloaded with small civil claims by Councils for overdue rates.

Assessing exemptions, concessions and rebates

10. Are the land uses currently exempt from paying council rates appropriate? If a current exemption should be changed, how should it be changed? For example, should it be removed or more narrowly defined, should the level of government responsible for providing the exemption be changed, or should councils be given discretion over the level of exemption?

The definition of Public Benevolent Institutions (PBI's) needs to be more conclusive. There have been a large number of what were Public Housing properties handed over to various Housing Groups. These groups are registered as PBI's and then make a claim for non rateability under the Local Government Act 1993. If non rateability is granted then the rest of the community is required to pay additional rates in order that the Councils revenue base does not decrease which is contradictory to the equity principle of taxation. It is understood that it was never intended that such properties were to be granted non rateability and that the provisions of Section 560(4) of the Local Government Act 1993 were to continue to apply however the Local Government Act has not kept pace with what is happening in the community and needs updating.

There are many organisations which are acquiring entire precincts (i.e. schools & churches) that request granting of non rateability. State Government bodies such as

National Parks & Wildlife Service, Teacher Housing Authority etc. are claiming non rateability even though there are private leases or agreements in place and the buildings are not occupied by the authority.

State Forests are an example of property owners whose claim for rating exemption appears to be incongruous with the largely commercial nature of the activities conducted on their properties. PBI's are another example of such circumstances. To obtain the benefits of non rateability PBI's must provide relief of poverty, sickness, destitution or helplessness as well as being public institutions (see *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation* (1931) 45 CLR 224), however many are also undertaking commercial operations (i.e. providing services that span from independent living through to acute aged care). Councils should be given discretion over the levels of exemption based on the principle of competitive neutrality as in many cases these organisations are operating as commercial operations and are already receiving funding from multiple sources such as other levels of government. Such discretion would be based on whether the main objects of the organisation are in the nature of a PBI and its activities are in accordance with those objects, and that the subject land must be used for the purposes of the organisation. If part only of the land is used for PBI purposes the land should be notionally divided to ascertain the proportion which is exempt.

Determination of non rateability has become reliant on precedence being set on appeals from the court rather than clear definitions within the Local Government Act. The intention of the current Local Government Act in relation to non rateability has been lost and current court interpretations are inconsistent.

Section 555 (non rateability for all rates and charges) should be amended to allow councils to make an annual charge for services if the service is connected to the land and the owner requests or agrees to the provision of the service. This amendment will align with the taxation principle of Efficiency in relation to the minimisation of behavioural changes i.e. excessive consumption.

11. To what extent should the exemptions from certain state taxes (such as payroll tax) that councils receive be considered in a review of the exemptions for certain categories of ratepayers?

Council's are not completely exempt from payroll tax. Some Council's are subject to payroll tax for commercial operations such as Water, Sewer, and Cemeteries. Council's already experience significant cost shifting from other levels of government (\$7.028m for Clarence Valley Council), and removal of such tax exemptions will place further burden on Council's finances which will result in reduced levels of service to ratepayers.

12. What should the objectives of the pensioner concession scheme be? How could the current pensioner concession scheme be improved?

There should be centralisation of the granting of mandatory pensioner rebates as happens in other states and is administered by the relevant state government. This would reduce the likelihood of fraud on behalf of the ratepayer.

Additionally, pensioner concessions scheme should remain, but should be increased by inflation and greater financial assistance should be provided from other levels of government to offset the cost of pensioner concessions to Councils.

Freezing existing rate paths for newly merged councils & establishing new, equitable rates after the 4-year freeze.

As Clarence Valley Council is not a Council that has been designated for merging we have not provided individual responses for each question in the Issues Paper related to this area i.e. questions 13 to 23. However, in summary Council believes that the proposed methodology of freezing existing rate paths for newly merged councils and establishing new, equitable rates after the 4-year freeze, does not align with the taxation principles of Equity (Ability to Pay), Simplicity, and Sustainability. If the proposed approach is adopted it will not achieve the outcome of a financially sustainable local government system able to deliver the right level of services to residents and ratepayers.

If you require further information regarding this submission please contact Matthew Sykes on [REDACTED]

Yours faithfully

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Scott Greensill
General Manager