

Submission

Independent Pricing and Regulatory Tribunal Inquiry
into Local Government Rating System



PORT STEPHENS
COUNCIL

Independent Pricing and Regulatory Tribunal Review of Local Government Rating System

Port Stephens Council Submission

Summary

Port Stephens Council (PSC) would like to thank the Independent Pricing and Regulatory Tribunal (IPART) for the invitation to provide input to the review of the rating system through commentary on the April 2016 IPART Issues Paper. Council views this rates review as a 'once in a generation' opportunity for a new rating system that will work for councils and their communities.

Although Port Stephens Council is a regional council, we have taken the positions outlined below based on what Council believes is a 'whole of State' perspective, rather than a more regional or Sydney-centric view.

In addressing the topics related to the proposed four-year rates freeze in amalgamating councils, Port Stephens Council understands that the Premier has referred this matter to IPART and we have endeavoured to add value to the deliberations. However it remains Council's position that this is a poor piece of public policy; and that a new entity should not be hamstrung in its work to deliver improved performance, which is the aim of any merger.

Issues and examples are set out below in the order of the IPART Issues Paper, with the IPART questions in blue and the PSC response following.

Port Stephens Council Submission

Taxation principles

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

Overall Council agrees with the tax principles stated; however we would add the principles of enforceability and flexibility. Enforceability seeks to ensure taxes are collectible and cannot be evaded, which is consistent with the intent of property rates. Flexibility seeks to ensure that the tax system can respond to changes in future revenue needs, changes in technology or other factors that might be hard to predict.¹

For example, s.710 of the Local Government Act 1993 does not cater well for service of rate notices to Australia Post customers who use the MyPost Digital Mailbox to receive their notices as the notice is uploaded to a location and the customer is alerted to its arrival rather than sent as an email attachment directly. A more flexible approach would serve the interests of the rate payer and the council: people should be able to have choices that make it easier to do business with councils; and councils should be able to offer those choices as and when technology makes it viable to do so.

¹ OECD (2014), "Fundamental principles of taxation" in *Addressing the Tax Challenges of the Digital Economy*, OECD Publishing, Paris p31

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?

Council supports the introduction of Capital Improved Value (CIV) valuation method for **residential properties**. The reasoning is that this methodology is beneficial in achieving equity in rating between strata title (multi-unit) properties and non-strata title (detached dwelling) properties and overcoming rate income growth constraints caused by the apportioning of land value according to strata unit entitlement.

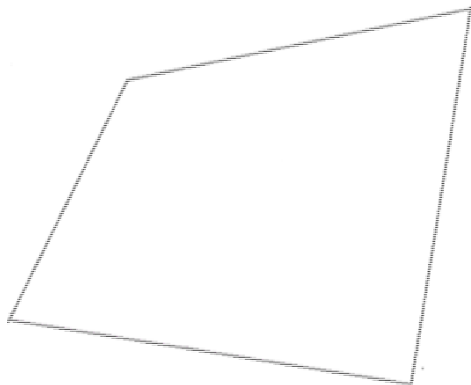
This issue potentially affects every council in the State and is not restricted to large metropolitan councils. Any additional rate income growth opportunity afforded to councils with large numbers of strata title properties through the use of CIV should also be given to all councils including those with smaller numbers of strata subdivisions, not just selected LGAs.

The consequential financial effect of CIV on both costs to implement and impact on rate income growth is relative to the size and budget of the council. What is considered a minor or modest financial benefit to a larger council may be significant to a smaller council, and council size should not be a determinant of whether the financial advantages of CIV are excluded from an LGA.

Below we have provided examples of the effect of land value and CIV on various subdivisions.

(a) An actual Deposited Plan subdivision in Port Stephens Council:

Parcel of land prior to subdivision



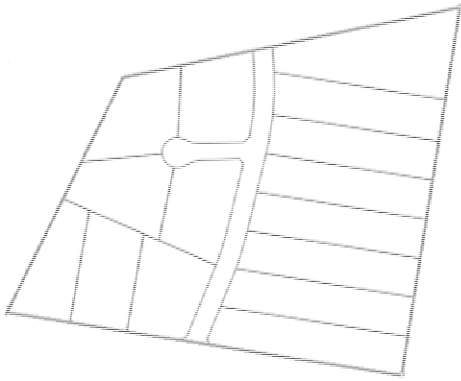
Land value prior to subdivision \$1,050,000

Rates levied prior to subdivision \$3,901.15

Calculation:

(Lot 1 rates \$1,050,000 x 0.003383 + \$349 base amount)

Parcel of land after 15 lot subdivision



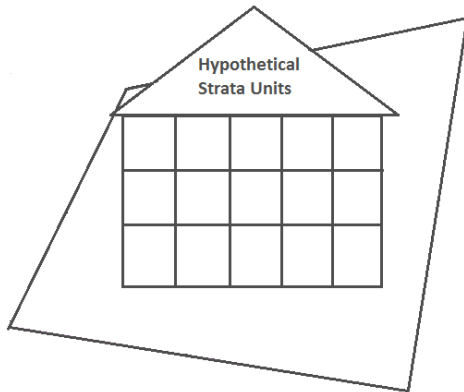
Land value after subdivision into 15 lots \$5,867,000

Rates levied after subdivision \$25,083.07

Calculations:

- Lot 1 rates \$1,678.52 (\$393,000 x 0.003383 + \$349 base amount)
- Lot 2 rates \$1,678.52 (\$393,000 x 0.003383 + \$349 base amount)
- Lot 3 rates \$1,678.52 (\$393,000 x 0.003383 + \$349 base amount)
- Lot 4 rates \$1,793.54 (\$427,000 x 0.003383 + \$349 base amount)
- Lot 5 rates \$1,644.69 (\$383,000 x 0.003383 + \$349 base amount)
- Lot 6 rates \$1,621.01 (\$376,000 x 0.003383 + \$349 base amount)
- Lot 7 rates \$1,621.01 (\$376,000 x 0.003383 + \$349 base amount)
- Lot 8 rates \$1,621.01 (\$376,000 x 0.003383 + \$349 base amount)
- Lot 9 rates \$1,658.22 (\$387,000 x 0.003383 + \$349 base amount)
- Lot 10 rates \$1,621.01 (\$376,000 x 0.003383 + \$349 base amount)
- Lot 11 rates \$1,969.46 (\$479,000 x 0.003383 + \$349 base amount)
- Lot 12 rates \$1,678.52 (\$393,000 x 0.003383 + \$349 base amount)
- Lot 13 rates \$1,678.52 (\$393,000 x 0.003383 + \$349 base amount)
- Lot 14 rates \$1,570.26 (\$361,000 x 0.003383 + \$349 base amount)
- Lot 15 rates \$1,570.26 (\$361,000 x 0.003383 + \$349 base amount)

Parcel of land after 15 lot strata subdivision



Land value after strata subdivision into 15 units
\$1,050,000

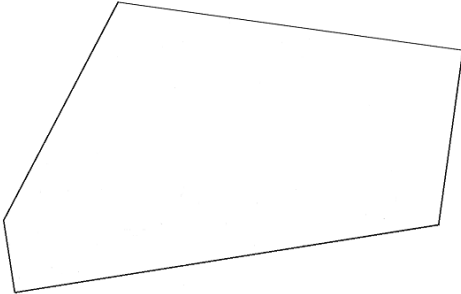
Rates levied after subdivision \$8,787.15

Calculation:

(Rates \$1,050,000 x 0.003383 + 15 x \$349 base amounts)

(b) An actual strata subdivision in Port Stephens Council:

Parcel of land prior to strata subdivision



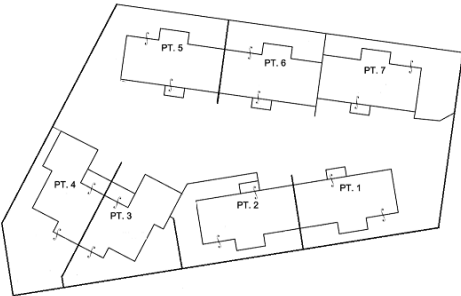
Land value prior to subdivision \$415,000

Rates levied prior to subdivision \$1,752.95

Calculation:

(Lot 1 rates \$415,000 x 0.003383 + \$349 base amount)

Parcel of land after 7 lot strata subdivision (using land value)



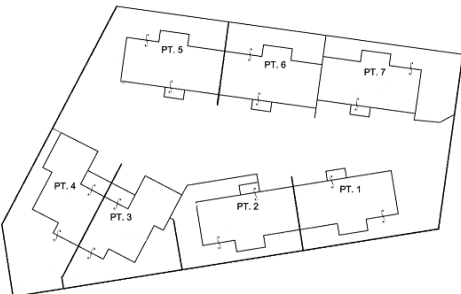
Land value after strata subdivision into 7 units
\$415,000

Rates levied after subdivision \$3,846.95

Calculation:

(Rates \$415,000 x 0.003383 + 7 x \$349 base amounts)

Parcel of land after 7 lot strata subdivision (using CIV based on actual sales)



CIV after strata subdivision into 7 units \$3,980,000

Rates levied after subdivision \$15,907.36

Calculations:

Lot 1 rates \$2,344.97 (\$590,000 x 0.003383 + \$349 base amount)

Lot 2 rates \$2,226.57 (\$555,000 x 0.003383 + \$349 base amount)

Lot 3 rates \$2,226.57 ($\$555,000 \times 0.003383 + \349 base amount)
Lot 4 rates \$2,294.23 ($\$575,000 \times 0.003383 + \349 base amount)
Lot 5 rates \$2,311.14 ($\$580,000 \times 0.003383 + \349 base amount)
Lot 6 rates \$2,209.65 ($\$550,000 \times 0.003383 + \349 base amount)
Lot 7 rates \$2,294.23 ($\$575,000 \times 0.003383 + \349 base amount)

CIV would assist in providing councils with a sustainable revenue stream. If CIV was used, then the total rateable value would increase following a strata subdivision in the same way total rateable value increases following a Deposited Plan subdivision. However the rate in the dollar would be lower, following introduction of CIV due to the higher value base of CIV over land value, thus reducing to some extent income growth associated with the use of CIV. Land value unfairly constrains all councils' rate income growth from strata subdivisions.

The suggested disincentive for ratepayers to make capital improvements under a CIV rating system is more relevant to commercial, industrial and farm land. For residential properties, there is less discretionary capital expenditure that potentially might be affected by the council rating valuation methodology. The use of CIV instead of land value is likely to see a reduction in the ad valorem rate for residential properties, lowering the impact of capital improvements on residential rates. Council could provide information to ratepayers about the estimated impact of capital expenditure decisions on their rate bill via the Council website using a simple rate calculator or table, so they could see the impact on their rates.

If CIV increases related to capital improvement works on properties are recognised in supplementary lists between general revaluations in a rate pegging environment, a council's notional general income will increase more than under existing land value methodology as construction expenditure will grow notional general income in addition to subdivision activity. The definition of notional general income may need to address whether any capital expenditure contributing to growth in total CIV is backed out of notional general income in some calculated way.

In other states where CIV is used there is currently no rate pegging so the rates are calculated annually by dividing total required rate income by total CIV. In NSW with rate pegging in place, capital expenditure would grow notional general income. This would be essential to gain additional notional general income in a residential strata land category, however in another residential category consisting of non-strata properties, the construction of a house, or other additions would increase notional general income in addition to subdivision activity. A solution could be that increases in CIV relating to dwelling construction and property improvements, as opposed to subdivision activity, could be excluded from schedule 1 of the permissible income work papers. Alternatively, for simplicity continue to use land value for the residential (non-strata) category; however this would have the undesirable effect of having two different rate bills for a detached dwelling and a strata unit that have the same market value.

PSC supports the continued use of land value **for commercial, industrial and farming properties**. The effect of using land value for these property types is that the ad valorem rate will remain higher than if CIV was used, causing rates on vacant land to be higher. This would continue to provide an incentive to develop commercial, industrial and farm land due to elevated holding costs for undeveloped land.

Conversely, using CIV for residential property reduces the rate in the dollar that is currently applied to land value and potentially enhances housing affordability as it reduces residential developers' holding costs for vacant land; and strata units are not separately rated until after registration of the Strata Plan.

Council supports continuing to mandate the valuation methodology to be used by councils for particular categories of land. This will ensure a consistent State-wide approach, reduce potential ratepayer confusion and prevent unproductive merit arguments with ratepayers.

Although CIV would be more costly to administer than land value, the additional rate income growth available to councils would provide the means to pay for the more costly valuations.

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)?

Council believes it is desirable that the valuations used for rating be perceived by ratepayers as being arrived at independently of the council. The current system, with the NSW Valuer General providing valuations, supplementary lists, engaging contract valuers, resolving valuation objections and managing valuation processes achieves this perception of independence. Council does not want to own the valuation objection process.

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?

Port Stephens Council believes there is merit in simplifying the area of base amounts and minimums. Base amounts used in conjunction with CIV would enable minimums to be discontinued for strata units.

Council does not support the concept of counting bedrooms or occupants as this would introduce an inefficient administration element. Calculating base amounts for seniors living in multi-bedroom dwellings, or calculations based on residential occupancy numbers would be unpopular and invite merit arguments with ratepayers and might result in ratepayers manipulating the rating system.

The present 50% maximum applying to base amount yields remains relevant and should continue to ensure capacity to pay is approximated in some way.

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

Council supports the replacement of the residential category with two categories being residential strata title and residential. The categories need to be well defined. The current Act does not define *residential accommodation* or *centre of population*, leaving terminology open to interpretation and challenge. It would be preferable to have less ambiguous definitions. For example, *centre of population* should be replaced with *locality* as defined by the *Geographical Names Act 1966* so that boundaries are certain. Perhaps *residential accommodation* could be aligned with the Standard Instrument LEP definition of *residential accommodation*.

Under the strata title and residential categories Council would like to raise the possibility of a *short-term accommodation* sub-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 higher demand for council services. At the same time short-term accommodation premises in holiday areas often derive benefits of local economic development and tourism initiatives, but do not make the same contribution that other business rate assessments make.

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 and included in any advertisements, including on-line advertisements, offering the premises for rent. Letting agents could be required to obtain a registration reference prior to offering the premises for rent and to make such information available to council. When registered, the rate assessment would be rated under the *short-term accommodation* sub-category of the strata title or residential category, as appropriate. When a ratepayer cancels a property's registration it is returned to its former rate category. Self-registration could mirror the State land tax registration obligations on certain property owners. To enable enforcement, empower councils to issue infringements to property owners, letting agents, and advertisers who fail to comply with their responsibilities.

Under the business category, *centre of activity* is not defined, leaving open the possibility of making a rate for a single rate assessment and a council being challenged as to whether certain lands should be included or excluded from the sub-category. To ensure consistency and transparency Council suggests that the business category have optional sub-categories according to *locality* as defined by the *Geographical Names Act 1966*. Property value whether it is land value or CIV approximates capacity to pay. Making a different rate for individual commercial complexes or shopping centres negates property value as the driver of rate relativities. Councils might be challenged for determining rating structures based on assumptions about a site's capacity to pay; or unclear or undisclosed methodology.

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

None that Council is aware of.

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?

Council's preference would be for rate pegging to be discontinued now that the Integrated Planning and Reporting Framework (IPR) has matured. Council has made a suggestion in question 8 below about modifying the definition of notional general income in order to encourage urban renewal.

In general the concept is accepted that in assessing special variation (SV) submissions, IPART should be satisfied that there is a genuine need that cannot be achieved by other means. Council also strongly advocates that the community must have inputs to decisions that affect them. However the capacity of councils to ensure that community members understand the impacts on them of an SV if approved varies across the State. Effective communication and gathering of feedback can be very expensive, especially where there is limited internal capacity in councils and thus consultants are required. Some ways the current situation can be improved are:

- a) Amend the Local Government Act to remove the different SV categories 508 and 508A. All should be the same with timeframe explicated in the application. The present differentiation is artificial and confusing, for community and councils.
- b) Clearer guidelines from IPART on what are its expectations in terms of community engagement. The detail on IPART's website is not really helpful. It states *the consultation the council has undertaken to obtain the community's views on the proposal.*
It is the council's responsibility to provide enough evidence in its application to justify the minimum rates increase. Where applicable, councils should make reference to the relevant parts of their Integrated Planning and Reporting documentation to demonstrate how the criteria have been met.

In the past IPART set a benchmark percentage community approval of any proposed SV, which although somewhat unrealistic, did provide councils with some idea of what IPART was going to use for assessment. In this context, what does IPART see as 'enough evidence'?

- c) Develop a suite of templates for use by councils that provides a minimum level of activity for SV applications. These would include but not be limited to such things as what constitutes demonstrated need; impact; engagement. These would also elicit the principles of taxation e.g. if the proposed SV is equitable, enforceable etc. Some uniformity across the State would be desirable as it would smooth the effects of variable engagement costs especially.
- d) Council has made a suggestion in question 8 below about modifying the definition of notional general income in order to encourage urban renewal.

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

From a rating perspective (as opposed to a social or political perspective) there may be a financial disincentive for councils to embrace urban renewal of old industrial or commercial sites. The former industrial or commercial site is rated under the business category while the renewed site may be rated residential or a mix of business and residential. Business rate structures are usually significantly higher than residential rate structures within an LGA. The renewed site may raise less rate income than the former industrial or commercial site even though infrastructure and service demands may increase in association with the renewal.

A way this might be overcome is by amending the definition of notional general income, as necessary, to allow councils to optionally retain the notional income of the former site as an assessment under the business category in schedule 1 of the permissible income work papers; and then record the renewed site as an assessment under the residential category in schedule 2 of the permissible income work papers, after land use has triggered a change in land category.

At present the land category as at the end of the financial year is placed in both schedule 1 and schedule 2, meaning that the notional general income in schedule 1 records the renewed site under its new categorisation which may be a lower residential rate. The former business rate income from the former industrial or commercial site is lost forever.

Amending the definition of notional general income would allow that notional income for the former business rate assessment to be spread across all ratepayers in the LGA making the urban renewal revenue neutral rather than a loss proposition.

Alternatively, income lost due to urban renewal could be treated in the same way as the current Crown Land adjustment for sales of non-rateable land becoming permanently rateable such as Landcom land sales in years subsequent to subdivision, with affected councils lodging an annual application for consideration and approval by IPART and the Office of Local Government.

Section 94 contributions may be preferable to implementing a special rate in an urban renewal area.

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

Many councils offer regular repayment plans for ratepayers in arrears via direct debit or BPay or other payment streams. The best way to keep rate debts out of the court system is to provide easier payment options. While there are provisions in the current Act for quarterly instalments and for interest to be reduced or waived, there are also provisions that impose daily interest charges on late payments as the default.

One solution may be to change the Local Government Act to include a pay by the month option with 12 equal monthly instalments from 31 August through to 31 July the following year, with no interest charges applying on those instalments paid by the due date each month. This would mirror the payment options provided by insurance companies and telecommunication providers.

Should a ratepayer find it easier to pay rates weekly or fortnightly then they could simply pay weekly or fortnightly ahead of the due date. Council direct debit arrangements could be adapted to manage these payments. It is further proposed that the annual rate notice gives advice that a monthly payment option is available and that making the first payment is the only indication needed to take up the monthly payment option.

The Act could also provide that no further notice is required to be issued for rate assessments paying by the month, reducing unnecessary billing notices. Remaining rate assessments, not electing to pay by the month, could continue to receive and pay quarterly notices, along with properties that are sold during the year that were previously making monthly payments. Any councils unable to code rate assessments as paying monthly, could simply continue to issue quarterly instalment notices and pursue assessments where there has been neither a monthly payment, nor a quarterly payment by the instalment due date.

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

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

Without some thought about easier payment options and migration to more rigorous customer payment negotiation and monitoring effort, the status quo of reliance on expensive civil claims processes will continue. In Port Stephens Council we attempt to telephone all customers to negotiate repayment arrangements before considering referral to an external debt collection agency which may eventually lead to court processes. Those negotiations with ratepayers usually result in a payment plan involving regular fortnightly or monthly payments; ratepayers tell us this is easier. It would be timelier if that option was offered up front with the rate notice and interest automatically withheld for payments made monthly. At present any equal monthly arrangement effectively needs to commence before the rate notice has been issued as rate notices are not issued until July, putting ratepayers under financial stress to make a large initial payment by 31 August to avoid interest charges.

Equal monthly payments would have no adverse impact on a council's cash flow after the initial introduction, and council investments could be timed appropriately to accommodate the transition. The social benefit in providing easier payment options and potential avoidance of legal action outweighs the reduction in council investment interest achieved via current quarterly payment timing as opposed to a deferred monthly payment option (which if fully taken up would be equivalent to one year's interest on one third of a rate instalment). Similar considerations of equity, lost interest and investment income would have been made when migrating from the Local Government Act 1919 provisions to the current Act, with the former Act providing an additional three months interest free period for ratepayers beyond the due date.

Port Stephens Council offers aged pensioners the option to defer their rates against their estate, (subject to income and asset criteria) through a formal agreement. Very few ratepayers have taken up the option citing reluctance to burden beneficiaries with debt; however the agreements have worked well for more than a decade with a number of assessments paid out of a deceased ratepayer's estate.

Council suggests the limitation contained in s.712 (1) "Proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable." be increased to recognise deferral options provided to pensioners. Otherwise, a specific statement about the availability of deferrals might be appropriate.

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?

Council proposes that exemptions be removed for particular land use types even if they are owned and operated or used by public charities, public benevolent institutions or are run in conjunction with a place of worship:

- Child care centres and pre-schools
- Food premises
- Plant nurseries
- Residential accommodation
- Retail and commercial premises selling primarily new products
- Seniors housing including aged care facilities, retirement villages and nursing homes
- Vacant land owned by charities and public benevolent institutions that remains vacant after a period of time (eg 10 years) of continuous ownership by the charity or public benevolent institution

The rationale for the removal of these exemptions is that these land uses operate in a competitive market and so should not enjoy a competitive advantage over private operators via rate exemption.

The justification for the removal of exemption from residential accommodation is that all residential accommodation contributes to the need for council services. NSW Land and Housing Corporation pays rates on its housing whereas community housing providers generally do not, if they are a public charity or public benevolent institution. There has been and continues to be a shift in social housing away from the NSW Land and Housing Corporation to community housing providers and an unintended consequence of this is a

reduction in council revenue raising through rate exemptions. Given that it is a government priority to increase involvement of the non-government sector in social housing councils may be further deprived of rate income as this shift in provider becomes more prevalent.

The justification for the removal of exemption from vacant land owned by charities and public benevolent institutions that remains vacant after a period of time (eg 10 years) of continuous ownership by the charity or public benevolent institution, is that if the land is not being put to any use apart from being set aside for future use, then it is effectively a land banked property investment with reduced or nil holding costs. This is in contrast to other owners of land banked property where holding costs apply. Unused vacant residential, commercial, or industrial land that is owned by charities or public benevolent institutions should receive a price signal via rates so that the land is put to a higher use providing residential accommodation or employment generating industry.

Charities and public benevolent institutions currently receive rate exemptions for holiday homes that are deemed to be used for the purposes of the charity. Since these are residential properties that generate demand for council services they should be rated in the same way as other residential properties.

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?

Councils receive funding from State and Commonwealth governments. If councils were to commence paying State and Commonwealth taxes that they are currently exempt from, this would erode the net government transfers to local councils. This is different to the rate exemption currently granted to specified ratepayers as councils do not generally provide financial assistance to the recipients of rate exemptions. The process would reduce efficiency of the funding framework and lead to unintended reductions in revenue for councils.

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

Currently councils meet up to 45% of pensioner rebates, meaning that non-pensioner rate payers are effectively subsidising pensioners. Provision of social welfare benefits is not in the charter of councils.² Council would like to see pensioner rate concessions indexed to increase annually, with the total cost of concessions met by State and Commonwealth governments.

Freezing existing rate paths for newly merged councils

13. We have interpreted the rate path freeze policy to mean that in the four years after a merger, the rating path in each pre-merger council's area will follow the same trajectory as if the merger had not occurred. Do you agree with this interpretation?

Yes

² Section 8, *Local Government Act 1993*

- 14. Within the rate path freeze period, should merged councils be permitted to apply for new special variations:**
- **For Crown Land added to the rating base?**
 - **To recover amounts that are 'above the cap' on development contributions set under the Environmental Planning and Assessment Act 1979?**
 - **To fund new infrastructure projects by levying a special rate?**

Council supports allowing Crown Land adjustment variations, which are a normal administrative process in Port Stephens Council to avoid losing income from Defence Housing Authority property sales, as the Commonwealth has always made an ex-gratia payment to Council equivalent to rates for those properties. Port Stephens LGA also has Landcom subdivisions and to be deprived of rate income growth for those property sales, subsequent to the year in which they were valued, during the rate freeze period, would be outside the intended scope of the rate freeze.

If a community wants new infrastructure and is prepared to pay for it via a special rate following an appropriate community engagement process, then it is implied that they do not seek to be protected from the increase under the rate freeze provisions.

- 15. Are there any other situations where merged councils should be able to apply for new special variations within the rate path freeze period?**

PSC has no contribution to this question.

- 16. During the rate path freeze period, should merged councils only be able to increase base amounts and minimum amounts each year by the rate peg (adjusted for any permitted special variations)?**

Port Stephens Council agrees with this.

- 17. During the rate path freeze period, should merged councils be able to allocate changes to the rating burden across rating categories by either:**
- **relative changes in the total land value of a rating category against other categories within the pre-merger council area, or**
 - **the rate peg (adjusted for any permitted special variations)?**

As general revaluations will occur during the rate freeze it may be appropriate to change rating burdens between land (rating) categories by the relative change in value of the land (rating) categories.

- 18. Do you agree that the rate path freeze policy should act as a 'ceiling', so councils have the discretion to set their rates below this ceiling for any rating category?**

We agree that this should be the case.

- 19. What other discretions should merged councils be given in setting rates during the rate freeze period?**

PSC has no contribution to this question.

20. We considered several options for implementing the rate path freeze policy. Our preferred option is providing the Minister for Local Government with a new instrument-making power. What are your views on this option and any other options to implement the rate path freeze policy?

The objective of merging councils is (allegedly) to make them more financially sustainable. Port Stephens Council is not in agreement with the rate freeze as it is deemed poor public policy. Whether giving a new instrument-making power to the Minister for Local Government or some other option for the four year period is effectively depriving a new entity of the means to reach for financial sustainability. In fact the delay has the effect of more than four years because of the compounding effect of missed revenue opportunities. Council believes that a new entity should be trusted to make a rationale rating strategy that provides the best benefit and protection to its community. After all it will have to do so in year five.

Establishing new, equitable rates after the 4-year freeze

21. Should changes be made to the LG Act to better enable a merged council to establish a new equitable system of rating and transition to it in a fair and timely manner? If so, should the requirement to set the same residential rate within a centre of population be changed or removed?

Please note our reference to the use of the 'centre of population' above and preference for using 'locality'.

Council is unsure that a merged council in Sydney would necessarily comprise one centre of population as there is case law that appears to support the option of creating sub-categories for different suburbs.

In *The Council of the City of Sydney v South Sydney City Council* [2002] NSWLEC 129 Pearlman J found that that the creation of sub-categories of the residential category in South Sydney City Council by "centre of population" for Residential Population Centre A – comprising the suburbs of Alexandria, Beaconsfield, Centennial Park, Darlington, Erskineville, Eveleigh, Moore Park, Newtown, Paddington, Redfern, Rosebery, St Peters, Surry Hills, Waterloo and Zetland; and Residential Population Centre B – comprising the suburbs of Camperdown, Chippendale and Ultimo; and Residential Population Centre C – comprising the suburbs of Darlinghurst, Elizabeth Bay, Potts Point, Rushcutters Bay and Woolloomooloo, were valid. At 49:

"Having regard to the charter by which South Sydney is bound under s 8 of the LG Act (in common with all councils), fairness and equity are legitimate considerations in the exercise of its powers, including its power to determine sub-categories. Similarly, matters of the community of interest, geographical cohesion etc in relation to the proposed categories were also legitimate considerations in the exercise of its powers."

22. Should approved special variations for pre-merger councils be included in the revenue base of the merged council following the 4-year rate path freeze?

Yes. The outcomes sought and approved in the special variation would continue following merger, so it is logical the approval to continue to fund those outcomes should follow.

23. What other rating issues might arise for merged councils after the 4-year rate path freeze period expires?

Merged councils will need to be brought to a common valuation base date. As this generally occurs on a three year cycle, it will occur during the rate freeze period; perhaps the merging councils could be revalued as at the date of the council next due for revaluation, effectively bringing forward a revaluation for the remaining merging council/s.

Summary

Port Stephens Council has been an active participant in the entire process from Destination 2036 in 2011 to Fit for the Future processes and Inquiries by IPART. In that context the importance of this Review cannot be overstated. Council believes that this review of the rating system in New South Wales is a 'once in a generation' opportunity to remove anomalies, streamline processes and provide revenue generation that is sustainable and equitably applied across all categories.

I am pleased to offer this submission on behalf of Port Stephens Council.

Wayne Wallis
General Manager

May 2016