

## ISSUES PAPER – REVIEW OF LOCAL GOVERNMENT RATING SYSTEM

### SUBMISSION – MID-WESTERN REGIONAL COUNCIL 13 May 2016

#### 1. Changes to be Made to Rating Categories

##### a) Categorisation as Mining

A full and comprehensive review of Section 517 of the Local Government Act is considered necessary. The Mining category, in relation to its tight definition within the Act, is not sufficient in Council's view.

Judgments made by the NSW Land & Environment Court in 2013 substantially narrowed the definition of "mining" for rating purposes, severely restricting the ability of local government to rate mining land holdings in accordance with their dominant use. The current case law is that any council using the definition of the word "mine" for interpreting Section 517 of the Act is apparently doing so in error; bearing in mind that the word "mine" is only used within the Act at Section 517, other than reference to a mine safety location. Council has been left with no alternative but to use the Chief Judge's ruling that the use of the definition from the Act's Dictionary for the word "mine", is irrelevant. It is suggested that we have a difficulty now in local government as an industry, if we are unable to rely on definitions within the Act's Dictionary for the purposes of interpreting and applying the Act.

Mining companies purchase land for noise, dust and visual attenuation as well as for environmental offsets. All the land is part of the wider mine site ie the land that is required for the mine project, without which, a mine cannot operate. The agricultural purposes of the lands are taken away and it is submitted that as the lands were purchased for mining purposes it is appropriate to categorise and rate these lands as Mining.

The word "mine" is defined in the Dictionary of the Act as follows:

*"means land on or below the surface or partly on or partly below the surface used or held for mining purposes".*

It should be pointed out that the word "mine" was taken from the 1918 Act and transposed directly into the 1993 Act. It is clear that circumstances have changed considerably in relation to how mining now operates since 1918.

It is suggested that the definition of the word "mine" should be defined along the lines of:

*"any land used or held for mining purposes including land used or held for stockpiling, noise, dust and visual attenuation and for offsets on or below the surface or partly on or partly below the surface that is required for the mining operation to occur".*

##### b) Categorisation of Vacant land

A full and comprehensive review of Section 519 of the Local Government Act is considered necessary with the view of clarifying and simplifying this area of legislation.

Referring again to judgments made by the NSW Land & Environment Court in 2013, a parcel of land purchased by a coal mining company and comprising a house and sheds, devoid of any agricultural pursuits and surrounded by land used and categorised for mining activity, was deemed vacant land. It was ordered that the land be categorised as Farmland based upon the zoning of the land. The zoning of the land did allow for farming, but also allowed for mining and business pursuits.

It is considered that the Mining or the default Business category would have been more appropriate. This consideration is based upon the premise that properties conducting some agricultural pursuits, but lacking the scale or capacity to have significant and substantial commercial purpose or character, do not qualify to be categorised as Farmland. Instead, such properties are categorised as either Residential or Business.

There appears to be a real inequity in allowing vacant land to be categorised as Farmland and accordingly it is submitted that this area of legislation needs to be reviewed.

## 2. Rate Exemptions

As part of environmental offset programs and provision of buffer areas, mining companies are putting land under State conservation agreements. The agreements make the land non-rateable, even though often mining is occurring under this land or, the mining company requires this land to be set aside for buffer purposes between their mining operations and their near-by neighbours. In the majority of cases, mining activities would not be able to proceed without the buffer areas or environmental offsets in place. The mining companies are complying with operating consents but, at the same time are able to avoid paying Council rates on these land parcels that they are required to own in order to operate.

It is submitted that there needs to be a complete and detailed review of the legislation relating to this matter so that all other landowners within the region are not subsidising mining companies through their rates.

## 3. Pensioner Concessions

It is considered that Section 575 of the Act be reviewed and the legislation changed to make it clear that the only rebates allowed are for those types of rates and charges and for the amounts specifically mentioned in Section 575(3).

The literal interpretation of Section 575(2) is to allow a rebate for Section 501 charges up to one half, without a maximum limit. Charges specifically mentioned at Section 575(3) are for domestic waste management services (made under Sections 496 & 502 of the Act) and not charges raised under Section 501.

The Office Local Government will not approve a 55% subsidy payment to Council for the one-half amount rebated on Section 501 charges.

## 4. Rate Capping

Council would like to raise the obvious issue of rate capping being detrimental to long term financial sustainability. There needs to be some flexibility to increase rates above the IPART rate cap amount. This could be delivered in a number of ways, with one option reflecting

flexibility to increase above rate capping amounts by a small increment eg 1-2%, with clear requirements to publicly exhibit that the option Council is taking is above the rate cap amount. Above 2% could still require the robust procedure for special rate variations that currently exist.

The issue is that Council needs to be able to support their own community decisions to: subsidise services, cover cost shifting, increase service levels etc, on an ongoing basis; in order to drive towards a long term financially sustainable future.