

Review of the Local Government Rating System

Local Government — Final Report
December 2016

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ISBN 978-1-76049-042-3

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1 Executive summary

The NSW Government has asked the Independent Pricing and Regulatory Tribunal (IPART) to review the local government rating system in NSW. The purpose of our review is to develop recommendations to improve the equity and efficiency of the rating system, in order to enhance councils' ability to implement sustainable fiscal policies over the long term.

This review considers the valuation method used to calculate rates, exemptions and rating categories, the way in which councils' total income increases as population increases, the distribution of rates across different ratepayers and the eligibility and design of exemptions and concessions. Our recommendations are not designed to increase the average rates paid by current ratepayers, but to allow councils to collect revenue more equitably and efficiently from ratepayers.

In conducting the review, we have consulted stakeholders, analysed the current rating system and assessed its performance against the key taxation principles of efficiency, equity, simplicity, sustainability and competitive neutrality. We have also compared the NSW rating system to best-practice policies in other jurisdictions.

We have developed our recommendations to promote a stronger and more sustainable rating system that would benefit ratepayers and councils. Box 1.1 outlines our key outcomes resulting from our recommendations.

Box 1.1 Our key outcomes:

1. Use the Capital Improved Value (CIV) valuation method to levy local council rates.
 2. Allow councils' general income to grow as the communities they serve grow.
 3. Give councils greater flexibility when setting rates in residential areas.
 4. Modify rate exemptions so eligibility is based on land use rather than ownership.
 5. Improve assistance to pensioners.
 6. Give councils more options to set rates within rating categories.
-

Use the CIV valuation method to levy local council rates

We recommend mandating the CIV method as the basis for setting rates in metropolitan council areas, and giving non-metropolitan councils the option to use CIV as an alternative to Unimproved Value (UV).

CIV outperforms UV in metropolitan areas when assessed against key tax principles and international best practice. Rating properties using CIV allows:

- ▼ councils' rate income to grow sustainably as new capital is invested and costs increase, and
- ▼ councils to rate residences and businesses efficiently, equitably, simply and transparently.

Total rates income collected by councils from current ratepayers would remain unchanged with the switch from UV to CIV.

Non-metropolitan councils should be allowed to choose between the CIV and UV method for setting rates because the benefits of using CIV are less clear in regional areas.

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

We also recommend allowing councils' rates income to increase over time in line with the growth in CIV arising from new capital investment. This means rates per household, on average, would not rise in real terms,¹ whilst improving financial sustainability and encouraging urban renewal.

As the community grows, new ratepayers would fund the extra local services, such as parks, walkways, roads and libraries, provided by councils over the coming years to support a growing community. This would allow councils to fund and establish additional infrastructure and services for the use of both current and future ratepayers without the need for State Government assistance or Special Variations. Current ratepayers would be more motivated to support growth, urban renewal and implementing the Plan for Growing Sydney.

The CIE estimates this recommendation could provide a net gain of between \$443 million and \$2.1 billion to current and future ratepayers.²

Our recommendation would:

- ▼ improve the timely provision of local council services to support a growing community

¹ Other factors could lead to average rates per household increasing, for example, if a council applied for a special variation to fund improved services to the community.

² The CIE, *The costs and benefits of changing local council rate setting*, December 2016, Net Present Value analysis over 15 years using a 7% discount rate.

- ▼ allow the NSW Government to significantly reduce the current budget funding that supports growth and urban development, and
- ▼ remove the cross subsidy, whereby current residents pay, via state taxes and rate rises under Special Variations, for the expansion in services supplied by councils to support growth. Removing this cross subsidy could provide a gain of \$1.8 billion to current ratepayers over the next 10 years.

Our recommendation distributes the rating burden more efficiently and equitably between current and future ratepayers because they face the same tax burden. It would also allow councils to maintain consistent service levels over time without resorting to Special Variations.

Giving councils greater flexibility when setting rates in residential areas

We recommend allowing councils increased flexibility to set different rating structures in residential areas. This would improve the equity and efficiency of the rating system by allowing councils with diverse communities to set rates that reflect differences in access to, demand for and cost of providing council services across their local area. This also allows new councils (at the end of the 4-year rate path freeze) to establish new rate structures for residential rates, and transition to them in a fair and timely manner.

We propose introducing protections to promote transparency and equity when a council sets different residential rates, and to protect ratepayers from excessive rate increases.

Modifying rate exemptions so eligibility is based on land use rather than ownership

Our recommendations on exemptions are driven by the general principle that eligibility should be based on land use rather than ownership. If land is used for commercial or residential purposes it should not be exempt from rates regardless of who owns it.

Our recommendations better target exemptions to ensure ratepayers do not subsidise the costs of providing council services to properties where this is not justified on efficiency and equity grounds, and properties with comparable uses of land attract the same rating treatment. Applying this general principle means we recommend retaining, amending or removing some exemptions.

Improving assistance to pensioners

We also considered how to improve assistance provided to pensioners. We recommend maintaining the current \$250 pensioner concession rebate for

existing pensioners and introducing a new \$1,000 per year rate deferral scheme that would be available to both existing and new pensioners.

Our recommendations enhance the NSW Government's commitment to providing concessions to pensioners, whilst improving the long-term financial sustainability of local councils and ensuring that other ratepayers would not be required to fund this cost in the long term.

Giving councils more options to set rates within rating categories

The current rating system includes four rating categories which reflect the primary use of the land - residential, business, farmland and mining. We recommend introducing a new rating category for environmental land, and new subcategories for residential, business, farmland and mining properties, to encourage urban renewal and growth and allow councils to use their rate structures to better take account of different costs that arise from different land uses.

2 Overview and our recommendations

This chapter provides the context for our review of the local government rating system in NSW. It sets out what we have been asked to do and how we approached the review. It also outlines the current rating system, introduces the key tax principles we have used to assess and recommend changes to this system, and lists our recommendations.

2.1 What we have been asked to do

The NSW Government asked IPART to review the current rating system and recommend reforms that aim to enhance councils' ability to implement sustainable and equitable fiscal policy.

Under our terms of reference, we are required to consider:

- ▼ the rating burden across and within communities, including consideration of multi-unit dwellings
- ▼ the appropriateness and impact of current rating categories and exemptions, and mandatory concessions
- ▼ the land valuation methodology used as the basis for determining rates in comparison to other jurisdictions
- ▼ the capacity of a newly merged council to establish a new equitable rating system and transition to it in a fair and timely manner, and
- ▼ the objectives and design of the rating system according to recognised principles of taxation.

Our terms of reference also specify that we must take account of the Independent Local Government Review Panel's Final Report (Panel Report)³, the NSW Government's response to this report, and the 2013 NSW Treasury Corporation (TCorp) report '*Financial Sustainability of the NSW Local Government Sector*'.⁴ We are required to recognise the importance of the Integrated Planning and

³ Independent Local Government Review Panel, *Revitalising Local Government*, October 2013, at <http://www.localgovernmentreview.nsw.gov.au/>, accessed 11 August 2016.

⁴ NSW Treasury Corporation, *Financial Sustainability of the NSW Local Government Sector, Findings Recommendations and Analysis*, April 2013.

Reporting framework that allows NSW councils to draw various plans together and understand how they interact.⁵

In addition, our terms of reference require us to take account of the NSW Government's policy of encouraging urban renewal, as well as its commitment to protect residents against excessive rate increases and to provide rate concessions to pensioners.

A copy of our terms of reference is provided in Appendix A. The reports noted above are summarised in Appendix H.

2.1.1 Our process for conducting this review

We have undertaken public consultation, research and analysis. We released an Issues Paper in April 2016, and received 159 written submissions in response to this paper. We also interviewed some councils about aspects of their submissions, and conducted a public hearing in April 2016. In addition, we consulted relevant NSW Government agencies and organisations, and engaged experts in the field to provide input on our approach.

As an interim task, we delivered an Interim Report to the Government in June 2016, which was publicly released on our website on 1 August 2016.⁶ We recommended a legislative and regulatory approach to achieve the Government's policy that there will 'be no change to the existing rate paths for newly merged councils for four years'⁷, in accordance with our terms of reference. We maintain our recommendations set out in the Interim Report, along with our recommendations in this Report (see Box 2.1).

Following the release of our Draft Report in August 2016, we held public hearings in Sydney and Dubbo, and conducted further consultation with stakeholders. We also engaged The CIE to conduct a cost-benefit analysis of our recommendations to use CIV to rate properties and determine growth in council rates. We received 175 submissions in response to our draft recommendations.

⁵ Office of Local Government, *Integrated planning and reporting*, at <https://www.olg.nsw.gov.au/councils/integrated-planning-and-reporting>, accessed on 12 August 2016.

⁶ IPART, *Freezing existing rate paths for newly merged councils*, June 2016.

⁷ NSW Government, *Media Release – Stronger Councils for Sydney and Regional NSW*, at <http://www.nsw.gov.au/media-releases-premier/stronger-councils-sydney-and-regional-nsw>, 18 December 2015, accessed 12 August 2016.

Box 2.1 4-year rate path freeze for new councils

In our Interim Report we recommend an approach for:

- ▼ determining the general income for a pre-merger council area within a new council, and
- ▼ setting rates for that pre-merger council area (given this general income).

Our recommended approach balances providing a sufficient degree of rate certainty to ratepayers (as required by the rate path freeze policy), with providing appropriate flexibility to councils to address unexpected or external factors. It does this by:

- ▼ allowing a council's income to grow by up to the rate peg or an existing Special Variation
- ▼ preventing new councils from equalising rates across pre-merger council areas using mechanisms that lead to rate increases^a
- ▼ permitting a new council to apply for Special Variations in limited circumstances:
 - where there is a critical short-term financial need
 - to fund new infrastructure
 - to renew an expiring Special Variation that funds a continuing service
 - for unrecovered, 'above the cap' development contributions, and
 - for Crown Land added to the rate base, and
- ▼ allowing councils to maintain a pre-existing rate plan for rebalancing rates between categories during the rate path freeze period.

In our Final Report, we also recommend that new councils be able to apply for a streamlined Special Variation to increase their general income as a result of changes to rate exemptions (see Section 6.7.2).

^a A new council might be able to equalise rates across pre-merger council areas by setting rates below the rate peg. A pre-merger council's rate path is a ceiling. A new council would be free to set rates at lower levels within any pre-merger council area, which might have the effect of equalising rates.

2.1.2 Structure of this report

The rest of this report explains the context and approach for our review, discusses our analysis and findings in detail, and sets out our recommendations. The report is structured as follows:

- ▼ **Chapters 3 to 6** focus on our key recommendations and the analysis that supports them, including:
 - using CIV as the basis for calculating the variable amount in rates in metropolitan areas
 - giving regional councils the option to use CIV or UV when setting rates
 - allowing councils' general income to grow as the communities they serve grow, measured by the increase in CIV from new developments

- giving councils greater flexibility to set different residential rates within their local area, and
 - modifying rate exemptions so eligibility is based on land use rather than ownership.
- ▼ **Chapters 7 to 10** discuss our additional recommendations and analysis on:
- introducing a new rate deferral scheme for pensioners
 - introducing a new rating categories and new subcategories
 - transitioning to using the CIV method as the basis for calculating the Emergency Services Property Levy, and
 - allowing councils to either purchase valuation services directly from the market or from the Valuer General.

2.2 The current rating system in NSW

Councils provide a range of infrastructure and services to ratepayers in their local government area. To fund their costs, councils:

- ▼ levy rates on property owners in their area
- ▼ charge fees for the use of specific services (user charges)
- ▼ receive grants from the State and Federal governments
- ▼ generate other revenue, for example, from fines, developer charges and interest, and
- ▼ raise funds through borrowings.

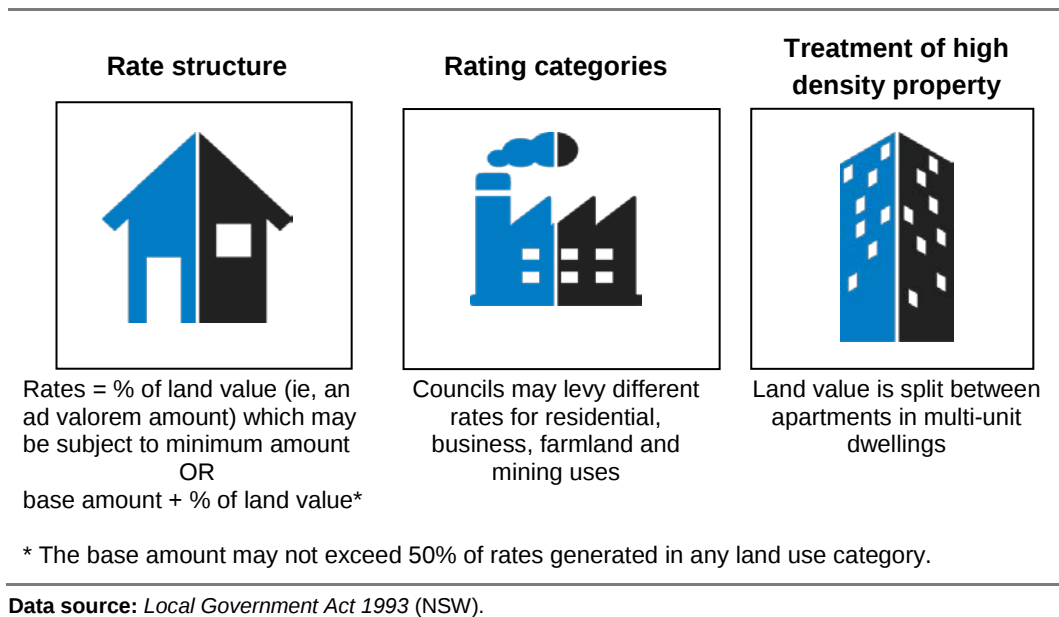
This review only considers rates included in a council's general income.⁸

The system that determines how these rates are currently calculated in NSW is set out in the *Local Government Act 1993* (LG Act).⁹

The following sections outline key features of this system and Figure 2.1 provides an overview of how council rates are set in NSW.

⁸ This is income derived from ordinary rates, special rates and specified annual charges (section 505 of the *Local Government Act 1993* (NSW)). Special rates and charges for water and sewerage are not included in a council's general income.

⁹ For more detailed information on the current rating system, see the LG Act (Chapter 15, Sections 491-607), and the NSW Department of Local Government, *Council Rating and Revenue Raising Manual*, 2007.

Figure 2.1 How council rates are set in NSW

2.2.1 Rate structure

Under the LG Act, a rate may consist of:

- ▼ an ad valorem amount (which may be subject to a minimum amount), or
- ▼ a base amount to which an ad valorem amount is added.

In NSW, an **ad valorem amount** is set as a proportion of the unimproved land value (UV) of the rateable property – that is, the value of the property without any buildings, houses or other capital investments.

A **minimum amount**, where applied, is a fixed charge which applies instead of the ad valorem amount, when it is greater than the ad valorem amount.

A **base amount**, where applied, is a fixed charge that is levied equally against all rateable properties within a given rate category, or subcategory of land use, in addition to the ad valorem amount.

There is no restriction on the proportion of revenue a council can generate from the ad valorem amount included in rates. However:

- ▼ revenue generated from the base amount cannot exceed 50% of the total revenue from any particular rating category, and
- ▼ the minimum amount cannot exceed a statutory limit (set at \$506 in 2016-17¹⁰), unless approved by IPART.¹¹

¹⁰ This ceiling only applies to ordinary rates. A different ceiling applies to special rates: \$2 (section 548(3)(b) of the LG Act).

¹¹ Councils that wish to set a minimum amount above the statutory limit are required to submit a minimum rate application to IPART for review and assessment. IPART has been delegated the authority to approve minimum amount variations by the Minister for Local Government.

In 2013-14, the ad valorem amount accounted for 75% of all NSW council rate revenue. It is the primary method for raising rating income. Base and minimum amounts accounted for an average of 15% and 10% of council rate revenue respectively across NSW.¹²

Treatment of high-density property

Where the rateable property consists of multiple units, such as a block of apartments, a single land value is determined for the site as a whole, and the assessed UV for an individual apartment is worked out by dividing the total land value according to each apartment's unit entitlement.

2.2.2 Rating categories

Councils may vary the way they calculate rates for different categories of property. For example, they can use a different percentage of the unimproved land value to calculate the ad valorem amounts, apply different minimum amounts, or add different base amounts. There are four main rating categories:

- ▼ residential
- ▼ business
- ▼ farmland, and
- ▼ mining.

Councils may also determine subcategories within each of these four categories, and vary the way they calculate rates for each subcategory. However, the degree of flexibility varies across categories. In particular, the LG Act requires that residential rates for all properties within a **centre of population** are calculated the same way.

Finally, there are also a range of land uses which are currently exempt from paying rates (or exempt from paying a portion of rates). These include national parks, charities and education institutions.

2.2.3 Rate peg

The LG Act sets out a process that regulates the amount by which councils can increase their general income. The main component of general income is rates revenue from ordinary and special rates (see section 2.2.6 below).

¹² These are averages and not all councils apply these rates.

Each year, IPART determines the maximum percentage by which a council may increase its general income in the coming year, known as the **rate peg**. We calculate this percentage based on the estimated annual change in NSW councils' costs, adjusted for any improvement in productivity. The total amount of general income collected from rates revenue is typically called the **rating burden**.

Councils then set their rates for each rating category so that their annual general income does not increase in percentage terms by more than the rate peg for that year. This gives them some flexibility to vary the increase in rates across categories (eg, to increase residential rates by a higher percentage than farmland rates), as long as the total increase in revenue does not exceed the rate peg.

2.2.4 Special Variation process

Councils can apply to IPART for a **Special Variation** to allow them to increase general income above the rate peg for a range of reasons, including to provide additional services, to replace ageing assets, or improve financial sustainability.

The **Integrated Planning and Reporting (IP&R)** framework is an important part of the Special Variation process. As part of the IP&R framework, when applying for a Special Variation, councils are required to engage the community on how the funding required will deliver services and infrastructure that meet the community's expectations about service levels.

2.2.5 Growth outside the rate peg

Aside from Special Variations, councils can increase their general income 'outside the rate peg' through the **supplementary valuation process**. This involves a new value being assigned to a property due to changes being made to the property. For example:

- ▼ land rezoning (eg, the zoning of a property changing from farmland to residential or detached housing to multi-unit apartments), and/or
- ▼ changes in the number of rateable properties on the property (eg, through an increase in apartments or subdivision).

The growth in general income that results from supplementary valuations is determined by applying a council's current rating structure (ie, ad valorem and fixed charges across categories) to:

- ▼ the new value of the rezoned land (and to a different ratings category, if applicable), and/or
- ▼ the newly rateable properties.

2.2.6 Different types of rates

There are two different types of rates included in a council's general income:

- ▼ **Ordinary rates** – councils are required to make and levy an ordinary rate for each year on all rateable land in their area.
- ▼ **Special rates** – councils have the discretion to levy a special rate for:
 - works or services provided or proposed to be provided, or
 - any other special purpose.

Special rates can be levied on subgroups of ratepayers. For example, a special levy could be applied to all properties in a specific area or development, even if it is within a centre of population.

2.2.7 Land valuation process

Councils do not undertake the land valuations used to calculate the rates applicable to each property themselves. Instead, they are required to use the unimproved land valuations provided by the NSW Valuer General.

The Valuer General values all land in NSW, and provides services to a range of users including to the NSW Government for the purpose of levying land tax. In comparison, councils in Victoria and Tasmania have the option of using other valuers to estimate property values for the purpose of levying rates.

2.2.8 Funding of infrastructure and services

Typically, income from rates is used to fund (or partly fund) infrastructure and services that have the characteristics of 'public goods' or 'mixed goods'. Services with the characteristics of 'private goods' are generally funded through user charges (see Box 2.2 for more information.)¹³

¹³ The LG Act recognises this principle in allowing direct charges for services such as water and sewerage (section 501), mandating direct charges for waste (section 496), and not including these user charges in the council's general income for rates purposes (section 505).

Box 2.2 What are public, private and mixed goods?

The infrastructure and services provided by councils fall into three categories:

- ▼ **Public goods:** where one person's consumption does not prevent others from consuming it and it is difficult or not practical to charge consumers to use it. Examples include local roads, footpaths and parks.
- ▼ **Private goods:** where consumption by one person prevents another from consuming the same unit of that good. Examples include water, sewerage and garbage collection.
- ▼ **Mixed goods:** that have a mixture of private and public good characteristics, such as libraries and community centres.

Development contributions plans and IPART's role

Councils can levy development contributions from property developers if new development is expected to increase the demand for council services.

The contributions and the local infrastructure to be funded must be set out in a councils 'section 94 contributions plan'.¹⁴ The contribution a developer pays is currently capped by NSW legislation as follows:

- ▼ \$30,000 per dwelling or residential lot in greenfield areas, and
- ▼ \$20,000 per dwelling or residential lot in all other areas.¹⁵

IPART reviews contributions plans for the NSW Government if:

- ▼ the development contributions are above the relevant cap, and
- ▼ the council is seeking gap funding from a Special Variation or through the Local Infrastructure Growth Scheme (LIGS).

The Local Infrastructure Growth Scheme

The Local Infrastructure Growth Scheme (LIGS), provided by the NSW Government, funds the gap between the maximum contribution that councils can charge developers and what it actually costs councils to deliver essential infrastructure.

LIGS aims to increase housing supply as the developer does not need to pay the full cost of infrastructure, with NSW Government funding used to deliver roads, parks and other local infrastructure in housing growth areas.

¹⁴ See Section 94, *Environmental Planning and Assessment Act (NSW) 1979*.

¹⁵ Department of Planning circular PS 11-12, *Section 94E Direction – Development contributions*, 15 March 2011.

In 2016-17, the NSW Budget provides \$60 million in LIGS funding to support infrastructure for new homes in The Hills and Blacktown local government areas.¹⁶

Chapter 4 discusses our recommendations that could promote growth and urban renewal, and how they could boost housing supply and reduce the need for State Government and developer contributions.

2.3 Key tax principles

The key tax principles that we have used to assess the current rating system are:

- ▼ efficiency
- ▼ equity
- ▼ simplicity
- ▼ sustainability, and
- ▼ competitive neutrality.

Stakeholders generally agreed with us using these principles for our review. The sections below outline each of these principles.

2.3.1 Efficiency

Efficiency comprises two main sub-principles: the benefits principle, and the principle that taxes should minimise changes in behaviour.

Benefits principle

The income raised from rates is generally used to fund (or partly fund) infrastructure and services that have the characteristics of ‘public goods’ (see Box 2.2). The benefits principle is that each person’s share of funding for public goods should be proportional to the benefits they receive from these goods.¹⁷

However, the benefits principle is difficult to apply because people generally understate their willingness to pay for the benefits that they receive from public goods.^{18,19} In practice, proxies that are correlated with people’s willingness to pay for public goods, such as the value of the property they own, are used to estimate benefits received.

¹⁶ NSW Budget 2016-17, *Better planning for more homes, jobs*, Media Release, 21 June 2016, NSW Government, NSW Budget 2016-17, Budget Paper no 3 Budget Estimates, p 8-4.

¹⁷ This is otherwise known as the **Lindahl tax** solution to funding public goods. The efficient level of provision of the public good is determined where the sum of individual benefits from providing an extra unit of the good equals the cost of supplying that extra unit.

¹⁸ A person’s willingness to pay for goods should generally be equal to the benefits they receive from those goods.

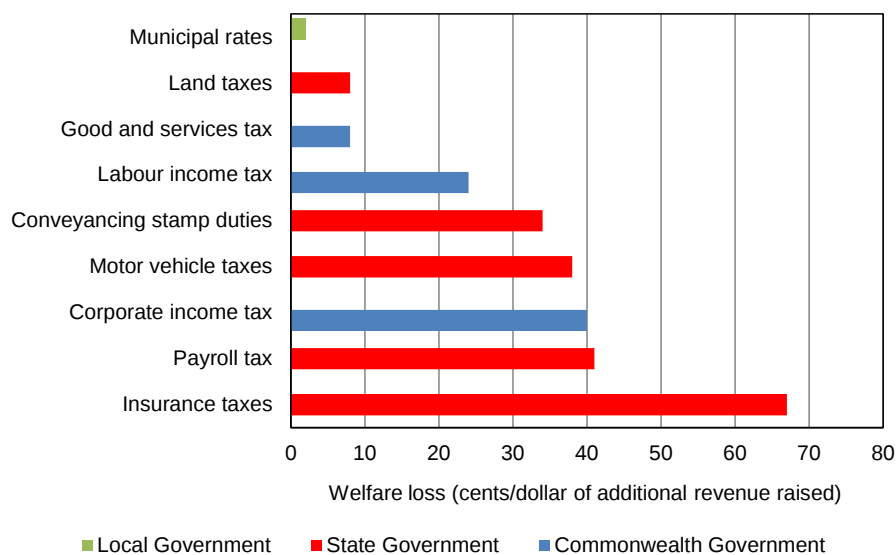
¹⁹ This is due to the **free-rider** problem. People have an incentive to under-state their willingness to pay for public goods, if their stated willingness to pay is then used as the basis on which taxes are levied on them.

Taxes should minimise changes in behaviour

Taxes that minimise changes to production and consumption decisions are more efficient. The more that taxes that are designed to raise general revenue change behaviour, the greater the welfare loss.²⁰

The Henry Tax Review found that local rates were the most efficient of all current taxes used by any level of government, because changes in behaviour from rate taxes are small. It estimated that for every dollar raised through rates, there were welfare losses of just 2 cents (Figure 2.2). In comparison, the welfare losses associated with other State and Commonwealth taxes ranged from 8 to 70 cents per dollar raised. Major State taxes such as payroll tax and stamp duty had an excess burden of 30 to 40 cents per dollar.

Figure 2.2 Marginal welfare loss from a small increase in selected Australian taxes



Data source: Henry K, *Australia's future tax system – Final Report*, May 2010 (Henry Tax Review), p 13, updated using KPMG Econtech, *CGE analysis of the current Australian Tax System*, Final Report, 26 March 2010.

2.3.2 Equity

Equity also has three sub-principles: the benefits principle (discussed above), the ability to pay principle and the intergenerational equity principle.

²⁰ The welfare loss of taxation is known as the excess burden of taxation, and is the distortionary cost that taxes cause by reducing the amount of productive activity that would otherwise occur in a free market.

Ability to pay

People should contribute to funding public goods according to their ability to pay. **Ability to pay** has two components:

- ▼ The **horizontal equity principle** requires people of equal capacity to pay the same amount of tax.
- ▼ The **vertical equity principle** requires people who are better off to pay more tax than those who are worse off, so the burden of tax is proportional to the taxpayer's means.

Property-based taxes such as rates are generally regarded as equitable, because property value correlates with wealth and ability to pay.

Intergenerational equity

Taxes should also be equitable over time. This means the current generation of ratepayers should not pay the total costs of services that also benefit future generations (and vice versa). It is therefore important that rates income grows over time to meet the costs of servicing new dwellings and a larger population.

2.3.3 Simplicity

Taxes should be easily understood, difficult to avoid and have low costs of compliance and enforcement. If a tax is easy to understand and is fair, compliance is generally high.

Property-based taxes such as rates are generally hard to avoid, as the government holds comprehensive land ownership records.

2.3.4 Sustainability

To be sustainable, the income generated by a tax should be reasonably reliable, be able to withstand volatile economic conditions, and grow over time to support the future needs of government.²¹

2.3.5 Competitive neutrality

Competitive neutrality requires businesses competing with each other to be treated in a similar way. This principle is used to promote fair and efficient competition between public and private businesses.

²¹ Our consideration of sustainability encompasses the requirement of the terms of reference to consider the current financial sustainability of local government in NSW, including the findings and deliberations of NSW Treasury Corporation report *Financial Sustainability of the NSW Local Government Sector*, 2013.

2.4 List of our recommendations

Use the CIV valuation method to levy local council rates

- 1 The *Local Government Act 1993* (NSW) should be amended to mandate Capital Improved Value (CIV) as the basis for setting ad valorem rates in the metropolitan council areas defined in Box 3.1. 25
- 2 The *Local Government Act 1993* (NSW) should be amended to allow non-metropolitan councils to choose between the Capital Improved Value and Unimproved Value (UV) methods as the basis for setting ad valorem rates at the rating category level. 25
- 3 The *Local Government Act 1993* (NSW) should be amended to facilitate a gradual transition of rates to a Capital Improved Value method. 41
 - The amount of rates that any ratepayer is liable to pay to the council should increase by no more than 10 percentage points above the rate peg (as adjusted for Special Variations) each year as a result of a council adopting a Capital Improved Value method for setting rates. Councils could apply to IPART to exceed this 10% limit.
- 4 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. 43

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

- 5 The *Local Government Act 1993* (NSW) should be amended so that the growth in rates revenue outside the rate peg is calculated using the formula based on changes in CIV, defined in Box 4.1. 50
 - For non-metropolitan councils, this formula would be independent of the valuation method chosen as the basis for setting ad valorem rates.
- 6 The NSW Government fund the NSW Valuer General for the upfront cost of establishing the database to determine Capital Improved Values. 62
- 7 The NSW Government fund the cost for a non-metropolitan council to set up a Capital Improved Value database for the purposes of implementing our recommended formula for calculating growth in rates revenue outside the rate peg, where the Unimproved Value method for setting rates is maintained. 62

- 8 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: 65
 - form part of a council's general income permitted under the rate peg, nor
 - require councils to receive regulatory approval from IPART.
- 9 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. 66

Give councils greater flexibility when setting residential rates

- 10 The *Local Government Act 1993* (NSW) should be amended to remove the requirement to equalise residential rates by 'centre of population'. Instead, the *Local Government Act 1993* (NSW) should allow councils to determine a residential subcategory, and set a residential rate, by: 73
 - separate town or village, or
 - residential area.
- 11 The *Local Government Act 1993* (NSW) should outline that: 73
 - A 'residential area' is an area within a contiguous urban locality that has, on average, different access to, demand for, or costs of providing council services or infrastructure (relative to other areas in that locality). 73
 - Councils could use geographic markers to define the boundaries for a residential area, including postcode boundaries, suburb boundaries, geographic features (eg, waterways, bushland) and/or the location of major infrastructure (eg, arterial roads, railway lines).
- 12 The *Local Government Act 1993* (NSW) should be amended so, where a council uses different residential rates within a contiguous urban locality, it should be required to: 86
 - ensure the highest rate structure is no more than 1.5 times the average rate structure across all residential subcategories (ie, so the maximum difference between the highest and average ad valorem rates and base amounts is 50%), or obtain approval from IPART to exceed this maximum difference, and
 - publish the different rates (along with the reasons for the different rates) on its website and in the rates notice received by ratepayers.

- 13 At the end of the 4-year rate path freeze, new councils determine whether any pre-merger areas are separate towns or villages, or different residential areas. 90
- In the event that a new council determines they are separate towns or villages, or different residential areas, 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 residential areas, 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 Special Variations) each year as a result of this equalisation. The *Local Government Act 1993* (NSW) should be amended to facilitate this gradual equalisation.

Better target rate exemption eligibility

- 14 Sections 555 and 556 of the *Local Government Act 1993* NSW should be amended to: 98
- 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.
- 15 Land that is used for residential care as defined in Section 41-3(1) of the *Aged Care Act 1997* (Cth) be proportionally rateable according to the share of places whose maximum Refundable Accommodation Deposit is above the level set by the Minister for Health and Aged Care (currently \$550,000). 107
- 16 Section 556(1)(i) of the *Local Government Act 1993* (NSW) should be amended to include land owned by a private hospital and used for that purpose. 109

- 17 The following exemptions be removed: 112
 - 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(1)(c) and section 555(1)(d))
 - land that is below the high water mark and is used for the cultivation of oysters (*Local Government Act 1993* (NSW) section 555(1)(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(1)(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(1)(p)).
- 18 Section 555(1)(b1) of the *Local Government Act 1993* (NSW) should be amended to remove the current rating exemption for land that is the subject of a conservation agreement and instead require it to be rated using the Environmental Land category. 112
- 19 The following exemptions not be funded by local councils and hence should be removed from the Local Government Act and Regulation: 116
 - land that is vested in the Sydney Cricket and Sports Ground Trust (*Local Government Act 1993* (NSW) section 556(1)(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
 - land comprising the site known as Museum of Sydney (*Local Government (General) Regulation 2005* reg 123(c)).

The NSW Government should consider whether to fund these local rates through State taxes.
- 20 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. 117
- 21 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. 117
- 22 A council's maximum general income not be modified as a result of any changes to exemptions from implementing our recommendations. 121

- 23 A council may apply to IPART for a Special Variation to take account of the changes in exemptions using a streamlined process in the year that our recommended exemption changes come into force. The council would need to demonstrate: 121
- It satisfies the first criteria for Special Variation applications in the OLG guidelines relating to the need for and purpose of a different revenue path for the council's General Fund, and
 - that any subcategory rating structure applied to previously exempt properties is no greater than the average rate structure across the relevant rating category.
- 24 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). 124
- 25 At the start of each rating period, councils calculate the estimated value of rating exemptions within the council area. This information should be published in the council's annual report or otherwise made available to the public. 124

Improve assistance for pensioners

- 26 For new and existing eligible pensioners, introduce a rate deferral scheme operated by the NSW Government, where: 128
- Eligible pensioners would be allowed to defer payment of ordinary council rates up to \$1,000 per annum and indexed to CPI, or any other amount as determined by the NSW Government.
- 27 Give existing eligible pensioners the option to access, either: 128
- the current pensioner concession, or
 - the rate deferral scheme, as defined in Recommendation 26.
- 28 Funding pensioner assistance: 128
- The current pensioner concession funding arrangements would continue.
 - The rate deferral scheme (defined in Recommendation 26) would be funded by the NSW Government. The loan should be charged interest at the NSW Government's 10-year borrowing rate, and could become due when property ownership changes.

Provide more rating categories

- 29 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 *Local Government Act 1993* (NSW). 136
 - Land subject to a state conservation agreement is categorised as 'environmental land' for the purposes of setting rates.
- 30 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. 138
- 31 Sections 493, 519 and 529 of the *Local Government Act 1993* (NSW) should be amended to add an optional vacant land subcategory for residential, business and mining land. 139
- 32 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. 142
- 33 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. 143
 - The residual category that is determined should not be subject to change for a 4-year period.
 - If a council does not determine a residual category, the business category should act as the default residual rating category.
- 34 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. 145

Recovery of council rates

- 35 Councils have the option to engage the State Debt Recovery Office to recover outstanding council rates and charges. 149
- 36 The existing legal and administrative process to recover outstanding rates be streamlined by reducing the period of time before a property can be sold to recover rates from five years to three years. 150
- 37 All councils adopt an internal review policy, to assist those who are late in paying rates, before commencing legal proceedings to recover unpaid rates. 151

- 38 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. 152
- 39 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, eg, via email. 153
- 40 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. 155

Other recommendations

- 41 The valuation base date for the Emergency Services Property Levy and council rates be aligned. 158
- 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. 158
- 42 After the NSW Valuer General has established the database to determine Capital Improved Values for rating purposes (see Recommendation 3), councils be given the choice to directly buy valuation services from private valuers that have been certified by the NSW Valuer General. 161

3 Use of the CIV valuation method to levy council rates

Currently, the LG Act requires NSW councils to use the unimproved value (UV) method as the basis for setting the variable charge included in a property's rates (the ad valorem amount). It also allows councils to include a base amount, or make the ad valorem amount subject to a minimum amount.

We considered whether changing these provisions would enhance councils' ability to implement sustainable and equitable fiscal policies. The sections below summarise our findings and recommendations, then present our analysis in more detail.

3.1 Summary of findings and recommendations on valuation methods

We recommend **mandating Capital Improved Value (CIV) as the basis for setting rates in metropolitan council areas**, and **providing non-metropolitan councils the choice of CIV and UV at the rating category level**.

Importantly, the total amount of rates collected by a council would not initially change as a result of switching to the CIV valuation method. Rates per household would, on average, remain the same.

We found that, in metropolitan areas:

- ▼ **CIV performs better against tax principles.** CIV better reflects the benefits the ratepayer receives from council services, the costs of supplying council services, is more equitable and better understood by ratepayers.
- ▼ **CIV addresses limitations of the current system**, that UV cannot equitably and efficiently increase revenue from residential and business ratepayers as areas become more built up over time. UV does not capture ratepayers' willingness to pay for council services in these areas.

CIV is also consistent with best practice in other jurisdictions. Internationally and in Australia there is a trend away from UV towards using a CIV approach.

In non-metropolitan areas, we found that the benefits of CIV are relatively lower, particularly in rural and remote areas with a low level of capital development. Providing non-metropolitan councils a choice between CIV and UV would allow these councils to choose the valuation method that best suits the needs of their local communities.

We also recommend minimum amounts be removed from the LG Act. Base amounts are a more equitable and efficient way to recover fixed costs from rates than minimum amounts. Currently, the requirement to use UV forces many metropolitan councils to rely on minimum amounts to recover sufficient revenue from ratepayers, particularly those in apartments. As councils would now use, or have the option to use, CIV, this would no longer be necessary.

Our recommendations are consistent with stakeholder feedback. A strong majority of metropolitan councils expressed a preference for adopting a CIV method, while most regional councils support being able to choose either CIV or UV. The majority of stakeholders identified that base amounts are superior to minimum amounts.

3.2 Valuations methods used as the basis for setting rates

Recommendation

- 1 The *Local Government Act 1993* (NSW) should be amended to mandate Capital Improved Value (CIV) as the basis for setting ad valorem rates in the metropolitan council areas defined in Box 3.1.
- 2 The *Local Government Act 1993* (NSW) should be amended to allow non-metropolitan councils to choose between the Capital Improved Value and Unimproved Value (UV) methods as the basis for setting ad valorem rates at the rating category level.

To reach our recommendations, we:

- ▼ Analysed how each valuation method performed against the key taxation principles.
- ▼ Analysed the current UV method and issues with its use as outlined by stakeholders, including the difficulty in raising rates efficiently and equitably in metropolitan council areas.
- ▼ Considered the use of CIV and UV in other jurisdictions.
- ▼ Considered stakeholder views.

Our analysis for mandating CIV to be used to rate properties is outlined below. Our proposed protection to prevent excessive rate rises during implementation is discussed in Section 3.7. We recommend providing choice at the rating category level for non-metropolitan councils, so they can take account of local conditions.

Box 3.1 outlines which councils would be considered metropolitan councils, and Box 3.2 provides background on the CIV and UV valuation methods.

Box 3.1 Which councils would be considered metropolitan?

Councils classed as metropolitan would be based on OLG council groupings, which classify local councils into 11 different categories:

- ▼ 5 categories are for Sydney metropolitan and metropolitan fringe councils
- ▼ 4 categories are for rural councils, and
- ▼ 2 categories are for 'large regional' and 'small-medium regional' cities.^a

We recommend that all Sydney councils and large regional city councils should be classed as metropolitan, with CIV mandated in these areas. All other council areas would be considered non-metropolitan and be able to choose between CIV and UV at the rating category level. Table 3.1 contains the 42 councils that would currently be classed as metropolitan.

Table 3.1 Metropolitan Council Areas

Sydney metro		Sydney metro fringe	Large regional
Bayside	Lane Cove	Blue Mountains	Coffs Harbour
Blacktown	Mosman	Camden	Lake Macquarie
Burwood	North Sydney	Campbelltown	Maitland
Canada Bay	Northern Beaches	Central Coast	Newcastle
Canterbury-Bankstown	Parramatta	Hawkesbury	Port Macquarie-Hastings
City of Sydney	Randwick	Liverpool	Shoalhaven
Cumberland	Ryde	Penrith	Tweed
Fairfield	Strathfield	The Hills	Wollongong
Georges River	Sutherland	Wollondilly	
Hornsby	Waverley		
Hunters Hill	Willoughby		
Inner West	Woollahra		
Ku-ring-gai			

Source: Office of Local Government.

^a Large regional councils have a population above 70,000.

Note: For consistency we have used the terms metropolitan and non-metropolitan to distinguish these councils throughout this report.

Box 3.2 Valuation methods and their use in setting rates

As discussed in Chapter 2, a property's rates include an ad valorem amount, which reflects the underlying value of the property. This amount is calculated by multiplying an ad valorem rate (a fixed percentage) by the assessed value of the property.

In NSW, councils are currently required to use the Unimproved Value (UV) method to assess this value. However, in a number of other jurisdictions, councils have a choice of methods including Capital Improved Value (CIV).

The key difference between the UV and CIV methods is that:

- ▼ UV only considers the underlying land value of a property, whereas
- ▼ CIV considers the underlying land value plus capital improvements.^a

This difference means the two methods produce very different assessed values for properties with significant capital improvements, such as a block of apartments or other high density buildings.

For example, to value an apartment under the UV method, the aggregate land value for the entire apartment block is first derived. Then, the value for each individual apartment is calculated by dividing the total land value according to each apartment's unit entitlement. This often results in values much lower than the combined market value of all the apartments, because the underlying land value is only a small component of the total value of the unit block.

^a UV is the value of land subject to its highest and best use as permitted under current zoning. The CIV accounts for a property's permitted highest and best use, but also includes the net economic value of capital improvements (which will usually, but not necessarily, be greater than zero). A property's CIV includes the value of permanent capital structures, but does not include the value of production processes, moveable capital or economic goodwill.

3.3 Performance of CIV method against tax principles

We analysed the performance of CIV against our tax principles, and found in metropolitan areas, CIV significantly outperforms UV on all tax principles:

- ▼ **efficiency**, including the benefits received principle and minimising changes in behaviour
- ▼ **equity**, including the ability to pay and benefits received principles
- ▼ **sustainability**, and
- ▼ **simplicity**.

In non-metropolitan areas we found the efficiency benefits of CIV are reduced because the level of development, and hence capital, is lower. In particular, in rural and remote areas, there might be little difference between the capital improved value and the unimproved value of land. For example, if a council considers using a CIV method could discourage investment in farmland properties but not residential properties, it could use CIV to rate residential property and UV to rate farmland.

3.3.1 CIV is efficient

CIV efficiently captures the cost of supplying council services as these costs increase with growth in capital and people within a council area. CIV is generally a better indicator than land value (UV) of the benefits that ratepayers receive from council services.

CIV captures cost of supplying council services

The cost of providing council services is directly related to growth in capital, people and businesses within a council area. Under a UV method, rates do not change if additional capital is invested into a property. Any increases in the cost of providing council services, and the demand for these services, are not factored into the decision to develop land under UV.

In effect, the cost of servicing new development is funded by existing ratepayers. This is inefficient because rates only capture a portion of the total demand for the council services, which can lead to an under provision of council services.

CIV would capture the increased demand and use of council services from new developments. This would potentially lower upfront developer charges, State Government contributions and rates paid by existing residents (see Chapter 4).

CIV reflects benefits ratepayers receive from council services

We found property value (CIV) is a better indicator than land value (UV) of the benefits that ratepayers receive from council services. CIV is more efficient compared to UV because it better reflects the demand for most of the services provided by local councils.

Box 3.3 outlines our approach, while Appendix B explains the analysis in detail.

Box 3.3 Approach for this analysis

To analyse whether a ratepayer's property value (CIV) or land value (UV) better reflects their demand for council services, we took the following steps:

1. Identify the council services that rates fund.
2. Identify the classes of property and different types of ratepayers within a council area.
3. Compare the relationship between the demand for council services to the two valuation methods for each class of property and type of ratepayer.

Table 3.2 provides an indicative breakdown of the services funded by rates, based on 'Net Cost of Services' data from councils' financial reports.

Table 3.2 Services funded by local council rates

Council service	Typical share of a rates bill (%)
Streets and footpaths	27.5
Facilities (parks, libraries, pools, etc)	29.3
Other services (community and environment)	10.7
Governance and administration	32.5

Source: IPART analysis; OLG (using council financial statements).

Take the example of a house and a block of four matching apartments located next door on otherwise identical parcels of land such that their unimproved land value is equal:

- ▼ Under UV, the rates for the house and apartment block would be the same, so the rates for each apartment would be one-quarter of those for the house (on average).²² However, the four households in the apartments are likely to create higher total demand for council services than the single household in the house.
- ▼ Under CIV, the rates for the house and each apartment would be based on market value, which is likely to provide a better proxy for the demand for council services of each household.

²² Assuming that no base or minimum amounts apply.

CIV better captures the demand for council services when comparing two houses, or for two apartments. A ratepayer in a more expensive house would typically have a higher willingness to pay for the public goods funded by rates (eg, they will be willing to pay more for footpaths and street lighting).²³

For two businesses, CIV is also more correlated with their demand for council services. A multi-floor shopping centre generates higher demand on council services relative to a single storey set of shops. This demand is better reflected by an approach based on market value (CIV) rather than an approach based on land value (UV).²⁴

3.3.2 CIV is equitable

CIV is equitable because it better reflects the benefits that a ratepayer receives from council services (see Section 3.3.1), and a ratepayer's ability to pay for council services. CIV meets the ability to pay principle better than UV, as it is more highly correlated with the ratepayer's income and wealth.²⁵

The CIV of a ratepayer's property includes capital improvements as well as land value, and therefore represents a larger component of household wealth. This is important when comparing houses to apartments, as the land itself might be a very small fraction of the overall property value, particularly for high density apartments.

Evidence from the 2007 New Zealand rates inquiry suggests CIV is more highly correlated with annual household income than UV.²⁶ Overall, as noted by Abelson (2006), property values or income are both better indicators of ability to pay than are land values.²⁷

²³ Academic literature is consistent with this position, estimating that a 10% increase in income typically leads to an increase in demand for local public goods of between 2%-10% (depending on the good). Borchering and Deacon (1972) estimate the income elasticity of demand for local public goods, finding positive and (generally) significant elasticities between 0.2 and 1.0 (Borchering T and T Deacon, *The demand for the services of non-federal governments*, The American economic review, 1972, pp 891-901). Within apartments, a 10-storey apartment block with, say, 100 residents will have a greater demand for council services than a 5-storey apartment block with 50 residents occupying the same land size.

²⁴ For farmland properties, the UV and CIV methods should produce a relatively similar outcome, to the extent that the value of buildings and other capital structures relative to land value is fairly low and stable across properties.

²⁵ In practice, the two are related. A person's asset-based wealth is related to their expected lifetime income. A person's wealth also reflects their total capacity to pay at any point in time.

²⁶ New Zealand Local Government Rates Inquiry Panel, *Funding Local Government*, August 2007, pp 125-126.

²⁷ Abelson P, *Local Government Taxes and Charges*, 2006, p 5.

3.3.3 CIV is sustainable

CIV would provide a sustainable rating base. As highlighted in Section 3.3.1, a UV method does not capture the increased cost of servicing new development. This limitation of UV compounds over time and weakens councils' financial sustainability. In contrast, the growth in CIV due to new development approximates the increase in demand for council services. Over time, as the proportion of high density dwellings increases, the ratio of capital to land increases, and CIV becomes much more broadly based relative to UV.

The market value of a property will vary less over a property price cycle than its land value because the value of capital improvements is fairly constant. Sharp changes in property prices will be reflected to a greater extent in the UV of a property than its CIV. As a result, a CIV-based tax will better withstand economic fluctuations – and the rate in the dollar for CIV will be less volatile than the UV tax rate.

3.3.4 CIV is simple

CIV is simple to calculate and easily understood by ratepayers. It is simple to verify a property's CIV. Almost all real estate transactions involve properties that have capital improvements. Over time, the process used to assess UV in NSW has become less transparent, as determining land values has required subtracting the estimated value of improvements in the absence of vacant land sales.²⁸

In addition, ratepayers find CIV easier to understand, as most ratepayers have a much better understanding of the market value of their property than its unimproved land value.

3.4 CIV is consistent with international best practice

CIV is more consistent with international best practice than UV. We found that 85% of countries use CIV (or a similar method based on market value). Out of 125 countries, only five mandate UV. As outlined in Appendix D, there has also been a trend moving away from UV to CIV.

In jurisdictions where councils can choose between CIV and UV – such as Victoria, South Australia, Tasmania and New Zealand – councils overwhelmingly opt for CIV over UV. CIV, or similar approaches based on market value, is used for setting rates in metropolitan council areas in all other Australian states besides Queensland.

²⁸ In most cases, UV is calculated as the residual of the market value less the value of improvements, which means that judgment is required in the analysis and accounting for the added value of improvements. For further details, see Mangioni V, *Transparency in the valuation of land for land tax purposes in New South Wales*, eJournal of Tax Research, 9:2, December 2011, p 145.

3.5 Limitations of the UV valuation method

Stakeholders raised a number of issues with the current method:

- ▼ the use of UV prevents councils from raising rates equitably and efficiently in urban areas with a high share of apartments, and
- ▼ the distribution of business rates based on UV does not necessarily reflect the underlying demand or use of council services.

3.5.1 Residential rate setting under UV biases councils to use fixed charges

Many councils rely on base and minimum amounts (fixed charges) to attempt to reflect the use of council services because the UV of individual apartments is often very low. Although fixed charges can be a simple and efficient way to recover the fixed costs of servicing dwellings such as providing billing services they are not, on their own, an efficient means to fund local public goods.

Box 3.4 outlines how apartments are rated under UV.

Box 3.4 Residential rate setting for residential apartments based on UV

If an individual apartment is under a strata title,^a the land value of the individual apartment is calculated by dividing the aggregate land value for the entire apartment block by that apartment's unit entitlement. Because the underlying land value is only a small component of the total value of the unit block, this typically results in modest land values for an individual apartment.

- ▼ If a council adopts a rate structure with a base and ad valorem amount, then the ad valorem amount is influenced by unit entitlement. However, because the land values are still low, the difference in ad valorem amounts is typically very small. In this case, a 3-bedroom apartment, on average, pays slightly more than a 1-bedroom apartment.
- ▼ If a council adopts a rate structure with a minimum amount, in almost all cases the apartment is subject to the minimum amount. That is, a 3-bedroom apartment pays exactly the same as a 1-bedroom apartment.
- ▼ Around 75% of Sydney councils adopt a rate structure with a minimum amount.

If individual units within an apartment block are under a single title – for example, if it is owned by a single investor – the entire block is considered a single property for the purposes of rating. In this case, when the rate structure is applied to the block, only one minimum or base amount can apply to all units within the block. In effect, the land value is still divided among individual units, but a council cannot use fixed charges to reflect the use or demand for services from the residents in each apartment.

^a Or a company or stratum title.

Figure 3.1 illustrates the impact of relying on fixed charges for a Sydney council where around 60% of properties were apartments. It compares what the distribution of rates would look like for this council if it collected the same rates revenue using:

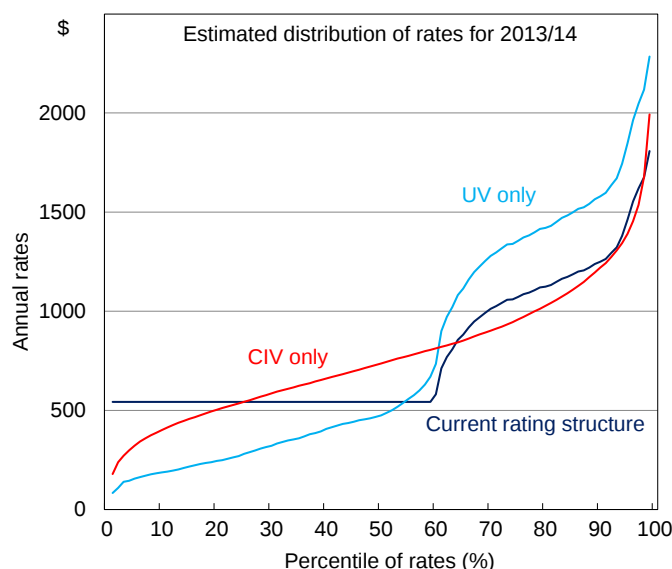
- ▼ a rate comprising an ad valorem rate based on UV (light blue line)
- ▼ the council's actual 2013-14 rating structure comprising a minimum amount and an ad valorem rate based on UV (dark blue line), and
- ▼ a rate comprising an ad valorem rate based on CIV (red line).

This comparison suggests the council is using fixed charges as an imperfect tool to implement what would occur under the CIV method. It also shows there is no equity or efficiency for the bottom 60% of ratepayers on the current UV rating structure, as they all pay the same rates irrespective of the differences in the benefits they receive from, or their ability to pay for, council services.

This council reflects what many Sydney councils could look like in the future, with over 65% of dwelling approvals for high density apartments. Currently, 40% of dwellings in Sydney are apartments – the highest of any Australian capital – with this share increasing over time (see Appendix C).

Across Sydney councils in particular, as density increases in a council area, councils are tending to increase the share of rates they collect from minimum rates, to raise a more equitable share of revenue from apartments. In Section 3.8 we discuss our recommendation to remove minimum amounts, explain the difference between base and minimum amounts and assess how they perform against tax principles.

Figure 3.1 Residential rates for a Sydney Council with a high concentration of apartments

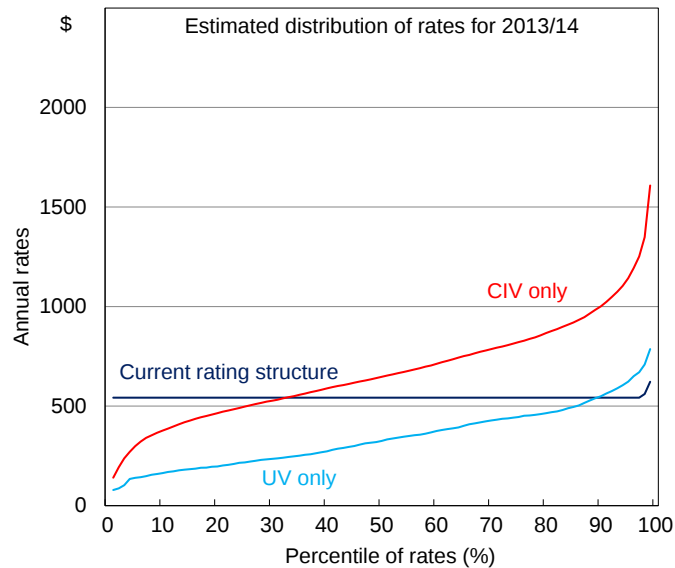


Data source: IPART analysis; Land and Property Information (LPI); Office of Local Government (OLG).

In areas where the share of apartments is high, the majority of apartments are paying the same minimum rate irrespective of the property values. This means that minimum rates do not correlate with the per capita drivers of councils' costs, benefits received, or willingness and ability to pay for public goods.

Figure 3.2 shows the difference in annual rates for strata properties when setting rates using UV and CIV. These figures highlight that in areas where there is a high or growing share of apartments, our recommendation to introduce CIV would increase the efficiency and equity of rates.

Figure 3.2 Comparison of residential rates for strata apartments in a typical Sydney Council using UV and CIV



Data source: IPART analysis; LPI; OLG.

Non-strata apartments

In some cases, councils are unable to use minimum or base amounts to collect rates from apartments. When an apartment block is not strata titled, only one minimum or base amount can apply to all units within the block (see Box 3.4). This has created outcomes where the annual rates for individual units within an apartment block are as low as \$31 per year (Table 3.3).

Table 3.3 Estimated rates paid in 2016/17

	Number of apartments	UV	CIV	Annual rates per apartment		
		Actual	Estimate	Current rates (UV)	CIV rates with 50% base	CIV rates and no base amount
Property A, Waterloo	249	\$43.0 million	\$225 million	\$209	\$188	\$373
Property B, Zetland	436	\$21.8 million	\$370 million	\$61	\$177	\$352
Property C, Rhodes	529	\$15.5 million	\$252 million	\$31	\$129	\$257

Notes: Rates under CIV are an estimate and hold total residential rates revenue constant.

Sources: IPART analysis.

3.5.2 Business rate setting under UV biases councils to define narrow subcategories

A number of metropolitan councils are attempting to replicate the demand and use of council services from individual businesses through targeted differential rating. They do this by defining small areas or single shopping centres as a separate subcategory or business 'centre of activity'.

A CIV method would reduce the need for large rating differentials and narrow subcategories to equitably and efficiently rate businesses with different capital density. Box 3.5 contains an illustrative example of a Sydney metropolitan council which appears to be replicating a CIV rating system by using narrow business subcategories, and using high ad valorem rates to reflect capital density. It would be far simpler and more transparent if metropolitan councils used CIV to rate businesses. The wide variation in ad valorem rates, such as the 10 and 11 multiples in Table 3.4, would no longer be required.

Box 3.5 A number of Sydney councils are attempting to replicate CIV using narrow business subcategories

This box contains an example where Willoughby Council has created two separate business subcategories for two shopping centres. These subcategories attempt to reflect the differences in demand for council services that result from differences in capital density.

Table 3.4 considers Willoughby Council's 2016-17 rating structure for residential ratepayers and the two shopping centres subcategorised as separate centres of activity. It calculates:

- ▼ the actual rate in the dollar charged under the UV method, as a ratio of the residential rate, and
- ▼ the estimated rate in the dollar that would have been charged under a CIV method to replicate the current rates collected from each of the three categories, as a ratio of the residential rate.

Table 3.4 Willoughby Council's 2016-17 rating structure

Category	Actual UV Rate	Revenue-neutral CIV Rate
	As a ratio of Residential rate	As ratio of Residential rate
Residential	1.0	1.0
Chatswood Chase	11.1	1.7
Chatswood Westfield	10.5	1.9

Sources: Scentre 2015 Annual Report; Vicinity 2016 Annual Report; Willoughby Council; IPART analysis.

Table 3.4 shows that, under the current UV method, Willoughby Council has levied a much higher rate in the dollar on two major shopping centres compared to residential properties in the council area. The council is essentially replicating a CIV rating system by using narrow business subcategories, and using high ad valorem rates to reflect capital density.

Our approach encourages business investment

Some businesses expressed a concern that the share of rates paid by businesses would rise if CIV is implemented.²⁹

Our analysis suggests the use of CIV should not lead to an increase in the total share of rates paid by businesses. Firstly, councils are currently free to choose the share of rates collected from businesses.³⁰ Secondly, our examination of the data shows councils are already approximating CIV rating for business using narrow subcategories and higher ad valorem rates as density increases, as shown in Table 3.4. Therefore, directly rating using CIV should not change the overall

²⁹ Shopping Centre Council of Australia, submission to IPART Draft Report, October 2016, p 6.

³⁰ Our consultation with stakeholders suggests that most councils favour apportioning rates between residents and businesses using fixed shares.

share of rates paid by business. CIV would make the burden of rates paid by different types of ratepayers much more transparent in metropolitan areas.

In contrast, as discussed in Chapter 4, councils would now have better incentives to encourage business investment which could place downwards pressure on the share of rates paid by business.

3.5.3 The UV base becomes less accurate as the mix of densities changes

Stakeholders have identified cases where changes in land values for different types of businesses have led to large changes in the rate burden that are unrelated to changes in the demand or use of council services.

As development increases, vacant land sales are rarer, and fewer are available to estimate UV. This means improved property sales are increasingly used to determine land values, by subtracting the estimate of the value of capital from the sale price to determine land value. As density increases:

- ▼ **it becomes more difficult to estimate land value by subtracting the value of capital from market value.** This is because small differences in the estimated value of capital have a greater impact on land values. For example, if the ratio of capital to land for a property is 10 to 1, a 5% change in the estimated value of capital causes a 50% change in the property's estimated land value.
- ▼ **small changes in market value have a greater impact on land values.** If the ratio of capital to land for a property is 10 to 1, a 5% change in market value would result in a 50% change in the property's estimated land value.³¹

The market value of a property is more stable over a property price cycle than its land value, especially in highly built up areas. Therefore CIV would provide benefits in providing more accurate valuations and reducing the volatility amongst different ratepayers – who have properties with a mix of densities – with their respective share of the overall tax burden.

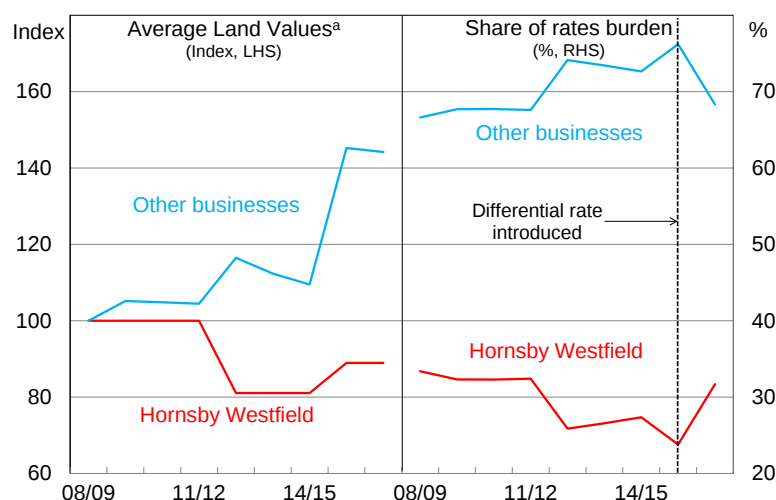
Box 3.6 contains an example where a council has responded to a shift in the ratings burden within its business community by creating a narrow business subcategory. It highlights that CIV would better reflect the actual demand for council services over time, reducing the need for creating narrow rating subcategories.

³¹ This is because a change in property price does not impact the value of capital.

Box 3.6 UV leads to changes in rates that do not reflect changes in the use of council services

Figure 3.3 plots the land values used to levy rates by Hornsby Council within its Business CBD subcategory over the period 2008-09 to 2016-17. It shows that the land value for the Westfield shopping centre fell by around 10% over this period, while the average land value for other businesses rose by over 40%.

Figure 3.3 Hornsby Council – Rates in Business CBD subcategory



a Nominal index, land values for 2008/09 rating year = 100.

Data sources: Hornsby Council; LPI; IPART analysis.

Over 2008-09 to 2015-16, the rates for other businesses typically increased by around 40-50% more than for the shopping centre. The share of rates paid by the shopping centre fell by around 10 percentage points over this period, while the share for other businesses rose by the same amount.

In 2016-17 Hornsby Council subcategorised the shopping centre as a separate subcategory, and it levied a rate that was 47% higher for the shopping centre than the rate for other business CBD properties. The subcategorisation was done to match the share of rates paid by the shopping centre in 2011-12. The rates for other business CBD properties reduced by an average of \$560 per ratepayer between 2015-16 and 2016-17.

Sources: Hornsby Shire Council; Shopping Centre Council of Australia, submission to IPART Draft Report, October 2016, p 5.

3.6 Stakeholders comments

Our recommendations are generally supported by stakeholders. A strong majority of metropolitan councils expressed a preference for adopting a CIV

method, while most non-metropolitan councils support being able to choose either CIV or UV. Only 20% of stakeholders support retaining the UV method with little or no change.

In the Draft Report, our draft recommendation was that all councils should be allowed to choose between CIV and UV at the rating category level. In response to stakeholder feedback and after further analysis we have decided to refine our recommendation. We now recommend mandating CIV as the valuation method in metropolitan areas, and to retain choice for non-metropolitan councils.

3.6.1 Mandating CIV in metropolitan areas would promote consistency

Most metropolitan councils expressed a preference for the CIV method. Stakeholders consistently identified CIV better meets tax principles than UV in urban areas, and would resolve major issues in the rating of apartments³² as well as commercial and retail land use.³³ Newcastle City Council noted:

...the use of CIV is recognised both nationally and internationally as a fair, transparent and sustainable approach to rating. The UV methodology is considered to be out dated and only continues to be used in a small number of jurisdictions.³⁴

A number of metropolitan councils believed CIV should be mandated or made a default option for councils.³⁵ Lake Macquarie City Council noted the “application of a common system reduces confusion for ratepayers, particularly those with landholdings in more than one LGA”,³⁶ with LGNSW noting that it “favoured CIV as the method of valuation for rating purposes in urban areas”.³⁷

3.6.2 Choice is valuable in non-metropolitan areas

Most non-metropolitan councils supported the choice over valuation methods and were divided on their preference for CIV or UV. A number of stakeholders identified that a choice would be beneficial in choosing “the most appropriate rating method that best suits their local government area”.³⁸

3.6.3 Other stakeholder concerns

Around 20% of stakeholders favoured retaining the UV method with little or no change. In general, these stakeholders were concerned:

³² For example, Canterbury-Bankstown Council, p 1, Camden City Council, p 1, The Hills Shire Council, p 5, Submissions to IPART Draft Report, October 2016.

³³ V. Mangioni, Submission to IPART Draft Report, October 2016, p 2.

³⁴ Newcastle City Council, Submission to IPART Draft Report, October 2016, p 2.

³⁵ For example, Randwick City Council, Submission to IPART Draft Report, p 1.

³⁶ Lake Macquarie City Council, Submission to IPART Draft Report, October 2016, p 1.

³⁷ LGNSW, Submission to IPART Draft Report, October 2016, p 6.

³⁸ Queanbeyan-Palerang Regional Council, Submission to IPART Draft Report, October 2016, p 2.

- ▼ CIV could deter ratepayers from productive investments, particularly large shopping centres³⁹
- ▼ providing CIV data would be costly,⁴⁰ and
- ▼ a separate residential subcategory for strata apartments could adequately resolve current issues with rating apartments.

While some stakeholders identified that CIV might deter investment decisions, the Productivity Commission has previously concluded that neither UV nor CIV “significantly distort economic activity and resource allocation”.⁴¹

Our analysis has shown that unlike UV, the CIV method is more efficient in metropolitan areas because it captures the cost of supplying council services as these increase with capital investment. As discussed in Chapter 4, our recommendations would encourage more capital investment than the current UV system.

We do not recommend an apartment subcategory. It would increase the complexity of the rating system and would create an arbitrary rating burden between apartments and houses. This would be contrary to the horizontal and vertical equity principles and is unlikely to reflect the benefits received from council services. It also does not address the future financial unsustainability of councils as communities grow and more capital is invested. Appendix E discusses alternative valuation methods to CIV, including a rating subcategory for apartments.

The following section discusses the protection that we recommend as a transitional measure to prevent excessive rate increases for NSW ratepayers when CIV is implemented.

3.7 Protections should be introduced for councils implementing CIV

Recommendation

- 3 The *Local Government Act 1993 (NSW)* should be amended to facilitate a gradual transition of rates to a Capital Improved Value method.
 - The amount of rates that any ratepayer is liable to pay to the council should increase by no more than 10 percentage points above the rate peg (as adjusted for Special Variations) each year as a result of a council adopting a Capital Improved Value method for setting rates. Councils could apply to IPART to exceed this 10% limit.

³⁹ Shopping Centre Council of Australia, p 4, Property Council of Australia, p 6, Submissions to IPART Draft Report, October 2016.

⁴⁰ Penrith City Council, p 1; Property Council of Australia, pp 6-7, Submissions to IPART Draft Report, October 2016.

⁴¹ Productivity Commission, *Assessing Local Government Revenue Raising Capacity*, 2008, p 177.

While our recommendation would ensure that overall rates collected by a council is initially unchanged, a number of stakeholders noted that moving to CIV would lead to a redistribution in the rates paid by individual properties.⁴² Our analysis suggests that if every NSW Council adopted CIV, around 5% of residential ratepayers could face a total increase in rates of \$500 per year or more, with the overwhelming majority of these properties high-value apartments in metropolitan councils that are paying minimum amounts.

We consider that a protection would be required to minimise the impact of transitioning to CIV. We recommend, if a council adopts a CIV method for any part of its rate base, rates for these ratepayers can increase by no more than 10 percentage points above the rate peg (adjusted for Special Variations) each year that result from a council adopting CIV.

This recommendation would ensure all NSW ratepayers would not experience excessive rate increases. Equally, gradual equalisation would not lead to a reduction in the new council's general income from rates. The 10% limit on rate increases for some ratepayers would be offset by a smaller decrease in rates for other ratepayers. Our analysis suggests that, under our recommendation, 95% of ratepayers would be fully transitioned to CIV within six years.

Rates for an individual property would be allowed to increase as a result of a supplementary valuation or through a general revaluation. A supplementary valuation reflects new development to a property that should be captured by a change in rates. In other words, as new properties are built, they would be rated on a CIV basis. A general revaluation, which currently occurs once every three years in most council areas, does result in a redistribution of the total amount of rates among individual properties.⁴³ However, it is important this redistribution is reflected in council rates, as it "ensures changes in the local property market are reflected in the councils' rates model, helping to ensure fairness and equity for ratepayers".⁴⁴

3.7.1 Apply to IPART to exceed limit

We also recommend that councils should be able to apply to IPART to exceed this 10% limit. For example, after four years of equalisation, there might be only one or two ratepayers in a category that have not fully transitioned to CIV. In this case, the council could apply to IPART to fully equalise across the category. Also, if an apartment development had not been strata titled, there may be a case for exceeding this limit.

⁴² For example, Berrigan Shire Council, Submission to IPART Draft Report, October 2016, p 1.

⁴³ In years where a general revaluation occurs, the 10% protection we have recommended would apply net of the impact of the revaluation on a ratepayer's bill. This is done simply by applying the 10% protection to rates using the old property values before calculating the impact of the new property values on individual rates.

⁴⁴ NSW VG 'Council rates' at http://www.valuergeneral.nsw.gov.au/council_rates

3.8 Removing minimums from the rate structure

Recommendation

- 4 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.

Base amounts are a superior method to recover the fixed costs of providing council services, as they better correlate with ratepayers' benefits received and ability to pay.⁴⁵

If our recommendation to mandate CIV in metropolitan areas is adopted, councils would be able to equitably and efficiently raise rates from apartments without the need for minimum amounts. Removing minimum amounts from the LG Act would not have a major impact on most non-metropolitan councils, as the majority of these councils already use a base amount.

Therefore, we consider minimum amounts should be phased out from 2020-21. This would allow councils sufficient time to move to new rate structures. It would also align with the end of the rate path freeze period for newly merged councils, when these councils would shift to new rate structures.

Our findings and analysis are discussed in more detail below. To reach our recommendation that minimum amounts should be removed from the rate structure, and the current provisions in relation to base amounts be retained, we:

- ▼ analysed how minimum amounts and base amounts performed against the key taxation principles
- ▼ analysed NSW councils' current use of these amounts, and
- ▼ considered stakeholders' views and current practice in other jurisdictions.

Box 3.7 outlines the current provisions for base and minimum amounts.

⁴⁵ A rate structure with a base amount is better correlated with ability to pay because differences in property value are better reflected in the rates paid with a base amount than with a minimum amount.

Box 3.7 Current LG Act provisions on base and minimum amounts

As Chapter 2 discussed, under the current rate structure, rates may comprise:

- ▼ a variable ad valorem amount, which may be subject to a fixed minimum amount, or
- ▼ a fixed base amount to which an ad valorem amount is added.

The revenue collected from the base amount cannot exceed 50% of the total revenue from any particular rating category. In contrast, the constraint on minimum amounts is not as restrictive. While there is a statutory limit for minimum amounts (\$506 in 2016-17), councils that wish to set minimum amounts above this limit can submit a minimum rate application to IPART for review and assessment.

3.8.1 Performance of minimum and base amounts against tax principles

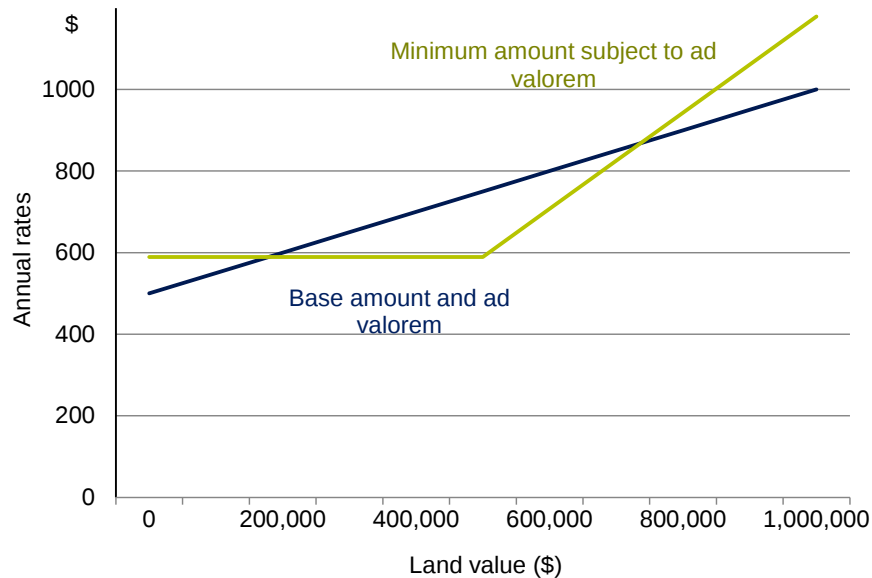
Our finding is that base amounts are more efficient and equitable than minimum amounts in recovering the fixed costs of servicing dwellings, such as providing billing services. This is consistent with previous research on current NSW rating practices.⁴⁶ This is because:

- ▼ Under a minimum amount, all ratepayers below a set threshold of land value pay the same amount. A one-bedroom apartment will pay the same minimum amount as a three-bedroom apartment.
- ▼ Under a base amount (with an ad valorem amount), all ratepayers face the same fixed charge to which an ad valorem amount is added. A one-bedroom apartment would pay lower rates than a three-bedroom apartment.

This means that a base amount plus an ad valorem amount will more closely reflect the benefits received from council services, and differences in ratepayers' ability to pay.

This difference is highlighted in Figure 3.4. It shows that a base amount plus an ad valorem amount rate structure (the blue line) is both more equitable and more efficient than an ad valorem amount which is subject to a minimum amount.

⁴⁶ Comrie J, *NSW Government Rating and Charging Systems and Practices*, April 2013, p 9.

Figure 3.4 Comparison of base and minimum amounts

However, base amounts should not be set above the level required to recover fixed costs, because they do not reflect ratepayers' benefits received or ability to pay as closely as an ad valorem amount (whether based on CIV or UV).

For example, a dwelling with one occupant pays the same base amount as a dwelling with four occupants, although it is likely that the latter will derive a larger benefit from the public goods that councils provide. Further, base amounts also tend to place a greater burden on less well-off ratepayers, because owners of low value dwellings effectively pay a higher rate of tax than owners of expensive dwellings.

On this basis we do not recommend any change to the current 50% restriction on revenue collected from base amounts. This will ensure, consistent with tax principles, that property value remains the predominant driver of a ratepayer's council rates.

3.8.2 NSW councils' current use of base and minimum amounts

Currently, most regional councils (62%) use a base amount in residential property rates, but most Sydney metropolitan councils (74%) use a minimum amount (Table 3.5).

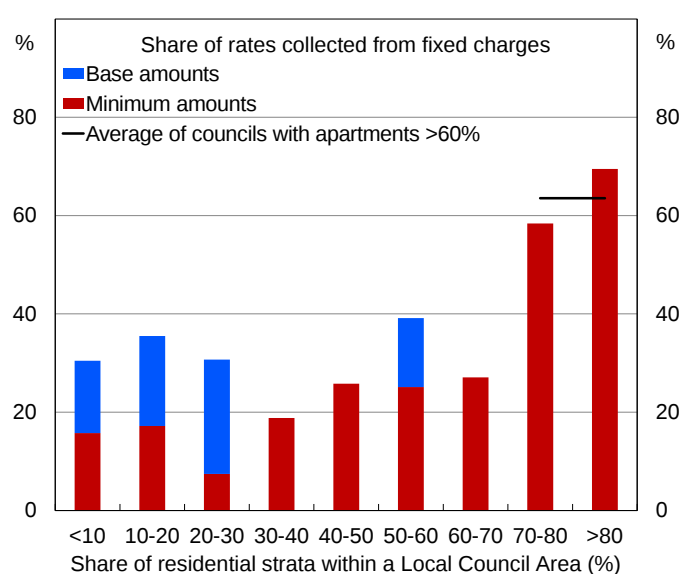
Table 3.5 Use of base and minimum amounts by Sydney metropolitan and regional councils in 2013-14

Type of rates	Sydney metropolitan councils		Regional councils		All councils
	Number of councils	As a % of total metropolitan	Number of councils	As a % of total regional	
Residential rates					
Base	10	26%	74	62%	84
Minimum	28	74%	45	38%	73
Business rates					
Base	5	14%	63	56%	68
Minimum	30	86%	50	44%	80

Note: Includes total number of councils that applied base and/or minimum amounts for residential and business properties in 2013-14.

Source: IPART analysis based on revenue data collected by OLG from each council.

Figure 3.5 shows that in Sydney council areas, as density increases councils are tending to increase the share of rates they collect from minimum rates, to raise a more equitable share of revenue from apartments. In areas where more than 70% of residential properties are apartments, councils recover over 60% of rates revenue from minimum amounts. In areas where more than 80% of residential properties are apartments, councils collect 70% of rates from minimum amounts. Overall, in Sydney areas where the council levies a minimum rate, around 40% of residential ratepayers were on this minimum rate in 2013-14.

Figure 3.5 Residential rates across Sydney metropolitan councils

Data source: IPART analysis; LPI; OLG.

3.8.3 Stakeholder views on minimum and base amounts and current practice in other jurisdictions

The majority of stakeholders identified that base amounts are superior to minimum amounts, and agreed that minimum amounts should be removed from the LG Act, particularly in light of our recommendation to integrate CIV into the rating system. For example, Campbelltown City Council noted:

The use of minimums should be removed from the LG Act. Minimum amounts are regressive, often poorly structured, difficult to apply across the current rating categories and are often misunderstood by the community.⁴⁷

Stakeholders also supported retaining base amounts for a range of reasons, including smoothing the impact of land valuation on rates.⁴⁸

Some stakeholders did not agree with our recommendation, generally on the basis that:

- ▼ retaining minimum amounts would give councils greater flexibility with their rating structures, and
- ▼ replacing a minimum amount with a base amount could lead to significant rate increases for some ratepayers.⁴⁹

We have considered these viewpoints but still recommend minimum amounts should be removed because they are less equitable and efficient than base charges in recovering council costs. In addition, our protection to limit any changes in an individual's rates bill to 10 percentage points above the rate peg (as adjusted for Special Variations),⁵⁰ that result from our recommendation to introduce CIV, would smooth the impact of removing minimum amounts from the LG Act.

The use of base and minimum amounts in other states varies. Our recommendation to abolish minimum amounts is consistent with rating practices in Victoria (Table 3.6). The 50% revenue restriction on base amounts is consistent with other Australian states, with no other state allowing councils to recover more than 50% of revenue from fixed charges.

⁴⁷ Campbelltown City Council, Submission to IPART Draft Report, October 2016, p 2.

⁴⁸ For example, City of Ryde Council, p 4, Cootamundra Shire Council p 3, Shoalhaven City Council, p 3, Gunnedah Shire Council, p 2, Coffs Harbour City Council, p 2, Western Plains Regional Council, p 3, submissions to IPART Issues Paper, May 2016.

⁴⁹ For example, City of Wagga Wagga, Submission to IPART Draft Report, October 2016, pp 1-2.

⁵⁰ This 10% does not include any changes to rates that would result from the 3 year land revaluation process or any increases in CIV from new capital investment.

Table 3.6 Base and minimum amounts in other Australian states

	Base amounts		Minimum amounts	
	Permitted	Limit	Permitted	Limit
Victoria	✓	20% of revenue	✗	N/A
Queensland	✗	N/A	✓	No restriction
South Australia	✓	50% of revenue	✓	35% of properties
Western Australia	✗	N/A	✓	50% of properties ^a
Tasmania	✓	50% of revenue	✓	35% of properties
NSW (recommended)	✓	50% of revenue	✗	N/A

^a In Western Australia, no more than 50% of properties can be on a minimum rate if the minimum rate is \$200 or higher.

Source: *Local Government Act 1989* (Vic), *Local Government Regulations 2012* (Qld), *Local Government Act 1999* (SA), *Local Government Act 1995* (WA), *Local Government Act 1993* (Tas) and *Local Government Act 1993* (NSW).

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

As the local community grows, councils are required to provide services to new residents and businesses. A sustainable and efficient rating system allows councils to recoup the cost increases resulting from growth.

We considered whether the current method for determining the growth in rates could be reformed to enhance councils' financial sustainability and encourage growth and urban renewal. The sections below summarise our findings and recommendations, then present our findings and analysis in more detail.

4.1 Summary of findings and recommendations on growth

We recommend that councils' rates income should increase over time in line with the growth in Capital Improved Value (CIV) arising from new development.

Current and future ratepayers would share the burden of taxation over the long-term equitably and efficiently. Under our recommendation, current and future ratepayers would face the same tax burden, with future ratepayers providing additional rates revenue to meet the costs of servicing growth. Our recommendation would remove the current cross subsidy, where current ratepayers pay, via state taxes and rate rises under Special Variations, for the expansion in services supplied by councils to support growth. The CIE estimates net gains over 15 years of between \$443 million and \$2.1 billion to current and future ratepayers from implementing our recommendations.

This would encourage current ratepayers to support growth, urban renewal and implementing the Plan for Growing Sydney.

Our recommendation would deliver sustainable revenue increases for councils that match the costs of servicing new development. This could **reduce the need for councils to levy up front developer charges** and decrease the upfront cost of housing and business investment. It would reduce the regulatory burden of SV applications by enabling councils to provide improved and more consistent levels of service over time without the need for SVs for this purpose.

We recommend that **the NSW Government should fund the implementation of CIV as it could deliver budget savings of up to \$1.1 billion over 10 years if it implemented our recommendations.**⁵¹

We also recommend introducing **a new type of special rate** to allow local councils to better partner with state and federal governments in the **delivery of joint infrastructure projects**. We recommend **increasing the scope for councils to adapt rating policies to short-term changes in their community**, while ensuring that councils' long-term financial sustainability is not impacted.

4.2 Allowing general income to increase in line with the growth in CIV from new developments

Recommendation

- 5 The *Local Government Act 1993* (NSW) should be amended so that the growth in rates revenue outside the rate peg is calculated using the formula based on changes in CIV, defined in Box 4.1.
 - For non-metropolitan councils, this formula would be independent of the valuation method chosen as the basis for setting ad valorem rates.

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 defined in Box 4.1.

Box 4.1 Our recommended formula for calculating revenue growth

$$Income_{Year\ 2} = Income_{Year\ 1} \times (1 + peg) \times (1 + percentage\ increase\ in\ CIV\ due\ to\ supplementary\ valuations)$$

The following sections outline the current practice for determining growth in rates and explain our formula. We discuss the key benefits of our recommendation compared to the current system, analyse our recommendation against key tax principles and summarise stakeholder feedback.

⁵¹ These are direct budget savings. The CIE figures are net present value figures which discount future revenues and costs by 7% per year.

4.2.1 Current practice for determining growth in rates

The current process for determining how the council rate base increases as the community grows is known as 'growth outside the rate peg'. When a change occurs to a parcel of land, determining the growth in a council's rate base involves two steps.

1. An updated land value is determined for each rateable property on the land under a 'supplementary valuation'.
2. The council's current rating structure (ad valorem and fixed charges across categories) is applied to the updated land value and rating category, to each rateable property.

See Box 4.2 for more details on this process.

Box 4.2 The supplementary valuation process and CIV

When changes to a property are recorded, a Supplementary Notice of Valuation is issued to determine a new land value, outside of the usual three to four year valuation cycle.

Supplementary valuations can occur due to:

- ▼ newly created parcels of land in subdivisions
- ▼ the transfer of part of land which is included in an existing valuation (eg, through strata division of an existing block)
- ▼ the amalgamation of parcels of land into a single valuation
- ▼ changes to zoning, or
- ▼ an error being detected in the valuation process.

In addition, under a CIV method, supplementary valuations would also occur if significant capital improvements are made to property. These could include improvements that occur at the conclusion of a Development Application or Complying Development process, but could exclude minor improvements that occur under the Exempt Development process.

Source: NSW Valuer General, *Supplementary Notice of Valuation*, at http://www.valuergeneral.nsw.gov.au/land_values/notice_of_valuation/supplementary_notice_of_valuation, accessed 8 August 2016.

Under the current UV methodology, the current 'growth outside the rate peg' process results in an increase in general income from new development that is typically much lower than the increase in demand for council services, and the associated increase in costs of servicing these new residents and businesses. This is because the land value (UV) will not increase as higher density apartments and businesses are built, unless there is land rezoning which increases land value.⁵²

⁵² Furthermore, even if rezoning occurs, the increase in rates from the higher land value will be much lower than the growth in residents and businesses. Put simply, this is because as housing density increases, the land value becomes a smaller share of property value, and less representative of the costs of providing council services to ratepayers.

Councils will only receive additional income by levying fixed charges (base or minimum amounts) across a larger number of properties.

4.2.2 Using a CIV formula to calculate 'growth in rates outside the peg'

Growth outside the rate peg should be scaled by the percentage change in CIV due to supplementary valuations according to the formula in Box 4.1. Our formula ensures that rates revenue increases in proportion to the increased cost of providing council services over time.⁵³ The formula is designed to ensure:

- ▼ total rates income for councils increases in line with the growth in costs caused by increased demand for councils services
- ▼ general changes in property prices (captured through asset revaluations) do not increase a council's rates income, and
- ▼ the growth in a council's rates income from new developments is not determined or influenced by the rate structure that a council adopts (the proportion of fixed to ad valorem charges).

As it is more consistent and sustainable, we recommend this growth factor be applied for all councils in NSW, independent of the valuation method chosen by a council. The information on CIV would need to be collected in all council areas that apply our growth outside the peg formula,⁵⁴ even for those where UV is used as the basis for setting rates.

Box 4.3 outlines the current 'growth outside the rate peg' process as new development occurs, and compares it against the increase in rates that would have occurred using our recommended formula (discussed further in section 4.3.2), using an actual strata subdivision in Port Stephens Council.

⁵³ Our formula would only permit non-negative changes in growth outside the peg from supplementary valuations.

⁵⁴ Councils that do not elect to adopt our formula would receive no growth in rates outside the rate peg.

Box 4.3 Growth in rates income due to new development

Figure 4.1 examines the change in rates income from a strata subdivision from one residence to seven strata units that occurred in Port Stephens Council. The analysis uses land value and property sales information provided in Port Stephens' submission to our Issues Paper.^a

It considers rates income prior to subdivision, and the growth in rates income following the subdivision, calculating the revenue growth using three different rating structures:

- ▼ an ad valorem rate only using UV as the valuation method
- ▼ Port Stephens Council's current rating policy which uses a UV ad valorem rate with a base amount collecting 35% of residential rates revenue, and
- ▼ an ad valorem rate only using CIV as the valuation method; the basis of our recommended formula.^b

Figure 4.1 Council rates income under strata subdivision

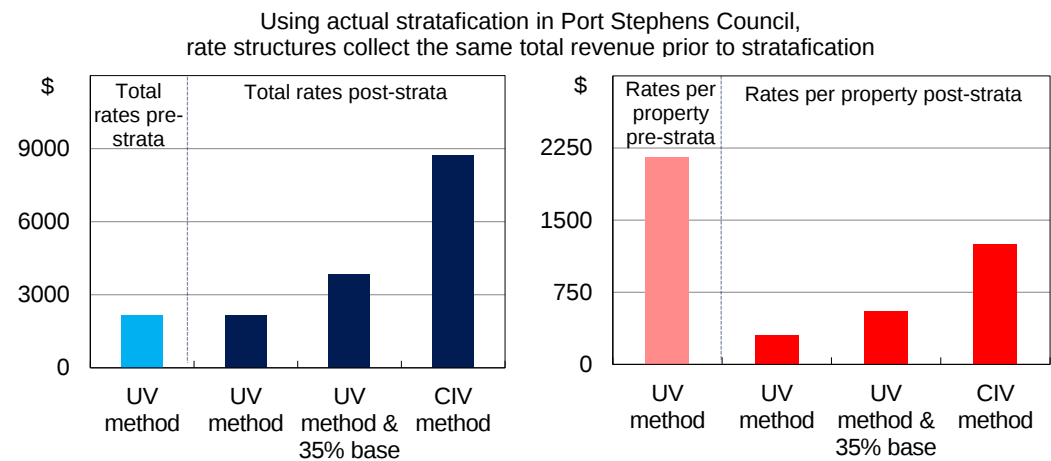


Figure 4.1 highlights the impact of the valuation method on rates income for strata subdivision. In this subdivision example, using the council's actual rates structure, the current method only delivers a modest uplift in total income even though the council is now servicing seven times as many households. The rates for the new households are around one-quarter of the rates prior to subdivision.

By contrast, if the increase in CIV were used to determine the growth in rates from new development, Port Stephens Council's total rates would increase by around \$6000 per annum, roughly matching the increase in costs of servicing six new households. At the same time, rates per property would be around \$1250 per year.

^a For further details, see Port Stephens Council, submission to IPART Issues Paper, May 2016, pp 2-6.

^b The ad valorem and base amounts are set so that the council collects the same total income from residential property prior to the strata subdivision. The rate structures under UV use the current formula for calculating growth in rates outside the rate peg.

4.3 Welfare analysis

Our recommended approach would promote councils' financial sustainability over the long-term. It would result in more efficient and equitable rating structures that do not require current ratepayers to fund the costs of servicing a growing community. It would also encourage councils and the community to promote urban renewal, reduce the cost of residential and business investment and the reliance on State Government contributions to stimulate investment.

Appendix F explains the benefits to the community of allowing rates revenue to increase as growth occurs alongside the increase in Capital Improved Value. In summary:

- ▼ Existing ratepayers would benefit from additional services provided by councils as the community grows without their rates increasing in real terms.
- ▼ The NSW Government funding that is provided to councils to cover the costs of servicing new residents and businesses could be reduced.
- ▼ Future ratepayers would also benefit from the increase in investment, development and urban renewal – which could lower the prices for new people entering communities.
- ▼ Under the current approach, growth would make current ratepayers worse off to the extent they pay higher rates and State taxes to fund services provided to new communities. This is also summarised in Box 4.4.

4.3.1 The CIE findings

IPART commissioned economic consultants The CIE to independently provide a cost-benefit analysis of our recommendations to rate properties using CIV and to calculate growth in the rate base using our proposed change in CIV formula.

The CIE has concluded there are substantial net welfare gains to current and future ratepayers from our proposals, arising from the improved provision of council services, more efficient funding of council services, and increased growth.

The CIE estimate net gains over 15 years of between \$443 million and \$2.1 billion to society from implementing our recommendations, with a central estimate of \$1.1 billion.⁵⁵ See Appendix F for further discussion.

⁵⁵ The CIE figures are net present value figures which discount future revenues and costs by 7% per annum. For more information, see, The CIE, *The costs and benefits of changing local council rate setting*, December 2016, p 37.

Box 4.4 Existing ratepayers would not cross-subsidise future ratepayers if CIV is used to determine growth in rates

CIV used to determine growth in the rate base

Over the next 10 years, the number of households in NSW is expected to grow by 14%. This will increase the demand for council services shown by the shift of the demand curve from D_0 to D_{CIV} in Figure 4.2.

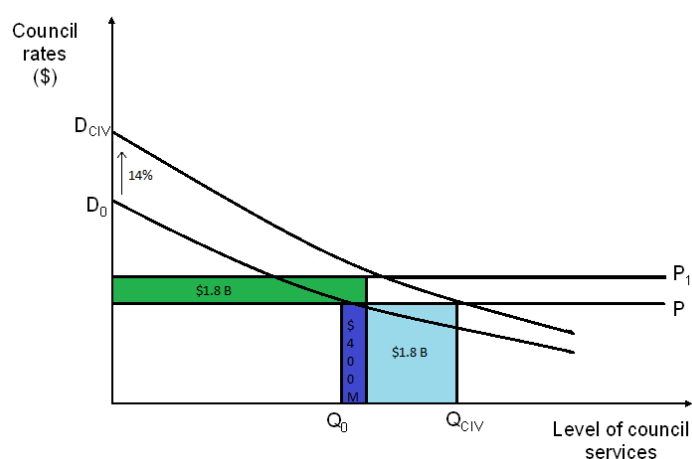
Using the change in CIV to determine the growth in the council rate base, the supply of council services increases from Q_0 to Q_{CIV} . New ratepayers fund this increase in council services, contributing \$2.2 billion of revenue over 10 years (this is the sum of the two blue shaded areas from Q_0 to Q_{CIV} in Figure 4.2).

UV used to determine growth in the rate base

Under a UV base, new ratepayers would only pay \$400 million of extra revenue over 10 years (the dark blue area). The UV base does not reflect new ratepayers demand for council services, or the \$2.2 billion cost of meeting this demand by increasing supply to Q_{CIV} .

To get an efficient level of supply of council services, existing ratepayers (or developers through developer contributions) would be required to make up the \$1.8 billion^a shortfall by paying extra state taxes and higher rates (because councils apply for SVs to fund growth). This is shown in Figure 4.2 by the price for supplying council services to current ratepayers rising from P to P_1 . They pay the green rectangle in extra revenue, a \$1.8 billion cross-subsidy provided to future ratepayers.

Figure 4.2 Current ratepayers would not cross-subsidise future ratepayers



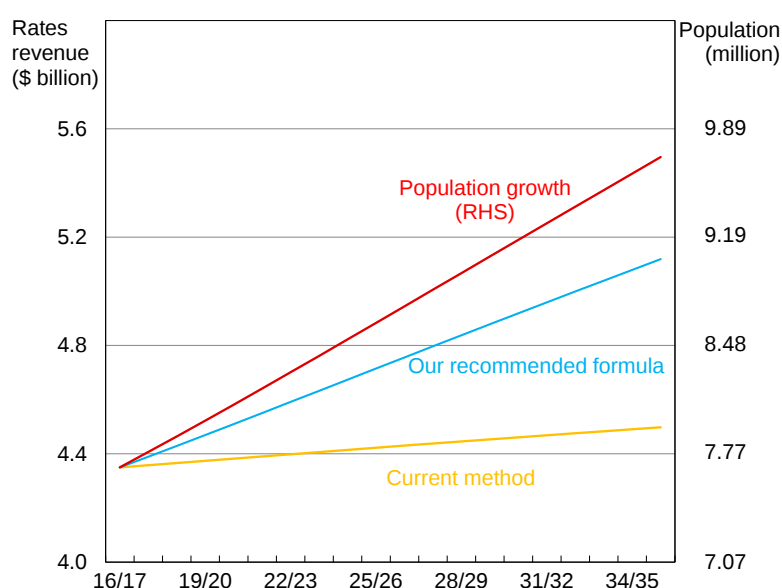
^a Developer contributions could fund part of this shortfall.

4.3.2 Revenue benefits to councils from using CIV

Over 10 years, we estimate that our approach would deliver the local government sector an additional \$1.8 billion revenue (in real terms), funded by future ratepayers, and about \$330 million per annum by Year 10.⁵⁶ Councils would receive a sustainable revenue stream to support growth and urban renewal, while ensuring rates per household do not rise in real terms.

Figure 4.3 shows that under the current system, councils' growth in total rates income from new ratepayers is typically around 0.2% per year or \$400 million in total over 10 years. This compares to population growth which has averaged about 1.3% over the past 5-10 years. In contrast, our recommended formula is estimated to deliver real growth in income of about 0.9% per year as a result of new residences and businesses or around \$2.2 billion in total over 10 years.

Figure 4.3 Projected growth in rates revenue and population^a



^a Rates revenue is in nominal 2016-17 dollars.

Note: Costs per person to deliver council services typically decrease as population density increases, eg, the road costs per capita would be expected to decrease as population increases. Our formula correctly captures the lower cost per person in providing council services as population density increases over time.

Data sources: ABS, Population Projections, Australia, 2012 (base) to 2101, November 2013, Cat. No. 3222.0; ABS, Residential Property Price Indexes: Eight Capital Cities, June 2016, Cat. No. 6416.0; ABS, Building Activity, Australia, March 2016, Cat. No. 8752.0; Department of Planning and Environment, 2016 NSW population and household projections, available at <http://www.planning.nsw.gov.au/Research-and-Demography/Demography/Population-projections>; Office of Local Government; IPART Analysis.

⁵⁶ \$1.8 billion is our estimate of the net revenue increase in rates from our recommended formula (the light blue line) less the revenue increase from the current formula (the orange line) over the next 10 years.

Over the next 20 years, an additional 1 million dwellings are forecast to be built in NSW – a 30% increase. This growth is expected to occur in both metropolitan Sydney and regional areas, with regional councils expected to grow by nearly 20% over this period.

4.4 Performance of our CIV approach against tax principles

Our recommended method for growing councils' general income better meets the tax principles of efficiency, equity, simplicity and sustainability.

4.4.1 Efficiency

Our approach would encourage councils to better balance rates across rating categories, and reduce reliance on State Government contributions.

Better balancing business and residential rates

Our recommendation would encourage councils to levy rates that minimise changes in behaviour and promote investment in their local community.

The growth in a council's rates income from new development would not be dependent on the rates structure, or valuation method, that it adopts. An increase in either residential or business investment would give councils the same growth in rates revenue above the rate peg.

Councils would be encouraged to lower rates for ratepayers whose investment decisions are more sensitive to rates. Charging a lower rate for ratepayers in these rating categories would grow the council's rate base more quickly. This creates incentives for councils to better balance the rates burden between business and residential ratepayers.

Rates are more efficient than upfront charges to recoup long-run costs under CIV

Recouping the cost of servicing new ratepayers wholly through developer contributions increases the cost of housing and business investment. Our formula would gradually recover additional costs of servicing growth in the community from future ratepayers as development takes place.

Although these developer contributions are capped, the NSW Government provides additional funding when the costs of providing essential infrastructure for new communities exceeds the cap. This can be inefficient because it requires the government to use less efficient state based taxes to fund new developments upfront. Funding these contributions through rates over time would result in much smaller welfare losses (Chapter 2 and Appendix F).

Reduced use of fixed charges

Land value will generally not increase when development takes place. Councils will only receive additional income by levying fixed charges (base or minimum amounts) as the number of properties grows.

This encourages councils to choose high minimum or base charges to obtain revenue growth from new ratepayers. However, using fixed charges in this way is neither equitable nor efficient, because rates do not reflect a ratepayers willingness or ability to pay for council services (see Chapter 3). Fixed charges should be used as a mechanism to recover the fixed costs of servicing dwellings.

4.4.2 Equity

Our recommended formula would be more equitable because the costs of providing services to future generations would be recovered from future ratepayers over the entire life of these assets. The current system results in current ratepayers cross-subsidising the costs of providing services to future ratepayers.

4.4.3 Simplicity

Our formula would better meet the simplicity principle by reducing the cost of the rate peg system, reducing the need for councils to apply for SVs to generate additional income, while maintaining the NSW Government's commitment to protect NSW residents against excessive rate increases.

We estimate that our recommendation could result in reduced regulatory costs of \$2.5 million per year as a result of reduced SV applications. Councils would not need to apply for SVs because they are pursuing growth and urban renewal. A council could still apply for SVs if there is a change in demand for its services.

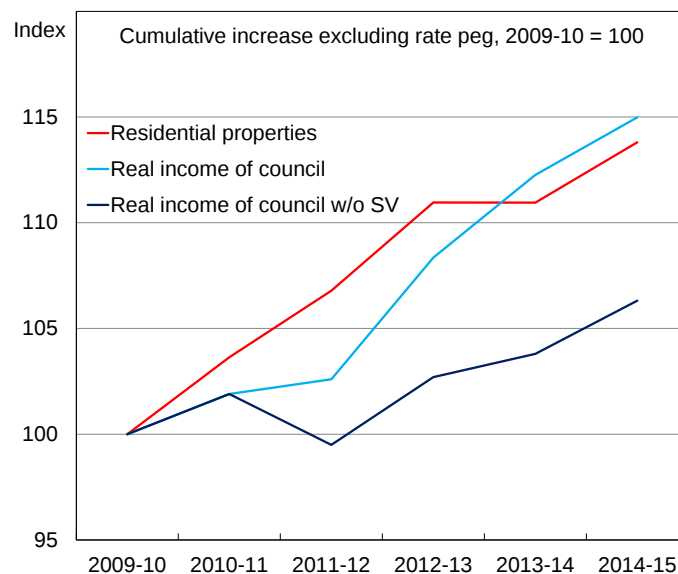
Our recommendation would ensure a smoother rates trajectory for individual ratepayers. Ratepayers would potentially avoid sharper increases in rates under an SV, to catch-up a prior period of real rate decreases. This is consistent with the Government's policy of avoiding excessive rate increases.

Box 4.5 compares the growth in residential properties to a Sydney council's real growth in council income with, and without, an SV that the council received under the current system. It highlights that the council would have experienced a real reduction in income per ratepayer without the SV.

Box 4.5 The current system results in increased pressure to apply for SVs

This box analyses the growth in residential ratepayers against real growth in income for a metropolitan council over the period 2009-10 to 2014-15. Figure 4.4 below shows that the number of residential ratepayers has increased by 15% over this period, while total rates revenue would have only increased by 6% in real terms without an SV.^a

Figure 4.4 A metropolitan council's growth in residential properties and rates income



^a Real growth in income is calculated by subtracting the rate peg from council income.

Data source: OLG, IPART.

4.4.4 Sustainability

Our approach would enhance councils' financial sustainability by allowing rates income to grow in line with growth in the community, providing councils with a larger rate base over time to support the increased demand for council services from new residents and businesses.

Under the current system, councils receive insufficient increases in revenue from new development. Unless change is implemented, over the next 20 years a number of councils would be expected to service populations that are 75% larger, or more, with an inadequate uplift in rates revenue to compensate.

4.5 Stakeholder comments

The majority of stakeholders support our recommendation, identifying that the UV method does not deliver sufficient growth in rates over time. For example, Byron Shire Council noted that our method:

...better reflects the real cost of providing additional services to the community as a result of growth. [It] also assists councils to be potentially more financially sustainable and may reduce the need to apply for future special rate variations.⁵⁷

City of Sydney Council highlighted some of the key issues with the current rating system for metropolitan councils:

The needs of medium and high density communities cannot be sustainably funded under the existing rating legislation...A rezoning of industrial to residential land, only marginally lifts total rate revenue while significantly increasing the infrastructure and service delivery needs of the community and demands of council.⁵⁸

In addition, Port Stephens Council highlighted the importance of our recommendation for both metropolitan and regional councils.

This issue potentially affects every council in the State and is not restricted to large metropolitan councils...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.⁵⁹

Some stakeholders also noted, that as councils would be able to receive higher rates income from new developments, there should be reduced need for councils to levy up-front developer contributions. For example, Urban Taskforce noted:

This [reform] will also provide local councils with a steady income stream to fund local infrastructure, which will hopefully encourage councils to accommodate additional development and density in their LGA where appropriate.

Given this adjustment in local government's approach to infrastructure funding, other local infrastructure charges, such as Section 94 charges, should be revised to take into consideration the re-allocation of infrastructure costs from upfront (Section 94 paid by developers) to a more staggered, equitable approach where individual land owners contribute through council rates over time.⁶⁰

4.5.1 Comparison of CIV formula to population growth

The Property Council of Australia recommended that growth outside the peg should be based on population growth.⁶¹ In other words, a council's rates revenue would grow outside the rate peg according to the annual increase in population.

⁵⁷ Byron Shire Council, Submission to IPART Draft Report, October 2016, p 2.

⁵⁸ City of Sydney Council, Submission to IPART Draft Report, October 2016, p 1.

⁵⁹ Port Stephens Council, submission to IPART Issues Paper, May 2016, p 2.

⁶⁰ Email to IPART from A. Manson, Urban Taskforce Australia, 24 October 2016.

⁶¹ Property Council of Australia, Submission to IPART Draft Report, October 2016, p 9.

We have considered this proposal. We have concluded that our recommended formula would be superior for the following reasons:

1. Scaling changes in a council's general income by changes in population would provide an incentive for councils to discourage business investment, by encouraging councils to decrease residential rates and increase business rates. This is because any reduction in business investment that results from charging higher business rates would have no impact on council revenues. By contrast, lowering residential rates would encourage new residential development, maximising population growth and the growth in council revenues. A number of property developers, in consultation, agreed that a growth in population formula would create a perverse incentive that would undermine business investment.⁶²
2. Council costs per person typically decrease as population density increases – because of lower costs per person in providing some council services such as the local road network. Our formula correctly captures these economies of scale.
3. Using a population formula (with a UV rating base) results in current ratepayers providing a cross-subsidy to future ratepayers, which is inefficient and inequitable. This cross-subsidy occurs because the population formula allocates the cost increases from growth to both current and future ratepayers. As the UV base grows more slowly than population, current ratepayers end up funding this gap by paying higher rates. In contrast, our formula results in a more efficient and equitable allocation of rates, with future ratepayers paying the rates required to fund the cost increases caused by growth.
4. The change in capital value better reflects the change in demand for council services. For example, a wealthy person building and moving into a \$20 million harbourside mansion should have a greater willingness to pay for council services such as coastal walks and parks, compared to a family of four moving into a \$300,000 two bedroom apartment that was previously occupied by one person. Under a population formula, the total rate base would grow more in the latter instance with the family moving into the two bedroom apartment.
5. A population formula does not correctly account for changes in the composition of growth between rating categories. For example, if a large mine was constructed, a local council would receive no additional revenue to service the increased demand on local roads.

⁶² Meeting with representatives from the Shopping Centre Council of Australia; Urbis; AMP Capital; Mirvac; Scentre Group and Stockland, 3 November 2016.

4.6 The NSW Government should fund the introduction of CIV

Recommendation

- 6 The NSW Government fund the NSW Valuer General for the upfront cost of establishing the database to determine Capital Improved Values.
- 7 The NSW Government fund the cost for a non-metropolitan council to set up a Capital Improved Value database for the purposes of implementing our recommended formula for calculating growth in rates revenue outside the rate peg, where the Unimproved Value method for setting rates is maintained.

We recommend that the NSW Government should fund the upfront cost of introducing CIV as the financial benefits it would receive would significantly outweigh the initial cost. Over a 10-year period, the net cost saving to the NSW Government's budget could be up to \$1.1 billion.

4.6.1 Establishing a CIV database

Upfront costs

The main cost driver of integrating CIV into the local government rating system would be the set-up cost of a database to collect and manage capital improved values. Based on consultation with the NSW Valuer General (VG), we understand the VG estimates the total costs at around \$100 million or more, although analysis by The CIE suggests that the costs could be significantly lower.⁶³

State budget savings

We have identified a number of programs that provide funds to councils to cover their costs of servicing increased developments in their areas. These costs could be replaced with the increased revenue councils receive from rates due to basing growth outside the rate peg on CIV rather than UV (see Section 4.2).

In the 2016-17 NSW Budget, these programs include:

- ▼ \$60 million in Local Infrastructure Growth Scheme (LIGS) funding, which provides funding to councils to deliver local infrastructure at the same time as new homes are built.
- ▼ \$40 million in Infrastructure for Priority Precincts, which funds local infrastructure upgrades in metropolitan areas which are increasing in density.

⁶³ The CIE estimated that the cost of establishing CIV could be around \$10 million. For more details, see The CIE, *The costs and benefits of changing local council rate setting*, December 2016, p22.

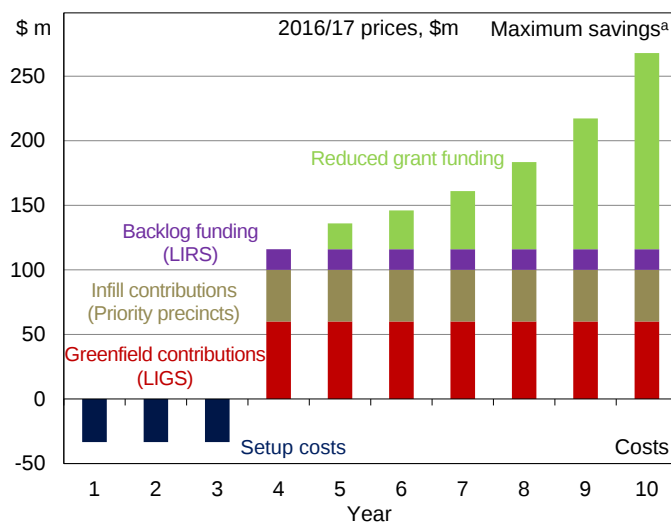
The NSW Government has also allocated a total of \$120 million to 2025 in Local Infrastructure Renewal Scheme (LIRS) funding, to address councils' infrastructure backlogs.

Office of Local Government (OLG) data indicates NSW Government grant funding to councils was over \$800 million in 2014-15, and over 30% flowed to metropolitan growth councils. In part, this reflects that population growth is a factor that influences grant funding.⁶⁴

This funding could be reduced if our recommendation is adopted because it would provide councils with a sustainable revenue stream to fund long run infrastructure needs.

Figure 4.5 shows the impact of introducing CIV on the NSW budget, showing that the potential revenue savings for the NSW Budget would strongly outweigh the costs. Appendix G contains a more detailed discussion of the benefits and costs of implementing CIV.

Figure 4.5 Potential impact of our recommendation on the NSW Budget



^a These are our estimates of the maximum savings the State Government could deliver.

Sources: NSW Budget Paper 2016-2017, available at: <http://www.budget.nsw.gov.au/>, accessed 30 November 2016; NSW Valuer General; IPART analysis.

4.6.2 Upfront costs for non-metropolitan councils

Some stakeholders were concerned if a council retained a UV method for setting rates it would also be required to update CIV information to calculate the growth in their general income.⁶⁵ These councils would be required to reflect changes from supplementary valuations to both the unimproved and improved values.

⁶⁴ The CIE, *Developer contributions in NSW*, June 2016.

⁶⁵ For example, Tweed Shire Council, submission to IPART Draft Report, October 2016, p 2.

Our analysis suggests that additional costs should not be significant.

- ▼ The change in CIV formula would be determined automatically for all councils as development takes place. UV data would only be used to distribute changes in general income across the community.
- ▼ The cost for a council to receive both CIV and UV information should be little more than receiving either CIV or UV data individually. This is because the same information is used to update CIV and UV data in practice, as the value of improvements is required to derive the unimproved value of land and its capital improved value.

Non-metropolitan councils might incur some setup costs in implementing our recommended growth formula if they maintain a UV method for rating. We recommend the NSW Government should fund this initial cost because the change in CIV formula would make non-metropolitan councils more financially sustainable.

Our recommendation ensures regional councils could choose the valuation method best tailored to their local communities, whilst not being financially penalised with lower growth in the rate base through time if they chose a UV method.

4.6.3 Funding ongoing costs of CIV

Implementing CIV would provide a sustainable revenue stream from future ratepayers which would reflect the costs of servicing growing communities. Under our proposal the ongoing direct costs of the CIV system would be funded by local councils and other users of the data through the valuation services they purchase.

We estimate if CIV were introduced, and current arrangements for valuation services remained unchanged, the costs of maintaining a CIV system alongside UV could be around \$5 million per year (a 10% increase on the current costs of the valuation system), based on information provided to IPART by the NSW Valuer General.⁶⁶ Our recommendation to allow councils the option to buy valuation services from private contractors should place downwards pressure on these costs over time (see Chapter 10).

⁶⁶ We used the NSW Valuer General's cost estimates provided to IPART by the Valuer General as part of our 2014 review of the NSW Valuer General's prices, and then estimated how these costs would be impacted using the VG's estimates of the increase in annual valuations, supplementary valuations and objections from maintaining a CIV system alongside a UV system, contained in his Submission to our Draft Report. For further information, see: IPART, *Review of prices for land valuation services provided by the Valuer-General to councils - Final Report*, 2014; and NSW Valuer General, Submission to IPART Draft Report, pp 14-15, 28.

4.7 Levying a special rate for joint delivery of new infrastructure projects

Recommendation

- 8 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.

As councils become larger and achieve long-term financial sustainability, they will be better positioned to co-fund joint infrastructure projects with the State and Federal Government. Our recommendation would give councils the option to partner with other levels of government to deliver a broader range of infrastructure projects that benefit the local community, with minimal regulatory burden.⁶⁷

Section 495 of the LG Act allows councils to levy special rates on any subset of rateable land within its area to meet the costs of delivering additional services, facilities or activities to ratepayers. However, the application of the current special rate provisions to joint infrastructure projects might be limited in practice to the goods, services and facilities currently outlined in Chapters 5 and 6 of the LG Act.⁶⁸ In other words, they cannot be used to co-fund infrastructure or services that fall within another sphere of government's service functions, even if they benefit the local community.⁶⁹

If infrastructure built by the State and/or Federal Government directly benefits the local community then a special rate should be permitted to collect revenue for this explicit purpose, regardless of which level of government constructs the infrastructure. This is particularly relevant as councils develop greater strategic capacity and ability to effectively partner with other levels of government.

The rates used to fund joint infrastructure should be outside a council's general income. This is because the infrastructure being provided is outside the core services for which councils collect rates. This would encourage urban renewal,

⁶⁷ During the rate path freeze period, this special rate would only be available to newly merged councils if they reach an agreement with the NSW Government.

⁶⁸ While section 24 of the LG Act outlines that "a council may provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public", the LG Act is also fairly prescriptive in the list of council's service functions permitted under the Act (or other Acts such as the *Roads Act 1993*).

⁶⁹ For example, City of Sydney Council has levied a special rate to construct infrastructure and services that surround a light rail line, eg, footpaths, as these are within a local council's service functions. However, the special rate was not used to co-fund the rail line itself, as providing rail is a state, or federal, function.

and better partnering by councils with the State and Federal Government without regulatory burdens. This would also reduce the need for councils to apply to IPART for Special Variations to fund joint infrastructure projects.

As highlighted by City of Sydney Council,⁷⁰ councils would engage ratepayers within the community through Integrated Planning & Reporting documents on:

- ▼ the benefits to the community of the project
- ▼ the total cost of the project
- ▼ the federal and/or state and local contributions to the project, and
- ▼ the total amount rates to be levied, and the distribution of these rates.

4.7.1 Stakeholder comments

The majority of stakeholders supported our recommendation, given that partnering with other spheres of government would be optional for councils. For example, Newcastle City Council noted that our recommendation:

...will encourage urban growth and remove both the significant impediments currently in place of requiring [SV] approval and excluding the funds raised from Council's general income.⁷¹

Some stakeholders were concerned that it could lead to potential cost shifting from State and Federal Governments to local councils,⁷² and the “potential for...political pressure to be exerted on councils by the NSW Government”⁷³. Our recommendation addresses these concerns:

- ▼ it would be at council's discretion whether to partner with State or Federal government, and
- ▼ the decision to jointly fund projects should reflect local community preferences that result from engagement with all levels of government.

4.8 Increased ability for councils to set rates below the rate peg

Recommendation

- 9 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.

⁷⁰ City of Sydney Council, Submission to IPART Draft Report, October 2016, p 4.

⁷¹ City of Newcastle Council, Submission to IPART Draft Report, October 2016, p 4.

⁷² For example, Campbelltown City Council, Submission to IPART Draft Report, October 2016, p 3.

⁷³ LGNSW, Submission to IPART Draft Report, October 2016, p 4.

The NSW local government reforms aim to build “a stronger system of local government in NSW, with councils that are sustainable, well-managed and ready to play an active role in helping communities grow.”⁷⁴

Councils need the ability to adapt pricing policies to short-term changes in their community's ability to pay, while ensuring long-term financial sustainability. This is consistent with the Integrated Planning and Reporting (IP&R) framework which requires NSW councils to prepare a 10-year Long Term Financial Plan that estimates the rates revenue a council expects to generate over this period.

Currently, councils have limited flexibility to set rates below the rate peg. Under the current provisions of the LG Act, a council that sets general income below the rate peg has only two years to return to the same rates trajectory. Our recommendation increases the ability for councils to protect ratepayers if the community experiences a short-term downturn, eg, as a result of drought or a downturn in commodity prices, while providing more time for councils to return to their sustainable long-term rates trajectory.

4.8.1 Allowing councils the flexibility to set rates that are responsive to local conditions

The Long Term Financial Planning process under IP&R requires councils to estimate expected rates revenue for the next ten years along with other revenue and expenditure variables. These budgets are designed to be used in strategic expenditure and revenue decision making.

IP&R budgets allow a council to plan for long-term infrastructure spending, and determine the long-term rates trajectory required to fund this spending.

However, if a council decides to levy lower rates than the maximum permissible income in a year, for example, due to a downturn in commodity prices, section 511 of the LG Act only allows the council to recover the lost income within the next two years. Over a longer period, it does not allow a council to recover lost rates income or to return to the same rates trajectory that it planned to follow.

The illustrative example in Box 4.6 highlights the limitations of the current legislation and the benefits of our proposed reform.

⁷⁴ NSW Government, *Strengthening Local Government*, at <http://www.fitforthefuture.nsw.gov.au/strengthening-local-government>, accessed 8 August 2016.

Box 4.6 The current limitations with setting rates below the rate peg

This box highlights the limitations of section 511 of the LG Act in allowing councils to set rates below the rate peg.

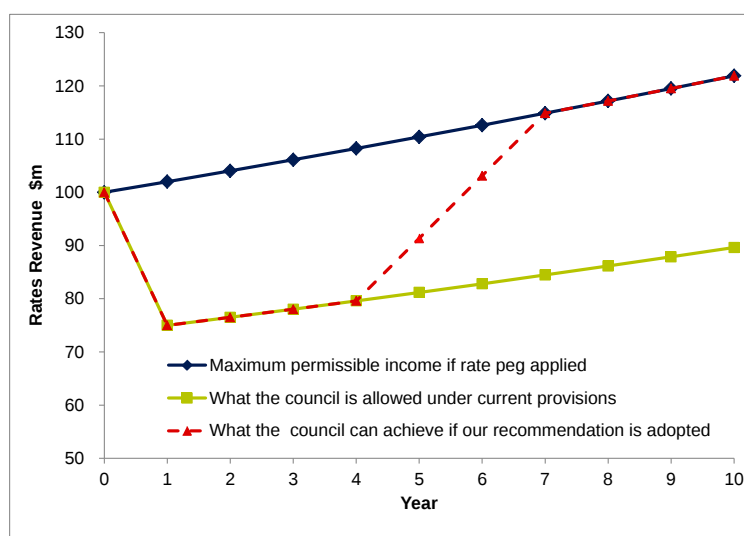
- ▼ In its Long Term Financial Planning Process a council ('Council A') has budgeted for revenues over the next 10 years (Year 1 to Year 10) based on the current year revenue of \$100 million and assumed rate peg of 2%. This revenue also meets Council A's long-term expenditures and ensures financial sustainability.
- ▼ However, in Year 1, Council A decides to collect only \$75 million rates revenue due to a drought in its LGA.
- ▼ In the subsequent 3 years (Year 2 to Year 4), the council applies the rate peg to the previous year's rates income in each year as drought conditions continue.
- ▼ In Year 5, there are no longer drought conditions in the community, and Council A decides to return to its long-term rating trajectory over the following three years.

Figure 4.6 plots the rating trajectory that the council could follow under the following three scenarios:

- ▼ The revenue that Council A would be allowed to receive if it temporarily set rates below the maximum in Year 2 to Year 4 if our recommendation to allow councils a longer period to return rates to its long-term rating trajectory is permitted (red line).
- ▼ The revenue that Council A would be able to recover if it temporarily set rates below the maximum in Years 2 to 4 under the current provisions of the LG Act (green line).
- ▼ Council A's rates trajectory if it had applied the full rate peg percentage in all years (blue line).

Importantly, under the current LG Act, if Council A set rates below the maximum in Year 2 to Year 4, it would not be able to return to its sustainable long-term ratings trajectory without applying for an SV.

Figure 4.6 Proposed approach to return to rates trajectory



Under our recommended approach, Council A would be allowed to resume its sustainable long-term rates trajectory in Year 7. Council A would also be allowed to gradually transition back to this path over a few years if it deemed this was more appropriate. Our recommendation would help councils balance short-term fluctuations in their community's ability to pay while ensuring they are able to meet long term plans.

Our recommendation benefits councils with significant farmland and mining properties

Our proposed reform, while beneficial to all councils, would particularly benefit councils with a substantial level of farmland and mining properties. The communities in their areas are most exposed to drought and changes in commodity prices, and these councils may wish to temporarily deviate from their rating structure to levy lower rates due to local economic factors.

Our recommendation would give councils the option, but not the obligation, to set general income below the rate peg during periods of droughts or periods of lower commodity prices without having to permanently reduce the level of rates or services to the community. This would allow councils to play a more active role in working with their community, and better set rates and services based on local economic conditions.

4.8.2 Stakeholder comments

Stakeholders were nearly unanimous in their support of our recommendation, and believed that it would encourage better long term financial planning⁷⁵ and allow councils to be more responsive to changes in the community.⁷⁶ For example, Berrigan Shire Council noted that our recommendation would allow "council to discuss sensibly with its community the option of a pause in rate increases in times of economic difficulty, with the ability to recover that pause in future".⁷⁷

4.9 The Special Variation process

The terms of reference for this review require IPART to take account of the NSW Government's commitment to protect NSW residents against excessive rate increases.

⁷⁵ Muswellbrook Shire Council, submission to IPART Draft Report, October 2016, p 3.

⁷⁶ For example, Northern Beaches Council, p 2, NSW Farmers Association, p 7, submissions to IPART Draft Report, October 2016.

⁷⁷ Berrigan Shire Council, submission to IPART Draft Report, October 2016, p 3.

As outlined in Chapter 2, councils that wish to increase their general income above the rate peg can apply to IPART for a Special Variation. Table 4.1 shows that since 2011-12 there have been 133 applications for an SV or a minimum rate increase, with around 60% of councils applying for at least one SV or minimum rate increase over this period. Over 90% of SV or minimum rate applications have been fully or partially approved in this period.

Table 4.1 SV and minimum rate applications

	Applications		Determinations		
		Full approval	Part approval	Declined	No determination
2011-12	23	9	10	4	0
2012-13	16	10	6	0	0
2013-14	24	21	3	0	0
2014-15	34	30	3	1	0
2015-16	23	22	1	0	0
2016-17	13	9	1	0	3 ^a
Total	133	101	24	5	3

^a No determination was made by IPART because the 3 councils were dissolved under an amalgamation.

Source: IPART.

However, the SV process incurs a significant regulatory burden on councils and the NSW Government, which might have deterred some councils from applying for SVs. For example, Wentworth Shire Council noted that the cost of applying for an SV is almost equal to the additional revenue received in the first year of the SV.⁷⁸ In its response to the panel, the NSW Government noted that it “supports removing unwarranted complexity, costs and constraints from the rate-peg system”.⁷⁹

Our core recommendation, that growth outside the rate peg should be scaled by the change in CIV, should significantly reduce the number of SV applications and reduce the cost of the rate-peg system. This is because rates per dwelling are held broadly constant over time, rather than the current system where rates per dwelling can significantly decline with growth from new developments.

This recommendation would also ensure a smoother rates trajectory for individual ratepayers. Ratepayers would potentially avoid sharper increases in rates under an SV, to catch-up a prior period of real rate decreases. This is consistent with the Government’s policy of avoiding excessive rate increases.

⁷⁸ Wentworth Shire Council, submission to IPART Issues Paper, May 2016, p 1.

⁷⁹ Office of Local Government, *NSW Government Response: Independent Local Government Review Panel recommendations and Local Government Acts Taskforce recommendations*, September 2014, p 5.

Under the proposed approach, a council that determines its base level of rates income using the SV process would no longer need to apply simply to compensate for growth. Councils would generally only need to apply for an SV to fund increases in the level of service to the local community.

In our Issues Paper, we highlighted three options suggested by the Panel Report to further reduce the costs and the constraints of the current SV process:

- ▼ streamlining the application and approval process for SVs
- ▼ introducing earned autonomy, where certain councils demonstrating consistent high performance could earn complete exemption from rate pegging, and
- ▼ replacing rate pegging with rate benchmarking.⁸⁰

We have considered these points. We have concluded that our core recommendation, to calculate growth outside the peg using the change in CIV, would reduce a large part of the regulatory burden from rate pegging, and is consistent with the NSW Government's policy of ensuring residents are protected from excessive rate rises. It would do this by significantly reducing the future need for, and size of, SV applications.

4.9.1 Stakeholder feedback

The majority of stakeholders disagreed with current rate pegging arrangements, instead viewing the introduction of IP&R, which requires councils to engage with the community to establish an appropriate resourcing strategy, as providing a sufficient framework to determine the level of rates.⁸¹

Stakeholders also noted broad support for streamlined rate pegging and earned autonomy.

⁸⁰ Independent Local Government Review Panel, *Revitalising Local Government*, October 2013, pp 42-45.

⁸¹ See, for example, LG NSW, p 3, Canterbury-Bankstown p 2, Clarence Valley Council, p 9, Submissions to IPART Draft Report, October 2016.

5 Give councils greater flexibility when setting residential rates

Many stakeholders consider the LG Act prevents metropolitan councils from setting different residential rates within their local areas. They have requested it be modified to give metropolitan councils greater flexibility when setting these rates. Rural and regional councils can already set different residential rates, as can councils in other jurisdictions.

We considered whether the current restriction on councils setting different residential rates remains appropriate, or whether it should be changed. The sections below summarise our findings and recommendations, and then discuss our findings and analysis in more detail.

5.1 Summary of findings and recommendations on setting residential rates

Councils should have more flexibility to set different residential rates within their local areas. This would allow them to set rates that take account of differences in access to, demand for and cost of providing council services across their residential ratepayer base. It would also assist them to be more responsive to local needs, reduce any cross-subsidies between areas and provide incentives for urban renewal. It would not lead to a change in the overall amount of rates collected, but rather would allow councils to set a more equitable and efficient distribution of the rating burden within their local area.

New protections to promote equity and transparency in setting different residential rates should be introduced. These include rules around the maximum difference between the highest and average rates within an area, as well as a requirement for councils to provide ratepayers with information on different residential rates.

In addition, **new councils should (at the end of the 4-year rate path freeze) have the flexibility to establish new structures for residential rates, and transition to them appropriately.** Depending on its specific circumstances, a new council should be able to choose to equalise rates across its pre-merger areas, keep the existing rate structures in each pre-merger area, or move to a new rate structure. If it chooses to equalise its residential rates, this should be a gradual process, with rate changes limited to a maximum increase of 10 percentage points above the

rate peg (as adjusted for permitted Special Variations) in any year as a result of this equalisation.

5.2 Councils should have more flexibility to set different residential rates

Recommendations

- 10 The *Local Government Act 1993* (NSW) should be amended to remove the requirement to equalise residential rates by 'centre of population'. Instead, the *Local Government Act 1993* (NSW) should allow councils to determine a residential subcategory, and set a residential rate, by:
 - separate town or village, or
 - residential area.
- 11 The *Local Government Act 1993* (NSW) should outline that:
 - A 'residential area' is an area within a contiguous urban locality that has, on average, different access to, demand for, or costs of providing council services or infrastructure (relative to other areas in that locality).
 - Councils could use geographic markers to define the boundaries for a residential area, including postcode boundaries, suburb boundaries, geographic features (eg, waterways, bushland) and/or the location of major infrastructure (eg, arterial roads, railway lines).

Currently, the LG Act requires councils to equalise residential rates by setting the same ad valorem rate within a single 'centre of population'. This means that it can only set different rates where it can identify different centres of population within its area.

To assess whether this remains appropriate or should be changed, we examined the current requirement in the context of different NSW councils (including new councils formed by the recent mergers). We also considered stakeholders' comments and the practice in other jurisdictions.

Our finding is that change is needed for the following reasons:

- ▼ to remove confusion about what the current requirement means
- ▼ to allow councils to tailor rates to local preferences for services, minimise any cross-subsidies, and provide incentives for urban renewal
- ▼ to allow councils to select the most efficient option to fund their services and infrastructure, and
- ▼ to allow councils to choose how to balance key tax principles when setting residential rates.

The analysis that supports this finding is outlined in Sections 5.3 to 5.6. Box 5.1 provides further explanation of the recommendations above.

Box 5.1 Further explanation of recommendations 10 and 11

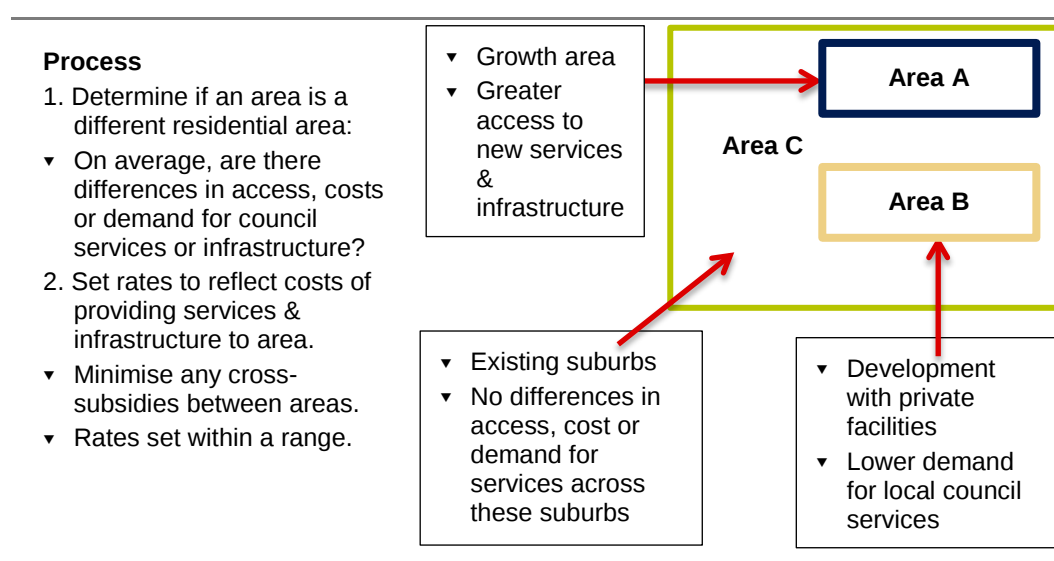
We recommend that the 'centre of population' requirement be removed from the LG Act, and replaced with provisions that enable a council to determine a residential subcategory by separate town or village or residential area.

The **'separate town or village'** subcategory reflects the current OLG guidelines. It should be retained since rural and regional councils use it to set different rates for towns or villages where there is a geographic separation between them.

The **'residential area'** subcategory provides greater flexibility to metropolitan councils.

- ▼ If a council determines an area has, on average, differences in access, costs or demand for council services or infrastructure (relative to the other areas adjoining it), it could choose to set a different rate for it.
- ▼ The council could use geographic markers (eg, suburbs, roads, railways, waterways) to determine the boundaries for this residential area.
- ▼ The council could determine an area's access, demand or costs by estimating an average per dollar of property value. For example, the council estimates the cost of providing council services is:
 - \$1,400 per dwelling in Area A and \$1,000 per dwelling in Area B, and these areas have similar average property values. Area B has a lower service cost per dollar of property value than Area A, and so these areas could constitute different residential areas, or
 - \$1,000 per dwelling in both Areas A and B, but average property values in Area A are twice those of Area B. Area B has a higher service cost per dollar of property value than Area A, and so these areas could constitute different residential areas.

The figure below outlines how councils could use the residential area subcategory.



5.2.1 Stakeholder comments

General support for setting different residential rates

Stakeholders supported our recommendations to give councils more flexibility to set different residential rates.⁸² Most agreed with councils being able to set different rates for areas that have different access to, demand for, or costs of providing council services or infrastructure.⁸³

Stakeholders considered the recommendations would provide them with the ability to more closely align rates paid with services received⁸⁴ and minimise any cross-subsidies.⁸⁵ Some noted that this would allow a more efficient and equitable setting of rates.⁸⁶ Stakeholders also thought the recommendations would allow councils to use different rates to provide different service levels, in line with local preferences⁸⁷ and residents' willingness to pay.⁸⁸

Only a few stakeholders disagreed with the recommendations. Some objected to differential rating on fairness grounds. They thought it would lead to councils charging residents different rates, even though they receive the same service level.⁸⁹ Others thought it would lead to councils unfairly targeting areas with higher rates, such as poorer areas which may be higher users of council

⁸² Albury City Council, Bega Valley Shire Council, Blacktown City Council, Blayney Shire Council, p 3, Burwood Council, p 4, Byron Shire Council, p 3, Camden Council, p 3, City of Canterbury Bankstown, p 3, Central Coast Council, p 3, Cootamundra Gundagai Regional Council, p 2, Cowra Shire Council, p 3, Cumberland Council, p 4, Dubbo Regional Council, Glen Innes Severn Council, p 3, Goulburn Mulwaree Council, Greater Hume Shire Council, pp 2-3, Ku-ring-gai Council, p 3, Lachlan Shire Council, p 2, Lake Macquarie City Council, p 3, LGNSW, p 4, Narrabri Shire Council, Newcastle City Council, p 5, Northern Beaches Council, p 2, Northern Rivers Regional Organisation of Councils, p 3, NSW Farmers' Association, p 8, NSW Revenue Professionals, p 3, Penrith City Council, p 2, Port Stephens Council, p 2, Queanbeyan-Palerang Regional Council, Randwick City Council, p 3, Riverina Eastern Regional Organisation of Councils, p 3, Shellharbour City Council, p 2, Shoalhaven City Council, p 3, Tamworth Regional Council, p 2, Hills Shire Council, p 55, Tweed Shire Council, p 3, Waverly Council, p 3, Wentworth Shire Council, p 2, Willoughby City Council, p 11, Wollondilly Shire Council, p 2, Wollongong City Council, p 5, submissions to IPART Draft Report, October 2016, City of Parramatta Council, Sydney Public Hearing, 19 September 2016, Transcript, p 32, Sutherland Shire Council, Sydney Public Hearing, 19 September 2016, Transcript, p 34.

⁸³ For example, see Randwick City Council, p 4, Shellharbour City Council, p 2, Newcastle City Council, p 5, submissions to IPART Draft Report, October 2016.

⁸⁴ Central Coast Council, p 3, Newcastle City Council, p 5, Randwick City Council, p 4, Waverly Council, p 3, submissions to IPART Draft Report, October 2016.

⁸⁵ Riverina Eastern Regional Organisation of Councils, submission to IPART Draft Report, October 2016, p 3.

⁸⁶ LGNSW, submission to IPART Draft Report, October 2016, p 4.

⁸⁷ Riverina Eastern Regional Organisation of Councils, p 3, submission to IPART Draft Report, October 2016, p 3.

⁸⁸ Tweed Shire Council, p 3, The Hills Shire Council, p 56, submissions to IPART Draft Report, October 2016.

⁸⁹ Mosman Council, submission to IPART Draft Report, October 2016, p 2.

resources.⁹⁰ In response, we note our recommendations allow councils to choose how to balance key tax principles – which take into account a ratepayer’s ability to pay, as well as the degree of benefit they receive from council services – when setting residential rates (see Section 5.6).

Taking property values into account when determining residential areas

Several stakeholders requested that councils be allowed to set different rates to take land values into account. That is, an area could be a different residential area – and be charged a different residential rate – where its land values are much higher than other areas, compared to the council services it receives.⁹¹

We have updated Box 5.1 from the Draft Report to clarify that councils may take property values into account when determining differences in an area’s average access, demand or costs. This provides additional flexibility to councils and resolves the issues raised by these stakeholders.

Using the term ‘residential area’ instead of ‘community of interest’

Several stakeholders were concerned that the term we proposed in the Draft Report (‘community of interest’) to define an area with different access, demand or costs may be confusing, since it is already used in legislation to define council and electoral boundaries.^{92,93} Therefore, we recommend the term ‘residential area’ be used instead.

Determining the boundaries for a residential area using geographic markers

Some stakeholders requested greater certainty around how councils could set the location of boundaries for a residential area. For example, Port Stephens Council suggested that councils be able to define the boundaries using geographic references, locality boundaries or zoning boundaries.⁹⁴ We agree with this suggestion and recommend that councils can use geographic markers (eg, suburbs, roads, railways) to determine the boundaries for their residential areas.

⁹⁰ NCOSS, submission to IPART Draft Report, October 2016. In addition, the NSW Aboriginal Land Council was concerned that councils in rural or remote areas could use the ‘separate town or village’ criteria to set different rates, which may lead to negative impacts on discrete Aboriginal communities. In response, we note that our recommendations give greater rating flexibility to metropolitan councils. Under the current LG Act and OLG Guidelines, regional and remote councils already have the ability to set different residential rates for their separate towns and villages.

⁹¹ Woollahra Municipal Council, p 5, Randwick City Council, p 4, Ku-ring-gai Council, p 3, submissions to IPART Draft Report, October 2016.

⁹² Central Coast Council, p 3, Woollahra Municipal Council, p 8, submissions to IPART Draft Report, October 2016.

⁹³ For example, section 66 of the *Commonwealth Electoral Act (1918)*; section 263 of the *Local Government Act (1993)* NSW.

⁹⁴ Port Stephens Council, submission to IPART Draft Report, October 2016, p 2.

In determining different residential areas, councils would only need demonstrate a difference, on average, in access, demand or costs between the areas. They would not need to show that dwellings on one side of the boundary have different characteristics to those on the other side of the boundary.

5.3 The current ‘centre of population’ requirement is unclear

The meaning of the current requirement for setting different residential rates by ‘centre of population’ is not clear. In submissions to our Issues Paper and Draft Report, several councils indicated they were confused about its application in urban areas.⁹⁵

Stakeholders generally thought that it prevents Sydney metropolitan councils from setting different residential rates within their local areas. This understanding appears to be consistent with the OLG guidelines. However, a judicial interpretation of the requirement suggests the opposite.

5.3.1 OLG guidelines interpretation of ‘centre of population’

The OLG guidelines indicate that if an area is within a contiguous urban development, it would only constitute a discrete centre of population in very limited circumstances. Namely, the area must be independently serviced by infrastructure and have a separate community of interest.

The guidelines note that setting different residential rates may have limited application within the suburbs of the main urban centres. Further, councils should not use the ‘centre of population’ requirement to:

- ▼ set different residential rates within homogenous suburbs, or
- ▼ enable rating variations by street or any special feature (eg, proximity to water).

In contrast, the guidelines provide more scope for rural and regional councils to set different residential rates. They indicate that a council might identify discrete centres of population by separate towns or villages.⁹⁶

⁹⁵ For example, see Warringah Council, pp 10-11, Port Stephens Council, p 13, submissions to IPART Issues Paper, May 2016; Newcastle City Council, submission to IPART Draft Report, October 2016, p 5.

⁹⁶ Department of Local Government, *Council Rating and Revenue Raising Manual 2007*, p 23.

5.3.2 Judicial interpretation of 'centre of population'

The Land and Environment Court held that a council could determine residential subcategories by 'centres of population' in a metropolitan area, and set different rates for the different residential subcategories. In determining a 'centre of population' it could take into account factors such as whether the area had a community of interest, geographic cohesion and a similar contribution to rates revenue relative to services received.⁹⁷ See Box 5.2 for further details.

Box 5.2 Judicial interpretation of the 'centre of population' requirement

The former South Sydney Council determined that the suburbs in its northern area made a disproportionate contribution to rates revenue in comparison with their utilisation of infrastructure. This area comprised 24% of the council's area, 24% of its road length and 12% of its parks, yet contributed 36% of its rate revenue.

The council addressed this disparity by establishing residential subcategories, and setting a different ad valorem rate and minimum amount for each subcategory:

- ▼ Southern Area (eg, Alexandria, Newtown, St Peters): 0.201% AV, \$338 minimum
- ▼ Western Area (eg, Camperdown, Chippendale, Ultimo): 0.165% AV, \$327 minimum, and
- ▼ Northern Area (eg, Darlinghurst, Potts Point, Elizabeth Bay): 0.165% AV, \$327 minimum.

It took the following factors into account when making these residential subcategories:

- ▼ the inequity arising from the disparity between contribution to revenue and services received, and
- ▼ whether the land within the proposed subcategories exhibited unique characteristics: community of interest, geographical cohesion, historical, traditional values and requirements.

The Land and Environment Court held that these were legitimate factors for the council to consider when exercising its power to determine 'centres of population' and make residential subcategories.

5.4 Councils should be able to tailor rates to local preferences

Within a council's area, there will be varying degrees of access to and demand for council services, as well as costs of providing those services. Most stakeholders supported giving councils greater flexibility to respond to these differences by setting different residential rates.

⁹⁷ *The Council of the City of Sydney v South Sydney City Council* [2002] NSWLEC 129.

Allowing different residential rates would promote a more efficient rating structure, by minimising any cross-subsidies between these areas. It could also provide incentives for greater private provision of services and urban renewal. It would not lead to a change in the overall amount of rates collected, but rather would allow councils to set a more equitable and efficient distribution of the rating burden within their local area.

5.4.1 Councils are growing

Larger council areas and growing populations mean more diverse communities, with variations in access, demand and costs across these communities. Some suburbs may have a higher or lower demand for council services compared to other suburbs within the council area. Alternatively, councils may incur relatively higher or lower costs providing services to some of their suburbs (see Box 5.3).

Allowing councils to set different residential rates would improve their ability to respond to local circumstances (ie, these differences in access, demand or costs) as they provide their services and infrastructure. Stakeholders agreed that councils should be able to implement different rates that reflect their local circumstances, factor in the needs of specific areas and take into account their diverse communities.⁹⁸

Several new councils, as well as ones subject to merger proposals, considered they could use different rates to transition to [new rating systems across their larger council areas following the 4-year rate path freeze](#).⁹⁹

- ▼ The City of Parramatta Council noted it has substantial diversity across its enlarged area in terms of services that are accessed and the services that are required going forward. Differential rating may be a useful tool to address these differences.¹⁰⁰
- ▼ Were it to merge, Newcastle Council thought our recommendations would support a more equitable and efficient transition to its new rating system. Our recommendations would allow greater flexibility to establish rates which are more reflective of the relevant communities' willingness and ability to pay, and which more closely correlate with the level of services provided to the respective communities.¹⁰¹

⁹⁸ For example, The City of Canterbury Bankstown, p 3, LGNSW, p 7, Waverly Council, p 3, The Hills Shire Council, p 56, submissions to IPART Draft Report, October 2016.

⁹⁹ For example, Snowy Valleys Council, submission to IPART Draft Report, October 2016.

¹⁰⁰ City of Parramatta Council, Sydney Public Hearing, 19 September 2016, Transcript, p 32.

¹⁰¹ Newcastle City Council, submission to IPART Draft Report, p 5.

- ▼ Queanbeyan-Palerang Regional Council indicated post-merger it comprises a highly urbanised compact community, surrounded by several rural villages. Each rural village has different levels of services and service expectation when compared to the urban community. Our recommendations provide it with the ability to rate according to the level of demand for council services within these diverse communities.¹⁰²

Box 5.3 Costs may vary because of local conditions

Compared to the other suburbs in a council area, an area may have higher or lower costs. For example, it may be:

- ▼ a former industrial site, so providing parks may require higher remediation costs
 - ▼ prone to flooding, so building roads there may be more costly (eg, greater drainage requirements), or
 - ▼ in a bushfire zone, so buildings there may have to meet higher standards.
-

5.4.2 Councils may have a mix of established and growth suburbs

Ratepayers in councils that have a mix of established and growth suburbs may have different levels of access to or demand for council services. For example, The Hills Shire Council indicated that growth suburbs often have a younger demographic and fewer facilities. These factors may lead to councils providing them with different services or infrastructure when compared to established suburbs.¹⁰³

Setting the same residential rate across established and growth suburbs may be inequitable. It could result in ratepayers from the established suburbs paying for services or infrastructure provided to the growth suburbs which they are unlikely to access.¹⁰⁴

Shellharbour Council noted that our recommendations would provide councils with the flexibility to levy different rates for suburbs that have greater access to services and infrastructure. This is particularly relevant in councils which have new development as well as older established areas.¹⁰⁵

¹⁰² Queanbeyan-Palerang Regional Council, submission to IPART Draft Report, October 2016.

¹⁰³ Hills Shire Council, submission to IPART Draft Report, October 2016, p 56.

¹⁰⁴ We note that some of the funding for infrastructure in growth suburbs may come from development contributions under section 94 of the *Environmental Planning and Assessment Act 1979* (NSW).

¹⁰⁵ Shellharbour City Council, submission to IPART Draft Report, October 2016, p 2.

5.4.3 Councils may want to encourage private service provision, urban renewal and new development

There are often differences in demand for local services between strata developments. Some strata developments provide significant private open space and facilities for their residents, which are maintained by the strata. In contrast, others do not offer these services, creating additional demand for councils to provide them.

Stakeholders indicated that other types of developments, such as university colleges and retirement villages, may also provide extensive private facilities for residents that reduce the demand for council services. See Box 5.4.

Councils should have the flexibility to provide incentives for these types of developments to offer private services, by setting a lower residential rate. This may also encourage more urban renewal or new development within council areas.

Box 5.4 Examples of developments that provide council like services

University colleges

Sancta Sophia College, which is located within the University of Sydney campus, indicated the university provides infrastructure and services that would usually be provided by the council. For example, it provides:

- ▼ recreational open spaces
- ▼ libraries, which are publicly available and used by the local community
- ▼ community facilities (eg, childcare centres)
- ▼ sporting facilities (eg, aquatic centre, playing fields, stadiums), and
- ▼ halls, theatres and other spaces available for entertainment and cultural events.

Retirement villages

Anglicare noted that it provides a range of services for residents in its retirement villages, reducing the demand for council services. These include providing:

- ▼ libraries, information services and sporting/fitness facilities
- ▼ roads, pavements and parks, and
- ▼ waste collection and recycling services.

Source: Sancta Sophia College, p6, Anglicare, pp 7, 13, submissions to IPART Draft Report, October 2016.

5.4.4 Land values do not always address differences in access to services and infrastructure

In some situations, councils may find that land values take account of differences in access to their services. Ratepayers with better access to council services may have a higher land value and therefore pay higher rates (assuming a uniform ad valorem rate). In this case, differential rating would be unnecessary.

However, factors other than access to council services are often the drivers of land values, particularly in metropolitan Sydney. These factors include proximity to public transport, beaches or waterways. So there may not always be a strong connection between the benefits received from local services (ie, access) and ad valorem rates paid. In these instances, setting different residential rates may be a useful option for councils.

5.4.5 Councils can identify the beneficiaries who are likely to access their public goods

As Chapter 2 discussed, rates are used to fund a council's provision of public goods (eg, parks, roads), which are non-excludable (ie, difficult or impractical to charge users for). However, this does not necessarily preclude a council from setting different residential rates to reflect differences in access to these public goods. For example, it could identify a subset of ratepayers who are the likely beneficiaries of the public good, and so recover higher rates from them to account for this higher level of access.

Allowing councils to set different residential rates is consistent with practices in other jurisdictions. For example, Queensland councils can determine different residential rates based on land use, access to or consumption of council services.¹⁰⁶ Box 5.5 outlines the practice in Victoria.

¹⁰⁶ Queensland Department of Infrastructure, Local Government and Planning, *Rates and Charges*, at <http://www.dilgp.qld.gov.au/local-government/finance/rates-and-charges.html>, accessed 15 July 2016.

Box 5.5 Different residential rates in Victoria

- ▼ A council may apply a different rate to residential land, as well as other types of land (eg, business). If it does so, the council must specify its objectives of the differential rate, and publish these on its website.
- ▼ The highest rate that the council sets across all types of land (including residential) must be no more than four times the lowest rate.
- ▼ Ministerial Guidelines were introduced in 2013 to reduce complexity and inconsistent application of different rates across councils. For example, councils must provide evidence of assessing the different rates against taxation principles. The Minister has the power to prohibit rates that are inconsistent with the guidelines.
- ▼ The Victorian Government is looking to increase transparency in the levying of different rates. It will require councils to clearly specify how the use of different rates contributes to the equitable and efficient conduct of council functions.
- ▼ While Victorian councils have the flexibility to set different residential rates, they have generally not been used by metropolitan councils.

Source: Victorian Government, *Ministerial Guidelines for Differential Rating*, April 2013; Victorian Department of Environment, Land, Water and Planning, *Act for the future, Directions for a new Local Government Act 2016*.

5.5 Councils should be able to select the most efficient option to fund their services and infrastructure

Currently, there are several options available to councils to fund their services and infrastructure. For example, councils can use:

- ▼ user charges, to fund services that have the characteristics of private goods (eg, water, sewerage, garbage collection)
- ▼ developer contributions or special rates, to fund public or mixed goods that benefit a particular group of ratepayers (eg, footpaths, roads, drains)
- ▼ debt, to fund either types of goods, and
- ▼ base amounts, to ensure a fixed amount is recovered from each ratepayer.

Councils are likely to experience increasing variations in access, demand and costs across their communities. Therefore, the existing funding options may not provide councils with sufficient flexibility when determining how best to fund their services and infrastructure.

We note the LG Act already includes a provision to allow councils this flexibility to set different residential rates. Further, there may be instances when differential rating may be a more efficient funding option than the alternatives (see Box 5.6).

Box 5.6 Councils can select the most efficient funding option

In the examples below, councils may consider it is more efficient to set different residential rates rather than use special rates or base amounts to address differences in access, demand or costs between areas.

Different residential rates vs special rates

- ▼ Where ratepayers in an area are receiving services that are not benefiting the wider council area, councils can currently use special rates to levy those ratepayers.
- ▼ Special rates may not be a feasible option where an area is imposing a lower cost, rather than higher cost, on council. This may occur where the area has a lower demand for services relative to the council area norm (eg, strata developments, university colleges or retirement villages that provide private services – see Section 5.4.3). In this instance, a different residential rate may be a more efficient funding option.

Different residential rates vs base amounts

- ▼ Setting a base amount that all ratepayers must pay (irrespective of land values) allows councils to ‘flatten out’ the rating structure, which would otherwise be determined by ad valorem rates. It can help to reflect the benefits ratepayers receive from their local services. (See Chapter 3 for our findings on base amounts.) Differential rating may be another way of recognising these benefits, without the distortionary effects of base amounts.
-

5.6 Councils should be able to choose how to balance key tax principles when setting residential rates

Setting residential rates (uniform or different) may involve a trade-off between key taxation principles – particularly vertical equity and efficiency.¹⁰⁷ Councils are best placed to decide how to balance these principles where they are in conflict. So they should be able to choose which to prioritise when setting their residential rates.¹⁰⁸ In addition, allowing councils to set different residential rates is consistent with most of these taxation principles.

5.6.1 Efficiency vs equity

Giving councils greater flexibility to set different residential rates would allow them to more closely align rates to the local services received by ratepayers. This would reduce any cross-subsidies between areas and thus improve the efficiency of rates. It would also promote the benefits principle, which is one of the dimensions of the equity principle.

¹⁰⁷ Section 2.3 discusses the key tax principles.

¹⁰⁸ See Newcastle City Council, p 5, Randwick City Council, p 3, submissions to IPART Draft Report, October 2016.

To promote another dimension of the equity principle, vertical equity, councils would need to set rates so that ratepayers who are better off pay more than those who are worse off. That is, they would need to make the burden of taxation proportional to the ratepayer's ability to pay.

There is sometimes a conflict between the principles of vertical equity and efficiency. Under the current LG Act, many councils are unable to tailor their residential rates to local preferences. Rather, they must set the same ad valorem rate for residents. Residential ratepayers with higher land values pay higher rates than those with lower land values. This is irrespective of their access to or demand for council services, or the costs of providing them with those services.

In effect, this obliges Sydney metropolitan councils to prioritise the principle of vertical equity over other tax principles when setting residential rates within their areas. A better outcome may be to let councils determine the appropriate balance between equity and efficiency concerns within their diverse communities – through permitting different residential rates – and be accountable to their ratepayers at the ballot box.

Even if a council uses different residential rates, vertical equity issues are still addressed. For example, using a single ad valorem rate within an area ensures that residents with a greater ability to pay do pay higher rates than other residents in that area.

5.6.2 Sustainability

Differential rating would be a more sustainable approach to rating, compared with having a uniform rate across a council area, especially in larger and more economically varied council areas. Councils can more readily adapt their different rates to changing circumstances (eg, enlarged council areas, different types of strata developments or areas with a mix of established and growth suburbs).

5.6.3 Simplicity

Having different residential rates would be more complex than having a single residential rate across a council's area. However, imposing transparency requirements on councils (such as those in our recommendation 12, discussed below) would improve ratepayers' understanding of different residential rates. This may mitigate any increase in rate complexity that accompanies a move to different residential rates from a single rate.

Differential rating would also simplify issues for new councils by giving them much better flexibility to efficiently and fairly deal with the existing rate structures they have inherited from the pre-merger councils.

For example, provided their pre-merger areas have differences in their access, demand or costs – and so comprise different residential areas (see Box 5.1) – new metropolitan councils could choose to maintain the existing rate structures. This means that all residents may benefit from merger efficiencies.¹⁰⁹

In contrast, the current LG Act requires many new councils to set a uniform residential rate across their areas, which may create ‘winners and losers’. That is, some ratepayers will experience a decrease in their rates, whilst others will be exposed to rate increases (see Section 5.8.2).

5.7 Protections should be introduced to promote equity and transparency in setting different rates

Recommendation

12 The *Local Government Act 1993* (NSW) should be amended so, where a council uses different residential rates within a contiguous urban locality, it should be required to:

- ensure the highest rate structure is no more than 1.5 times the average rate structure across all residential subcategories (ie, so the maximum difference between the highest and average ad valorem rates and base amounts is 50%), or obtain approval from IPART to exceed this maximum difference, and
- publish the different rates (along with the reasons for the different rates) on its website and in the rates notice received by ratepayers.

If councils are allowed to set different residential rates, there is a risk that some ratepayers may be subject to excessive rates. To mitigate this risk, new protections should be introduced to promote equity and transparency.

We recommend that the highest rate structure is no more than 1.5 times the **average rate structure**, rather than the lowest rate structure (as we proposed in the Draft Report).

Our revised recommendation ensures that no group within the council area would be targeted with excessive rates, as well as giving councils more flexibility to charge lower rates where access, demand or costs are much lower for a residential area. For example, councils would have greater scope to charge lower rates for developments that provide extensive private services (eg, strata developments, university colleges, retirement villages – see section 5.4.3), instead

¹⁰⁹ As part of the *Fit for the Future* process, we assessed most pre-merger Sydney metropolitan councils as financially fit. This implies that these councils are expected over the long term to recover costs within their pre-merger areas. Allowing differential rating means a new council could choose to maintain its pre-merger rate structures (subject to the requirements outlined in Section 5.3) and apportion merger cost savings to all pre-merger areas in a way that ensures all areas benefit from the merger savings.

of having a floor on these rates tied to the highest rate across other residents in the community.

5.7.1 The highest rate should be no more than 1.5 times the average rate across all residential subcategories

We consider the maximum differential (ie, the difference between the highest and average residential rates) should be limited to 1.5 times within a contiguous urban locality, without the need for regulatory oversight. That is, there can be a maximum of 50% difference between both the highest and average:

- ▼ ad valorem rates, and
- ▼ base amounts.¹¹⁰

If a council wished to set a different rate that falls outside this range, it could apply to IPART for approval. Box 5.7 contains an illustrative example of how this could be implemented a council.

Box 5.7 Applying different rates in a council

As an example, a council has an average rate structure comprising an ad valorem rate of 0.08% and base amount of \$100. It identifies that:

- ▼ Area A has a higher demand for council services. The council could set a higher rate for Area A compared to the average rate, increasing the ad valorem rate to 0.12% and base amount to \$150. If the council wanted to set an even higher rate structure in Area A, it would require IPART approval to exceed the maximum 1.5 times limit.
 - ▼ Area B has a lower demand for council services. The council could set a lower rate structure for Area B compared to the average rate. There would be no restriction on how far the council could go below the average rate.
-

The range only applies to the areas that are part of a contiguous urban locality. This is because differences in access, costs or demand for local services in urban areas are unlikely to vary to the same degree as in rural and regional areas.

We analysed the existing residential rates that new councils have inherited from their pre-merger areas. For most new councils in metropolitan areas, the range between their existing rates was less than 1.5 times.

¹¹⁰ In Chapter 3, we recommend that minimum amounts be removed from the LG Act. If they are retained, the maximum differential should also apply to minimum amounts.

5.7.2 Councils should publish information on their different residential rates

If a council uses different residential rates within a contiguous urban locality, it should be required to make these rates publicly available on its website. Further, it should publish on its website the reasons for the different rates, based on the access, demand and cost criteria outlined in Box 5.1. The council should also include this information on the different rates (and the reasons for them) in the rates notice received by ratepayers.

These transparency protections would be in addition to the existing Integrated Planning and Reporting framework (IP&R). Under this framework, a council is required to include its proposed rates structure in its draft Operational Plan, which is publicly exhibited for at least 28 days before being finalised. This allows ratepayers to provide comments to the council on the proposed rates.¹¹¹ The final Operational Plan (including the different rates) is then made publicly available.

5.7.3 Stakeholder comments

Many stakeholders agreed with all of our recommended protections.¹¹²

- ▼ Some councils thought they would protect the community¹¹³ and reduce the risk of different rates being used inappropriately.¹¹⁴
- ▼ Several stakeholders considered the 1.5 maximum difference appeared reasonable¹¹⁵, and prevented councils imposing excessive rates on ratepayers.¹¹⁶ However, some thought that the restriction should be reviewed in three to four years to ensure it is achieving its intended outcomes.¹¹⁷
- ▼ Other stakeholders considered our recommendations provided an appropriate level of transparency.¹¹⁸ They agreed that councils should have to justify the different rates to their communities.¹¹⁹

¹¹¹ NSW Division of Local Government, Department of Premier and Cabinet, *Integrated Planning and Reporting Guidelines for local government in NSW*, March 2013, pp 120, 122.

¹¹² Berrigan Shire Council, p 4, Blayney Shire Council, p 3, City of Canterbury Bankstown, p 3, Central Coast Council, p 3, Glen Innes Severn Council, p 3, Goulburn Mulwaree Council, Greater Hume Shire Council, p 3, Lake Macquarie City Council, p 3, submissions to IPART Draft Report, Northern Beaches Council, p 3, NSW Farmers' Association, p 8, Queanbeyan-Palerang Regional Council, Riverina Eastern Regional Organisation of Councils, p 4, Shoalhaven City Council, p 3, The Hills Shire Council, p 56, Tweed Shire Council, p 3, Waverly Council, p 3, Woollahra Municipal Council p 8, submissions to IPART Draft Report, October 2016.

¹¹³ The Hills Shire Council, submission to IPART Draft Report, October 2016, p 56.

¹¹⁴ Central Coast Council, submission to IPART Draft Report, October 2016, p 3.

¹¹⁵ City of Canterbury Bankstown, p 3, Greater Hume Shire Council, p 3, submissions to IPART Draft Report, October 2016.

¹¹⁶ Woollahra Municipal Council, submission to IPART Draft Report, October 2016, p 8.

¹¹⁷ Riverina Eastern Regional Organisation of Councils, p 4, Greater Hume Shire Council, p 3, Wagga Wagga City Council, submissions to IPART Draft Report, October 2016.

¹¹⁸ Newcastle City Council, submission to IPART Draft Report, October 2016, p 6.

In addition, there were stakeholders that only agreed with part of our recommended protections.

- ▼ Some supported the 1.5 maximum difference, but not the additional transparency. Reasons included that there was insufficient space on the rates notice to outline the justification for setting different rates,¹²⁰ the IP&R framework should remain the forum for communicating rates policy with the community,¹²¹ and it provided sufficient transparency if different rates were published on council websites (rather than also in rates notices).¹²²
- ▼ Others adopted the opposite position, supporting the transparency protections but not the 1.5 maximum difference. Several councils were concerned that this difference could be unduly restrictive.¹²³ Other councils requested the maximum difference be increased to 2 times.¹²⁴ For example, Newcastle City Council indicated that, if it merges there would be:

...significant variations in the access to and demand for council services, given the geographical variations between inner city, suburban, semi-rural and rural areas. An expanded differential to a factor of 2 [would] enable residential rates to be set in line with the level of benefit to ratepayers and cost of providing services to these areas.¹²⁵

Finally, several stakeholders disagreed with our recommended protections.¹²⁶ They thought councils should be able to determine their rating structure without being restricted by the 1.5 times maximum difference, which some thought was arbitrary.¹²⁷ Instead, they considered that the IP&R framework provided sufficient rigour around setting rates.¹²⁸

Despite some stakeholders expressing reservations about the protections, we have retained them since we consider they are an important mechanism to protect ratepayers and enhance confidence in the rating system. By requiring councils to outline different rates in rates notices and on their websites, this

¹¹⁹ Blayney Shire Council, p 3, Wagga Wagga City Council, NSW Farmers' Association, p 8, submissions to IPART Draft Report, October 2016.

¹²⁰ Albury City Council, submission to IPART Draft Report, October 2016.

¹²¹ Campbelltown City Council, p 3, Wentworth Shire Council, p 2, submissions to IPART Draft Report, October 2016.

¹²² Dubbo Regional Council, submission to IPART Draft Report, October 2016.

¹²³ Waverly Council, p 3, Randwick City Council, p 4, Shellharbour City Council, p 2, submissions to IPART Draft Report, October 2016.

¹²⁴ Blacktown City Council, Newcastle City Council, p 6, submissions to IPART Draft Report, October 2016. Port Stephens also requested a change to the maximum difference: see Port Stephens Council, submission to IPART Draft Report, October 2016, p 3.

¹²⁵ Newcastle City Council, submission to IPART Draft Report, October 2016, p 6.

¹²⁶ For example, Cowra Shire Council, submission to IPART Draft Report, p 3, Ku-ring-gai Council, p 3, Tamworth Regional Council, p 3, submissions to IPART Draft Report, October 2016.

¹²⁷ Burwood Council, p 4, City of Sydney, p 5, LGNSW, p 8, submissions to IPART Draft Report, October 2016.

¹²⁸ Camden Council, p 4, Wollongong City Council, p 5, Dubbo Regional Council, Lachlan Shire Council, p 3, Tamworth Regional Council, p 3, NSW Revenue Professionals, p 4, submissions to IPART Draft Report, October 2016.

information is more readily available to ratepayers than if it were only contained in the IP&R documentation.

In addition, we have amended the 1.5 times maximum difference so that it applies between the highest and average rate structures (rather than the highest and lowest rate structures). This provides councils with greater flexibility to charge lower rates for residential areas that impose low costs on councils (eg, because the areas provide extensive private facilities that reduce demand for council services).

5.8 New councils should have flexibility to continue existing rate structures or establish new ones

Recommendation

- 13 At the end of the 4-year rate path freeze, new councils determine whether any pre-merger areas are separate towns or villages, or different residential areas.
- In the event that a new council determines they are separate towns or villages, or different residential areas, 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 residential areas, 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 Special Variations) each year as a result of this equalisation. The *Local Government Act 1993* (NSW) should be amended to facilitate this gradual equalisation.

After the 4-year rate path freeze expires, new councils formed by the recent mergers should be allowed to establish new structures for residential rates, and transition to them appropriately. If a new council can identify separate towns or villages, or different residential areas (see Box 5.1), it should be able to choose to:

- ▼ equalise rates across its pre-merger areas
- ▼ keep the existing rate structures in each pre-merger area, or
- ▼ move to a different rate structure.

5.8.1 Proposed process for new councils

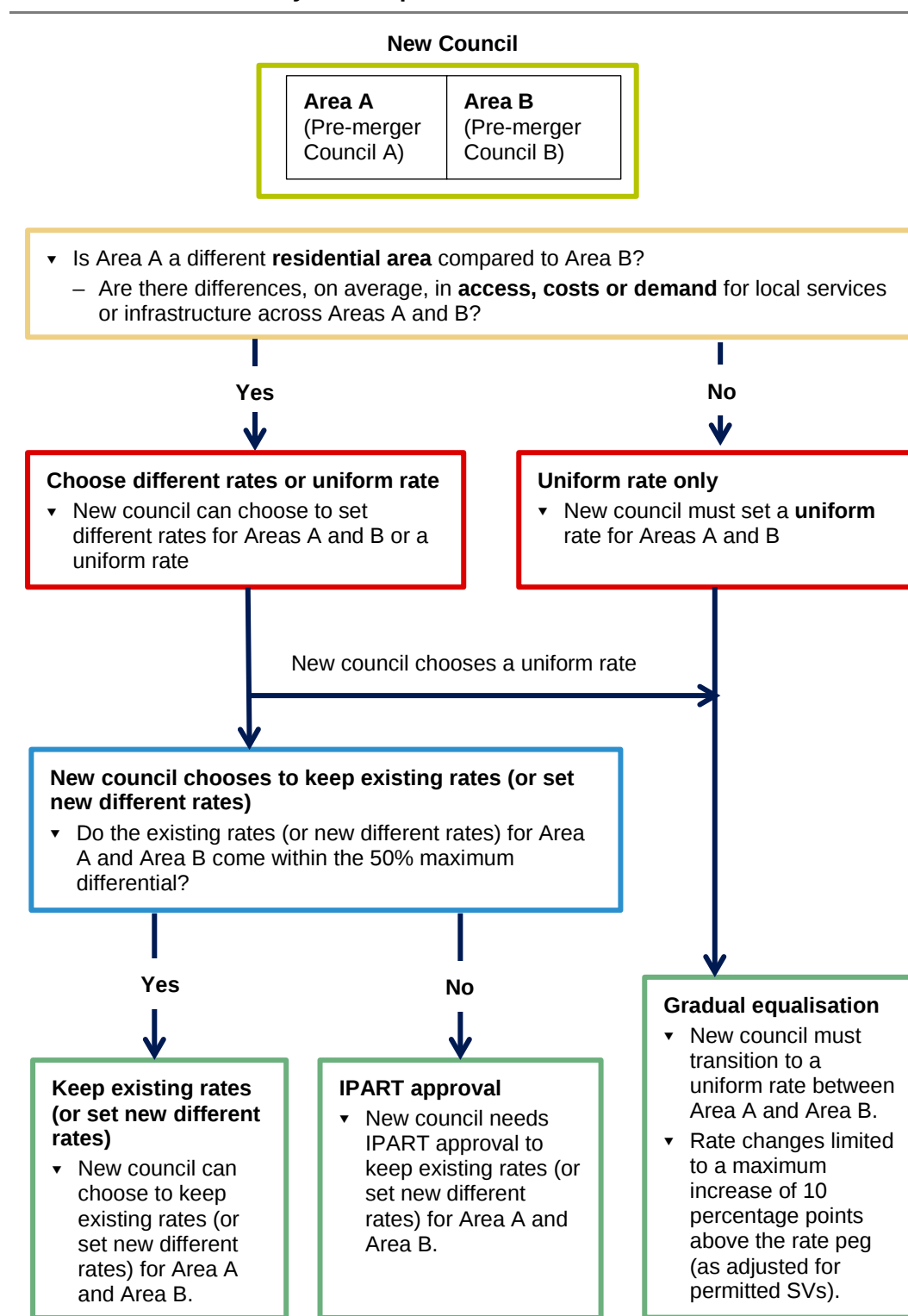
We propose that towards the end of the rate path freeze, a new council would assess whether its pre-merger areas are separate towns or villages, or different residential areas (ie, they have differences in access, demand or costs).

For example, if a new metropolitan council determines that:

- ▼ Its pre-merger areas are **different residential areas**:
 - The new council could set different residential rates for them using the existing rates or new different rates, provided these rates are within the ranges set out in Section 5.7. If the differential is greater than this maximum, the new council would need to seek IPART approval to maintain the existing rates or set the new different rates.
 - The new council could choose to equalise rates across the pre-merger areas, using the gradual equalisation process outlined below.
- ▼ Its pre-merger areas are **not different residential areas**, the new council would need to undertake a gradual equalisation of rates (eg, transition over time, rates increase by no more than 10 percentage points above the rate peg – as adjusted for Special Variations – each year as a result of this equalisation) (see Section 5.8.2).

This proposed process is outlined in Figure 5.1 and Box 5.8.

Figure 5.1 Process for new metropolitan councils to set residential rates after the 4-year rate path freeze



Box 5.8 Examples of how a new council may choose to set residential rates after the 4-year rate path freeze

Assume that a new council has been created from the merger of councils A and B (Areas A and B) in a contiguous urban locality. In Examples 1 and 2, the pre-merger councils set rates at \$1,400 per dwelling in Area A and \$1,000 per dwelling in Area B, reflecting demand preferences and supply costs in these areas.

- ▼ Example 1 compares the current requirement to equalise rates with our recommendations that provide new councils with greater rate flexibility.
- ▼ Example 2 illustrates how a new council may take property values into account when setting different rates for its areas, based on differences in average demand.

Example 1 – rate equalisation vs rate flexibility

Under the current LG Act, the new council would be required to equalise ad valorem rates across Areas A and B. If both areas have similar average property values, it must set rates at \$1,200 in both areas. This leads to outcomes that may be unfair and inefficient. Either:

- ▼ Area B has to cross subsidise the residents in Area A by \$200 per ratepayer, or
- ▼ the new council starts decreasing service levels in Area A and increasing them in Area B, which may be contrary to the preferences of the respective local communities.

Under our recommendations, Areas A and B could constitute different residential areas, given that they have different average demand per dwelling (and similar average property values). The new council could choose to:

- ▼ keep the existing structure
- ▼ equalise rates (using the gradual process outlined in Section 5.8.2), or
- ▼ move to another rate structure, moving rates higher or lower in the two areas based on local demand preferences, costs of supply and access to council services

The new council may conclude that maintaining the existing residential rates in Area A and B is more efficient, sustainable and equitable than moving to a uniform residential rate (ie, equalising rates).

Example 2 – Setting different rates for residential areas

- ▼ Assume that the Areas A and B have very different average property values (\$1 million and \$500,000 per dwelling respectively). As a result, average demand for council services per dollar of property value is 0.14 cents in Area A (ie, \$1,400 divided by \$1 million) and 0.2 cents in Area B (ie \$1,000 divided by \$500,000).
- ▼ Per dollar of property value, Area A has a 30% lower demand for council services relative to Area B, on average. Under our recommendations, Area A and B constitute different residential areas and the new council could choose to set a 30% lower ad valorem rate in Area A compared to Area B. This would better match the demand for and cost of providing council services in each area.

5.8.2 Gradual equalisation of rates for new councils

Under the current LG Act, at the end of the rate path freeze, new councils would be required to equalise their residential rates immediately. This could expose some ratepayers to large increases or decreases in their rates.

If new councils are required to set a uniform residential rate (or choose to set such a rate – see Section 5.8.1), they should gradually equalise rates across their pre-merger areas. 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 Special Variations) each year as a result of this equalisation (ie, the 10% limit).

Ceiling on rate increases

This requirement would protect ratepayers by acting as a ‘ceiling’ on rate increases due to equalisation. Our analysis indicates it would also mean that most new councils could equalise their rating structures within five years after the rate path freeze expires in June 2020.

Councils would have the discretion to set a resident’s rate changes below this ceiling during the equalisation process. While this may extend the timeframe for equalising rates, it would let councils take into account their ratepayers’ ability to pay and ensure they are not exposed to excessive rate increases. In particular, it allows councils to factor in the amount of the rate peg or any Special Variations when determining whether to go below the ceiling for equalising rates.

Gradual equalisation would not lead to a reduction in the new council’s general income from rates. The 10% limit on rate increases for some ratepayers would be offset by a correspondingly smaller decrease in rates for other ratepayers.

Impact of land revaluations

The 10% limit only applies to rate increases arising from equalisation, not as a result of land revaluations. Ratepayers would still be subject to rate changes from land revaluations, which in some instances could lead to them experiencing an increase in their rates above the limit.¹²⁹

¹²⁹ In years where a general land revaluation occurs, the 10 percentage point limit we have recommended would apply net of the impact of the revaluation on a ratepayer’s rates notice. This is done simply by applying the 10 percentage point limit to rates using the old property values before calculating the impact of the new property values on individual rates.

5.8.3 Stakeholder comments

Stakeholders generally supported our recommendation for new councils to have the flexibility to continue existing rate structures or establish new ones.¹³⁰ The main point of difference between stakeholders was around the equalisation process.

Around one-third of stakeholders that commented on this issue agreed with our recommendation to have a gradual process for new councils that choose to equalise rates post-freeze.¹³¹ They considered the 10% limit would protect ratepayers from large rate increases as a result of the merger process.¹³² Others commented that the ceiling provided councils with the flexibility to gradually equalise rates.¹³³

Newcastle City Council noted that applying the 10% limit during the rates equalisation process was:

...a reasonable approach which will provide councils with the flexibility to gradually equalise rates over a number of years. The current legislation does not provide this flexibility and requires new councils to equalise their rates immediately - this has the potential to cause undue financial hardship for some residents in merged council areas, at the end of the 4-year rate path freeze.¹³⁴

The remaining stakeholders typically supported gradual equalisation of rates, but had concerns with the 10% limit. They thought that it should:

- ▼ not apply at the individual ratepayer level,¹³⁵ but rather at the rating category level¹³⁶
- ▼ be replaced with a higher limit of 20 percentage points, given the relatively low value of council rates compared to other household bills,¹³⁷ or
- ▼ be removed altogether,¹³⁸ so that councils could determine their own transitional policies in consultation with the community¹³⁹ or as part of the IP&R process.¹⁴⁰

¹³⁰ For example, see Newcastle City Council, p 6, Shellharbour City Council, p 3, submissions to IPART Draft Report, October 2016.

¹³¹ Blayney Shire Council, p 3, Clarence Valley Council, Cootamundra Gundagai Regional Council, p 3, Cumberland Council, p 5, Greater Hume Shire Council, p 3, Lachlan Shire Council, p 3, Newcastle City Council, p 6, Randwick City Council, p 5, Riverina Eastern Regional Organisation of Councils, p 4, Shellharbour City Council, p 3, Shoalhaven City Council, p 4, Waverly Council, p 3, Willoughby City Council, p 11, submissions to IPART Draft Report, October 2016.

¹³² Newcastle City Council, p 6, Willoughby City Council, p 11, submissions to IPART Draft Report, October 2016.

¹³³ Shellharbour City Council, submission to IPART Draft Report, October 2016, p 3.

¹³⁴ Newcastle City Council, submission to IPART Draft Report, October 2016, p 6.

¹³⁵ Central Coast Council, submission to IPART Draft Report, October 2016, p 4.

¹³⁶ Port Stephens Council, submission to IPART Draft Report, October 2016, p 4.

¹³⁷ Woollahra Municipal Council, submission to IPART Draft Report, October 2016, p 9.

¹³⁸ Burwood Council, submission to IPART Draft Report, October 2016, p 4.

¹³⁹ Campbelltown City Council, submission to IPART Draft Report, October 2016, p 4.

¹⁴⁰ City of Canterbury Bankstown, p 4, NSW Revenue Professionals, p 4, Tamworth Regional Council, p 3, submissions to IPART Draft Report, October 2016.

Only a few stakeholders disagreed with gradual equalisation. These stakeholders thought it was too restrictive,¹⁴¹ supplanted council's decision making processes around rates¹⁴² and unnecessarily prolonged the process for merging rate structures, thereby causing confusion amongst ratepayers.¹⁴³ Berrigan Shire Council considered that councils should be able to immediately equalise rates, should they determine it is in the best interest of its community.¹⁴⁴

In response, we consider the limit on rate increases to be an important protection for ratepayers during the equalisation process. Our recommendations give additional flexibility to councils when setting their residential rates. However, this flexibility needs to be balanced against the risk of ratepayers experiencing excessive rate increases as a result. Our recommended protection mitigates against the risk of such rate increases.

Several stakeholders queried how the 10% limit would take land revaluations into account.¹⁴⁵ We have clarified that our recommended 10% limit excludes the effects of land revaluations, allowing rates for individual properties to increase by more than 10% as a result of such revaluations.

¹⁴¹ Goulburn Mulwaree Council, Dubbo Regional Council, submissions to IPART Draft Report, October 2016.

¹⁴² LGNSW, submission to IPART Draft Report, October 2016, p 8.

¹⁴³ Berrigan Shire Council, p 5, Queanbeyan-Palerang Regional Council, submissions to IPART Draft Report, October 2016.

¹⁴⁴ Berrigan Shire Council, submission to IPART Draft Report, October 2016, p 5.

¹⁴⁵ Central Coast Council, p 4, Northern Beaches Council, p 4, Woollahra Municipal Council, p 9, submission to IPART Draft Report, October 2016.

6 Better target rate exemption eligibility

The LG Act provides for a range of rate exemptions to be made, largely based on who owns the land – for example, land owned by the Crown and religious bodies is exempt. We assessed the current exemptions to identify opportunities to improve their efficiency, equity and competitive neutrality. The sections below summarise our recommendations, and then discuss each recommendation and analysis in more detail.

6.1 Summary of recommendations on rate exemptions

Rate exemptions should be better targeted to ensure all other ratepayers do not subsidise the costs of providing council services to properties where this is not justified on efficiency and equity grounds, and properties with comparable uses of land should attract the same rating treatment. In particular:

- ▼ **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 would help to ensure that land used mainly to deliver private benefits pays its fair share of rates.
- ▼ **Some explicit exemptions should be retained or amended, as they are consistent with the general exemptions.** For example, these include those for land used by a religious body for that purpose, land vested in the NSW Aboriginal Land Council, and land owned by a hospital and used for that purpose.
- ▼ **Some explicit exemptions should be removed on the basis that the land is used for a commercial or residential purpose.** For example, these include those for land owned or vested in a water authority, land below the high water mark used for the cultivation of oysters, and land used for commercial logging.
- ▼ **Exemptions for land used for both exempt and non-exempt purposes should cover the portion used for exempt purposes only.**

In addition, councils' maximum general income should not be adjusted as a result of any one-off changes in exemption statuses resulting from implementing the above recommendations. However, councils should have access to a streamlined SV process if they wish to increase general income to take account of the one-off changes to exemptions. We have also made recommendations to increase the consistency and transparency of exemptions.

6.1.1 Changes since the Draft Report

We have made four changes to our draft recommendations in response to stakeholder feedback:

- ▼ exempting the majority of aged care facilities, except where they are charging commercial rates (see Section 6.2.4)
- ▼ retaining the current exemption from rates for freight rail corridors (see Section 6.3.2)
- ▼ removing the exemption for land subject to a conservation agreement and instead recommending it be rated using the environmental land category (see Section 6.4.3), and
- ▼ recommending a streamlined SV process for councils to use in the year that our exemption recommendations are implemented (see Section 6.7.2).

6.2 General exemptions should be based on land use not land ownership

Recommendation

14 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.

Rate exemptions mean current ratepayers subsidise the cost of providing council services to those eligible for exemptions. To justify this, exemptions should be granted on efficiency and equity grounds. For example, they could be targeted at land used to generate substantial local public benefits and not for land used to generate private benefits (see Box 6.1 for more information).

Box 6.1 On what grounds should rate exemptions be granted?

Where an activity provides substantial public benefits to the local community, it may be equitable and efficient to exempt it from paying rates. For example, schools and hospitals generate public benefits. Requiring them to pay rates may result in them reducing their services below a socially optimal level.

It may also be equitable to provide exemptions where the organisation has limited ability to pay. For example, granting exemptions to religious or charitable institutions – which may have limited ability to pay rates – could allow them to spend more on public goods such as helping the disadvantaged, which results in better outcomes for society.

However, where the benefits provided by an activity are spread across multiple council areas a rates exemption may be inappropriate, because local ratepayers are subsidising ratepayers in other council areas. Rather, financial support for these activities could be better provided at the State level, as this source of funding more accurately reflects the benefits received by the wider community.

Currently, the LG Act exempts several types of land from paying rates.¹⁴⁶ These exemptions are largely based on who owns the land, rather than how it is used. This has resulted in inefficient and inequitable outcomes, including:

- ▼ **Exemptions being granted for land used to generate private benefits** – for example, commercial logging in state forests and commercial oyster farming on land below the high water market (ie, Crown land).
- ▼ **Properties with comparable land uses being rated differently** – such as a retirement village that is owned by a Public Benevolent Institution (PBI) compared to one that is privately owned.^{147,148}
- ▼ **Cost advantages for exempt organisations that directly compete with the private sector** – for example, government enterprises or charitable institutions that provide goods and services at commercial rates.

To improve efficiency, equity and competitive neutrality, we consider exemptions across all rating categories should be determined by land use, irrespective of ownership. In addition, all land used for commercial activities or residential purposes should be rateable, unless it is explicitly exempted. Box 6.2 illustrates how these principles should apply to land rented to organisations such as charitable and religious institutions.

¹⁴⁶ Section 555 of the LG Act exempts certain land from all rates (see **Table I.1** in Appendix I). In addition, section 556 exempts certain land from all rates other than water supply special rates and sewerage special rates (see **Table I.2** in Appendix I).

¹⁴⁷ A Public Benevolent Institution is a type of charitable institution whose main purpose is to relieve poverty or distress. For more details, see http://www.acnc.gov.au/ACNC/FTS/Fact_PBI.aspx.

¹⁴⁸ Cootamundra Shire Council, submission to IPART Issues Paper, May 2016, p 7.

Box 6.2 Exemptions and land rented for an exempt activity

Several stakeholders queried how land that is owned privately, but rented to a charity (or otherwise exempt organisation), would be rated as a result of moving from ownership to use as the basis for granting exemptions (eg, a charity renting office space). We recommend this land should continue to be rateable.

We recommend this because the owner of the land, who is the relevant person for the purposes of levying rates, is using the land for a commercial activity by renting the land.

6.2.1 Land used for commercial activities should be rateable

There are several reasons why land used for commercial activities (defined in Box 6.3) should be rateable:

- ▼ **Commercial activities generate private benefits and revenue.** Therefore these ratepayers have the ability to pay, and should pay, rates.
- ▼ **Commercial activities impose costs on council.** Therefore, it is equitable and efficient that those responsible for the costs make a contribution to them by paying rates. This would also provide them with an incentive to minimise these costs.
- ▼ **Granting exemptions for land used for commercial activities gives those conducting the activities a competitive advantage.** This is contrary to the principle of competitive neutrality and may lead to less efficient suppliers entering industries based on a tax advantage, or disadvantage efficient competitors.

In addition, making all land used for commercial activities rateable would be consistent with recent amendments to the LG Act that limit the scope of several exemptions to focus on land use, and exclude commercial use.¹⁴⁹

¹⁴⁹ In 2010, the LG Act was amended to limit exemptions granted to religious and charitable organisations. The exemptions available to these organisations would only apply to the parts of their land used for religious or charitable purposes, and not those parts used for commercial purposes.

Box 6.3 How we define commercial activity

An activity is considered to be a commercial activity if it:

- ▼ involves the selling of goods and/or services
- ▼ is provided at more than a nominal consideration^a
- ▼ is undertaken on an ongoing basis, and
- ▼ is not the provision of a public service.

^a The Australian Taxation Office (ATO) defines nominal consideration in the context of commercial activities of charities to be below 50% of market value (75% for supply of accommodation). ATO, *GST and non-commercial rules – benchmark market values*, at <https://www.ato.gov.au/printfriendly.aspx?url=/Business/Bus/GST-and-non-commercial-rules---benchmark-market-values/>, 15 June 2015, accessed 16 August 2016.

6.2.1 Land used for residential purposes should be rateable

Similarly, land used for residential purposes (defined in Box 6.4) should be rateable because this purpose generates a private benefit to the resident, rather than a public benefit to the wider community.¹⁵⁰ Also, residential users impose costs on councils, so its owners should help to fund those costs.

In addition, removing the current exemptions for residential purposes based on land ownership would address a particular concern for councils that have a high proportion of social housing in their local areas.

¹⁵⁰ We note that social housing has both private and public benefits. This is discussed in more detail in section 6.2.4

Box 6.4 How we define residential activity

We consider residential purposes to be situations where a property is:

- ▼ predominantly used as a place to live, and
- ▼ occupied by the same resident continuously for periods of three months or greater.^a

This would include residences such as community housing developments, retirement villages and student accommodation provided on University campuses.

If a property's residential activities are incidental to its main purpose of occupancy, the property would not be viewed as residential. These types of properties could include:

- ▼ extended drug treatment programs
- ▼ school student boarding facilities
- ▼ crisis accommodation, or
- ▼ women's refuges.

Serviced apartments, which are currently defined in the Local Government Regulations 2005 as residential, should instead be rated as residential only for the proportion of property which meets the definition of residential activity outlined above; in particular, the proportion of apartments that are occupied by the same resident continually for the period of three months or greater. Otherwise they should be rated in the same manner as hotels and motels. It would be up to the owner of the serviced apartments to demonstrate the proportion of the property being used for a residential purpose.

^a This definition is in place to ensure that genuine public good such as temporary shelters are not considered residential activities for rating purposes.

6.2.2 Stakeholder comments on basing exemptions on land use

Stakeholder opinion on the move to exemptions based on land use rather than ownership was mixed.

Councils were overwhelmingly in favour of our recommendation to move the basis of granting exemptions to land use from ownership, with nearly 50 councils expressing their support. Councils argued this recommendation would broaden the rate base and remove inequitable exemptions from the system.

For example, Lake Macquarie Council noted that it supports:

...application of rates to the widest possible rate base, as all landowners consume council services in one form or another.¹⁵¹

Similarly, Sutherland Shire Council stated that it supports:

...the notion of exemption based on land use as opposed to ownership. There are current inequities that exist between the offering of services between PBIs and

¹⁵¹ Lake Macquarie Council, submission to IPART Draft Report, October 2016, p 4.

commercial operations. There is a subsidisation by the residents for non-rateable properties...¹⁵²

Conversely, submissions that were critical of this recommendation were predominately from stakeholders that may lose their exemption as a result of the change. In general, these submissions argued the change was inequitable and would adversely affect the operation of their organisation. These views are discussed in greater detail in section 6.2.4 below.

Serviced apartments

A number of stakeholders noted that the current treatment of serviced apartments is inconsistent with the principle of rating on use not ownership. For example Byron Shire Council argued that serviced apartments are no different from motels (which are rated as businesses).¹⁵³ LGNSW suggested that councils be able to create a separate rating category for these properties on the basis of their non-continuous occupancy.¹⁵⁴ The NSW Revenue Professionals argued that serviced apartments run in direct competition to hotels and that they should be rated as per their dominant use.¹⁵⁵

6.2.3 General impact of basing exemptions on land use rather than ownership

If our recommendations to base exemptions on land use, not ownership, and make land used for commercial activities or residential purposes rateable were adopted, some land uses would remain exempt, while others would become rateable. Table 6.1 provides examples of the likely impact of our broad recommendations on current exemptions.

¹⁵² Sutherland Shire Council, IPART Public Hearing – Sydney, 19 September 2016, p 67.

¹⁵³ Byron Shire Council submission to IPART Draft Report, October 2016, p 2.

¹⁵⁴ LGNSW submission to IPART Draft Report, October 2016, p 8.

¹⁵⁵ NSW Revenue Professionals submission to IPART Draft Report, October 2016, p 3.

Table 6.1 Impact on current exemptions

Remains exempt	Becomes rateable
Land used by universities for educational purposes	Commercial logging in state forests
Hospitals both public and private	Retirement villages
Land used by government and non-government schools for educational purposes	Child care centres charging market rates
Passenger Rail lines	University student or other residential accommodation
Land occupied and used in connection with religious purposes	Land used by a water corporation
Charities and PBIs where the activity is not residential or commercial in nature	Aged care facilities charging above the maximum RAD
Crown Land not used for commercial purposes or privately leased	Social housing owned by PBIs
Aged care facilities charging below the maximum RAD ^a	

^a Refundable Accommodation Deposit – see section 6.2.5 for more details.

6.2.4 Specific impact of making residential land use rateable

Social housing

We recommend that land used for social housing be rateable. As a result, social housing owned by PBIs would no longer be exempt from rates.

Social housing is rental housing that assists people who are unable to access suitable accommodation in the private rental market.¹⁵⁶ The public housing stock is owned by the Land and Housing Corporation which pays rates on land used for this purpose.

From an equity and commercial neutrality perspective the use of the land for social housing generates both private and broader community benefits. This raises the question of whether wider public policy objectives pursued by the State should be funded by the local community or rather by the State.

In recent years, the NSW Government has transferred ownership of some of its social housing to PBIs. Since land owned by PBIs is currently exempt from paying rates (irrespective of whether it is used for residential purposes), any social housing transferred to them becomes non-rateable. This has the effect of transferring part of the subsidy of social housing from the State to council ratepayers.

¹⁵⁶ NSW Government, Family and Community Services, *Social Housing*, at <http://www.housing.nsw.gov.au/social-housing>, accessed 3 August 2016.

Our recommendation to make all residential use of land rateable means that council ratepayers will no longer be subsidising social housing. With the removal of this subsidy the State Government need to address how this subsidy would be funded in the future.

Box 6.5 Substantial exemptions can arise from PBIs providing social housing

PBIs are increasingly providing social housing. In areas where social housing is growing, it leads to councils trying to deliver more services with a smaller rate base. This is unsustainable. For example:

- ▼ Sutherland Shire Council has 594 social housing properties in its local area. It indicated that transferring these properties to PBIs would result in an exemption worth \$2 million each year. This equates to an extra \$25 in rates a year for each remaining rateable household.
- ▼ Campbelltown Council has 5,500 social housing properties in its local area and another 350 properties held by community housing providers. It indicated that they currently generate \$6.5 million in rates each year. If these properties are transferred to a PBI and become exempt from rates, the council would have to raise this money from other ratepayers. This equates to \$109 a year for each remaining rateable household.

Source: See submissions from Sutherland Shire Council to IPART p 5; Campbelltown Council submission to IPART p 6.

Teacher housing

We recommend amending the LG Act to remove the current exemption from rates for all residential properties occupied by teachers, employees or caretakers of schools, including those located on school grounds. Our recommendation would harmonise the treatment of all teacher housing in NSW regardless of whether or not they are on school grounds.

The NSW Teacher Housing Authority (THA) provides housing for NSW public school teachers in remote and rural areas to encourage teachers to take positions in regional schools. Under the *Teacher Housing Authority Act 1975* the THA is required to pay council rates on any land vested with it, even though the LG Act provides for an exemption.¹⁵⁷ Similarly, the Catholic Education Commission NSW (CEC), which provides its teachers in rural areas with heavily subsidised rental accommodation, also pays rates on its properties provided these properties are not located on school grounds.

The CEC argued the current exemption for residential accommodation based on school grounds should be retained. It noted that any financial relief that could be

¹⁵⁷ *Teacher Housing Authority Act 1975* section 37.

provided by councils would ensure more funding for improving learning outcomes.¹⁵⁸

We note that the area of land that would become rateable as a result of this recommendation is small compared to the rest of the school grounds which would remain exempt.

University student accommodation

Under our recommendation that residential use should be rateable, university student accommodation on campus would no longer be exempt from rates. This is because the primary function of these properties is residential, and the residents impose costs on council (as do off-campus residents).

A number of universities and university colleges disagreed with this recommendation. The NSW Vice Chancellor's Committee argued university student accommodation is intrinsic to the university learning experience and so should not be considered a separate service.¹⁵⁹ University Colleges Australia's submission highlighted the pastoral care aspect of their accommodation, including study facilities, leadership training, academic support and community building.¹⁶⁰

Other stakeholders focused on the range of services that universities or colleges provide that reduces demand for council services. For example, Sancta Sophia College noted that the University of Sydney provides and maintains many council-like services including:

- ▼ footpaths
- ▼ parks
- ▼ open spaces
- ▼ libraries, and
- ▼ college ovals.¹⁶¹

While living on campus may be beneficial, these benefits are primarily private, accruing to the student. The majority of university students live off campus, many using private rental markets that directly compete with university provided housing. Therefore, to promote competitive neutrality, student accommodation should be rateable because it is residential use regardless of whether it is on or off campus.

¹⁵⁸ Catholic Education Commission of NSW, supplementary submission to IPART Draft Report October 2016, pp 1-3.

¹⁵⁹ NSW Vice Chancellors Committee submission to IPART Draft Report, October 2016, p 2.

¹⁶⁰ University Colleges Australia, submission to IPART Draft Report, October 2016, p 2.

¹⁶¹ Sancta Sophia College, submission to IPART Draft Report, October 2016, p 5.

Some university colleges may impose lower costs on councils because the university provides council like services. However, this is an argument for colleges to be treated as a separate residential area and subject to a lower rate (see Chapter 5). It does not support a complete exemption from rates.

The scale and cost of student housing can be substantial. For example the University of Sydney's submission notes its plan to build 4,000 new student accommodation places on campus by 2020.¹⁶² A complete exemption from rates may provide universities with an inefficient incentive to expand its campus and student accommodation, at the expense of other, off-campus options.

Retirement villages and aged care facilities

- 15 Land that is used for residential care as defined in Section 41-3(1) of the *Aged Care Act 1997* (Cth) be proportionally rateable according to the share of places whose maximum Refundable Accommodation Deposit is above the level set by the Minister for Health and Aged Care (currently \$550,000).

We recommend that land used for retirement villages should be rateable, but that most aged care facilities should be exempt from rates. Based on stakeholder feedback we consider these two areas should be treated separately. The distinction between the two is outlined in Box 6.6 below.

Box 6.6 Aged care facilities and retirement villages

There are a number of differences between aged care facilities and retirement villages. In particular, for aged care facilities:

- ▼ entry is controlled by the Federal Government, which conducts assessments to determine if an individual's needs are high enough to require placement in a facility
- ▼ prices are largely regulated, with the daily charge set at a maximum of 85% of the pension
- ▼ the Federal Government provides over 70% of the funding for the services, and
- ▼ the service provided is similar to end of life care, with around 60% of residents dying within 6 months of admission.

While many aged care facilities are co-located with a retirement village, the two types of properties are distinct and can be treated separately for rating purposes.

We recommend all retirement villages, whether they are run on a for profit or not for profit basis, be rated because they are primarily a residential use of the land.

¹⁶² The University of Sydney submission to IPART Draft Report, October 2016, p 11.

We recommend that aged care facilities be exempt from rates other than those places that are offered on a commercial basis.¹⁶³ This is because the services are hospital like in nature, a direct substitute for hospital services and provide public benefits.

Under our recommendation aged care facilities would be completely exempt from rates, unless they charge more than the maximum allowable Refundable Accommodation Deposit (RAD) (which is currently \$550,000 and set by the Minister for Health and Aged Care) on any places. Rates would be paid on the residences where the RAD is above the maximum because the activity is commercial.

Box 6.7 Refundable Accommodation Deposits

- ▼ The RAD is a lump sum payment paid by the individual to the aged care facility on entry. It is in addition to the daily charge that is set by the Federal Government.
- ▼ In practice, the RAD is an interest free loan which is used by the facility to generate revenues to fund accommodation costs. It is refunded once an individual leaves the facility.
- ▼ The Minister for Health and Aged Care sets the maximum allowable RAD that aged care facilities can charge (currently \$550,000).
- ▼ Facilities wanting to set a RAD above the maximum allowable amount must first apply to the Aged Care Pricing Commissioner for approval.
- ▼ Approximately 13,000 (7%) of all aged care places across Australia have a RAD above \$550,000 with 0.7% of all places requiring a RAD of over \$1,000,000.

^a Aged Care Pricing Commissioner, *Annual Report 1 July 2015 – 30 June 2016*, p 6, available online [http://www.acpc.gov.au/internet/acpc/publishing.nsf/Content/920BBDD1216D16CACA257C21002455D9/\\$File/ACPC%20Annual%20Report%202015-16.pdf](http://www.acpc.gov.au/internet/acpc/publishing.nsf/Content/920BBDD1216D16CACA257C21002455D9/$File/ACPC%20Annual%20Report%202015-16.pdf), accessed 10 November 2016

Stakeholder submissions from the aged care industry disagreed with the recommendation in our Draft Report that aged care facilities become rateable. They argued these facilities are more like hospitals than housing and that residents in these properties are not there by choice. They further argued that not-for-profit providers are serving an unmet need for aged care places in rural and regional areas and that by providing this service they keep hospital beds free – a substantial public benefit and saving to the NSW Government.

We have amended our draft recommendation in light of this feedback from stakeholders. Our recommendation strikes a balance between recognising the public benefits generated by aged care facilities in the community while ensuring that those places offered on a commercial basis pay rates.

¹⁶³ An aged care facility will offer a number of places or beds.

6.3 Some explicit exemptions should be retained or amended

Recommendations

- 16 Section 556(1)(i) of the *Local Government Act 1993* (NSW) should be amended to include land owned by a private hospital and used for that purpose.

We recommend amending the current exemptions for hospitals to include land owned by a private hospital and used for that purpose. In addition, some of the explicit exemptions currently included in the LG Act (listed in Box 6.8) require the exempted land be used for a specific purpose, which is not commercial or residential in nature.¹⁶⁴ This means these types of property are unlikely to be affected by our broad recommendations to base exemptions on land use discussed in Section 6.2 above.¹⁶⁵ Therefore, we recommend they remain in the LG Act in their current form.

Box 6.8 Retained Local Government Act exemptions

The following exemptions should be retained in the *Local Government Act 1993* (NSW):

- ▼ section 555(1)(e) Land that belongs to a religious body occupied for that purpose
 - ▼ section 555(1)(g) Land vested in the NSW Aboriginal Land Council
 - ▼ section 555(1)(g1) Land over which rail infrastructure facilities are installed.
 - ▼ section 556(1)(o) Land that is vested in the mines rescue company, and
 - ▼ section 556(1)(q) Land that is leased to the Crown for the purpose of cattle dipping
-

6.3.1 Retaining exemptions for several activities with public and private funding

The LG Act currently includes several exemptions that are partly funded by the NSW Government and partly funded by user fees. These include exemptions for non-governmental schools and passenger rail.

We recommend retaining these exemptions, as each of these activities are part funded by government and provide a public service – education and public transport, and so do not meet our definition of ‘commercial activity’ (see Box 6.3 above). In addition, retaining the exemptions for these activities is preferable on tax efficiency grounds, as levying rates is likely to result in a transfer of costs from local government to the less efficient State Government tax base.

¹⁶⁴ Part 2 Clause 4(2)(a) of the *Aboriginal Land Rights Regulation 2014* contains the stipulation that in order for the land to be exempt from rates under the LG Act that the land cannot be used for commercial or residential purposes.

¹⁶⁵ One exception is the exemption for the residence of a minister of religion. However as a significant part of a minister’s role is being available to the congregation at all times, it is reasonable to conclude that the residence is being used as part of a religious purpose.

For example, levying rates on non-government schools may result in higher fees and students switching back to government schools, or the NSW Government providing more funding to non-government schools to compensate for the rate payments. Both outcomes would result in the NSW Government having to raise additional funds through taxation – with a greater welfare loss than is currently the case.

The impact of our recommendations on specific areas of high stakeholder interest, or where we have made changes since the Draft Report are discussed in greater detail in the following sections.

6.3.2 Freight Rail

The exemption from rates for rail infrastructure should be retained. This recommendation is a change from the Draft Report, where we recommended land used exclusively for freight rail infrastructure becomes rateable. We recommended this because the land is being used for a commercial purpose.

Submissions from freight and logistics firms disagreed with our draft recommendation on the basis of competitive neutrality, arguing that it was inconsistent to rate the commercial use of rail but not of roads.¹⁶⁶

We see merit in the competitive neutrality argument raised by stakeholders, and have accordingly amended our recommendation. We also note that this exemption is consistent with the treatment of rail corridor land in other states.

While our original recommendation was consistent with some aspects of our economic principles of taxation, retaining this exemption is consistent with others. These include:

- ▼ **Efficiency:** freight rail lines reduce costs for councils. They reduce the load on the local council road network, decreasing road maintenance costs. Rating this land would increase prices, meaning a switch from rail to road and a corresponding increase in wear and tear costs of council maintained roads.
- ▼ **Competitive neutrality:** roads and private tollways are also exempt from rates.
- ▼ **Simplicity:** it would be very difficult to calculate the value of freight rail lines given the next best use of the land.

¹⁶⁶ See submissions from Freight on rail Group, Aurizon, Australian Logistics Council and Pacific National to IPART Draft Report October 2016

6.3.3 Private hospitals

The LG Act explicitly excludes land owned by public hospitals from rates, but does not exclude private hospitals. We recommend amending this exemption to include land owned by private hospitals and used for this purpose. In general, private hospitals:

- ▼ are serving the same population
- ▼ are often co-located with public hospitals, and
- ▼ provide significant public benefits by reducing the load on public hospitals.

As private hospitals' activities are comparable to public hospitals, they should be treated the same way for rating purposes.¹⁶⁷

Stakeholder comments

In general, stakeholders disagreed with this recommendation. They considered that private hospitals are commercial businesses and so should be required to pay rates.¹⁶⁸ Newcastle City Council also noted that private hospitals are significant beneficiaries of council funded infrastructure and so should be required to contribute in line with the benefits they receive.¹⁶⁹

Other councils such as Shellharbour City Council and The Hills Shire Council supported the recommendation. They thought private hospitals provide the same service to the community as public hospitals so they should be treated the same.¹⁷⁰

Overall the public benefits provided by private hospitals similar to those in the public system mean they should be treated similarly. This means they should be exempt from rates.

¹⁶⁷ This recommendation may also reduce State Government healthcare costs, as it will reduce costs for private hospitals which may result in patients substituting from public to private hospitals.

¹⁶⁸ See submissions from Wagga Wagga, Ku-ring-gai, Cowra and Randwick Councils, October 2016

¹⁶⁹ Newcastle City Council submission to IPART Draft Report, October 2016, p7.

¹⁷⁰ See submissions from Shellharbour and The Hills Shire councils, October 2016

6.4 Some explicit exemptions in the Local Government Act should be removed

Recommendation

17 The following exemptions 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(1)(c) and section 555(1)(d))
- land that is below the high water mark and is used for the cultivation of oysters (*Local Government Act 1993* (NSW) section 555(1)(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(1)(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(1)(p)).

18 Section 555(1)(b1) of the *Local Government Act 1993* (NSW) should be amended to remove the current rating exemption for land that is the subject of a conservation agreement and instead require it to be rated using the Environmental Land category.

We recommend removing these exemptions since in each case the land is being used for commercial or residential purposes, and so should be rateable. The Teacher Housing Authority is discussed in section 6.2.4 above. Other areas on which we received significant stakeholder feedback are discussed in the sections below.

6.4.1 Sydney Water, Hunter Water & WaterNSW land

Sydney Water, Hunter Water and WaterNSW are all State Owned Corporations responsible for the management and supply of water across the state. While owned by the State, these corporations operate commercial businesses and are price regulated to earn a commercial rate of return.

The water utilities disagreed with this recommendation, arguing it would lead to higher water prices for customers.¹⁷¹

These corporations deliver state wide benefits. However, the cost of exempting each of them from rates is borne by a relatively small portion of ratepayers who live in council areas where these corporations have facilities. This is inequitable as it means these ratepayers are subsidising the water users across the rest of the state. Removing the exemption ensures the users and beneficiaries of the service pay for its full costs, promoting efficiency.

¹⁷¹ See submissions to IPART Draft Report from Hunter Water, Sydney Water and WaterNSW.

The corporations also argued that their ability to recover unanticipated additional costs is limited within a determination period.¹⁷² This concern could be addressed in future price determinations.

6.4.2 Oyster farming

Our recommendation would result in land under the high water mark being used for oyster cultivation becoming rateable. This means the Department of Primary Industries, as the department responsible for administering this land, would be required to pay council rates on each of the 2234 oyster leases across the state.¹⁷³

Historically oyster leases in NSW paid council rates. Until the rewriting of the LG Act in 1993, farmland was defined as specifically including “oyster or fish farming within the meaning of the Fisheries and Oyster Farms Act 1935”.¹⁷⁴ In addition, oyster farming is rateable in other states (see Box 7.2).

Removing this exemption would have a number of positive effects. Firstly, it would broaden the tax base and remove the current inconsistency with how different parcels of primary production land are treated. Secondly, councils would have better incentives to monitor and improve water quality and environmental controls in order to assist the oyster industry, as a growing oyster industry would result in a growing rate base.

Box 6.9 Oyster farm rating practices in other states

In other states, the ability of councils to rate land under the high water mark varies.

- ▼ In Queensland and Tasmania, councils are able to levy rates on oyster farms as council boundaries cover the relevant section of water and land under the high water mark which is considered rateable land.
 - ▼ In South Australia and Victoria oyster farms do not pay council rates as council boundaries do not extend over water.
 - ▼ The High Court recently ruled in the case of *Coverdale v West Coast Council* [2016] HCA 15 that the seabed and waters of Macquarie Harbour are Crown Lands. As a result of this ruling the Valuer General of Tasmania is required to value these underwater plots. This allows these councils to levy rates on these plots of land.
-

¹⁷² See submissions to IPART Draft Report from Hunter Water, Sydney Water and WaterNSW.

¹⁷³ Department of Primary Industries submission to IPART Draft Report, October 2016, p 5.

¹⁷⁴ See Local Government (Rates and Charges) Amendment Bill 1988 available online at http://www.austlii.edu.au/au/legis/nsw/bill_en/lgacab1988400.pdf, p 3.

Oyster farmers argue they impose lower costs on councils and this might justify councils charging a lower rate on oyster leases. Councils would be free to do this under our recommendation in Chapter 8 to allow farmland subcategories based on geographical location.

Stakeholder comments

Submissions from the oyster farming industry were against making oyster leases rateable. They put forward a number of arguments, including:

- ▼ Lease holders do not have exclusive possession of the lease.
- ▼ The industry is exposed to pollution from other sources (particularly from councils).
- ▼ The industry pays a number of other fees to state agencies for food safety, water quality testing and other measures.
- ▼ It is difficult to value specific leases given the wide variance in productivity between different oyster farms.
- ▼ The industry already pays council rates on their land bases and that the aquaculture leases receive no council services.¹⁷⁵

Responses from councils with significant oyster industries were mixed.

Bega Valley Shire Council disagreed with our recommendation. It argued that levying rates would significantly impact the industry in their local area and the industry already pays a number of fees to other government departments.¹⁷⁶

Port Stephens Council and Clarence Valley Council agreed with the recommendation noting there should be no difference between Crown Land leased for oyster growing (which is exempt) and Crown Land leased for any other agricultural pursuit (which pays rates).¹⁷⁷

While industry submissions raised valid points, we recommend that oyster leases should be rateable because of the:

- ▼ historical and interstate precedent
- ▼ harmonisation in treatment of primary production land
- ▼ creation of better incentives for councils, and
- ▼ the ability to apply a differential rate to oyster leases if justified.

¹⁷⁵ See submissions to IPART Draft Report from DPI, NSW Farmers – Oyster Committee, Shoalhaven Crookhaven Quality Assurance Program, E.Munn.

¹⁷⁶ Bega Valley Shire Council submission to IPART Draft Report, October 2016.

¹⁷⁷ Port Stephens Council submission to IPART Draft Report October 2016 & Clarence Valley Council submission to IPART Draft Report October 2016.

6.4.3 Conservation agreements

The LG Act exempts land that is subject to a conservation agreement from all rates.¹⁷⁸ We recommend amending this exemption to instead require councils to categorise this land under our new ‘Environmental Land’ rating category discussed in Chapter 8. We recommend making conservation agreement land rateable at an Environmental Land rate for two reasons:

- ▼ the owner of the land still has exclusive possession and derives private benefits from it, while the broader community receives a more limited benefit than they would if the land was public, and
- ▼ the owner uses council services and imposes costs on councils.

By categorising land subject to a conservation agreement as Environmental Land, councils would be able to set a different ad valorem rate rather than having to use the residential or farmland rate. Further, the land subject to a conservation agreement generally reduces in value as the future use of the land is constrained.

Taken together, these two outcomes mean the land owner could pay lower rates for limiting the future use of their land, whilst still contributing a fair share to council’s cost of providing public goods and services.

Stakeholder comments

The NSW Farmers’ Association advocated removing the exemption for conservation agreements. It argued it is inequitable that this land is exempt from rates while farmland that is similarly limited in use as a result of the *Native Vegetation Act 2003* remains rateable. It further noted that many areas subject to a conservation agreement are held by absentee landholders and are not well managed in terms of feral species, fencing or fire hazard reduction work.¹⁷⁹

Councils were also critical of conservation agreements in their current state. Mid-Western Regional Council noted it is submission that:

...single-entity property owners who enter into such agreements still enjoy the entitlements and lifestyle which ownership affords at the expense of other local ratepayers who subsidise those who pay little or no share of the community’s rate burden.¹⁸⁰

They also noted many mining companies are placing mandatory buffer areas (a requirement of environmental offset programs) under conservation agreements, resulting in a reduction in rates with no corresponding increase in preserved land.¹⁸¹

¹⁷⁸ *Local Government Act 1993*, section 555(1)(b1).

¹⁷⁹ NSW Farmers’ Association submission to IPART Draft Report, October 2016, p 13.

¹⁸⁰ Mid-Western Regional Council, submission to IPART Draft Report, October 2016, p 2.

¹⁸¹ *Ibid.*

6.5 Specific exemptions in the Local Government Regulations should be removed

Recommendation

19 The following exemptions 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(1)(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
- land comprising the site known as Museum of Sydney (*Local Government (General) Regulation 2005* reg 123(c)).

The NSW Government should consider whether to fund these local rates through State taxes.

We recommend removing these mandatory exemptions from the LG Act and Regulation as these institutions are primarily commercial and the public benefits from their activities flow through to the wider community. Therefore, it may be more appropriate for the NSW Government to fund these exemptions through State taxes if it considers user charges should not be used by these institutions to fund local rates.

Box 6.10 Royal Agricultural Society Land

The land held by the Royal Agricultural Society (RAS) at Homebush is currently exempt from rates. Recommendations 14 and 19 would remove this exemption because the use of the land (for example for hosting the Royal Easter Show, football games and food & wine festivals) is predominately commercial in nature and the benefits flow primarily to individuals outside the council area.

We note other commercial and residential businesses within Sydney Olympic Park, including ANZ stadium, pay rates, so our recommendation creates consistency with the treatment of all land with Sydney Olympic Park. It would be up to the NSW Government, as the owner of the land, to determine how best to fund the cost of these rates and to address any commitments given to RAS.

6.6 Exemptions for mixed-use properties should apply to the proportion used for exempt purpose only

Recommendations

- 20 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.
- 21 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.

Some land may be used for a mix of exempt and non-exempt purposes. For example, a church may use one of the buildings on its land for religious purposes and rent another for a commercial activity. Or a not-for-profit organisation may use a building for its own purpose half of the week, and rent it for a commercial activity during the other half.

In this situation, an exemption should only be granted in respect of the portion of space or time devoted to the exempt activities, and the non-exempt portion should be rateable. This is consistent with the current provisions of the LG Act, which require councils to rate the portion of the land that is not used for an exempt purpose.¹⁸² It is also consistent with our recommendation 14, that exemptions should be granted on the basis of land use rather than ownership.

In general:

- ▼ Where the land can be divided on a **spatial basis** (ie, divided into parts that are used separately for exempt and non-exempt purposes), rates should be levied on the proportion of **land area** used for non-exempt purposes.
- ▼ Where the land can be divided on a **temporal basis** (ie, used for exempt and non-exempt purposes, but at different times) rates should be levied on the proportion of **time** the land is used for non-exempt purposes.

We have developed a process councils could use when rating this kind of mixed-use land, which is outlined below and summarised in Figure 6.1. Box 6.11 provides some examples of how it would work in practice.

¹⁸² For example, s555(5) of the LG Act: “A parcel of rateable land belonging to a religious body that is partly occupied and used in a manner described in subsection (1)(e), and partly in a manner that would result in part of the parcel not being exempt from rates under this section, is to be valued in accordance with section 28A of the *Valuation of Land Act 1916* to enable those rates to be levied on the part that is not exempt”

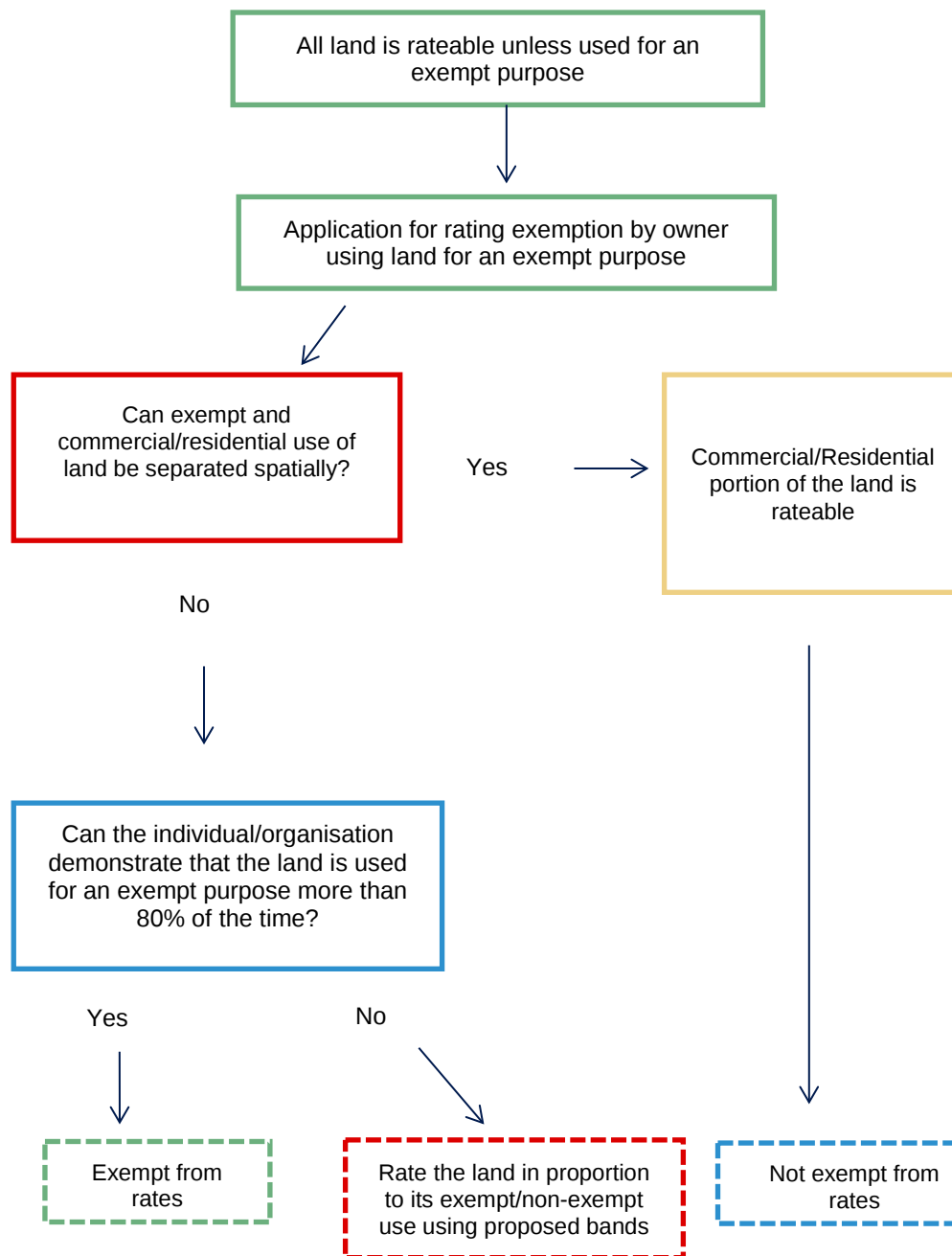
6.6.1 Process for rating mixed-use land

When councils receive an application for a partial rating exemption by a land owner on the grounds the land is partly used for an exempt purpose, the council should require the owner to provide supporting evidence of exempt use. However, to minimise the regulatory burden, we consider there should be a presumption that specific categories of exemptions are unlikely to be involved, to any great extent, in non-exempt activities.¹⁸³ For example:

- ▼ schools
- ▼ Aboriginal Land Councils
- ▼ hospitals, and
- ▼ non-commercial use of national parks and state forests.

For other categories, the council should first determine whether the land use can be separated into exempt and non-exempt purposes on a spatial or a temporal basis. Where it can be separated on a spatial basis, it is relatively straightforward: as indicated above, rates would be levied on the proportion of land area used for non-exempt purposes.

¹⁸³ This is only a presumption. The council can, if it determines that the land is being used for non-exempt purposes, treat the property like any other seeking an exemption from rates.

Figure 6.1 Proposed process for rating mixed-use land

Box 6.11 Examples of rating mixed-use land

Charity with a conference centre

Exempt and non-exempt uses separated on a temporal basis

A charity has a building which it uses to run its administrative functions that support its charitable activities. The charity rents out rooms in the building on a commercial basis (eg, to training groups) 3 days a week. The charity would pay rates in proportion to the amount of time the building is used for commercial activity.

Church with a child care centre

Exempt and non-exempt uses separated on a spatial basis

A local church sits on a 1000m² block of land. The church runs a child care centre on a commercial basis which accounts for 25% of the land size (or 250m²).

The council could determine the portion of the land that is rateable based on the area of land being used. The council levies rates on the 250m² used by the child care centre and due to the religious exemption category, exempts the church from rates.

Where the exempt use can be separated on a temporal basis, we propose councils use a series of bands to determine its rating liability (see Table 6.2). In a council rating year, where land is used for non-exempt purposes:

- ▼ 80% or more of the time, the land would be fully rateable
- ▼ between 50% to 80% of the time, the land would be rated at 65% of its full rating
- ▼ 20% to 50% of the time, land would be rated at 35% of full rating, and
- ▼ under 20% of the time, land would be fully exempt from rates.

Table 6.2 Proposed bands of council rates for mixed-use exempt land

% of non-exempt use	80-100%	50-80%	20-50%	0-20%
% of land that should be rateable	100%	65%	35%	0%
Indicative use	Exempt activity is incidental to the main commercial use of the land (even if this commercial activity supports other exempt activities) - ie, a store selling full priced goods to raise funds for a charitable cause	Substantial commercial use/activity may form the majority of the use of the land (eg, community space rented out during the week for private use/regularly scheduled workshops	Moderate commercial use/activity may be ancillary to the primary use of the land	Light commercial use that is incidental to the core purpose and/or once off activities (eg, annual fundraising dinner)

6.6.2 Self-assessment where exempt and non-exempt uses are separated on a temporal basis

To minimise compliance costs, land owners could use a self-assessment test to determine which of the above bands their land falls into. This self-assessment has three steps.

1. The property owner seeking an exemption self-assesses their property use, determines the proportion of time land is used for exempt purposes and provides this information to the council.
2. The council uses this information to levy rates on the property in line with the bands set out in Table 6.2.
3. The council conducts random audits of land use to determine the accuracy of property owners' self-assessments.

Using a self-assessment test has several advantages over a council-led process. First, it lowers the day-to-day administrative burden on councils of determining exemptions compared to a threshold test. Councils would generally accept the self-assessments and only conduct investigations on a risk basis or through a randomised audit process.

Second, it involves relatively low reporting and compliance costs for exempt organisations as they should have ready access to information on how much their land is used for commercial or residential activities.

Third, it allows councils to capture a greater proportion of commercial activity as rateable, which improves the horizontal equity of the rate base.

6.7 Councils' general income should not be modified as a result of changes to exemptions

Recommendation

- 22 A council's maximum general income not be modified as a result of any changes to exemptions from implementing our recommendations.
- 23 A council may apply to IPART for a Special Variation to take account of the changes in exemptions using a streamlined process in the year that our recommended exemption changes come into force. The council would need to demonstrate:
 - It satisfies the first criteria for Special Variation applications in the OLG guidelines relating to the need for and purpose of a different revenue path for the council's General Fund, and
 - that any subcategory rating structure applied to previously exempt properties is no greater than the average rate structure across the relevant rating category.

Under the LG Act, a council's maximum general income is modified to take into account changes in exempt properties. When a non-rateable property becomes rateable – for example if a charity was to close down and a new owner takes over the land – the council's general income is adjusted to reflect the additional revenue from the new rateable property.¹⁸⁴

Ordinarily, in any given year, the number of properties that would either become exempt or rateable is a very small percentage of the total rate base. Therefore, such adjustments have only a small impact on the council's general income and a marginal impact on other ratepayers.

However, our recommendation 14 is likely to result in a significant change in the number of exempt properties in each local government area. This in turn is likely to have significant implications for each council's general income.

We consider councils should not receive an automatic one-off permanent increase or decrease in their income as a result of our recommendations as the intent of our exemption recommendations is to set the correct taxation base rather than increase council revenue. Therefore, our Draft Report recommended that income be unchanged as a result of removing exemptions. In response to stakeholder feedback we have amended this recommendation to allow all councils (newly merged and other councils) to apply to IPART for a SV to take account of the changes in exemptions using a streamlined process.

Stakeholder comments

Stakeholders submissions varied in their support for our draft recommendations. Councils generally disagreed with limiting income and were in favour of being able to increase general income to take into account the newly rateable properties. For example, Port Stephens Council argued that there is

...reduced appetite for responding to the anticipated complaints from many newly rateable properties if there is no proposed additional rate income as a result of the changes.¹⁸⁵

Other organisations agreed with our draft recommendation and argued that it was not appropriate for council income to grow in response to the removal of exemptions. For example, Aged & Communities Services NSW & ACT argued that it is not councils that have been disadvantaged by current exemptions but rather other property owners. They further argued that obtaining a revenue increase through cancelling exemptions is not transparent.¹⁸⁶

¹⁸⁴ Where the reverse occurs and a property becomes exempt, the opposite should happen and a council's general income should decrease. However, OLG advises that in practice this does not occur as, historically, it is not common for a property to become exempt.

¹⁸⁵ Port Stephens Council, submission to IPART Draft Report, October 2016, p 10.

¹⁸⁶ Aged & Community Services NSW & ACT submission to IPART Draft Report, October 2016, p 8.

6.7.2 Streamlined SV process for exempt land

While the aim of our recommendations is not to increase council revenue, councils that choose to apply for an SV as a result of our recommended changes to exemptions and can demonstrate a financial need, should apply for an SV in the same year that they implement any changes to exemptions to avoid fluctuations in individual rates.

To facilitate this, we recommend that councils be able to apply to IPART for an SV using a streamlined process that would apply in the rating year when the exemptions changes are implemented. This process would require councils to demonstrate:

- ▼ that they satisfy the first criteria for Special Variations in OLG's guidelines that relates to the need for and purpose of a different revenue path for the council's General Fund,¹⁸⁷ and
- ▼ the proposed rates on newly rateable properties are no greater than the average rate structure for the relevant rating category that these properties belong to.

A council using this streamlined process would not be required to satisfy the other five criteria that a standard SV application would be assessed against.

Previously exempt properties may fall into narrow or unique business subcategories (such as Sydney Water land or commercially logged land in state forests). This may allow councils to charge high rates without affecting existing ratepayers. Therefore, we have recommended this second element of the SV criteria in order to protect previously exempt properties from being charged excessive rates.

If the Government implements this recommendation before the end of the rate path freeze period discussed in our Interim Report, then new councils should also be given access to this streamlined SV.¹⁸⁸ This is consistent with the Government's policy of protecting existing ratepayers over the rate path freeze period as the new SV covers only previously exempt properties.¹⁸⁹

¹⁸⁷ OLG, *Guidelines for the preparation of an application for a special variation to General Income for 2015/2016*, pp 12-13.

¹⁸⁸ This SV should be applied at the pre-merger council level.

¹⁸⁹ IPART, *Local Government Rating Review Interim Report*, June 2016 p2, Box 1.1.

6.8 Other changes should be made to improve consistency and transparency of exemptions

Recommendations

- 24 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).
- 25 At the start of each rating period, councils calculate the estimated value of rating exemptions within the council area. This information should be published in the council's annual report or otherwise made available to the public.

We have also identified some changes that would improve the consistency and transparency of the exemptions arrangements.

6.8.1 Move exemptions from water and sewerage special charges

In regional and rural areas, councils are responsible for the provision of water and sewerage services and charge water supply and sewerage special rates for this purpose. Although they are included in the rates notice, these special rates are a fee for service rather than an ordinary council rate.

Sections 555 and 556 of the LG Act both outline a range of exemptions from council rates. The principal difference between the two sections is that land in section 555 is exempt from all rates, while land in section 556 is exempt from normal rates but not special water and sewerage charges.

Our terms of reference require us to consider the appropriateness of rating exemptions under the LG Act. Given that water and sewerage special rates are a fee for service that has substantial private benefits, it may not be appropriate for certain uses of land to be exempt from paying these fees.

Our recommendation to amend section 555 of the LG Act would remove the mandatory exemption from water and sewerage rates for these types of property. Rather, this recommendation would give individual councils the discretion to exempt particular types of properties from water and sewerage special rates if they consider it appropriate to do so, as occurs currently under section 558(1) of the LG Act.¹⁹⁰

¹⁹⁰ We note that the water and sewerage exemptions outlined in the *Local Government Act* are not consistent with those in the *Water Management Act 2000* or the *Sydney Water Act 1994*. However, these other Acts fall outside of our terms of reference.

Stakeholder comments

Stakeholders were broadly supportive of our recommendation 25 to remove the current exemptions for water rates in section 555 of the LG Act. The Water Directorate argued the cost of these exemptions is primarily borne by other customers and that the changes will increase the discretion for councils.¹⁹¹

Similarly the Department of Primary Industries supported this recommendation. It noted that, for water utilities operating under the *Water Management Act 2000*, there is a comprehensive list of properties that may be exempted from water and sewerage special rates. A comparable list may be of use to councils operating local water utilities.

The NSW Aboriginal Land Council was opposed to this recommendation, stating that removing the blanket exemption would shift the burden to negotiate rate exemptions onto resource and capacity-poor Local Aboriginal Land Councils.¹⁹²

Overall, given water and sewerage charges are a fee for services and these exemptions impose a direct cost on the community, we recommend that the decision whether to exempt specific properties from water and sewerage special rates be given to councils.

6.8.2 Enable greater transparency on the level of exemptions

Currently, most councils do not have a strong indication of the 'cost' of each exemption. This is because a council's general income is generally not affected by exemptions, but rather any rate exemptions result in ratepayers in the local government area paying higher rates (ie, an increase in their ad valorem rates).

This outcome is contrary to the tax principle of transparency. It is difficult to assess the impact of exemptions on ratepayers without sufficient information. Under our recommendation, councils would be required to estimate the size of any exemptions in their local area and provide this information to ratepayers. Box 6.12 outlines our suggested method that councils could use in calculating these 'costs'.

¹⁹¹ Water Directorate submission to IPART Draft Report, October 2016, p 6.

¹⁹² NSW Aboriginal Land Council submission to IPART Draft Report, October 2016, p 6.

Box 6.12 Approach to estimating the impact of exemptions

In order to efficiently estimate the 'cost' of exemptions within a council area, we recommend councils apply the following process:

1. apply the relevant rate to the known land values for each exempt property
2. add in any base amount applicable, and
3. sum totals and divide over total rate paying properties to calculate average cost.

This method offers a simple and efficient way of calculating an indicative figure for the size and cost of exemptions within the local area.

This recommendation differs from the Draft Report in that councils are only required to estimate the size of any exemptions rather than exactly calculating this figure by running the rate calculation process twice as was recommended in the Draft Report.¹⁹³ This change takes into account stakeholder feedback on the administrative effort required to implement the original recommendation.

Councils would also be required to publish this information in their annual reports or otherwise make it available to the public. This would improve public awareness about exemptions, and facilitate assessments about their appropriateness.

Stakeholder comments

Stakeholders were split in their support for the original recommendation in the Draft Report. One group of councils including Berrigan Shire, Greater Hume Shire and Cootamundra Gundagai Regional Councils argued that this recommendation would be too onerous, entailing a significant amount of work for little reward.¹⁹⁴ We have addressed these issues by recommending a simplified process of estimation from what was recommended in the Draft Report.

Supporters of this recommendation in turn argued that it would increase the transparency and public awareness of exempted properties.¹⁹⁵ In its submission, Campbelltown City Council said this recommendation is achievable and applies a common sense approach to informing the community on the amount that exemptions are subsidised by the rest of the community.¹⁹⁶

¹⁹³ Once with all land being rated and once with exempt land being removed.

¹⁹⁴ See submissions from Berrigan Shire, Greater Hume & Cootamundra Gundagai Regional Councils, Submissions to IPART Draft Report October 2016

¹⁹⁵ See submissions from Blue Mountains City Council & Randwick City Council, Submissions to IPART Draft Report October 2016.

¹⁹⁶ Campbelltown City Council, Submission to IPART Draft Report, October 2016, p 7.

7 Assistance for pensioners

Pensioner concessions are currently provided to eligible pensioners¹⁹⁷ by means of a 50% discount on their combined ordinary council rates and waste service charges, up to a maximum of \$250 per annum.¹⁹⁸ We considered how to improve the equity and efficiency of the current pensioner concession and the long-term financial sustainability of local councils.

In this chapter we discuss the current pensioner concession, and explain how a rate deferral scheme can provide greater assistance to pensioners whilst removing the cost burden of the concession from ratepayers and local councils. In our analysis we address stakeholder comments received throughout this review.

7.1 Summary of findings and recommendations on a rate deferral scheme

We recommend grandfathering the current pensioner concession rebate for existing pensioners. We also recommend introducing a \$1,000 rate deferral scheme. The rate deferral scheme would be available to new pensioners and existing pensioners wishing to transfer to the scheme. This means that existing pensioners can choose to either continue receiving the \$250 rebate or transfer to the \$1,000 per year deferral scheme, which provides them with higher cash-flow relief. They will be better off with improved choices.

This recommendation is a change to our draft recommendation to introduce a \$250 rate deferral scheme for all pensioners and has been developed in response to stakeholder feedback. Our new recommendation enhances the NSW Government's commitment to providing concessions to pensioners, while supporting the long-term financial sustainability of local councils.

The rate deferral scheme would allow the NSW Government to target cash payments to pensioners equitably and efficiently. The rate deferral scheme, would:

- ▼ provide much greater assistance in paying rate bills for pensioners with limited income

¹⁹⁷ <http://www.olg.nsw.gov.au/sites/default/files/Pensioner-concession-factsheet-2011.pdf>, accessed 11 November 2016.

¹⁹⁸ *Local Government Act 1993*, Section 575 (3)(a).

- ▼ not narrow the rate base, and
- ▼ not affect councils with a high proportion of pensioners, or burden ratepayers living in these council areas.

Under our recommendation, the deferral scheme would be funded by the NSW Government. If a pensioner decides to defer ordinary council rates up to \$1,000 per year, the NSW Government would pay the bill immediately to the council. The NSW Government would be the lender to the pensioner, and there would be no short-term loss of cash or funding issues for councils.

By increasing the pensioner concession to \$1,000 per year, the rate deferral scheme can provide a higher level of relief to existing pensioners who would have the option to transfer to the rate deferral scheme.

Recommendation

- 26 For new and existing eligible pensioners, introduce a rate deferral scheme operated by the NSW Government, where:
 - Eligible pensioners would be allowed to defer payment of ordinary council rates up to \$1,000 per annum and indexed to CPI, or any other amount as determined by the NSW Government.
- 27 Give existing eligible pensioners the option to access, either:
 - the current pensioner concession, or
 - the rate deferral scheme, as defined in Recommendation 26.
- 28 Funding pensioner assistance:
 - The current pensioner concession funding arrangements would continue.
 - The rate deferral scheme (defined in Recommendation 26) would be funded by the NSW Government. The loan should be charged interest at the NSW Government's 10-year borrowing rate, and could become due when property ownership changes.

7.2 Options for pensioner concessions

In making our recommendation, we considered a range of options for pensioner concessions and how the current system and these options performed against the objectives of the concession payment and the key taxation principles. We examined how a deferral scheme meets these objectives, who should pay for the scheme, and pensioner schemes in other jurisdictions.

We consider that our revised recommendation addresses stakeholder comments submitted in response to our draft recommendation to replace the current pensioner concession with a rate deferral scheme.

Box 7.1 and section 7.3 provide some background on the current pensioner concession.

Box 7.1 The current pensioner concession

Under the current scheme, eligible pensioners are required to apply to their local council to receive a 50% discount on their combined ordinary council rates and waste service charges, up to a maximum of \$250 per annum.

The cost of providing this discount is shared between the NSW Government (55% or about \$78.5 million per annum) and local councils (45% or \$64.2 million).^a

Calculations based on OLG data suggest the contribution to the scheme from councils is up to 3% of rates income in some council areas.

^a NSW Budget estimates 2015-16, *Budget Paper No. 3*, p 8-34, at http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0019/128125/Budget_Paper_3_-_Budget_Estimates.pdf, accessed 16 August 2016.

7.2.1 Changes since the draft report

In our Draft Report we identified three options which would provide financial assistance to pensioners, these were:

- ▼ Retaining the current concession scheme, which is consistent with the NSW Government's commitment to providing rate concessions to pensioners.
- ▼ A pensioner concession fully funded by NSW Government, also consistent with a number of other Australian states.
- ▼ A rate deferral scheme fully funded by the State that would allow pensioners to defer a larger portion of their rates bills until their property is sold.

In response to stakeholder comment, we considered a new option that could provide a balance between the existing pensioner concession and a rate deferral scheme. Our recommendation enhances the Government's policy to maintain the existing pensioner concession, and provides more targeted and equitable assistance.

Our objective is to maximise the cash-flow relief to pensioners so they can comfortably meet their bills, whilst minimising the costs of this enhanced assistance to other rate payers, councils, and the NSW Government.

7.2.2 Stakeholder comments

During stakeholder consultation we found that in general stakeholders considered that:

- ▼ assistance to pensioners should be increased

- ▼ the assistance should be fully funded by the NSW Government
- ▼ a \$250 deferral scheme was not as attractive as a \$250 concession scheme, and
- ▼ assistance should be better targeted, with costs to others minimised.

We have considered this feedback, and addressed it by:

- ▼ maintaining the current scheme for existing pensioners, with a choice to transfer to the new scheme
- ▼ increasing assistance to new pensioners to \$1,000 per year, indexed by CPI, and
- ▼ clarifying how the new scheme is fully funded by the NSW Government.

We recommend giving existing pensioners a choice to access either, the current pensioner concession so they are at least no worse off, or alternatively access the new \$1,000 rate deferral scheme. This gives them improved choices to access higher cash-flow relief, making them better off.

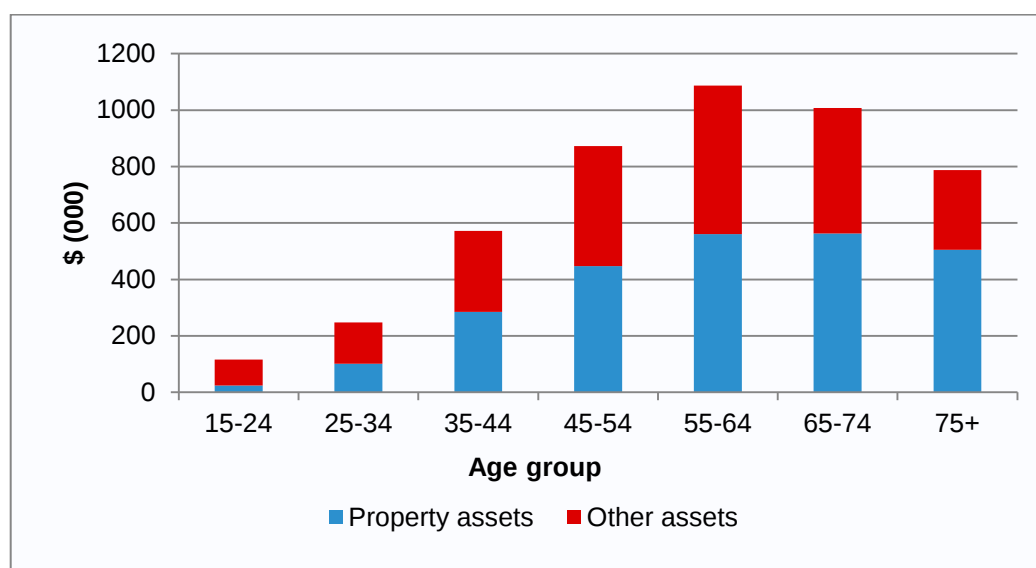
The details of how and when the liability would need to be paid should be considered further by the NSW Government. For example, the deferred rates could become due when the property changes ownership, unless a surviving spouse remains living in the residence, and the spouse would also be eligible for the deferral scheme if they owned the property. In this instance the deferred rates could become due when the surviving spouse no longer lives in the residence.

A number of stakeholders asked that we consider pensioner concessions relating to water and sewerage rates. However as these are beyond the terms of reference for this review our recommendations on improved assistance for pensioners are limited to ordinary rates.

7.3 Current pensioner concession system

The pensioner concession provides financial assistance to help pay council rates to pensioners who may have limited income and own their own home.

However, it also provides a subsidy to households that on average have higher net wealth. This subsidy is funded by all other households, which is contrary to the tax principle of vertical equity. Figure 7.1 shows that, on average, older households tend to be wealthier than younger households.

Figure 7.1 Net wealth over a taxpayer's lifecycle

Data source: Australian Bureau of Statistics (ABS), *Household wealth and wealth distribution, Australia*, 2011-12, Cat. No. 6554.0, Table 24.

The current concession provides no assistance to pensioners who rent property, who on average have significantly lower wealth and income than pensioners who own property.¹⁹⁹ They also incur council rates as indirect costs through their rent.

As noted by the Independent Local Government Review Panel, the current concession also provides an incentive for “relatively affluent retirees” to receive financial advice on structuring their affairs to obtain the pensioner concession.

The impact of the pensioner concession is most prominent in regional areas with a high - and rising - proportion of pensioners. Since local councils are capped on the revenue they can receive (general income), the current pensioner scheme requires other ratepayers in the council area to pay higher rates. These areas are generally lower socioeconomic areas with lower ability to pay. This means the current pensioner concession scheme is becoming unsustainable as it is imposing additional costs on those least able to bear such costs.

¹⁹⁹ For example, ABS data for 2013-14 suggest that people over 65 who own their own property have 37% higher incomes than people over 65 who rent, on average (ABS, *Household Income and Wealth, Australia*, 2013-14, Cat. No. 6523.0, Table 10).

7.4 Benefits of a rate deferral scheme

A rate deferral scheme is a better way to provide an enhanced concession to pensioners in paying their bills. Our proposed increase in pensioner assistance gives pensioners an additional \$750 per year to spend on other necessities.

It is a better scheme because the beneficiaries help to fund the cost over the long term and costs to other rate payers and councils are reduced. This option is currently offered in South Australia, Western Australia and the ACT.

The scheme can substantially reduce pensioners' rate bills because it increases the amount of cash paid to pensioners at a much lower cost than the current system.

Those that argued against the deferral scheme had mixed concerns, including:

- ▼ Pensioners may be reluctant to take on the deferral scheme and leave a debt against their estate.²⁰⁰
- ▼ Administration and costs of the scheme could be passed back to local government when it became unmanageable by the NSW Government.²⁰¹

However, in support of a deferral scheme we note:

- ▼ The scheme will only have recourse to the pensioner's house, which would be only a small proportion of the property's value, and future beneficiaries will not be liable if there is any shortfall.
- ▼ Administration costs will be lower than the current scheme as it is fully funded and administered by the State.

7.4.1 Who should fund the deferral scheme?

The pensioner concession is a NSW Government policy. On this basis we maintain our position that the NSW Government should be responsible for fully funding the scheme, rather than requiring councils to share this burden.²⁰²

²⁰⁰ Byron Shire Council, submission to Draft Report, October 2016, p 4.

²⁰¹ Carrathool Shire Council, submission to Draft Report, October 2016, p 1.

²⁰² Councils would still be free to offer their own rate concessions to pensioners in addition to these provisions.

Although most stakeholders did not support our draft recommendation to replace the existing system with a rate deferral, all agreed that either system should be entirely funded by the State as it is a State assistance measure. Sharing this burden with councils decreases their revenue, erodes their capacity to deliver services, and reduces their incentives to promote take-up of the rebate.²⁰³ It also raises the tax burden on other ratepayers, which is inequitable.

A State funded scheme would be consistent with the funding of pensioner concessions in other states. It is also consistent with our principle that local council rates should be used to fund local public goods rather than State Government social policy. Councils would also have better incentives to promote take-up of the scheme.

Our recommendations also provide the NSW Government with the option to increase the amount of deferment at much lower cost. Under our proposal the interest rate on the scheme would be set at the NSW Government's borrowing rate, which is lower than retail lending rates. The NSW Government's 10-year bond rate averaged less than 3% over the 2015-16 financial year.

Box 7.2 shows that in all other states the pensioner concession is fully funded by the state or territory government.

²⁰³ See submissions from Kempsey Shire Council, Camden Council, Waverley Council, Nambucca Shire Council, Glen Innes Severn Council, Cootamundra Shire Council, Greater Taree City Council, submissions to IPART Issues Paper, May 2016.; and Armidale Regional Ratepayers, Bega Valley Shire Council, City of Parramatta Council, submissions to IPART draft report, October 2016.

Box 7.2 Pensioner concession funding in other states

While most other Australian states offer a rate concession for pensioners, the most recent reform to pensioner concessions occurred in South Australia where the Government removed the pensioner concession from rates in 2015. The pensioner concession was replaced with a Postponement of Rates Scheme and a 'cost of living' concession for all pensioners and some low income earners.

	Type of Relief	Value of relief	Funding source
NSW	Concession only	50% discount, up to \$250 pa	55% state 45% council
VIC	Concession only	50% discount, up to \$218.30 pa	100% state
QLD	Concession only	20% discount, up to \$200 pa	100% state
NT	Concession only	62.5% discount, up to \$200 pa	100% NT govt.
TAS	Concession only	30% discount, up to \$425 pa	100% state
WA	Concession or rate deferral	50% discount, up to \$750 pa	100% state
SA	Rate deferral only	All rates in excess of \$500 pa	100% state
ACT	Concession and rate deferral	50% discount, up to \$700 pa, deferral on rates in excess of \$700	100% ACT govt.

Source: *Local Government Act 1993* (NSW); OLG, Pensioner Concession Factsheet, 2011; Victorian Department of Human Services, Municipal rates Concession fact sheet; *Local Government Act 1989* (VIC); *Local Government Act 2009* (Qld); *Local Government Regulation 2012* (Qld); *Local Government Act 1999* (SA); *Local Government (General) Regulation 2013* (SA); *Local Government Act 1995* (WA); Western Australia Government, ConcessionsWA; *Local Government Act 1993* (Tas); *Local Government Act 2008* (NT); NTPCCS, Policy Manual, January 2016; ACT Revenue Office, Rates assistance.

The Postponement of Rates Scheme in South Australia allows pensioners living in their primary place of residence to defer all rates in excess of \$500. There are limited restrictions on the minimum property value or percentage of equity held in the property required to defer rates. The interest rate on deferred rates is based on council's borrowing costs (5% in 2016-17). Deferred rates only become due when the property is sold. In particular, a pensioner that moves out of their home is not eligible to defer future rates, but does not need to pay any currently deferred rates until the property is sold.

Rate deferral schemes also operate in Western Australia and the ACT. These schemes are broadly similar, except that there are more restrictions on the minimum value of the property or the minimum equity held in the property. In Western Australia, deferred rates do not incur interest charges.

8 Provide more rating categories

The current rating system includes four rating categories which reflect the primary use of the land. These are residential, business, farmland and mining. Councils may elect to apply different rate structures to each category.

We considered the appropriateness of the existing rating categories. In this chapter we discuss our recommendations to create a new rating category for environmental land, as well as changes to the existing subcategories.

8.1 Summary of findings and recommendations on rating categories

We recommend **creating a new category for environmental land**.²⁰⁴ This allows councils to use their rate structures to take account of differences in costs that arise from different land uses.

We also recommend several changes to existing rating subcategories.

- ▼ **Subcategorising business land as industrial or commercial.** This assists councils to set rates based on the costs that businesses impose on them.
- ▼ **Vacant land should be an optional subcategory for residential, business and mining land.** This gives councils the option to apply a different rate to vacant land. For example, to encourage urban renewal to meet the community's housing needs.
- ▼ **Subcategorising farmland based on geographic location.** Councils can use location based rating to set rates that reflect access to their services.

In addition, we recommend:

- ▼ **Councils should determine which rating category should act as the 'residual' category.** They are best placed to decide which existing category is the most appropriate residual. The chosen category should not be changed for a 4-year period, in order to provide certainty to ratepayers.
- ▼ **Providing guidance for councils in determining rates for mining land.** Mining rates should primarily reflect the cost of councils providing services to the mining properties.

²⁰⁴ Land that cannot be developed due to geographic or regulatory restrictions.

8.1.1 Changes since the draft report

Our draft recommendations received strong support from stakeholders. We have maintained our draft recommendations, with two minor changes in response to stakeholder feedback:

- ▼ Vacant land should be an optional subcategory for residential, business and mining land, rather than a new rating category.
- ▼ The residual rating category is set for a period of four years to align with council elections, not five years.

8.2 Introducing a new Environmental Land category

Recommendation

- 29 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 *Local Government Act 1993* (NSW).
- Land subject to a state conservation agreement is categorised as 'environmental land' for the purposes of setting rates.

Our draft recommendation received strong support from stakeholders.²⁰⁵ We have maintained our recommendation, providing further clarification that land subject to a state conservation agreement **must** be categorised as environmental land for ratings purposes.

8.2.1 The need for an environmental land category

In many council areas, there is land that cannot be developed due to geographic or regulatory restrictions. At present, land that is undevelopable is categorised under one of the four existing categories for rating purposes.

Environmental land will typically impose lower costs on a council than inhabited land of similar value. These differences may not be fully reflected by differences in land value. Hence, councils should have the flexibility to be able to levy lower rates on environmental land to reflect these lower costs.

²⁰⁵ See submissions from Blacktown City Council to IPART Draft Report, October 2016 and Shellharbour City Council to IPART Draft Report, October 2016.

Defining environmental land

Land that has limited economic value and cannot be developed with site improvements due to geographic or regulatory restrictions could be classed as environmental land. In general:

- ▼ Geographic factors could include “water areas, mud flats, swamps, marshlands, steep slopes and other terrain on which residential or commercial development is virtually impossible because of physical limitations”.²⁰⁶
- ▼ Regulatory restrictions could include laws or agreements preventing development of property in order to conserve nature. For example, private land under conservation agreements with the NSW Office of Environment and Heritage would fall under this category. See Box 8.1 for more information.

Box 8.1 Land subject to State conservation agreements

In section 6.3.3, we recommended that land subject to a conservation agreement should be liable for rates, ie, is no longer exempt under the Act.

We propose that land subject to conservation agreements **must** be categorised and rated under the **environmental land** category.

This allows councils to charge a significantly lower rate for conservation land to reflect the lower costs imposed on councils by conservation land, and the benefits to the local community from conservation agreements.

8.2.2 Stakeholder comments

In submissions to our Issues Paper, several stakeholders supported a separate environmental land category.²⁰⁷ These stakeholders suggested councils should be given the flexibility to categorise undevelopable land, environmentally protected land and land with low development potential.

Stakeholders argued the current categorisation of these properties is not appropriate. For example, land could be zoned residential, however, the land may not be developed as a residential property due to geographic limitations discussed above. Therefore, a separate rating category for these types of property would be beneficial.

²⁰⁶ U.S. Census Bureau, *Geographical Areas Reference Manual*, ‘undevelopable territory’, p G-52, at <http://www2.census.gov/geo/pdfs/reference/GARM/glosGARM.pdf>, accessed 11 August 2016.

²⁰⁷ See submissions from Lake Macquarie City Council, p 4, Wingecarribee Shire Council, p 2, Wollongong City Council, p 4, Central Coast Council, p 4, and Armidale-Dumaresq Ratepayers Association, p 1, to IPART Issues Paper, May 2016.

The NSW Minerals Council also noted environmental buffer land held by mining firms is charged the mining rate although in many cases the land cannot be developed. The introduction of an environmental land category could also address this concern.

In response to the Draft Report, there was strong support for the introduction of an 'environmental land' category. However, some suggested that it should be a voluntary subcategory, rather than a new category.²⁰⁸ On balance, we are maintaining our recommendation to ensure that differences in costs arising from providing council services to environmental land are taken into account when setting rates.

8.3 Subcategorising Business Land as Industrial or Commercial

Recommendation

- 30 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.

Our draft recommendation received strong support from stakeholders. We have maintained our draft recommendation.

8.3.1 The need for new criteria for business subcategories

At present, councils are able to subcategorise business land according to a centre of activity.²⁰⁹ This results in councils having to charge a single rate based on the centre of activity, even when business activities within these centres are highly diverse and impose different costs on councils.

When councils have diverse businesses within one location, the centre of activity criteria may not be sufficient for a council to differentiate the rates chargeable for different land uses by businesses.

We propose that councils should be allowed to subcategorise business land as commercial or industrial in addition to the centre of activity subcategory. This subcategorisation of businesses into commercial and industrial uses is consistent with the proposed treatment under the new Emergency Services Property Levy (ESPL).

²⁰⁸ See submissions from Campbelltown City Council, to IPART Draft Report, October 2016; Byron Shire Council, to IPART Draft Report, October 2016 and Newcastle City Council, to IPART Draft Report, September 2016.

²⁰⁹ Section 529 of LG Act notes that "... a centre of activity might comprise a business centre, and industrial estate or some other concentration of like activities".

Defining industrial properties

Industrial properties could be defined based on Local Environment Plan (LEP) zonings, as is the case under the ESPL. According to the *Standard Instrument – Principal Local Environment Plan*, industrial activity is defined as follows:

Industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.

All other business properties that do not fall under the industrial definition could be defined as commercial property. These properties would include office space and retail premises.

8.3.2 Stakeholder comments

A few stakeholders stated the need for further subcategories of business land.²¹⁰ Some councils suggested that business land should be subcategorised based on LEP zoning for such land.²¹¹ However, we consider allowing commercial and industrial subcategorisation provides sufficient flexibility whilst ensuring policy consistency and simplicity.

In response to the Draft Report, we received strong support from stakeholders with some stakeholders noting that it aligns with the proposed categories for the Emergency Services Property Levy.²¹²

8.4 Introducing a new Vacant Land subcategory

Recommendation

- 31 Sections 493, 519 and 529 of the *Local Government Act 1993* (NSW) should be amended to add an optional vacant land subcategory for residential, business and mining land.

²¹⁰ See submissions from Narrandera Shire Council, p 2, Port Stephens Council, p 7, The Hills Shire Council, p 2, Liverpool City Council, p 2, Campbelltown City Council, p 2, Tweed Shire Council, p 2, to IPART Issues Paper, May 2016.

²¹¹ See submissions from Lake Macquarie City Council, p 4, and Gunnedah Shire Council, p 3, submissions to IPART Issues Paper, May 2016.

²¹² See submissions from Central Coast Council, submission to IPART Draft Report, October 2016; Dubbo Regional Council, submission to IPART Draft Report, October 2016; Lane Cove Council, submission to IPART Draft Report, October 2016.

Our draft recommendation received strong support from stakeholders.²¹³ In response to feedback, we have amended our recommendation to include vacant land as an optional subcategory for residential, business and mining land, rather than a new category.

8.4.1 The need for a vacant land subcategory

A separate vacant land subcategory would provide additional flexibility for all councils to tailor their rates to the needs of the local community.

Section 519 of the LG Act provides that vacant land should be categorised under the existing four rating categories. For example, an empty block of land in a residential estate would be charged the same residential rate as the houses in the estate.

For many urban councils, where land is scarce, allowing the council to set a higher rate on vacant land may encourage the development and urban renewal that is required to meet the current and future needs of the community. If our recommendation to allow councils to use a CIV valuation method is adopted, the need for a separate vacant land category would be of greater importance. Vacant land would typically attract lower rates under CIV as these properties would have lower assessed values compared to land with capital improvements. This could provide an incentive for owners of vacant land to not develop land.

Allowing a council to charge a higher rate for vacant land could provide incentives to develop this land – addressing a main drawback of CIV – whilst ensuring ratepayers still receive the efficiency and other equity benefits of CIV.

By contrast, allowing regional councils the option to levy a lower rate on vacant land to recognise the lower demand and cost of providing council services to these properties might also be appropriate.

New optional subcategory for vacant land

The current provisions in the LG Act require vacant land to be categorised as residential, business, farmland or mining by considering the underlying zoning of the land or the predominant categorisation of adjacent land. These concepts could be used to subcategorise vacant land into residential, business and mining land.

²¹³ See submissions from Cootamundra Gundagai Regional Council, submission to IPART Draft Report, September 2016; Northern Rivers Regional Organisation of Councils, submission to IPART Draft Report, October 2016 and Wollongong City Council, submission to IPART Draft Report, October 2016.

By allowing an optional subcategory for vacant land, councils have the flexibility to apply different rates for vacant land in the residential, business and mining land categories.

In Chapter 5, we recommend protections to ensure that the highest rate structure is no more than 1.5 times the average rate structure across residential subcategories within a contiguous urban locality. This protection would not apply to the vacant land subcategory for residential rates. This ensures that all vacant land across the main ratings categories would not be subject to the protection. This allows councils better freedom to pursue urban development policies with vacant land.

Use of 'Vacant Land' category in selected jurisdictions

A number of other Australian states provide flexibility for councils to charge different rates for vacant land.

- ▼ In Victoria, the *Ministerial Guidelines for Differential Rating 2013* states vacant land is an appropriate category for different rates. In practice, a number of councils – both urban and regional – set a higher ad valorem rate for vacant land to encourage the development of land for residential or commercial purposes.
- ▼ The Queensland LG Act does not specify rating categories. Instead, councils are allowed to determine rating categories, and many councils have adopted a vacant land category.²¹⁴
- ▼ The WA local government legislation allows vacant land to be charged different rates, with a number of councils charging higher rates on vacant urban land.

8.4.2 Stakeholder comments

Several stakeholders stated the need for a 'vacant land' category.

- ▼ Some councils, especially Sydney metropolitan councils,²¹⁵ were of the view that a separate 'vacant land' category would provide councils with the option to charge a higher rate in order to prevent 'land banking' and encourage urban renewal.
- ▼ Regional councils also supported a 'vacant land' category, as it would allow the application of a lower rate to reflect the lower impost on council services.²¹⁶

²¹⁴ For example Cloncurry Shire Council levies 85% of the residential rate on vacant land <10,000 m², based on UV valuation method.

²¹⁵ See submissions from The Hills Shire Council, p 2, Sutherland Shire Council, p 3, to IPART Issues Paper, May 2016.

²¹⁶ See submissions from Shoalhaven City Council, p 4, Mid-Western Regional Council, p 1, Byron Shire Council, p 2, WSROC, p 2, to IPART Issues Paper, May 2016.

In response to the Draft Report, most stakeholders supported the recommendation commenting that the vacant land category should be an optional subcategory of the main ratings categories.²¹⁷ We agree with this feedback.

8.5 Subcategorising Farmland based on geographic location

Recommendation

32 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.

Our draft recommendation received strong support from stakeholders. We have maintained our draft recommendation.

8.5.1 The need for new criteria for farmland subcategories

Section 529(2)(a) of the LG Act allows subcategorisation of farmland based on the 'intensity of land use', 'the irrigability of the land' and 'economic factors affecting the land'. Stakeholders expressed concern that these criteria are highly subjective and may prove difficult for councils to assess.

In our analysis of each council's rate structure with farmland properties, we noted that the majority of councils do not subcategorise based on the existing subcategorisation criteria. They apply one rate across the entire farmland area even where there are substantial differences in the intensity of farming across properties. This may be due to the subjectivity of the existing subcategorisation criteria, which makes it difficult to apply in practice.

8.5.2 Stakeholder comments

Stakeholders identified shortcomings in the current subcategorisation criteria.²¹⁸ In particular, DPI stated:

...there may be difficulties in the sub categorisation of farmland based on intensity of use, irrigated land, or economic factors affecting the land. These factors can vary from property to property and from season to season. It may be labour intensive and costly for councils to assess these variations and ensure the process was equitable.

²¹⁷ See submissions from Glen Innes Severn Council, to IPART Draft Report, October 2016; Narrabri Shire Council, to IPART Draft Report, October 2016; Greater Hume Shire Council, to IPART Draft Report, October 2016.

²¹⁸ See submissions from NSW Department of Primary Industries, p 4, Cootamundra Shire Council, p 5 and Riverina Eastern Regional Organisation of Councils, p 3, to IPART Issues Paper, May 2016.

Several councils believe that subcategorising land based on a geographic area such as a defined locality would achieve a more equitable outcome. These stakeholders argue that a defined geographic location would more directly reflect the productivity of farmland and hence the wealth that the land is able to generate.

These councils further highlighted that residential and business properties are currently subcategorised based on location, and this principle should be extended to the farmland category as well because location based rating can better reflect access to council services.

Councils were confident that they are well placed to identify the different land areas. Councils suggested that they could use the following criteria to create geographic boundaries:

- ▼ geographical markers such as a river bank, or an escarpment, or
- ▼ major infrastructure – eg, state/federal highway.

In response to the Draft Report, most stakeholders supported our draft recommendation.²¹⁹ Some stakeholders noted this recommendation would assist merged councils in setting new rate structures by geographic area for the farmland category within the new council area.²²⁰

8.6 Councils determining the residual rating category

Recommendation

- 33 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 4-year period.
 - If a council does not determine a residual category, the business category should act as the default residual rating category.

Our draft recommendation received strong support from stakeholders.²²¹ Based on stakeholder feedback we have amended the period for fixing the residual category from five years to four years to align with the council election cycle.

²¹⁹ See submissions from Dubbo Regional Council, submission to IPART Draft Report, October 2016 and The Hills Shire Council, submission to IPART Draft Report, October 2016.

²²⁰ See submissions from NSW Revenue Professionals, submission to IPART Draft Report, October 2016; NSW Farmers', submission to IPART Draft Report, October 2016 and Riverina Eastern Regional Organisation of Councils, submission to IPART Draft Report, October 2016.

²²¹ See submissions from Penrith City Council, submission to IPART Draft Report, October 2016 and Bega Valley Shire Council, submission to IPART Draft Report, October 2016.

8.6.1 The need to allow choice in determining the residual rating category

Section 518 of the LG Act specifies that:

Land is to be categorised as business if it cannot be categorised as farmland, residential or mining.

This means properties that do not meet the criteria for categorisation as residential, farmland and mining must be categorised as business properties. For example, a residential car park on a separate title or a jetty would be categorised as 'Business'. The business rate may not reflect the type of use and nature of the properties, and could be contrary to the principles of efficiency and equity.

Councils should be allowed to decide which existing rating category best fits as the residual category.

Before determining the residual rating category, a council should try to categorise all unclassified property into the existing rating categories based on the property's land use (even if these properties do not strictly meet all categorisation criteria). For all remaining property, councils should be allowed to determine one residual rating category after considering the nature of such property.²²²

The residual category that is chosen should not be subject to change for a 4-year period, in order to maintain simplicity, and provide certainty to ratepayers. This process should allow for a better application of tax principles for these properties.

If a council does not wish to determine the residual category for its LGA, the business category would remain as the default residual category, in line with current practice.

8.6.2 Stakeholder comments

Several stakeholders raised concerns about categorising properties that are not commercial in nature as 'business' properties.²²³ These councils point out that the requirement to categorise a property as business if that property does not meet the categorisation criteria of residential, farmland or mining is not always appropriate.

²²² If a council chooses a different residual category to business, it would need to define what properties fall under the business category in its local area.

²²³ See submissions from Shellharbour City Council, p 2, Lachlan Shire Council, p 2, Wollongong City Council, p 4, submissions to IPART Issues Paper, May 2016.

Our draft recommendation received strong support from stakeholders, but many suggested that the period for fixing the residual category should be four years to align with council elections.²²⁴ We agree with this feedback.

8.7 Mining rates to reflect cost of council services

Recommendation

- 34 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.

Our draft recommendation received a mixed response from stakeholders. The miners supported the recommendation, whilst some regional councils did not. We have maintained our draft recommendation.

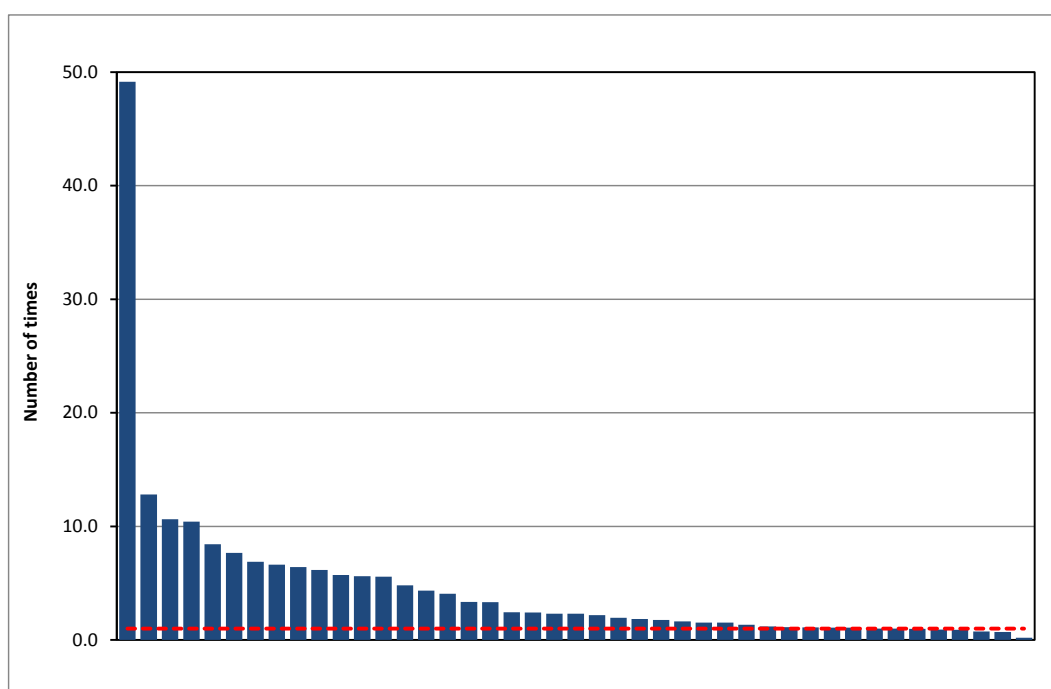
8.7.1 Why is this recommendation needed?

Our analysis has shown that the rates applied to mining land vary widely. Figure 8.1 presents the ratio of mining ad valorem rates to business ad valorem rates in 2013-14 for all councils with mining properties. These differentials are unlikely to reflect differences in costs of providing council services to these properties.

Mining rates should be set relative to other business categories primarily to reflect differences in the cost of providing council services to these properties. By contrast, the data suggests some councils may be using the mining category as a profits tax to fund local services. Our reform would make the mining rate more cost reflective and promote other tax principles, ensuring the rate is not just based on capacity to pay.

²²⁴ See submissions from Camden Council, submission to IPART Draft Report, October 2016; Ku-Ring-Gai Council, submission to IPART Draft Report, October 2016 and NSW Revenue Professionals, submission to IPART Draft Report, October 2016.

Figure 8.1 The ratio of Mining ad valorem rates to Business ad valorem rates



Note: The red dotted line indicates a business to mining ad valorem rate of 1:1. Of the 43 councils with mining properties, 35 councils had a ratio above one.

Data source: IPART analysis based on OLG data on council revenues.

We propose 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.

8.7.2 Stakeholder comments

In its submission and subsequent consultations, the NSW Minerals Council stated that mines are generally self-sufficient, and that councils are charging excessive rates on mining properties often based on the maximum tax the council thinks it can extract from the mines.

The Minerals Council suggested that a similar model to Victoria should be adopted to limit the variation in rates. The Victorian LG Act provides that the highest rate cannot be more than four times the lowest rate in an LGA.

In response to the Draft Report, there was mixed support from stakeholders.²²⁵ Stakeholders opposing the recommendation consider that councils should have the discretion to determine rating structures through their IP&R process.²²⁶ Also, it was argued that mines impose greater cost on the community than small business justifying the higher rates.²²⁷

However, we note under our recommendation, councils can charge higher rates if there is a higher cost of servicing mining properties, including long term rehabilitation and other costs imposed on the local community. Councils also have the ability to apply for Special Variations to recover costs imposed by mines operating in their local government area. We consider our recommendation is sufficiently flexible to address the main concerns expressed by a small number of regional councils.

²²⁵ Stakeholders who support the recommendation include: Cootamundra Gundagai Council, Greater Hume Shire Council and Port Stephens Council.

²²⁶ Berrigan Shire Council, submission to IPART Draft Report, September 2016.

²²⁷ See submissions from, Blayney Shire Council, to IPART Draft Report, October 2016; Dubbo Regional Council, to IPART Draft Report, October 2016 and NSW Revenue Professionals, to IPART Draft Report, October 2016.

9 Recovery of council rates

Overdue rates create a large impost on councils, the court system and ultimately the community. However, councils currently have limited options to recover outstanding rates.

We have considered changes to reduce councils' administrative costs through improving council access to different debt recovery options and by improving the rate levying process itself. The sections below summarise our recommendations then discuss our analysis in more detail.

9.1 Summary of our recommendations

This chapter makes the following recommendations:

- ▼ councils should have the option to engage the State Debt Recovery Office (SDRO) to recover outstanding council rates
- ▼ the existing legal and administrative process to recover outstanding rates should be streamlined
- ▼ councils should be able to offer discounts for ratepayers electing to receive their rate notices electronically, and
- ▼ ratepayers should not be able to postpone the payments of rates where land is rezoned.

Our draft recommendations received strong support from stakeholders. We have maintained those draft recommendations.

9.2 Recovery of outstanding rates

In 2013-14, overdue rates and charges were \$285 million, which was equivalent to about 7% of NSW councils' total annual rates income. Overdue rates were up to 19% of annual rates income in some local government areas.²²⁸

²²⁸ Office of Local Government, *Profile & Performance of NSW Local Government Sector*, June 2015, pg14. <https://www.olg.nsw.gov.au/sites/default/files/Whole%20of%20State%20Report%20-%20June%202015.pdf>

At the same time, councils' court orders for overdue rates impose a major burden on the Local Court system. The Department of Justice found that just over one-third of all civil claims in the Local Court system involve councils pursuing overdue rates.²²⁹ In addition, it appears some councils might pursue relatively lower value claims through the court system. Statistics we received from the Department of Justice suggested over 80% of court claims were for amounts of \$2,000 or less.²³⁰

These statistics indicate the need to reform the debt recovery process at the council level to reduce the unnecessary burden on both the court system and local government.

Through our stakeholder consultation process, we have identified a number of measures which should reduce the burden on the community from recovering outstanding rates. Our proposed recommendations in this area aim to improve the overall simplicity, efficiency and equity of this process.

9.2.1 Councils should be able to use the State Debt Recovery Office

Recommendation

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

Our draft recommendation received strong support from stakeholders.²³¹ There were some concerns around how this recommendation would work in practice²³²; however we consider these can be addressed in implementation. Some stakeholders opposed the recommendation, believing it was mandatory and hence overly prescriptive.²³³ Our recommendation is to allow councils the flexibility to use the SDRO, ie, a council may elect to 'use' or 'not use' the services of the SDRO, depending on its individual circumstances. We have maintained our recommendation.

The SDRO administers the NSW fine enforcement system and is responsible for the receipt and collection of outstanding NSW Government fines and penalties.

The SDRO also collects unpaid fines and fees issued by commercial entities or local government under contract. For example, the SDRO currently handles the collection of parking fines for the majority of NSW councils through an agreement with each council.

²²⁹ Letter from NSW Department of Justice to IPART, 5 April 2016.

²³⁰ Letter from NSW Department of Justice to IPART, 5 April 2016.

²³¹ See for example, Glen Innes Severn Council, submission to IPART Draft Report, October 2016; Bega Valley Shire Council, submission to IPART Draft Report, October 2016.

²³² See submissions from Camden Council to IPART Draft Report, October 2016; Local Government NSW to IPART Draft Report, October 2016; Shoalhaven City Council to IPART Draft Report, October 2016.

²³³ See submissions from NSW Revenue Professionals Association, to IPART Draft Report, October 2016; Queanbeyan-Palerang Regional Council, to IPART Draft Report, October 2016.

The Office of State Revenue²³⁴ suggests that allowing councils to engage the SDRO could significantly reduce the level of overdue rates and reduce the burden on the Local Court system. The SDRO:

- ▼ has a number of means to match outstanding dues to an individual, with access to a wide range of Government data sources including updated contact addresses, phone numbers and banking details
- ▼ has options to force payment through the use of garnishee requests against financial institutions
- ▼ has the ability to negotiate flexible payment plans for people under financial hardship, operating an internal review process through its 'hardship review board'
- ▼ can consolidate all outstanding government fines and dues, so an individual can manage all outstanding debts in a single package, and
- ▼ has data links to both LPI (Land & Property Information, NSW) and local government in place, reducing any costs of transferring the debt recovery process to SDRO.

In its submission, the SDRO noted it has a 75% debt recovery rate, and is currently responsible for the collection of over \$27 billion in taxes and 3.5 million fines, worth \$700 million, each year.

If councils were able to engage the services of the SDRO, the cost of collection would be passed onto the individual ratepayer when debts are recovered (as is currently the case with parking fines).

While engaging the SDRO's services may be an effective way to recover outstanding rates and charges, councils should also have other non-judicial avenues to recover rates before engaging the services of the SDRO (see Section 9.2.3).

9.2.2 Streamlining process for sale of land to recover dues

Recommendation

- 36 The existing legal and administrative process to recover outstanding rates be streamlined by reducing the period of time before a property can be sold to recover rates from five years to three years.

Our draft recommendation received strong support from stakeholders.²³⁵ We have maintained our recommendation.

²³⁴ Letter from Office of State Revenue to IPART, 22 July 2016.

²³⁵ See for example, Randwick City Council, submission to IPART Draft Report, October 2016; Griffith City Council, submission to IPART Draft Report, October 2016; Tweed Shire Council, submission to IPART Draft Report, October 2016.

The existing local government legislation allows a council to sell any non-vacant land on which any rate or charge remains unpaid for more than five years from the date on which it became payable.²³⁶

In other states, three years is the most common time period after which a property can be sold to recover outstanding rates.

We recommend reducing the time before a property can be sold to recover rates to three years. This will improve the simplicity of the rating system, bring NSW in line with other states, and is likely to reduce the costs and delays in recovering outstanding rates.

9.2.3 Councils should have an Internal Review policy for overdue rates

Recommendation

37 All councils adopt an internal review policy, to assist those who are late in paying rates, before commencing legal proceedings to recover unpaid rates.

Our draft recommendation received strong support from stakeholders. We have maintained our recommendation.

Councils have a number of means to assist ratepayers facing financial hardship. See Box 9.1 for a discussion of the common determinants of financial hardship.

According to the NSW Department of Justice, just over half of councils have a hardship policy that is publicly available online. These policies typically include information about alternative payment arrangements for ratepayers suffering financial difficulties. However, analysis suggests the efficacy of these policies is uncertain, because councils that have a hardship policy that is publicly available online tend to have more court filings for overdue rates. Of the top 50 councils filing unpaid rate claims in Local Courts, about 70% have a hardship policy on their website.²³⁷

For this reason, we recommend that councils should have an internal review policy for the payment of overdue rates. The policy would clearly specify, prior to commencing legal action, the other methods a council will pursue to recover outstanding rates.

In response to the draft report, some stakeholders suggested that OLG should issue guidelines requiring Hardship Policies to include an internal review process, rather than having a separate internal review policy.²³⁸ We consider this can be addressed at implementation.

²³⁶ The provision of sale for vacant land is 1 year, if the total amount of unpaid rates or charges exceeds the value of the property.

²³⁷ Email to IPART from Senior Policy Officer, NSW Department of Justice, 15 July 2016.

²³⁸ See submissions from Northern Beaches Council to IPART Draft Report, October 2016 and Tamworth Regional Council to IPART Draft Report, October 2016.

Box 9.1 Reasons for financial hardship

The Law and Justice Foundation of NSW, in its review of the Legal Aid NSW Mortgage Hardship Service, identified the following reasons for financial hardship for home owners, resulting in their inability to pay dues including council rates, loan repayments, strata levies etc.

- ▼ 40.6% faced unemployment or reduced employment.
- ▼ 28.6% experienced business failure or reduced income from self-employment.
- ▼ 28.6% suffered from illness or injury.
- ▼ 17.7% were dealing with family breakdown.

Source: Law and Justice Foundation of New South Wales, *Managing mortgage stress – Evaluation of the Legal Aid NSW and Consumer Credit Centre Mortgage Hardship Service*, June 2011, p 25.

9.2.4 Guidelines for a flexible payment mechanism

Recommendation

38 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.

Our draft recommendation received strong support from stakeholders.²³⁹ We have maintained our recommendation.

Flexible payment options include allowing ratepayers the flexibility to pay rates:

- ▼ on a number of frequencies (eg, weekly, fortnightly, monthly, quarterly or yearly basis), and
- ▼ through a variety of payment options, including direct debit or through Centrelink.

Councils should be able to offer flexible payment options as they allow ratepayers more flexibility to pay rates, which could assist councils' financial management.

However, through stakeholder submissions and consultation, we have identified that there is uncertainty about whether councils can offer flexible payment options. This is because:

- ▼ Section 564 of the LG Act allows councils to “accept payment of rates and charges due and payable by a person in accordance with an agreement made with the person”, but

²³⁹ See submissions from Newcastle City Council to IPART Draft Report, September 2016; Shoalhaven City Council to IPART Draft Report, October 2016 and Burwood Council, to IPART Draft Report, October 2016.

- ▼ Section 562 states annual rates may be paid annually or quarterly.²⁴⁰

In stakeholder submissions, a number of councils noted they already offer flexible payment plans (including weekly, fortnightly and monthly) along with direct debit and Centrelink payment options under Section 564 of the LG Act.²⁴¹ Some stakeholders noted guidelines would provide additional clarity to councils.²⁴²

Given the lack of clarity in the legislation, we recommend either the LG Act be amended or OLG issue guidelines to clarify that councils can offer flexible payment options to ratepayers.

9.3 Improvements in the rate levying process

Recommendation

- 39 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, eg, via email.

Our draft recommendation received mixed support from stakeholders. Some stakeholders requested amendments to the draft recommendation. We have maintained our position, because our recommendation would place downward pressure on councils' costs, which should be reflected in lower rates.

9.3.1 Current practice

Section 710 of the LG Act requires councils to issue paper based notices to a ratepayer, unless the ratepayer has, in writing, allowed these notices to be sent through other means such as e-mail.

Distributing bill notices and other correspondence only through paper based notices and letters may not be cost effective. In addition, paper based notices may not reach the ratepayer when they change their address (eg, moves interstate or overseas, and councils do not have access to their updated contact details).

²⁴⁰ Note that section 562 of the LG Act does not explicitly prohibit other payment frequencies.

²⁴¹ See submissions from The Hills Shire Council to IPART Issues Paper, May 2016; Goulburn Malwaree Council to IPART Draft Report, October 2016 and Wagga Wagga City Council to IPART Draft Report, October 2016.

²⁴² See submissions from City of Sydney to IPART Draft Report, October 2016 and Newcastle City Council to IPART Draft Report, September 2016.

9.3.2 Serving notices electronically

Providing councils with the option to offer a discount for ratepayers who receive electronic bill notices could result in more efficient delivery of notices and considerable cost savings.

Discussions with councils suggest the average cost of serving a paper bill notice to ratepayers is about \$1 per bill. This cost primarily reflects printing and postage. Most councils mail rate notices quarterly and at least one other council correspondence each year. With over 3 million rateable properties in NSW, **the potential cost saving of going fully paperless could be up to \$15 million per year.**

Our recommendation to provide councils with the choice to offer a discount to ratepayers who opt to receive electronic notices would encourage this shift.

Most councils²⁴³ were supportive of the option to take-up electronic rate notices. Electronic notices were seen as more cost-effective and could result in a higher recovery rate than paper based notices. This is because a ratepayer may not receive a paper rates notice if they change address.

In response to the Draft Report, a number of stakeholders have suggested that councils should be allowed to charge a fee for paper bills, rather than a discount for electronic bills.²⁴⁴ Other concerns raised include:

- ▼ any discount offered was unlikely to encourage change in delivery methods
- ▼ a discount may disadvantage ratepayers who do not have access to the internet, and
- ▼ it would be costly to implement.²⁴⁵

Charging a fee for paper delivery would result in an effective rate increase for most ratepayers for the current level of services they receive. Therefore, we consider allowing councils to provide a discount to ratepayers to reflect the cost savings from electronic delivery is more appropriate.

²⁴³ See submissions from Southern Sydney Regional Organisation of Councils, Shoalhaven City Council, Campbelltown City Council, Kempsey Shire Council, Manly Council, submissions to IPART Issues Paper, May 2016.

²⁴⁴ See submissions from Canterbury-Bankstown Council to IPART Draft Report, October 2016; Berrigan Shire Council to IPART Draft Report, September 2016 and Southern Sydney Regional Organisation of Councils to IPART Draft Report, October 2016.

²⁴⁵ See submissions from Blue Mountains City Council to IPART Draft Report, October 2016; Blayney Shire Council to IPART Draft Report, October 2016 and Ku-ring-gai Council to IPART Draft Report, October 2016.

9.4 Abolishing the postponement of rates due to rezoning

Recommendation

- 40 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.

Our draft recommendation received strong support from stakeholders.²⁴⁶ We have maintained our recommendation.

Section 585 of LG Act allows a property owner to apply for postponement of rates if:

- ▼ the property is rezoned
- ▼ the rates payable increase after rezoning, and
- ▼ the ratepayer does not intend to redevelop the land according to the new land uses permitted.

The OLG suggests that the process of administering rate postponements is complex, often costing councils more than the postponed rates.

In addition, Section 595 of the LG Act requires councils to write-off postponed rates and accrued interest after five years.

The current arrangements of the LG Act which allow a ratepayer to postpone rates, and require councils to write-off postponed rates after five years, are inconsistent with the tax principles of simplicity, efficiency and equity:

- ▼ In many cases land rezoning substantially increases the value of a property. This land rezoning generally occurs through no effort of the ratepayer, but increases the ratepayer's wealth, regardless of whether the ratepayer intends to sell or develop the property.
- ▼ The increase in rates is a small fraction of the ratepayer's increased wealth from land rezoning.
- ▼ Allowing rates to be postponed and written off if land is not developed provides a disincentive to develop land and does not promote growth and urban renewal.

This recommendation would simplify the rating system by reducing councils' administrative burden, provide a better incentive to develop land and ensure a more equitable distribution of the rating burden.

²⁴⁶ See submissions from Newcastle City Council to IPART Draft Report, September 2016; Shoalhaven City Council to IPART Draft Report, October 2016 and Burwood Council to IPART Draft Report, October 2016.

Most councils supported removing Section 585 of the LG Act because the section is difficult for ratepayers and councils to understand, and imposes an administrative burden on councils.²⁴⁷

²⁴⁷ Camden Council, New South Wales Revenue Professionals, Greater Taree City Council, Eurobodalla Shire Council, submissions to IPART Issues Paper, May 2016, Newcastle City Council, submission to IPART Draft Report, 16 September 2016, Randwick City Council, submission to IPART Draft Report, 13 October 2016.

10 | Other recommendations

Our review aims to enhance the ability of councils to implement sustainable and equitable fiscal policy and, to this end, we have made recommendations relating to the method for setting rates, exemptions and concessions. Through the course of the review we identified other issues where improvements would enhance the efficiency of the rating system. The sections below discuss our findings and analysis relating to these additional issues.

10.1 Summary of other findings

We considered a range of other issues that would enhance the efficiency of the rating system, benefit councils and other sectors of the economy. We found that:

- ▼ **The valuation base date used as the basis for collecting revenue for the Emergency Services Property Levy (ESPL) and collecting council rates should be aligned**, to promote simplicity and consistency.
- ▼ **CIV should be used as the basis for levying the ESPL**, when CIV data is available state-wide. CIV is more equitable and efficient (than UV) for levying the ESPL, as the cost of fire and emergency services relates more closely to protecting the capital on a property, rather than the property itself.
- ▼ **Giving councils the choice to purchase valuation services directly from the market** could allow them to obtain the quality of service they require in a more cost effective way. It could also improve the accuracy of valuations.

We do not make any recommendations about the exemptions that councils receive from certain state taxes as we consider that major reforms to the tax exemptions that local government receive from the NSW Government should be negotiated and changed as part of a broader reciprocal agreement between the two levels of government.

10.2 The Emergency Services Property Levy

Recommendation

- 41 The valuation base date for the Emergency Services Property Levy and council rates 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.

We considered the ESPL in light of submissions we received to our Issues Paper and Draft Report. We considered stakeholders' concerns about:

- ▼ how the ESPL would be levied if reforms to the valuation method are introduced, and
- ▼ consistency in application across the State if choice over the valuation method for rates is introduced.

Box 10.1 provides a summary of the Government's announcement on the ESPL.

Box 10.1 Emergency Services Property Levy

In December 2015, the NSW Government announced it would introduce an ESPL to fund fire and emergency services. The ESPL will be paid alongside council rates from 1 July 2017, and replaces the Emergency Services Levy on insurance policies.

The new levy would be based on unimproved land values and collected by local government on behalf of the NSW Government.

Source: <https://www.emergency.nsw.gov.au/media-releases/2015/nsw-moves-to-a-fairer-system-for-funding-fire-and-emergency-services.html>

UV is the only data currently available to set council rates. As the ESPL is to be collected by councils through rates for the NSW Government, it has to be levied on a UV basis. If our recommendations in Chapters 3 and 4 are adopted, CIV data would be collected state wide. This would allow the ESPL to be levied on either a UV or CIV basis. This raises the question as to whether UV or CIV is the better base for levying the ESPL.

Our findings and analysis, and our reasons for recommending that CIV should be used as the method to levy the ESPL, are outlined below.

10.2.1 How should the Emergency Services Property Levy be levied?

In submissions, councils raised a number of concerns relating to the method for levying the ESPL, including:

- ▼ The potential inconsistency in the valuation date for levying the ESPL and council rates. That is, the valuation base date for the ESPL might not be the same as the valuation date for council rates.
- ▼ Consistency with valuation base used for the ESPL and rating system. Councils wanted to only have to maintain one database for both.
- ▼ The valuation method used for the ESPL. For example, “the ESPL cannot be equitably levied against land values, and complements the use of CIV.”²⁴⁸

Valuation base date

The ESPL base date should be aligned for all councils across the state. Additionally the valuation base date for the ESPL and council rates should be consistent. Otherwise, a ratepayer will face two different sets of land values for two property-based levies. This is contrary to the tax principle of simplicity. In practice, this means every council will need to adopt the same valuation base date for rating.

Valuation method for the ESPL

The cost of fire and emergency services relates more closely to protecting the capital on a property, rather than the property itself. For example, a highly developed block of land with apartments may receive significant benefits from fire protection services whereas a neighbouring block of the same size with a small house receives comparatively little benefit. In this example, under UV, they would pay the same ESPL levy amount which is less equitable and efficient compared to CIV.

A CIV base for the levy is more consistent with efficiency and equity principles than UV, as the benefits received from emergency services increase with market value as new capital is invested. As discussed in Chapters 3 and 4, we recommend CIV information be collected in all council areas. We also recommend mandating CIV as the valuation base in metropolitan NSW. Hence, when CIV information is available state wide, the ESPL should be levied on a CIV, rather than a UV, basis.

²⁴⁸ Sutherland Shire Council, submission to IPART Issues Paper, May 2016, p 2.

Other jurisdictions

The ESPL is levied on a CIV basis in other states where CIV information is available, such as Victoria and South Australia. This includes councils where UV is adopted for setting rates. In practice, using a CIV base for the ESPL would not create any additional impost for rural councils that choose a UV base to set rates. This is because CIV data would be available state-wide and, under the current proposal, councils would be allowed to recover any additional costs of collecting the ESPL, as determined by the NSW Treasury.

Stakeholder comments

Most stakeholders supported our recommendation that the valuation base date for the ESPL and council rates be aligned to minimise confusion. The majority of stakeholders also agreed with our recommendation that the ESPL be levied on a CIV basis. Stakeholders expressed the view that CIV better reflects the use of services being funded by the ESPL. The Hills Shire Council stated:

Aligning the valuation base for the ESPL to the CIV makes the ESPL more easily understood by rate payers, simpler because only one base is used and the cost of fire and emergency services relates more closely to the protection of capital on the property rather than the property itself. It also brings NSW into line with existing ESPL schemes in other states.²⁴⁹

A number of stakeholders expressed concern that those councils using UV to levy rates would need to maintain two separate databases which may be costly and confusing. Our recommendation to mandate the use of CIV for rating properties in metropolitan NSW means that only one database would need to be maintained in these areas. We recommend in Chapter 4 that where non-metropolitan councils choose to use UV as the basis for levying rates the NSW Government should fund the additional costs to these councils of also maintaining CIV valuation data.

Other stakeholders objected to the ESPL and the way it is proposed to be implemented. The Shopping Centre Council of Australia suggests in its submission that considerable capital investment that shopping centre owners invest in fire suppression equipment should be considered in the context of the ESPL²⁵⁰. This issue arises no matter what valuation base is used to levy the ESPL.

²⁴⁹ The Hills Shire Council submission to the Draft Report, page 63.

²⁵⁰ Shopping Centre Council of Australia submission to the Draft Report, page 9.

10.3 Valuation services

Recommendation

- 42 After the NSW Valuer General has established the database to determine Capital Improved Values for rating purposes (see Recommendation 3), councils be given the choice to directly buy valuation services from private valuers that have been certified by the NSW Valuer General.

Councils are currently required to use valuations supplied by the Valuer General (VG) for rating property. We reviewed the current methods for providing valuation services. We found the process could be more efficient, and provide a higher quality product with increased accuracy of valuations, if councils were able to choose between using the VG or purchasing valuation services directly from private valuers.

Private valuers would need to meet standards set by the VG, to ensure consistent valuation standards are met for all users of valuation data. The VG would also need to ensure valuation data quality and be able to recoup these costs.

10.3.1 Allowing councils choice over valuation services

We recommend councils be given choice over how they obtain valuation services, once the VG has established the database to determine Capital Improved Values.

To ensure integrity of the data and achieve efficiency in the valuation process we recommend the VG retain responsibility for:

- ▼ setting valuation standards
- ▼ certifying valuers that can be engaged by councils to provide valuations
- ▼ maintaining a database of valuations, and
- ▼ requiring that valuations cannot be used for rates, levies or taxes until approved by the VG as generally true and correct.

We recognise that the process of setting up arrangements to facilitate competition will incur costs for the VG, and we propose that set up costs should be funded by the NSW Government. These set up costs could be more than offset by more accurate valuations under a competitive process, resulting in an improved collection of state taxes (see section 10.3.2 below).

To ensure a smooth transition while choice over valuation services is introduced, we also recommend:

- ▼ the VG continues to provide a valuation service to councils that do not choose to use private valuers, and

- ▼ a process for efficiently sharing valuation costs between the councils that use private valuers and other users of this valuation data.

Councils using the VG service could continue to pay a regulated price

If councils continue to use the VG, we recommend that the current valuation process remain relatively unchanged. This process is outlined in Box 10.2 and Figure 10.1. Using this process would allow the VG to continue to recover the efficient costs of providing services to councils.

While many councils would be able to readily source private valuation services, it may be more challenging for some councils, particularly those in rural or regional areas. Therefore, the VG could still be viewed as a monopoly provider of valuation services to these councils. If this occurs, IPART should continue to determine the maximum price the VG can charge councils that do not engage private valuers.

Box 10.2 Current valuation process

The VG is responsible for providing a list of valuations to councils for rating purposes at least once every four years.^a Councils typically receive valuations from the VG once every three years. The VG is also currently required to provide valuation information to the Office of State Revenue (OSR) and other minor users of the data.

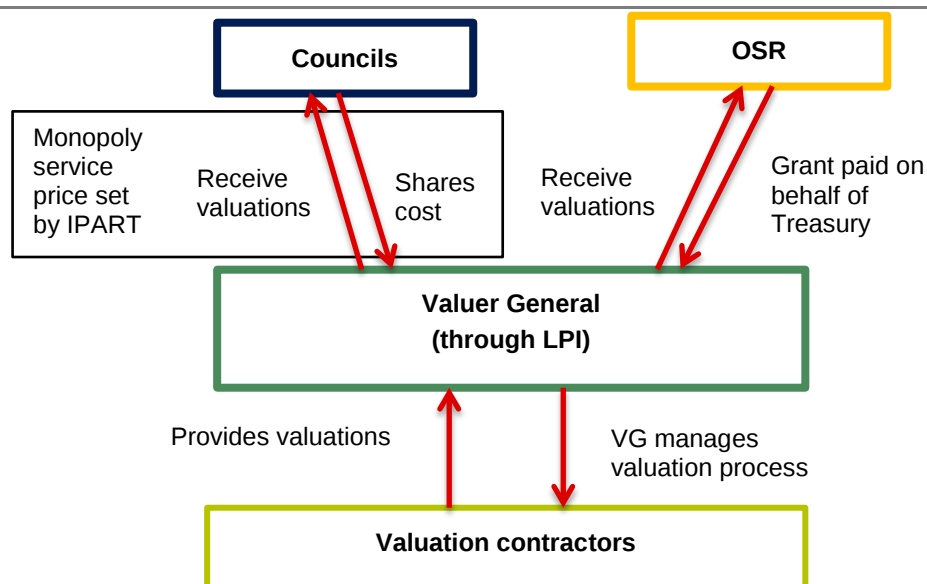
To provide these services, the VG:

- ▼ sets the standards for valuations, and
- ▼ delegates operational responsibilities through a service level agreement with Land and Property Information (LPI).

In turn, LPI manages the valuation system, in particular, managing valuation contracts by engaging external contractors to conduct valuations through a competitive tender process, and maintaining a database of valuations.^b

Finally, IPART determines the maximum prices for valuation services provided to councils for rating purposes. In IPART's 2014 Determination, decided to allocate 34% of the VG's total costs to councils. The funding from OSR for valuation services is provided via a grant from Treasury, however the price is not determined by IPART. The current process is outlined in Figure 10.1.

Figure 10.1 Current valuation process



^a Under Part 5 of the *Valuation of Land Act 1916*.

^b For more details, see IPART, *Review of prices for land valuation services provided by the Valuer-General to councils - Final Report*, 2014, pp 9-10.

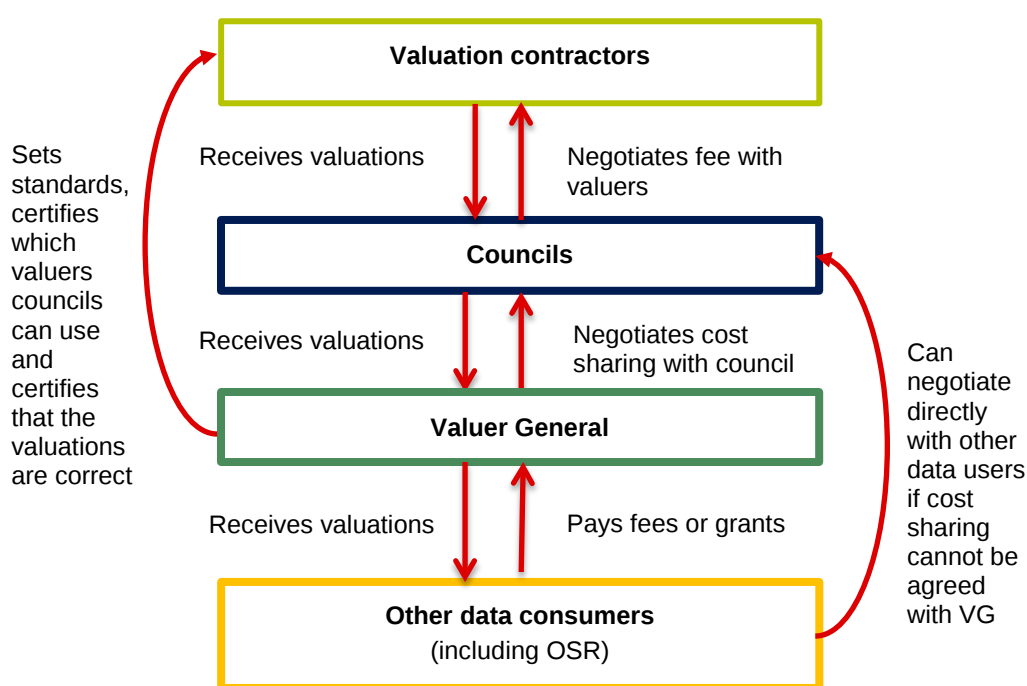
Councils using a private service could choose to share valuation costs

If councils engage private valuers, they could choose to use the following process to share their valuation costs (see Figure 10.2). Under this process, councils would:

1. buy valuation information from valuers directly
2. pay for these services, and
3. provide the information to the VG for a fee that is directly negotiated between the parties. Maximum prices determined by IPART could form the starting point for this negotiation.²⁵¹

Under this process, the VG would be responsible for setting standards and ensuring the accuracy of the information before councils would be able to use the data for setting rates.

Figure 10.2 Recommended arrangements for councils directly engaging private contractors



10.3.2 Improving accuracy in valuations

Allowing councils to purchase valuation services directly from the private sector could encourage improved accuracy with these valuations.

²⁵¹ To ensure efficiency in the valuation process, if a cost sharing arrangement cannot be reached directly with the VG, councils could have the option to directly negotiate agreements with the OSR and other users of the data.

The total rates a council can collect do not increase if valuations increase. Instead, property values determine how rates are apportioned across the community. Because more accurate valuations promote equity, efficiency and fewer objections, councils would be encouraged to ensure an accurate distribution of property values across the community.

Box 3.6 contains an example where the land value for a large shopping centre has been valued differently to adjoining property, on a per square metre basis.

Without a competitive valuation process, there is no mechanism for councils to test the accuracy of these relative valuations. Therefore, introducing competition could act as a further test on the accuracy of these valuations. This could have further implications for state taxes.

Box 10.3 The accuracy of valuations has been reduced

Table 10.1 is an illustrative example that compares the land values for the Bondi Junction Westfield to adjacent properties with equivalent land zoning. It shows that the land value for the Westfield is much lower on a per square metre basis (\$4,172) than 10 adjoining properties (\$13,181).

Table 10.1 Bondi Junction CBD Land Values as at 1 July 2015

Property no.	Land zoning	Address	UV (\$ million)	Land area (m ²)	Value per m ² (\$)
Westfield Bondi Junction					
3615390	B3	474-548 Oxford St	74.300	16820	4,417
3241411	B3	217-229 Oxford St	52.275	13520	3,866
Average	B3				4,172
Other adjoining properties					
3226684	B3	207-209 Oxford St	10.000	464	21,533
2070447	B3	211 Oxford St	3.800	177	21,469
2053376	B3	6-8 Bronte Rd	5.880	297	19,785
2070448	B3	213 Oxford St	10.600	765	13,849
2053377	B3	4A Bronte Rd	9.120	790	11,538
2053370	B3	20 Bronte Rd	2.200	195	11,299
2070450	B3	231 Oxford St	4.350	506	8,599
3002557	B3	22-26 Bronte Rd	4.950	578	8,558
2070451	B3	235 Oxford St	4.350	519	8,390
2070452	B3	237-239 Oxford St	7.690	1132	6,794
Average	B3		6.294	542	13,181

Source: LPI.

10.3.3 Stakeholder comments

More than half of the stakeholders that made submissions to our Draft Report supported our recommendation to give councils the choice to buy valuation services directly from certified private valuers provided the VG retains control over the agreed standards of valuation. The City of Sydney Council stated, “Flexibility and choice in this area will allow Councils to ensure they receive effective and efficient services and value for money”²⁵².

In support of its view that competition could lower the cost of valuations, Albury City council stated “the net cost per assessment for the City of Wodonga to undertake its municipal valuation is less than half the amount that Albury City is charged by the Valuer-General, even though the City of Wodonga utilises CIV as its valuation method”²⁵³.

Approximately one third of stakeholders opposed this recommendation for a number of reasons including:

- ▼ allowing choice could lead to inconsistency in valuations
- ▼ private valuers may have an incentive to inflate valuations to obtain a competitive edge, and
- ▼ removing the economies of scale the VG can achieve will lead to increased costs to councils that continue to use the VG.

In its submissions, the VG noted a move to allow councils to use private valuation firms:

- ▼ Would require the VG to establish agreements with councils.
- ▼ Raises the risk of inconsistency in valuation outcomes if there is inconsistency in valuation contracts.²⁵⁴
- ▼ Would mean the VG service may no longer be considered a monopoly service, indicating that the current pricing mechanisms may need to be reconsidered. This will potentially lead to some councils paying more for valuations than is currently required.²⁵⁵
- ▼ May cause a ‘conflict of interest’ for councils when levying rates.

²⁵² City of Sydney Council submission to Draft Report, page 12.

²⁵³ Albury City Council submission to Draft Report, page 13.

²⁵⁴ Office of the Valuer General, submission to IPART Issues Paper, May 2016, pp 8-9.

²⁵⁵ Office of the Valuer General, submission to IPART Draft Report, p25.

We consider that our recommended requirement for the VG to set valuation standards, certify valuers and approve valuations will ensure consistency in valuations is maintained. As discussed in Chapter 3, we recommend the establishment costs incurred by the VG in setting up a competitive framework should be funded by the NSW Government rather than by councils. Competition could then result in downward pressure on prices for valuations in many areas and more accurate valuations.

Under current rate pegging arrangements councils do not have a conflict of interest in using private valuers. If valuations increase, the total rates collected do not increase for councils under rate capping. Therefore councils have a strong interest in ensuring valuations are as accurate as possible to promote equity and minimise objections.

10.4 Councils' exemptions from certain state taxes

In our Issues Paper we asked whether the exemptions from certain state taxes (such as payroll tax) that councils receive should be considered as part of a review of the exemptions and concessions for certain categories of ratepayers.

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

However, in this review we do not recommend councils pay payroll tax. This is because major reforms to the tax exemptions that local government receive from the State Government should be negotiated and changed as part of a broader reciprocal agreement between the two levels of government. This agreement would promote more efficient tax bases for both levels of government and make them both better off.

Our position is consistent with stakeholder feedback. The majority of stakeholders were not supportive of councils paying payroll tax, and were also of the view that council exemptions from state taxes should be considered in the context of a broader taxation review.²⁵⁶

²⁵⁶ For example, Upper Lachlan Shire Council, p 2, Queanbeyan City Council, p 12, submissions to IPART Issues Paper, May 2016.



Appendices

A | Terms of Reference



Dr Peter Boxall AO
Chairman
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240



Reference: A1444504

18 DEC 2015

Dear Dr Boxall

Pursuant to section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*, I am writing to request the Tribunal undertake a review of the Local Government rating system in accordance with the attached Terms of Reference.

The implementation of an efficient and equitable rating system is a key component of the Government's *Fit for the Future* reforms, and will ensure all councils are able to implement sustainable fiscal policies and reforms over the longer-term.

Critically, the Tribunal's review should seek to recommend a legislative or regulatory approach to support the Government's policy of freezing existing rate paths for a period of four years for councils that merge as part of the *Fit for the Future* process.

An interim report outlining options and recommendations to achieve this commitment should be provided to the Minister for Local Government within six months. A final report addressing all aspects of the terms of reference should be provided to the Minister within 12 months.

Should you have any questions or wish to discuss this matter further, please contact Mr John Clark, Executive Director, Local Government Reform on 9228 3570 or john.clark@dpc.nsw.gov.au

Yours sincerely

MIKE BAIRD MP
Premier

Encl: Terms of Reference, Local Government Rating System in NSW

Terms of Reference

The Local Government Rating System in NSW

I, Mike Baird, Premier of New South Wales, approve the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992 (IPART Act)* to the Minister for Local Government for the review of the local government rating system in accordance with these 'terms of reference'.

General

IPART is to undertake a review to identify and make recommendations for potential reforms to the rating system for local government in NSW. These recommendations will aim to:

- Enhance the ability of councils to implement sustainable and equitable fiscal policy and
- Provide the legislative and regulatory approach to achieve the Government's policy of freezing existing rate paths for four years for newly merged councils.

In investigating and making recommendations for this review, IPART is to consider:

- a) the performance of the current rating system and potential improvements, including consideration of:
 - the rating burden across and within communities, including consideration of apartments and other multi-unit dwellings;
 - the appropriateness and impact of current rating categories and exemptions, mandatory concessions and rebates;
 - the land valuation methodology used as the basis for determining rates in comparison to other jurisdictions;
 - the impact of the current rating system on residents and businesses of a merged council and the capacity of the council to establish a new equitable system of rating and transition to it in a fair and timely manner.
 - the objectives and design of the rating system according to recognised principles of taxation.
- b) current examples of municipal best practice rating policies and schemes;
- c) the impact of the current and alternative frameworks for the rating system on communities and businesses and their capacity to pay; and
- d) any other matter IPART considers relevant.

In undertaking its review under these Terms of Reference, IPART is to take account of:

- the importance of Integrated Planning and Reporting in determining the revenue required to deliver services and infrastructure;
- the current financial sustainability of local government in NSW, including the findings and deliberations of the NSW Treasury Corporation report Financial Sustainability of the NSW Local Government Sector, 2013;
- the findings and deliberations of the Independent Local Government Review Panel and subsequent Government response;
- the NSW Government's policy of encouraging urban renewal; and
- the NSW Government's commitment to protect NSW residents against excessive rate increases and to providing rate concessions to pensioners.

Public consultation

IPART should consult with relevant stakeholders and NSW Government agencies by releasing an Issues Paper and Draft Report for their review on the IPART website. IPART should also consult with the Fit for the Future Ministerial Advisory Group.

IPART may also hold public hearings for the purposes of this review.

Timeframe

An interim report with recommendations on the legislative and regulatory approach to achieve the Government's policy of freezing existing rate paths for four years for newly merged councils should be submitted to the Minister for Local Government within 6 months of signing of the Terms of Reference.

A final review report should be formally submitted to the Minister for Local Government within 12 months of signing of the Terms of Reference.

Governance

IPART should provide progress briefings at regular intervals or as requested to the Chief Executive, Office of Local Government.

The Minister for Local Government will decide on the timing of release of the final report.

Supporting information and recommendations

IPART is to collect relevant material and data to establish the impacts to councils, communities and NSW of the current rating system, and to provide reasons for any recommendations for reform.

B The demand for council services

This appendix presents our analysis on whether a Capital Improved Value (CIV) or Unimproved Value (UV) rating structure better reflects ratepayers' demand for council services.

The academic literature provides support for a CIV method, as it suggests a higher property value will usually reflect a greater demand for council services. Previous research has shown CIV has a very high correlation with income (and a higher correlation with income than UV),²⁵⁷ and that increases in income typically lead to an increase in the demand for local public goods.²⁵⁸

In Chapter 3 we analysed the relationship between the demand for the services that rates fund and the rates that would be paid under a CIV or UV method. To do this, we identified the services that rates fund, the different rating categories and the types of ratepayers within a category.

If the difference between property values within a rating category, on balance, better reflects the differences in demand for a specific council service, we judged that the CIV method would be a better valuation method. If the difference between land values better reflects the difference in demand, the UV method was considered a better method.

We have assessed whether there is a strong, moderate or weak preference for one method over the other. This is shown in Table B.1 below. For some council services, it is relatively clear cut which method is superior for a given category of ratepayers, but in other cases it is less clear.

In general, we assessed that a CIV method better reflects ratepayers' demand for:

- ▼ The facilities that councils provide and maintain (eg, parks and fields, pools and libraries).
 - The total demand and usage of these facilities from all residents in an apartment block will be greater than the demand from a single household, on average.

²⁵⁷ New Zealand Local Government Rates Inquiry Panel, *Funding Local Government*, August 2007, pp 125-126.

²⁵⁸ Borchering T and T Deacon, *The demand for the services of non-federal governments*, The American economic review, 1972, pp 891-901.

- CIV will better reflect this demand because, using UV, as density increases on a block of land, the land value is divided among an increasing number of ratepayers who each make a lower overall contribution to council rates.
- ▼ Roads and footpaths.
 - The total demand for, and congestion on, local roads created by a block of apartments will be greater than a house, on average.
 - A wealthier household or unit should have a greater willingness to pay for roads and footpaths.²⁵⁹
 - That said, while a block of apartments should, in total, have a greater demand for footpaths and street-lighting than a house, these costs tend to grow at a slower rate per capita as density increases.
- ▼ Other services, such as social protection and environmental services which promote welfare in the community.
 - CIV, which is a better measure of ability to pay, is therefore a better measure to fund these services.

Rates also fund the 'governance and administration' functions of the council. This expenditure may relate in part to the oversight of other council services (ie, roads, parks, etc). In other cases, other governance expenses may be fixed expenditures that benefit all ratepayers. Base amounts could play a role in recovering some of these costs.

²⁵⁹ This is because wealthier households tend to spend more on vehicles, and to the extent that vehicle expenditure should proxy the underlying demand for additional road expenditure.

Table B.1 The relationship between demand for council services and valuation method

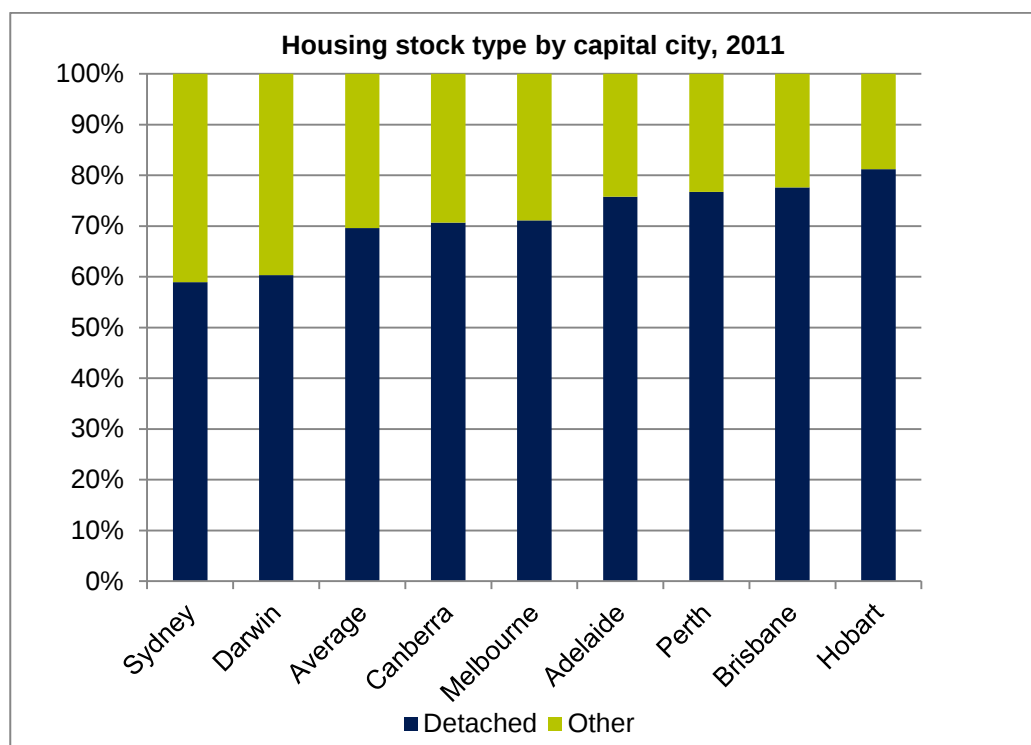
Council service	Share of rates bill (%)	Category of ratepayer					
		Residential ratepayers				Business ratepayers	
		Comparing an apartment to a house		Comparing two houses or two apartments		Comparing a number of small shops to a shopping centre	
		Better valuation method	Strength?	Better valuation method	Strength?	Better valuation method	Strength?
Streets and footpaths	27.5	CIV	Weak	CIV	Weak	Neither	N/A
Roads and bridges	18.5	CIV	Weak	CIV	Strong	CIV	Moderate
Footpaths and streetlights	5.7	CIV	Moderate	CIV	Weak	CIV	Weak
Street sweeping	3.3	CIV	Moderate	UV	Weak	UV	Weak
Facilities	29.3	CIV	Weak	CIV	Strong		
Parks and fields	15.5	CIV	Weak	CIV	Strong		
Libraries	7.5	CIV	Weak	CIV	Strong		
Pools	3.0	CIV	Weak	CIV	Weak		
Other	3.2	CIV	Moderate	CIV	Strong		
Other services	10.7	CIV	Strong	CIV	Strong		
Community	7.3	CIV	Strong	CIV	Strong		
Environment	3.5	CIV	Strong	CIV	Strong		
Governance and admin	32.5						

Source: IPART analysis, OLG (using council financial statements).

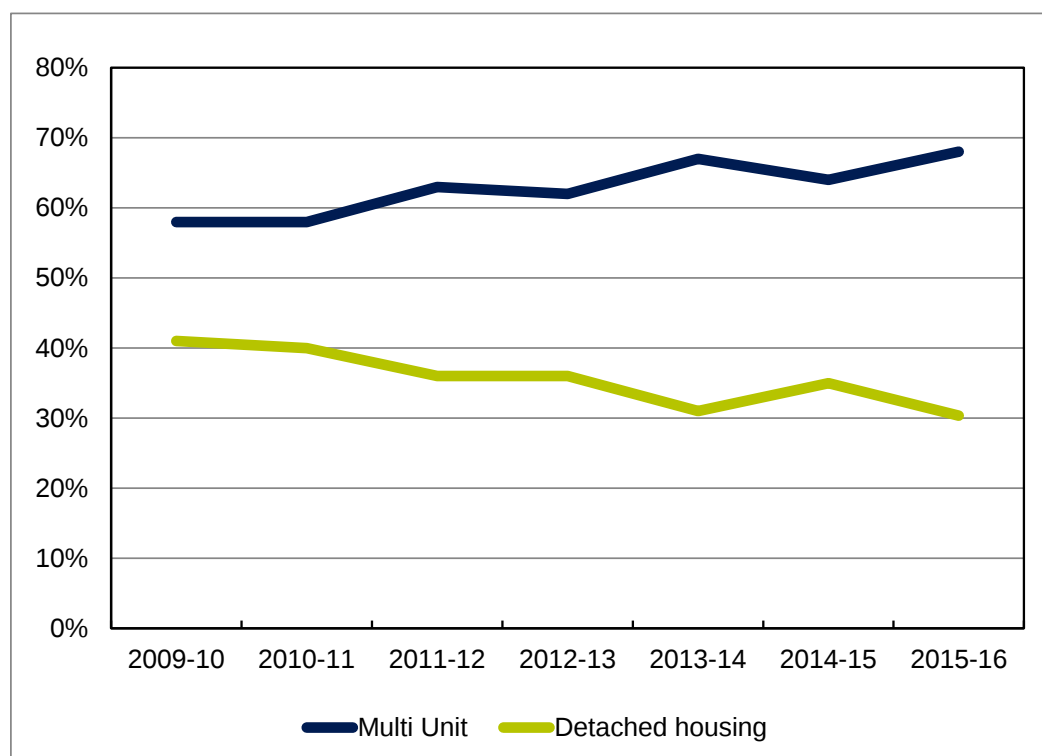
C Housing composition in Sydney

Figure C.1 shows Sydney has the highest proportion of multi-unit dwellings of Australia's capital cities at 40%, compared with 20% to 30% in other capital cities, and 30% Australia wide.

Figure C.1 Dwelling type percentages by capital city



Data source: ABS, 2011 Census of Population and Housing.

Figure C.2 Dwelling approvals by type in Sydney

Data source: Department of Planning & Environment, Annual Report 2014-15; ABS, Building Approvals, Australia, June 2016, Cat. No. 8731.0.

The proportion of apartments in Sydney is rising over time. Figure C.2 shows:

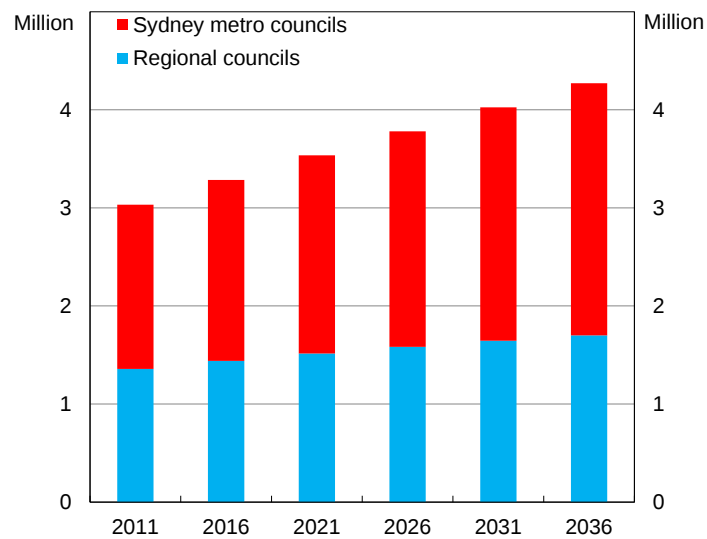
- ▼ In 2009-10, detached housing was 41% of total Sydney approvals and multi-unit dwellings comprised 58%.
- ▼ By 2015-16, detached housing was just 30% of approvals with multi-unit dwellings comprising 68%.²⁶⁰

Consequently, the appropriate treatment of multi-unit dwellings in council rate bases will be an increasingly important issue for NSW, and Sydney in particular, because the proportion of apartments is rising over time.

Over the next 20 years, an additional 1 million dwellings are forecast to be built in NSW – a 30% increase (Figure C.3). Councils will need to meet this additional demand for services and whilst ensuring they remain financially sustainable.

²⁶⁰ Department of Planning & Environment Annual Report 2014-15, p 30. Multi-unit dwellings include apartments, villas, townhouses, terraces and semi-detached homes.

Figure C.3 NSW housing growth forecasts



Data source: Department of Planning and Environment, *2016 NSW population and household projections*.

D Valuation method chosen in other jurisdictions

A comparison of the valuation methods used in other Australian states and internationally reveals two key patterns:

- ▼ Councils overwhelmingly favour a valuation method based on market value in Australian states where choice is provided.
- ▼ There has been an international trend towards rating on a CIV basis.

In general, two types of property valuation methodologies are used in other jurisdictions:

1. UV type approaches based on the value of land.
2. Market value type approaches, which are based on CIV or Annual Rental Value (ARV).

The ARV approach, which values property based on its rental value, is conceptually similar to a CIV approach.²⁶¹

A summary of valuation methods in Australian states is contained in Table D.2.

In Victoria, South Australia and Tasmania, councils can choose between UV, CIV and ARV. As shown in Figure D.1, **councils in these states overwhelmingly favour a valuation method based on market value.**

- ▼ In Victoria, of 79 councils, 73 currently use CIV and 6 use ARV.
- ▼ In South Australia, 60 out of 68 councils use CIV.
- ▼ In Tasmania, 24 out of 29 councils use ARV, and the remaining 5 use CIV.

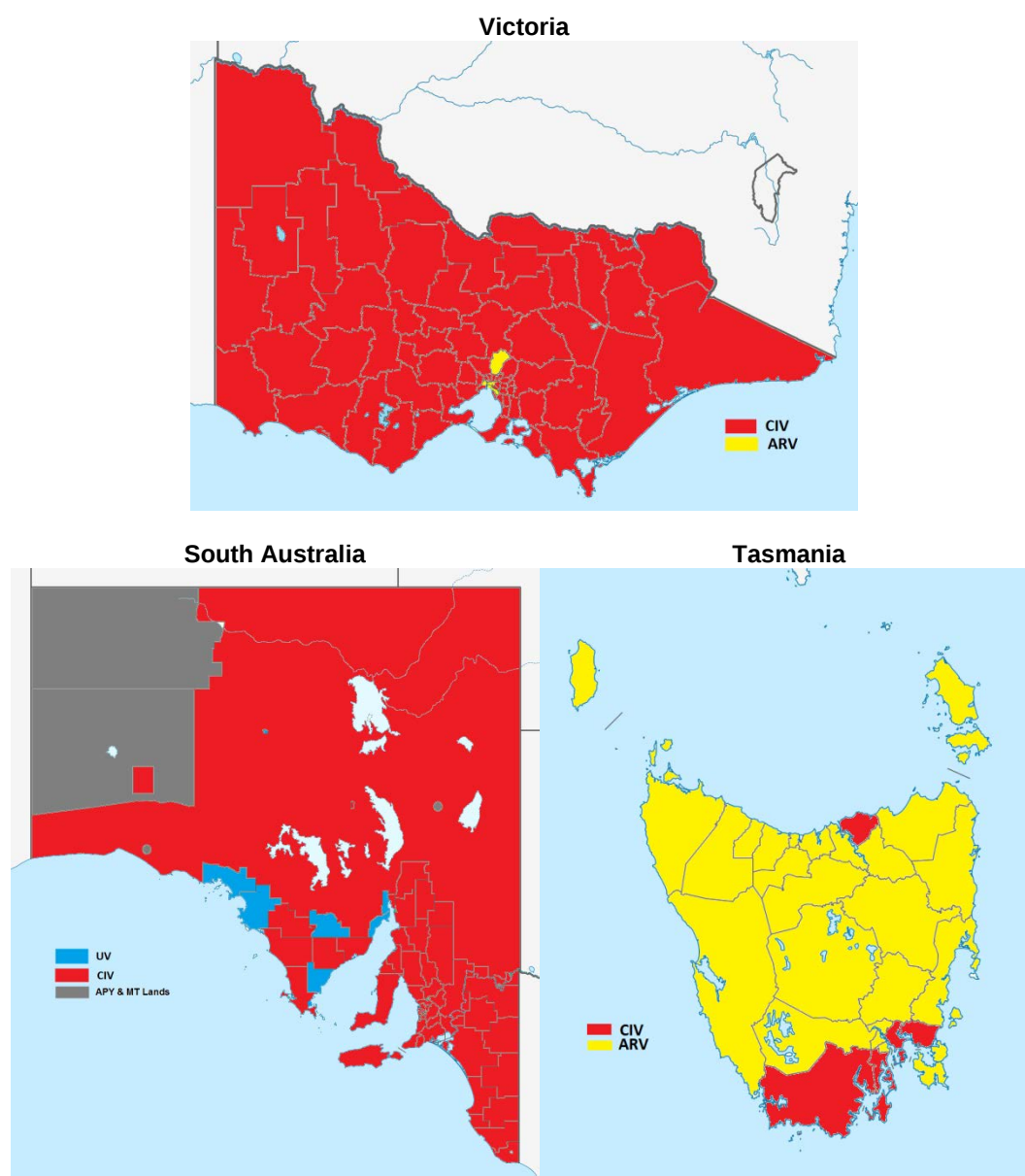
²⁶¹ We have not recommended ARV as an additional rating option for NSW as:

- CIV is sufficient to overcome potential weaknesses with a UV approach
- stakeholders did not want ARV as an additional option to CIV, and
- research has found that a CIV approach is generally superior to ARV-based approaches.

The *Tasmania Valuation and Local Government Rating Review Final Report* (April 2013) found that there was not a strong case to continue to use ARV. In particular, it assessed that an ARV approach was not as simple to understand, more costly to implement and more volatile than a CIV method (p 91).

In Queensland and Western Australia, councils are not provided choice over the valuation method. However, other tools have been chosen to address the rating of apartments. In Western Australia, councils must use the ARV method in urban areas, and the UV method in rural areas. In Queensland, UV is mandated for all councils, but councils have the flexibility to create different subcategories for apartments and houses to reflect the use of council services, which would otherwise be accounted for by using a CIV rating structure.

Figure D.1 Valuation methods adopted in states where choice is offered



Data sources: IPART analysis; Victorian Department of Transport, Planning and Local Infrastructure, *Valuation best practice*, 2016.

Internationally, a market value type approach is the most common form of valuation method used to levy property taxes (Table D.1). Among countries with taxes based on the value of the property, around 85% of countries use market value, while 15% choose UV. An analysis of 125 countries suggests that only 5 – Saudi Arabia, Taiwan, Papua New Guinea, Jamaica and Fiji – use UV as the sole basis of valuing land for tax purposes.

Table D.1 International property-based taxes and valuation method^a

Region	Number of countries	Method			
		UV	CIV	ARV	Other ^b
North America	3	0	3	0	0
Western Europe	17	0	12	7	0
Oceania	7	6	2	4	0
Asia	24	2	8	11	11
Eastern Europe	20	1	6	0	15
South America	16	2	15	1	0
Caribbean	13	4	6	8	5
Africa	25	1	11	7	21
Total	125	16	63	38	52

^a The sum of each column is greater than the total number of countries as some jurisdictions allow choice, or use multiple methods to tax property.

^b Other methods include property taxes that are not based on the value of the property.

Sources: IPART analysis;

<http://www.ipti.org/wp-content/uploads/2015/04/IPTI-Xtracts-Belgium-May-2015.pdf>

<http://www.ipti.org/wp-content/uploads/2015/09/IPTI-Xtracts-Finland-March-2016.pdf>

<http://www.skra.is/english/property-valuation/>

<https://www.nordisketax.net/main.asp?url=files/nor/eng/032.asp>

McCluskey, W. and M. Bell. *Rental Value versus Capital Value: Alternative Bases for the Property Tax*. International Center for Public Policy, Andrew Young School of Policy Studies, Georgia State University, 2008 p 8.

Academic literature has concluded there has been an international trend “to move away from land value based systems to the more popular capital improved value”.²⁶²

- ▼ In South Africa, in the 1990s, the use of CIV and UV was “rather evenly spread amongst municipalities”.²⁶³ However, a CIV method was mandated as the sole basis for property taxes in 2004.²⁶⁴

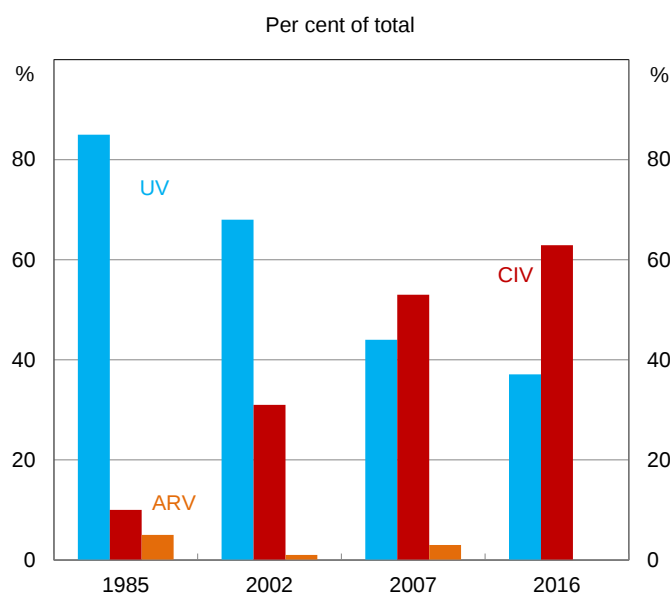
²⁶² McCluskey, W, L Cheng, and P Davis, *Land Value Taxation: An International Overview*, American Journal of Economics and Sociology 56.2007, 2007, pp 207-214.

²⁶³ Ibid.

²⁶⁴ Local Government Municipal Property Rates Act 2004, Section 46, at http://www.saflii.org/za/legis/consol_act/lgmpra2004454/, accessed 16 August 2016.

- ▼ In New Zealand, where councils are permitted to choose between UV, CIV and ARV, there has been a strong trend towards CIV. As shown in Figure D.2, in 1985, around 85% of councils adopted a UV method for rates. However, by 2007, the majority of councils had moved to a CIV method for rates, with over 60% of councils currently using CIV for levying rates.
- ▼ Most recently, in 2013 Ireland adopted a property tax based on CIV.²⁶⁵

Figure D.2 Valuation method chosen by councils in New Zealand



Data sources: McCluskey, W, A Grimes and J Timmins, *Property Taxation in New Zealand*, Motu Economic & Public Policy Research Trust, New Zealand, 2002, p 3; New Zealand Local Government Rates Inquiry Panel, *Funding Local Government*, August 2007, p 46; Department of Internal Affairs New Zealand.

²⁶⁵ Irish Tax and Customs, Local Property Tax (<http://www.revenue.ie/en/tax/lpt/>, accessed 16 August 2016).

Table D.2 Council rating methodology across Australia

	NSW	VIC	QLD	SA	WA	TAS	NT
Valuation method	UV	Councils may choose from: • UV • CIV • ARV 73 out of 79 Councils use CIV, the rest use ARV	UV	Councils may choose from: • UV • CIV • ARV 60 out of 68 councils use CIV	• Rural land – UV • Non-rural land – ARV • UV mandatory for mining and petroleum interests	Councils may choose from: • UV • CIV • ARV 24 out of 29 Councils use ARV, the remaining 5 use CIV	Councils may choose from: • UV • CIV • ARV All councils use UV
Base amount	Option for base amounts by land use category, up to 50% of general revenue for that category	Option for 'municipal charge' up to 20% of sum total of general revenue and revenue from municipal charges	No option for base amount	Option for base amount, up to 50% of general rates	No option for base amount	Option for base amount of up to 50% of general rates	Multiple base amounts for different purposes according to land use/location categories
Minimum amount or rate	Option for minimum amount up to a legislated ceiling for ordinary and special rates	No option for minimum amount	Option for differential minimum amount by land use categories	Option for minimum amount application for up to 35% of properties. It cannot be used in addition to a base amount	Option for differential minimum amounts for up to 50% of premises, unless capped at \$200	Option for minimum amount, but it cannot be used on top of a base amount	Option for different minimum amounts according to land use/location categories
Rate categories	Option for differential rates across four land use categories and multiple subcategories	Option for differential rates across multiple land use categories	Option for differential rates across multiple land use categories	Option for differential rates across nine land use categories, with option for specified land location categories	Option for differential rates across multiple land use categories	Option for differential rates across eight land use categories; no restriction on land location categories	Option for differential minimum amounts in addition to fixed charge

Notes: UV denotes Unimproved Value, CIV denotes Capital Improved Value, ARV denotes Annual Rental Value.

Sources: IPART analysis, *Local Government Act 1993* (NSW), *Local Government Regulation 2005* (NSW), *Local Government Act 1989* (Vic), *Local Government Act 2009* (Qld), *Local Government Regulation 2012* (Qld), *Land Valuation Act 2010* (Qld), *Local Government Act 1999* (SA), *Local Government (General) Regulation 2013* (SA), *Local Government Act 1995* (WA), *Local Government (Financial Management) Regulation 1996* (WA), *Local Government Act 1993* (Tas), *Local Government Act 2008* (NT).

E Alternative valuation methods to CIV

This appendix outlines the arguments for and against alternatives to our core recommendation to mandate CIV for metropolitan councils and provide choice between CIV and UV for non-metropolitan councils.

Alternatives include giving metropolitan councils the choice of CIV or UV, creating a residential subcategory for strata titled properties, or making no change.

Giving metropolitan councils choice

The main benefit of giving choice to both metropolitan and regional councils is that may create more consistency – or at least comparability – in rating between metropolitan and regional council areas.

However, it may create inconsistency and confusion in metropolitan areas if neighbouring councils adopt different valuation methods. As discussed in Chapters 3 and 4 the welfare gains from adopting a CIV approach are large in built up areas with significant capital investment. Hence, we have mandated CIV in metropolitan NSW.

Residential subcategory for strata

To resolve the rating of apartments issue, the Panel also suggested the residential land use category could be split into subcategories for detached housing (non-strata titled property) and another for multi-unit dwellings (strata titled property). Apartments could be rated on a CIV basis, as recommended by the Panel, or UV, as recommended by the NSW Valuer General.²⁶⁶

The main advantage of a residential subcategory for strata apartments is that it is a lower-effort solution to better balance the **average** rates paid by apartments and houses.

However, the disadvantages with this approach would outweigh the benefits regardless of whether apartments are rated on a UV or CIV basis.

²⁶⁶ Office of the Valuer General, submission to IPART Issues Paper, May 2016, pp 9-10.

If apartments are rated on a CIV method, and houses on a UV method:

- ▼ It is difficult to determine the relative rates between houses and apartments because they face different tax bases. What should be the ad valorem rates for a house with a UV of \$500,000 and an apartment with a CIV of \$500,000? In practice, there is unlikely to be a clear answer, and councils might choose arbitrary ratios between houses and apartments, which could increase inefficiency and reduce horizontal equity and transparency.
- ▼ Collecting CIV only for apartments would not necessarily be more cost effective. If CIV is collected for apartments only, data would need to be collected for around 1 million properties, with potentially little benefit outside of council rating. On the other hand, if CIV is collected for all properties, the benefits accrue more widely, and once apportioned would offset the costs to councils (see Appendix G).

Rating both houses and apartments on a UV basis and creating a separate subcategory for apartments will create a disparity in rates between low rise and high rise apartments within a council area. That is, a 2-bedroom apartment within a 5-storey apartment block will, on average, pay more rates than an otherwise identical 2-bedroom apartment within a 10-storey apartment block occupying the same land value.²⁶⁷

To resolve this disparity, in practice, a number of subcategories would need to be created according to the number of units, or number of floors, in a strata title. However, this is contrary to the tax principle of simplicity and is likely lead to inefficient outcomes. In Queensland, where councils are permitted to define residential subcategories for apartments, in 2015-16:

- ▼ one council adopted 253 rating categories, including 64 separate subcategories for strata apartments with 2-65 units, while
- ▼ a number of councils adopted over 100 rating subcategories.

Regardless of whether strata units are rated on a UV or CIV basis, a strata subcategory creates an arbitrary rating burden between apartments and houses, which is contrary to the horizontal and vertical equity principles, and rating on this basis is also unlikely to reflect the benefits received from council services.

Creating a separate strata sub category does not resolve any of the issues discussed in Chapter 4 on growth outside the peg. As discussed in Chapter 4 and in Appendix F, there are large welfare gains to NSW from growing rates over time based on the change in CIV, and allocating the rating burden between current and new ratepayers based on CIV.

²⁶⁷ For further details, see V. Mangioni, submission to IPART Issues Paper, May 2016, p 4.

No change

A small percentage of stakeholders recommended the current UV method should be retained, with little or no change.

However, we do not recommend this approach, as the current issues in the rating system warrant change for a significant, and increasing, number of council areas.

Other methods

Almost all stakeholders recommended a valuation method based on CIV, UV, or a mixture of the two. Only a small number of stakeholders recommended alternative methods for charging rates. This is consistent with the findings of the Henry Tax Review and the Productivity Commission Review which both find that taxes based on property value are a sound tax base for local government.²⁶⁸

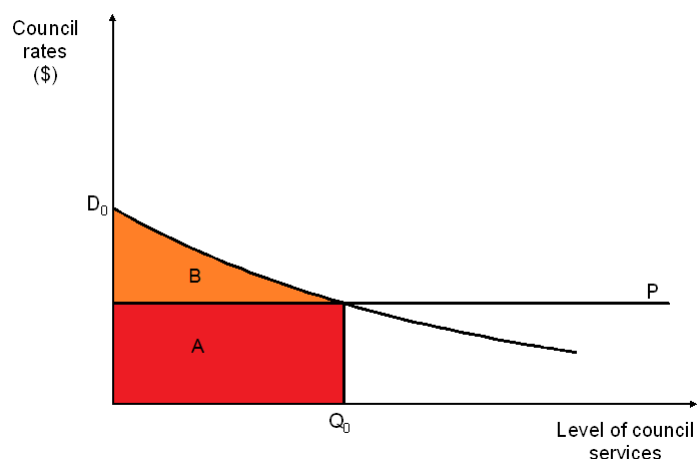
²⁶⁸ Henry Tax Review, p 692.

F Welfare benefits from basing revenue growth on CIV

This appendix provides context for The CIE results on the welfare gains to the community of allowing rates revenue to increase in proportion to the increase in Capital Improved Value from new investment.

As outlined in Section 2.3.1, the total demand for council services (eg, roads, parks, libraries, etc) is the sum of each individual's demand for these services.²⁶⁹ This is shown by the line D_0 in Figure F.1. The price of supplying council services is represented by the horizontal line P . The services provided by council is Q_0 , and total rates income from ratepayers is area A. The total benefits that ratepayers receive from council services is the sum of areas A and B, at a cost of A, so net benefit is area B.

Figure F.1 Current demand for council services



²⁶⁹ This assumes that council services are public goods. With public goods, each individual's demand curve is vertically summed together to get society's demand or "willingness to pay" for the public good.

Growing rates in proportion to the increase in CIV

Communities grow over time which results in an increase in the demand for council services.

Figure F.2 shows the increase in demand (D_{CIV}) for council services based on the increase in the CIV of properties over time. We have estimated over the next 10 years the community will grow by 14%. Using our change in CIV formula, the rate base would grow by 9% with this growth. This is shown by the increase in council services from Q_0 to Q_{CIV} , with future ratepayers paying Area C and D or \$2.2 billion extra in rates over the 10 years.

Our proposed approach is equitable and efficient because future ratepayers pay for the increase in council costs caused by their demand for council services. Figure F.3 highlights that current ratepayers would be better off with growth under our recommended formula. This is because the level of council services increases, and the price paid by these ratepayers is the same.

By contrast, using a UV base, with 14% total growth in the community, the total rate base would only increase by 2%, or \$400 million over the 10 years (Area C in the Figure F.2). This means either:

- ▼ there is a underprovision of public goods (Q_{UV} is provided, whereas Q_{CIV} is a more efficient level), causing a welfare loss of Area E. The CIE estimate that the net welfare gain for society (from providing Q_{CIV} of public goods) is between \$63 million and \$822 million,²⁷⁰ or
- ▼ to fund the cost of meeting the increased demand for council services from future ratepayers (area A), current ratepayers would have to pay higher rates and taxes (a \$1.8 billion cross subsidy, shown by Area F in Figure F.3). The CIE estimated the use of state taxes to reach the efficient level of supply of public goods would cause a welfare loss of between \$333 million and \$1.3 billion.²⁷¹

In practice, the result is likely to be somewhere between the two above outcomes; hence the use of both methods by CIE to estimate potential welfare gains to society from using our CIV formula.

²⁷⁰ The CIE, *The costs and benefits of changing local council rate setting*, December 2016, p 31.

²⁷¹ The CIE, *The costs and benefits of changing local council rate setting*, December 2016, p 30.

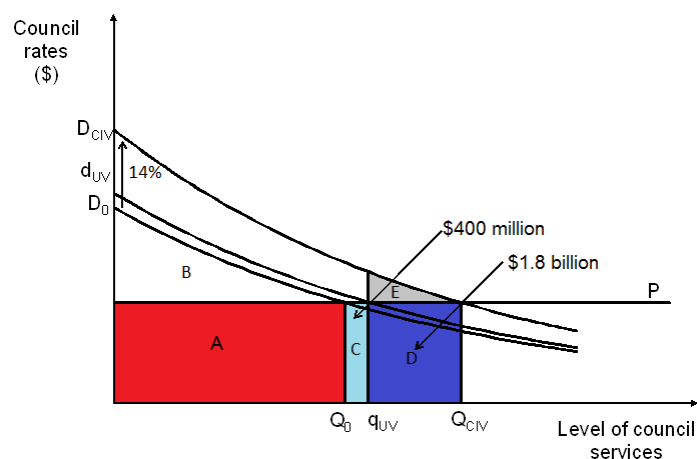
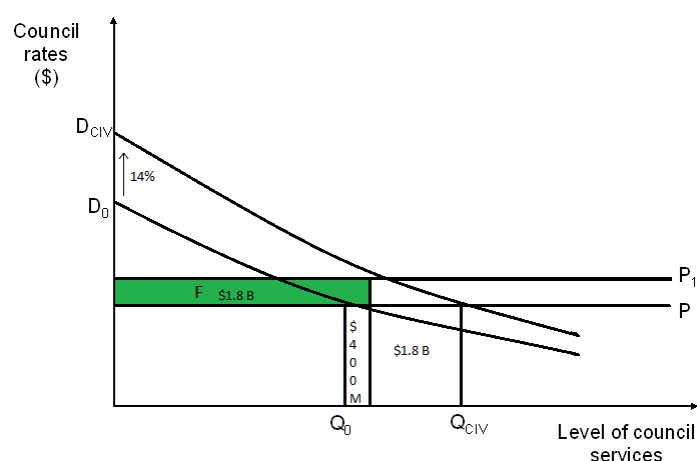
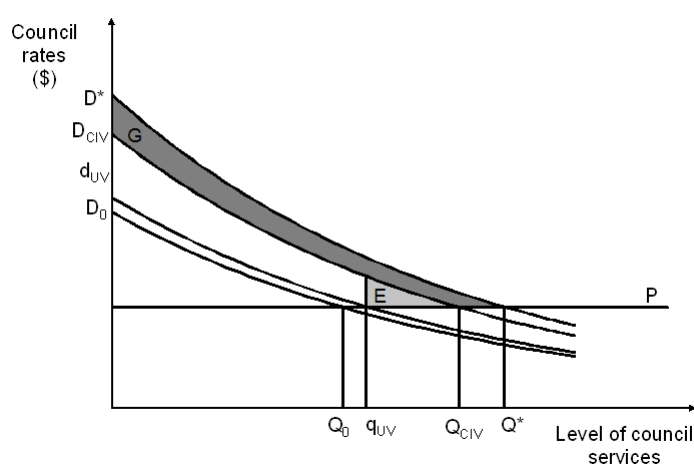
Figure F.2 Initial welfare gains under CIV**Figure F.3 Current ratepayers cross subsidise future ratepayers under UV**

Figure F.3 importantly also shows the current rating system motivates councils and the community to restrict growth and urban development – because they will be better off with less growth. Future ratepayers do not pay their share of costs, so current ratepayers are required to cross subsidise growth (area F in Figure F.3). Restricting growth can have large welfare losses, which CIE have also modelled.

CIE have previously concluded council restrictions on development cost NSW between \$1 and \$2 billion per year. They suggest our new CIV formula would motivate councils and the community to not be as restrictive, as they would now be better off with growth.

CIE estimate if current growth restrictions are reduced by between 5% and 10%, the NSW economy will gain between \$450 million and \$1.7 billion over 15 years. This is shown by the gain of Area G in Figure F.4, from local communities growing at an improved rate, D^* , under our proposed reforms.

Figure F.4 Total welfare gain using CIV



G Benefits and cost of collecting CIV information

Cost of collecting CIV is likely to be small if phased over several years

A key theme from submissions was that stakeholders were concerned about the cost of implementing CIV to rate property. However, our analysis suggests that any costs are small and can be contained by:

- ▼ Phasing the introduction of CIV over a number of years as individual ‘benchmark’ properties are valued. This will greatly reduce costs because for most properties the current valuation process already involves collecting information on the added value of improvements.
- ▼ Allowing the process for creating a database to store CIV data to be conducted through a competitive tender process.
- ▼ Once established, the cost of maintaining CIV alongside UV should not be significant. In addition, our recommendation to improve competition in providing valuation services puts downward pressure on these costs.

The benefits of CIV are significant

The benefits to NSW of collecting CIV are significant and accrue to numerous sectors of the economy. In discussions, the NSW Valuer General agreed that the benefits to NSW of collecting CIV information could be significant.²⁷²

CIV data could be used to generate additional revenue, as is the case in other states (see Box G.1). Once the benefits of CIV are apportioned fairly and efficiently, the total cost to councils for valuation services could fall. This could be achieved by ensuring any costs of collecting CIV data are fairly apportioned amongst the beneficiaries.

²⁷² Meeting with NSW Valuer General, 2 August 2016.

Box G.1 Benefits of CIV

The collection of CIV data requires information on property attributes (eg, land size, number of bedrooms, etc). This information will provide significant benefits to the community, Government and financial sectors.

Additional use of property attribute information by the public and private sector could greatly offset the cost of providing valuation services to existing consumers of the data.

Public sector benefits

A major public sector benefit of CIV data is it can be used to better tailor future developments to the needs of local communities. Information on property attributes can be used to more accurately forecast dwelling requirements.

In consultation, the Department of Planning and Environment (DPE) noted that it forecasts future dwelling requirements at the local community level by comparing estimates of future housing demand to estimates of current housing supply.^a

Better planning if CIV data is available

DPE's current estimates of housing supply – which use a number of public and private sector data sources – are incomplete in two dimensions. First, a significant proportion of the capital stock is often excluded in the data, including secondary dwellings (ie, granny flats) and a range of residences that are not houses or apartments (eg, seniors aged care). Second, the information has limitations in determining the mix of properties in a community – ie, the size and characteristics of apartments and houses – and hence whether these properties are on average under- or over-utilised by residents in the community.

The information on property attributes would increase the accuracy of these forecasts. In particular, it could be used to determine whether current – and future – development is appropriate to the demographic structure within a community.

This information would be important to efficiently and effectively implement the Plan for Growing Sydney and urban renewal.

Discussions with DPE also noted that the spillover benefits could extend to a range of other NSW Government departments.

Better tax data

The Office of State Revenue may also derive additional benefit from the information on CIV. This information could provide a meaningful cross-check for “off-market” property sales in the assessment of stamp duties. Consultation with experts in valuation and taxation noted that CIV would also be useful for the Australian Tax Office in auditing the amount of money spent on property in the assessment of capital gains tax.^b

Private sector benefits

Additional information on property attributes in NSW has a range of potential uses across the private sector, including for use in valuation models in the Banking, Insurance and Self-Managed Super Fund sectors. The real estate sector would also benefit from the availability of this information (eg, in its submission APM PriceFinder noted that it would be valuable if this information is available to data brokers).

In Victoria, information on property – excluding actual valuations – is available for purchase by the private sector through the Victorian Government's Property Sales and Valuations (PSV) database.

Additional benefits to councils and government

A further benefit of CIV information to councils is that it should be used to calculate growth in rates outside the peg from new development and rezoning in a manner that better approximates the drivers of councils' costs over time (see Chapter 4 for further details). This reform is likely to significantly reduce the number of SV applications councils need to make and the regulatory costs of rate pegging.

As discussed in Chapter 10, CIV is also a more efficient and equitable base to levy the ESPL, compared to UV.

^a Meeting with DPE, 10 June 2016.

^b Meeting with Dr Vincent Mangioni, 12 July 2016.

Collecting information on CIV

The data collection process for CIV should begin as soon as possible, so that new councils are able to use the new system at the conclusion of the rate path freeze. Council areas that are not subject to a merger would be free to choose a CIV approach once the data has been collected.

In its submission, the Valuer General noted that collecting capital improved values requires “investment to source, collate and maintain built attribute data for all properties in the state”.²⁷³ This involves two main tasks:

1. developing a database to store and maintain attribute data, and
2. populating the database with the relevant information.

On the first task, research has identified that there are a number of firms – both operating in Australia and internationally – who have wide-ranging experience in building valuation databases for both government and banking sectors.

²⁷³ Office of the Valuer General, submission to IPART Issues Paper, May 2016, p 7.

Additionally, any new system could include inbuilt auditing tools that would reduce the costs of ensuring valuation data quality, and inbuilt integration with other data sources. This suggests that the development of new systems should be conducted through a competitive tender process.

To ensure the costs of populating a CIV database are minimised, the collection of CIV information could be phased in over a period of time, such as three years.

The Valuer General's submission outlined a number of approaches to collect the data, including:

- ▼ adapting current processes, which include analysing property sales, data verification and supplementary valuations
- ▼ self-assessment or self-reporting, where the owner submits information on their property
- ▼ purchasing data from the private sector, and
- ▼ other techniques, including the use of aerial photography and physical inspection of properties.²⁷⁴

The Valuer General noted some potential limitations with using the gradual phase-in approach, mainly around the time taken to build up sufficient CIV data. Our finding is that the combination of current processes identified could be used to implement CIV data over a reasonable time period in a cost effective manner. The Valuer General could also consider integrating the other approaches identified if these are able to reduce the cost of implementing CIV and/or decrease the time to establish a database.

CIV data is already collected as part of the current valuation process

Land value (UV) is determined by analysing recent property sales. This process involves collecting the information and attributes required to calculate both market value (CIV) and land value (UV) (see Box G.2).

Each year at least 150,000 property sales occur. Capital improved values could be calculated easily for these properties at little cost, creating a much richer data set over time.

²⁷⁴ NSW Valuer General, Submission to IPART Draft Report, p 13.

Box G.2 CIV information is already collected

Each year, properties are chosen as 'benchmark' properties. Movements in the land value for these properties are then applied to other properties. The valuation process for determining the land value of benchmark properties involves:

1. obtaining the market value of the properties in the local area based on recent sales
2. estimating the added value of improvements to these properties, and
3. calculating the unimproved value by subtracting (2) from (1) for these properties, and then applying these values to revalue the benchmark property.

Essentially, CIV is already collected with steps 1 and 2, and UV is derived by step 3. Hence CIV could simply be collected in NSW over a period with little increase in total costs for the system overall.

Source: For more details on the process, see Mangioni, V, *Land Tax in Australia*, 2006, pp 22-24.

In addition, a verification process for property values was introduced following a review by the NSW Ombudsman in 2005. The NSW Valuer General identified that through this process, the values for the majority of the state are verified over a 6-year period, and suggested that improvement data could be collected when verifying a property's value.²⁷⁵

The Valuer General also identified that approximately 50,000 supplementary valuations are currently completed each year across NSW.²⁷⁶ These supplementary valuations require a physical inspection of the property. Information to determine CIV could be collected as part of this process.

In addition, the Valuer General noted that around 60,000 DA approvals are lodged each year.²⁷⁷ Information on these properties could be collected from documents lodged as part of successful DA applications to form the CIV database.

Together, this suggests that CIV data could be collected for over 500,000 properties each year by adapting current processes.

Other sources for collecting CIV

One option to collect CIV is a self-assessment process where the property owner is responsible for submitting information on their property. This could be used in conjunction with our suggested approach in the initial phase for gathering CIV data. A self-assessment process has been successfully adopted in Ireland when it introduced a property tax based on CIV in 2013.²⁷⁸

²⁷⁵ NSW Valuer General, Submission to IPART Draft Report, October 2016, p 14.

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ <http://www.revenue.ie/en/tax/lpt/valuation.html>, accessed 8 December 2016.

Stakeholders also identified a number of existing sources to collect CIV

In submissions, a number of stakeholders identified that much of the property attribute information exists to calculate CIV (eg, in council DA applications, water sewage diagrams, and property sales databases).²⁷⁹

The Valuer General noted this information is not held in a standardised form and may involve substantial manual effort in the valuation process.²⁸⁰ Our suggested approach, to gradually phase in the collection of CIV using the existing valuation processes would ensure the costs of CIV are contained and standards of valuation are met.

The cost of updating CIV alongside UV is not significant

Our analysis suggests that the cost of maintaining CIV and UV data is not significant in total.

- ▼ The same information is used to calculate capital improved and unimproved land values for the vast majority of properties.
- ▼ The costs of valuation services in states that maintain multiple valuation methods does not appear to be systematically higher (see Box G.3). In addition, our recommendation to introduce increased competition for valuation services could reduce costs of providing valuation services over time.

The Valuer General noted there could be an increase in the number of objections if CIV is introduced, as the “rate of objection is substantially higher in New Zealand than in NSW, with around half made on the basis that the valuation is too low.”²⁸¹ However, a process could be adopted where the Valuer General has the discretion to automatically accept non-material objections, where the dispute is about the valuation being too low. This could ensure that these objections do not increase the cost of the valuation system, whilst allowing other ratepayers to benefit.

²⁷⁹ For example, Thomson Reuters, p 2, Hometrack Australia, p 2, Sutherland Shire Council, p 2, submissions to IPART Issues Paper, May 2016. The Lake Macquarie Ratepayers Action Group noted that historical sales prices could be used to help calculate CIV (Lake Macquarie Ratepayers Action Group submission to Draft Report, 9 October 2016, pp 3–4).

²⁸⁰ NSW Valuer General, submission to IPART Draft Report, 14 October 2016, p 7.

²⁸¹ NSW Valuer General, submission to IPART Draft Report, 14 October 2016, p 15.

Box G.3 The cost of providing valuation services in other States

Table G.1 compares the cost of valuation services in NSW and Victoria, comparing the costs in Albury City Council and the City of Wodonga Council. The City of Wodonga has directly contracted a private sector valuer (LG Valuation Services) to provide valuation data to the council, while Albury City Council uses the service provided by the NSW Valuer General.

Table G.1 shows the costs of valuation in the Victorian council are over 40% lower per assessment, despite the council receiving three valuation methods from the valuation contractor. This suggests that there could be substantial benefits in allowing councils to directly purchase valuations from the market.

Table G.1 Cost of valuations in NSW and Victoria

	Council area	
	Albury City Council	City of Wodonga Council
State	NSW	Victoria
Valuation methods provided	UV only	UV, CIV and ARV
Number of assessments	23,086	19,150
Revaluation cycle frequency	3-years	2-years
Total estimated cost of valuations over cycle	\$1,222,368	\$257,599
Net cost to council over cycle	\$415,605	\$128,800
Cost per assessment over valuation cycle	\$18.00	\$6.73
Cost per assessment per year	\$6.00	\$3.36

Sources: Albury City Council; City of Wodonga Council; Department of Environmental, Land, Water & Planning (Victoria), *Who's who in Valuation Best Practice Guide 2016*.

H Reports considered by IPART

H.1 Independent Local Government Review Panel Final Report (Panel Report)

The NSW Government in April 2012 appointed the Independent Local Government Review Panel to review the NSW Local Government sector, including a review of the local government rating system. The Panel Report contained a number of key recommendations, which are summarised in Box H.1 below.

Box H.1 Independent Local Government Review Panel – key reform recommendations relating to the rating system

- ▼ Set local rates for apartments and other multi-unit dwellings more equitably and efficiently, in order to raise more revenue. Councils could be given the option of using Capital Improved Value (CIV) or the market value of the property to levy residential rates (p 40).
- ▼ Reduce or remove excessive rating exemptions and concessions that are contrary to sound fiscal policy and jeopardise councils' long-term sustainability (p 39).
- ▼ Some concessions for disadvantaged ratepayers are justified, but social welfare should not be a local government responsibility. Arrangements for pensioner concessions should be reviewed (p 40).
- ▼ Streamline the Special Variation process, or provide earned autonomy from rate-pegging for some councils, or replace rate-pegging with a new system of 'rate benchmarking' (p 42).
- ▼ Reduce the number of councils, particularly in Sydney, to create higher capacity councils that can better partner with the State Government in developing Sydney (p 72).
- ▼ The government consider giving larger councils in inner Sydney expanded responsibilities. These councils could use increased rates revenue to contribute more to sub-regional infrastructure and transport projects, freeing up state resources to be spent elsewhere (p 102).
- ▼ Commission IPART to undertake a review of the rating system (p 55).

Source: Independent Local Government Review Panel, *Revitalising Local Government*, October 2013.

H.1.1 NSW Government response to the Panel

The Government response to the Panel Report's recommendations on the rating system is set out below.

Table H.1 Government response to selected Panel recommendations

Recommendation on a review by IPART	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. ▼ 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.
Position	Supported
Government Response	The Government notes the issues raised by the Panel in relation to the equity of the current rating system. It remains committed however to protecting ratepayers from unfair rate rises and to providing rate concessions for pensioners. The Government will commission IPART to conduct a rating review to reflect these issues.
Recommendations on current rating system	Either replace rate-pegging with a new system of 'rate benchmarking' or streamline current arrangements to remove unwarranted complexity, costs, and constraints to sound financial management.
Position	Supported
Government Response	The Government is committed to a rating system that protects local ratepayers from unfair rate rises. It recognises however the improvements in council strategic planning under IP&R and therefore supports removing unwarranted complexity, costs and constraints from the rate-peg system, where there is evidence that the council has taken steps to reduce unnecessary costs before seeking to impose an increased burden on ratepayers. The OLG will work with IPART to amend the guidelines to develop a streamlined process for <i>Fit for the Future</i> councils wanting to increase rates above the rate peg, and to offset revenue loss through Financial Assistance Grants redistribution.

Source: Office of Local Government, *NSW Government Response: Independent Local Government Review Panel recommendations and Local Government Acts Taskforce recommendations*, September 2014, pp 4-5.

The Government also responded to the Panel's analysis on council mergers by commissioning IPART to conduct an analysis of councils' Fit for the Future (FFTF) proposals. The IPART *Assessment of Council Fit for the Future Proposals* released in October 2015 found 57 councils were fit and 87 councils were not fit. This analysis was used by the Government in its consideration of the council mergers that commenced on 12 May 2016.

H.2 TCorp Report on Financial Sustainability

Following an assessment of 152 NSW councils, the 2013 TCorp report into financial sustainability of NSW councils²⁸² made a number of key findings, including:

- ▼ Operating deficits are unsustainable – only one third of councils in 2012 reported an operating surplus. Over the period 2009 to 2012, the cumulative operating deficit of NSW councils totalled \$1.0 billion.
- ▼ The total infrastructure backlog of NSW councils had reached \$7.2 billion by 2012.
- ▼ Financial sustainability is deteriorating with nearly 50% of councils' financial outlook likely to be rated 'weak' or lower by 2016-17.
- ▼ A large asset maintenance gap exists within the sector with a \$389 million deficit in 2012 alone.
- ▼ Councils need to start consulting their communities about ways to either increase revenue, lower existing service levels and or standards, and pursue efficiency savings.

Fit for the Future council submissions showed improved financial sustainability

IPART assessed FFTF proposals from 144 NSW councils against a number of criteria, including financial criteria, and published its final report, *Assessment of Council Fit for the Future Proposals* in October 2015.

In its FFTF assessments in 2015, IPART only found 27 of 144 councils, or 19%, did not meet the financial criteria because of continuing operating deficits over the next five to 10 years.

In addition, the infrastructure backlog had substantially reduced since the TCorp report. The TCORP backlog of \$7.2 billion in 2012 corresponded to an average backlog ratio of about 13%. By contrast, in their 2015 FFTF proposals councils reported an average backlog ratio of 6.5% in 2014, with councils forecasting this ratio to fall to about 2.5% by 2020.

A major driver for this reduction in the backlog was a re-estimation of depreciation schedules. Councils in FFTF typically used depreciation lives of between 55 to 100 years.

²⁸² NSW Treasury Corporation, *Financial Sustainability of the NSW Local Government Sector, Findings Recommendations and Analysis*, April 2013.

H.3 Integrated Planning and Reporting

The Integrated Planning and Reporting (IP&R) framework²⁸³ requires NSW councils to prepare:

- ▼ a 10-year Community Strategic Plan, which identifies long term priorities
- ▼ a Resourcing Strategy (comprising a Long Term Financial Plan of at least 10 years, an Asset Management Plan and a Workforce Plan)
- ▼ a 4-year Delivery Program, which identifies service and works at a program level that are to be funded, and
- ▼ a 1-year Operational Plan (containing an annual budget).

IP&R enables councils to better achieve community priorities from effective planning, to meet the community's expectations about service levels and funding priorities. IP&R should underpin decisions on the revenue required by each council.

The Special Variation guidelines and IPART's assessment process are based on an expectation councils will have engaged the community in a discussion on the funding required through the IP&R process.

²⁸³ For further information, please see Office of Local Government, *Integrated Planning and Reporting*, at: <https://www.olg.nsw.gov.au/councils/integrated-planning-and-reporting>, accessed 16 August 2016.

I Current rate exemptions in the Local Government Act

Table I.1 What land is currently exempt from all rates?

Land type	Details
Land owned by the Crown	No rates are payable unless the land is held under a lease for private purposes.
National parks and conservation areas	All land within a national park, historic site, nature reserve, state game reserve, karst conservation reserve, land subject to a conservation agreement and land associated with the Nature Conservation Trust of NSW whether or not the land is affected by a lease, licence, occupancy or use.
Water corporation land	Land within a special or controlled area for Sydney Water or Hunter Water, land vested in or owned by Water NSW for installed water supply works, land within a special area for a water supply authority.
Land belonging to a religious body	Land that belongs to a religious body which is used in connection with a church or other building used for public worship, a residence of a minister of religion, a building used for religious teaching or training.
Land belonging to schools	Land which belongs to and is used in connection with a school inclusive of playgrounds, and buildings occupied as a residence by school teachers, caretakers or employees.
Land vested in an Aboriginal Council	Land vested in an Aboriginal Land Council that is not being used for a residential or commercial purpose, and land that is of spiritual or cultural significance that has been declared so by resolution with the approval of the Minister for Aboriginal Affairs.
Rail infrastructure land owned by a public transport authority	Land vested in or owned by a public transport agency and in, on or over which rail infrastructure facilities are installed.
Land used for oyster cultivation	Land that is below the high water mark used for any aquaculture relating to oyster cultivation.

Source: *Local Government Act 1993* (NSW), section 555.

Table I.2 What land is exempt from all rates, other than water supply special rates and sewerage special rates?

Land type	Details
Public places	Includes public reserves, cemeteries and free public libraries where they are vested in the Crown.
Mineral claims	Land that is the subject of a granted mineral claim, held under private lease from the Crown.
Land belonging to public benevolent institutions and public charities	Where the land belongs to and is used for the purposes of the public benevolent institution or charity.
Public hospitals and other health purposes	Land that belongs to a public hospital and land vested in the Minister for Health, the NSW Health Foundation and the local health district.
Land vested in universities	Land vested in a university or a university college used solely for its purposes.
Special listed groups	Land vested in the Crown/trust and used for Sydney Cricket Ground, Zoological Parks Board , Royal Agricultural Society, Museum of Sydney and Museum of Contemporary Art.
Cattle dipping	Land leased to the Crown for cattle dipping.
Land vested in a mines rescue company	Land vested in a mines rescue company and used for the purposed of a mine rescue station.

Source: *Local Government Act 1993* (NSW), section 556.