

## NSW SUBMISSION TO PRODUCTIVITY COMMISSION STUDY OF LOCAL GOVERNMENT REVENUE-RAISING CAPACITY

### Rate pegging

*Q. To what extent does rate pegging limit the ability of local governments to raise council rate revenues?*

A. Increases to NSW councils' general income are limited each year to the percentage approved by the Minister for Local Government. A general variation is determined which applies to all councils. In 2007/08 this percentage was 3.4% above 2006/07. General income does not include water and sewerage special rates, annual charges for waste or domestic waste services.

Councils may apply for a special variation to increase income by more than the general variation. Applications for special variation are assessed according to whether the additional income is necessary to:

- finance a project that has regional significance or a demonstrable regional economic benefit;
- finance new or enhanced local government services or facilities such as infrastructure maintenance or replacement programs and services related to sustainable natural resource management, waste management, environmental protection, pollution control and protection of public health; or
- meet substantial increases in Government contributions or charges, for example: variation of charges by the Valuer General, NSW Fire Levy or Rural Fire Contribution.

In the case of service enhancements or additional infrastructure operating costs, there is an expectation that productivity improvements will be achieved to offset ongoing costs. The proposed initiative is also expected to have clear outcomes that are capable of being measured.

Councils must be able to demonstrate broad community support for the increase.

Over recent years 30 – 40 councils have applied each year. Most are successful.

### Concessions and exemptions

*Q. What are the existing arrangements in each State and Territory regarding the payment of council rates and rate-equivalents by Australian, State and Territory landholders?*

A. The starting point is that all land is considered to be rateable. The NSW *Local Government Act 1993* (LGA) then prescribes what land is exempt from rates in Sections 555, 556, 557 and 558 (at Attachment A). Broadly speaking all Crown land is exempt unless it is under a private lease.

The following State-owned corporations pay rates:

Country Energy  
(Australian Inland Energy Water Infrastructure merged into Country Energy  
1/7/05)  
Delta Electricity  
Energy Australia  
Eraring Energy  
Hunter Water Corporation  
Integral Energy Australia  
Landcom  
Macquarie Generation  
New South Wales Lotteries Corporation  
Newcastle Port Corporation  
Port Kembla Port Corporation  
Rail Infrastructure Corporation  
Rail Corporation New South Wales  
State Water Corporation  
Superannuation Administration Corporation  
Sydney Ferries  
Sydney Ports Corporation  
Sydney Water Corporation  
Transgrid  
Transport Infrastructure Development Corporation  
Waste Recycling and Processing Corporation

If land is exempt from a special rate for a particular service, a council cannot impose a charge for the same service unless the charge is limited to recovering the cost of providing the service to that land.

*Q. Are local governments exempt from taxes and charges by other tiers of government? If so, what are they?*

A. Councils in NSW are exempt from paying NSW Government Land Tax, Income Tax and Stamp Duty.

### **Setting fees and charges**

*Q. What are the regulatory requirements and guidelines applied to local governments for setting fees and charges?*

A. Part 10 of Chapter 15 of the LGA deals with Council Fees. The term “approved fee” is defined in the Dictionary of the Act. Councils must give public notice in their draft management plans of proposed fees.

Income from fees does not form part of a council's annual general income and is not affected by rate-pegging.

### **Developer charges and contributions**

*Q. Are there legislated limits to contributions that can be required or charges that can be collected?*

NSW legislation provides a number of mechanisms for the levying of developer contributions by local governments.

Under s94 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) local governments can only require the payment of developer contributions in accordance with a statutory instrument, a contributions plan, which has been prepared following community consultation. The plan must comply with State Government guidelines and identify the proposed infrastructure, formulas for calculating the contribution for that infrastructure, and the contribution rates for development. Local governments cannot require a greater development contribution as a condition of consent than permitted by the plan.

Alternatively, under s94A of the EP&A Act, if a local government does not wish to prepare a development contributions plan they may require a levy on all new development set at the maximum percentage prescribed by the State Government of the cost of the development proposed by the developer. Generally, that maximum percentage currently prescribed is 1% of the cost of development. In certain regional cities the maximum percentage can be up to 3%.

Finally, it is open to local governments and individual developers to agree to an alternative contribution amount through a voluntary planning agreement under the EP&A Act. This can be in addition to or substitution for contributions authorised under s94 or s94A of the EP&A Act.

*Q. Are there legislated constraints on the use of revenue raised from developer charges?*

Yes. Developer contributions must be used for the purposes for which they are raised in accordance with contribution plans and planning agreements.

### **Fines and other pecuniary penalties**

*Q. What measures are there in place to protect against the possibility that local governments might view fines as a revenue raising instrument more than as an appropriate deterrent?*

A. In NSW local councils do not have the authority to make by-laws or regulations or set fines, penalties and the like. This is a matter reserved for State Government. For more minor offences, the Government sets fixed penalty notice amounts

uniformly across the State. More serious offences are dealt with in court where a higher maximum amount is set under legislation.

In both instances, appeal mechanisms are available where an alleged offender elects to challenge the amount of a fine or penalty imposed. Generally, daily penalties for continuing offences are not provided in NSW legislation.

Local councils detect and prosecute offences under many pieces of State legislation. The Department of Local Government encourages councils to have in place enforcement policies so as to ensure the consistent application of warnings and penalties depending upon the circumstances of breaches.

### **Service levels and pricing**

***Q. What guidelines and requirements are available to assist local governments to determine the appropriate range and standard of services, to measure and allocate their costs, to determine their revenue requirements, and to set rates, and fees and charges, accordingly?***

A. In NSW each council must prepare a Management Plan of its activities for at least three years. The plan must include a statement of the principal activities the council proposes to undertake and the services to be provided. For each principal activity the council must state objectives, performance targets and information on how performance will be assessed. The Management Plan must include a revenue policy that contains details of estimated income and expenditure. This includes details of rates, charges and fees to be levied. The Management Plan is released for public comment for 28 days and council must consider any submissions. Requirements are set out in Chapter 12, Part 2 of the LGA (at Attachment B).

The Department has issued a number of guideline documents to assist councils. These include:

- Council Rating & Revenue Raising Manual - January 2007
- Stormwater Management Services Charge Guidelines and FAQs
- Management Planning for Local Government Guidelines - February 2000
- Local Government Code of Accounting Practice and Financial Reporting (Update 15 June 2007)
- Pricing and Costing Guidelines for Council Businesses - July 1997
- Best-Practice Management of Water Supply and Sewerage Guidelines (Issued by Department of Energy , Utilities & Sustainability)

***Q. Do guidelines properly take into account the allocation of infrastructure costs over the life of long-lived assets such as local roads, libraries and other facilities?***

A. Councils in NSW may only raise charges for services provided or proposed to be provided. These services are limited to water supply, sewerage, drainage, waste management, domestic waste management, and stormwater management. In these cases guidelines have been issued which discuss costing and pricing which recognises the infrastructure costs associated with providing the services.

Other infrastructure such as roads, drainage, footpaths, civic buildings parks, gardens and so on, which are not infrastructure for a specific service provided to properties would be included as part of council's budget process.

The Department currently has a position paper "Asset Management Planning for NSW Local Government" circulating for public comment. This paper is the last of three papers issued by the Department. The other two are "A New Direction for Local Government" issued in October 2006 and "Integrated Planning and Reporting for NSW Local Councils" issued in November 2006. The papers promote the importance of strategic decision making by councils in order to deliver sustainable services to communities.

The recommendations presented in the Asset Management paper have been developed in conjunction with the NSW Infrastructure Task Force. The recommendations are as follows:

1. Strategic long term asset management and financial plans be included as essential components of an integrated planning and reporting framework across NSW local government.
2. Legislative amendments requiring long-term strategic asset management planning be introduced into the Local Government Act 1993.
3. Councils adopt asset management planning systems and practices that are consistent with the National Local Government Financial Sustainability Frameworks, and where applicable and practical, the International Infrastructure Management Manual.
4. A basic (core) approach to asset management planning be the agreed minimum level for all NSW councils.
5. An asset management improvement program be implemented to progressively raise asset management planning to a level appropriate for each council.
6. Legislative amendments requiring ten year financial planning be introduced into the Local Government Act 1993.
7. An industry wide capacity building program including a range of training, tools, templates and guidelines be introduced.

### **Incentive effects of grants and subsidies**

*Q. What grants and subsidies are provided to local government by State and Territory governments? What is the value for each category of grant? Are there any terms and conditions attached to these grants?*

A. The NSW Government does not provide any general revenue assistance to local government. Any funds provided are for specific projects or, more commonly, take the form of joint funding of projects shared between local government and State Government agencies.

The Department of Local Government administers a subsidy scheme for the cost to councils of providing mandatory rate concessions to eligible pensioners. The mandatory concession councils provide per rateable assessment is 50% of general, water and sewerage rates up to a maximum of \$250 for general rates and \$87.50 for both water and sewerage (if the service is provided by the council). The NSW Government meets half the cost of this concession. The estimated cost in 2007/08 is \$76 million.

The NSW Grants Commission distributes the NSW share of Financial Assistance Grants from the Commonwealth.

The below table shows NSW Government transfers to local government. This data was extracted in March 2006.

**Total Payments to Local Government  
(SDC 310)**

	2004-05 actual \$'000s	2005-06 projection \$000's	2006-07 estimate \$000's
<b>Annual Charges</b>			
Rates paid by general government sector	7,719	7,756	7,772
<b>Grants</b>			
Identifiable from the Commonwealth			
Financial Assistance Grants	495,492	518,611	518,611
General	358,153	374,408	374,408
Local Roads Component	137,339	144,203	144,203
Paid by State			
Pensioner rate rebates	73,169	76,000	76,000
Fire fighting equipment - capital	42,010	38,720	50,124
Bush firefighting costs	19,890	19,623	20,800
Traffic and Transport	85,718	93,834	82,049
Country Towns Water Supply and Sewerage program	87,762	57,000	30,000
Companion Animals Fund	2,980	3,600	3,600
Library services	22,073 -	-	-
Local government capital	49,466	44,337	104,392
Other	56,186	110,710	121,192
<b>Total Grants</b>	<b>934,746</b>	<b>962,435</b>	<b>1,006,768</b>
<b>Total Grants From State to Local Govt. Excluding Financial Assistance Grants</b>	<b>439,254</b>	<b>443,824</b>	<b>488,157</b>

## Local Government Act 1993 No 30

## 555 What land is exempt from all rates?

- (1) The following land is exempt from all rates:
- (a) land owned by the Crown, not being land held under a lease for private purposes,
  - (b) land within a national park, historic site, nature reserve, state game reserve or karst conservation reserve (within the meaning of the *National Parks and Wildlife Act 1974*), whether or not the land is affected by a lease, licence, occupancy or use,
  - (b1) subject to subsection (3), land that is the subject of a conservation agreement (within the meaning of the *National Parks and Wildlife Act 1974*),
  - (b2) land that is vested in, owned by, held on trust by or leased by the Nature Conservation Trust of New South Wales constituted by the *Nature Conservation Trust Act 2001*,
  - (c) land that is within a special area or controlled area (within the meaning of the *Water Board (Corporatisation) Act 1994*) for Sydney Water Corporation referred to in that Act and is Crown land or land vested in the Corporation,
  - (c1) land that is within a special area (within the meaning of the *Hunter Water Board (Corporatisation) Act 1991*) for the Hunter Water Corporation and is Crown land or land vested in that company,
  - (c2) land that is vested in or owned by State Water Corporation and in, on or over which water supply works (within the meaning of the *Water Management Act 2000*) are installed,
  - (d) land that is within a special area (as declared by an order under section 302 of the *Water Management Act 2000*) for a water supply authority and is Crown land or land vested in the authority,
  - (e) land that belongs to a religious body and is occupied and used in connection with:
    - (i) a church or other building used or occupied for public worship, or
    - (ii) a building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or
    - (iii) a building used or occupied for the purpose of religious teaching or training, or
    - (iv) a building used or occupied solely as the residence of the official head or the assistant official head (or both) of any religious body in the State or in any diocese within the State,
  - (f) land that belongs to and is occupied and used in connection with a school (being a government school or non-government school within the meaning of the *Education Reform Act 1990* or a school in respect of which a certificate of exemption under section 78 of that Act is in force), including:
    - (i) a playground that belongs to and is used in connection with the school, and
    - (ii) a building occupied as a residence by a teacher, employee or caretaker of the school that belongs to and is used in connection with the school,
  - (g) land that is vested in the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council and is declared under Division 5 of Part 2 of the *Aboriginal Land Rights Act 1983* to be exempt from payment of rates,
  - (g1) land that is vested in or owned by Rail Infrastructure Corporation, Rail Corporation New South Wales or Transport Infrastructure Development Corporation, and in, on or over which rail infrastructure facilities (within the meaning of the *Transport Administration Act 1988*) are installed,
  - (h) land that is below high water mark and is used for any aquaculture (within the meaning of the *Fisheries Management Act 1994*) relating to the cultivation of oysters.
- (2) Land is not rateable under subsection (1) (a) only because the land is leased by the Crown to a caretaker at a nominal rent.
- (3) If land to which subsection (1) (b1) applies comprises part of a single parcel of land

for rating purposes, that part is exempt from all rates. However, rates may be made and levied on the other part of that parcel proportionately.

(4) Land that is a lot in a strata plan registered under the *Strata Schemes (Leasehold Development) Act 1986* is taken, for the purposes of subsection (1) (e), (f), (g) and (g1), to belong to or be vested in the lessee (within the meaning of that Act) of the lot and not the lessor (within the meaning of that Act), unless the lessor is the lessee for the purposes of that Act.

#### **556 What land is exempt from all rates, other than water supply special rates and sewerage special rates?**

(1) The following land is exempt from all rates, other than water supply special rates and sewerage special rates:

- (a) land that is a public place,
- (b) land used for a public reserve and vested in the Crown, a public body or trustees,
- (c) land used for a common and vested in the Crown, a public body or trustees,
- (d) land used for a public cemetery and vested in the Crown, a public body or trustees,
- (e) land used solely for a free public library and vested in the Crown, a public body or trustees,
- (f) land acquired under an environmental planning instrument for the public purpose specified in the instrument and not leased for private purposes,
- (g) land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim granted under Division 4 of Part 9 of the *Mining Act 1992* and that the council has declared is not rateable,
- (h) land that belongs to a public benevolent institution or public charity and is used or occupied by the institution or charity for the purposes of the institution or charity,
- (i) land that belongs to a public hospital,
- (j) land that is vested in the Minister for Health, the Health Administration Corporation or the New South Wales Health Foundation,
- (k) land that is vested in an area health service constituted under the *Health Services Act 1997*,
- (l) land that is vested in a university, or a university college, and is used or occupied by the university or college solely for its purposes,
- (m) land that is vested in the Crown or the Sydney Cricket and Sports Ground Trust and is used or occupied for the purposes of or in accordance with the *Sydney Cricket and Sports Ground Act 1978*,
- (n) land that is vested in the Crown or the Zoological Parks Board and is used or occupied by the Board for its purposes,
- (o) land that:
  - (i) is vested in the mines rescue company, within the meaning of the *Coal Industry Act 2001*, and
  - (ii) is used for the purposes of a mine rescue station controlled by that company,
- (p) land that is managed by the Teacher Housing Authority and on which a house is erected,
- (q) land that is leased to the Crown for the purpose of cattle dipping,
- (r) land that is specified or described in the regulations as being exempt from all rates, other than water supply special rates and sewerage special rates.

(2) Land that consists of a lot in a strata plan registered under the *Strata Schemes (Leasehold Development) Act 1986* is taken, for the purposes of subsection (1) (h)–(o), to belong to or be vested in the lessee (within the meaning of that Act) of the lot and not the lessor (within the meaning of that Act), unless the lessor is the lessee for the purposes of that Act.

#### **557 What land is exempt from water supply special rates and sewerage special rates?**

(1) In addition to the land specified in section 555, water supply special rates may not be levied on land to which the council has resolved not to supply water.

(2) In addition to the land specified in section 555, sewerage special rates may not be levied on land which the council has resolved not to connect to the council's sewers.



**558 What land and bodies may be exempted from water supply special rates and sewerage special rates?**

(1) A council may exempt the following from payment of water supply special rates and sewerage special rates:

- (a) a public reserve,
- (b) a public hospital,
- (c) a public charity,
- (d) land:
  - (i) that is unoccupied, and
  - (ii) that is not supplied with water from a council water pipe and is not connected to a council sewer, and
  - (iii) that the council has determined is unsuitable for the erection of a building because it is liable to flooding or tidal inundation or liable to be affected by a coastal hazard,
- (e) land that, in the opinion of the council, it is impracticable, having regard to the physical features of the land or any unusual cost that may be incurred, to supply with water or connect to the sewer.

(2) A council may exempt from payment of water supply special rates land that is within 225 metres of a gravitation or rising water main and that is not connected to the main.

(3) A council may exempt from payment of sewerage special rates land that for the time being is not rateable in respect of the water supply special rate.

(4) A public hospital that is exempt from payment of water supply special rates is to be supplied with water, and a public charity that is so exempt may be supplied with water, on the following conditions:

- (a) there is to be supplied free of charge:
  - (i) in the case of a public hospital – 300 litres per day (or such greater quantity as the council may determine) for each person resident in the hospital, and
  - (ii) in the case of a public charity – 140 litres per day (or such greater quantity as the council may determine) for each person resident in an institution conducted by the public charity,
- (b) for the purposes of this provision:
  - (i) an inmate is taken to be resident, and
  - (ii) the number of persons resident is the average number of persons resident during the year preceding the period in respect of which charges would be payable, and
  - (iii) the general manager may, at any reasonable time, require the production of the records of the public hospital or public charity to verify the average number,
- (c) the supply is to be through a meter,
- (d) any quantity of water in excess of that which may be supplied free of charge is to be paid for at the charge fixed by the council for excess water.

(5) The council may revoke or alter an exemption.

## Local Government Act 1993 No 30

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### Chapter 13

#### Part 2 Management plans

#### 402 Preparation of draft management plans

During each year, a council must prepare a draft management plan with respect to:

- (a) the council's activities for at least the next 3 years, and
- (b) the council's revenue policy for the next year.

#### 403 Contents of draft management plan with respect to council's work and activities

(1) A draft management plan must contain the following statements with respect to the council's activities for the period to which it relates:

- a statement of the principal activities that the council proposes to conduct
- a statement of the objectives and performance targets for each of its principal activities
- a statement of the means by which the council proposes to achieve these targets
- a statement of the manner in which the council proposes to assess its performance in respect of each of its principal activities
- statements with respect to such other matters (including, but not limited to, social, community and cultural matters) as may be prescribed by the regulations.

(2) The statement of principal activities must include the following particulars:

- capital works projects to be carried out by the council
- services to be provided by the council
- asset replacement programs to be implemented by the council
- sales of assets to be conducted by the council
- activities of a business or commercial nature to be undertaken by the council
- human resource activities (such as training programs) to be undertaken by the council
- activities to properly manage, develop, protect, restore, enhance and conserve the environment in a manner that is consistent with and promotes the principles of ecologically sustainable development
- activities in response to, and to address priorities identified in, the council's current comprehensive report as to the state of the environment and any other relevant reports
- programs to be undertaken by the council to implement its equal employment opportunity management plan
- such other particulars as may be prescribed by the regulations.

Note. Equal employment opportunity plans are dealt with in Part 4 of Chapter 11.

#### 404 Contents of draft management plan with respect to council's revenue policy

(1) A draft management plan must include the following statements with respect to the council's revenue policy for the next year, subject to the regulations:

- a statement containing a detailed estimate of the council's income and expenditure
- a statement with respect to each ordinary rate and each special rate proposed to be levied

Note. The annual statement of revenue policy may include a note that the estimated yield from ordinary rates is subject to the specification of a percentage variation by the Minister if that variation has not been published in the Gazette when public notice of the annual statement of revenue policy is given.

- a statement with respect to each charge proposed to be levied
- a statement of the types of fees proposed to be charged by the council and, if the fee concerned is a fee to which Division 3 of Part 10 of Chapter 15 applies, the amount of each such fee

- a statement of the council's proposed pricing methodology for determining the prices of goods and the approved fees under Division 2 of Part 10 of Chapter 15 for services provided by it, being an avoidable costs pricing methodology determined by the council in accordance with guidelines issued by the Director-General
- a statement of the amounts of any proposed borrowings (other than internal borrowing), the sources from which they are proposed to be borrowed and the means by which they are proposed to be secured
- statements with respect to such other matters as may be prescribed by the regulations.

(2) The statement with respect to an ordinary or special rate proposed to be levied must include the following particulars:

- the ad valorem amount (the amount in the dollar) of the rate
- whether the rate is to have a base amount and, if so:
  - the amount in dollars of the base amount, and
  - the percentage, in conformity with section 500, of the total amount payable by the levying of the rate, or, in the case of the rate, the rate for the category or sub-category concerned of the ordinary rate, that the levying of the base amount will produce
- the estimated yield of the rate
- in the case of a special rate—the purpose for which the rate is to be levied
- the categories or sub-categories of land in respect of which the council proposes to levy the rate.

(3) The statement with respect to each charge proposed to be levied must include the following particulars:

- the amount or rate per unit of the charge
- the differing amounts for the charge, if relevant
- the minimum amount or amounts of the charge, if relevant
- the estimated yield of the charge.

(4) A draft management plan must include a statement containing a general estimate of the council's income and expenditure for the second and subsequent years for which the draft management plan is prepared.

(5) The statement of fees and the statement of the pricing policy need not include information which could confer a commercial advantage on a competitor of the council.

#### **405 Public notice of draft management plan**

(1) A council must give public notice of its draft management plan after it is prepared.

(2) The period of public exhibition must not be less than 28 days.

(3) The public notice must specify that submissions may be made to the council at any time during the period of public exhibition.

(4) The council must publicly exhibit the draft management plan in accordance with its notice.

(5) During the period of public exhibition, the council must have for inspection at its office (and at such other places as it may determine) a map which shows those parts of its area to which each category and sub-category of the ordinary rate and each special rate included in the draft management plan applies.

#### **406 Adoption of management plan**

(1) Before the end of each year, a council must adopt a management plan for the following year after it has been prepared and exhibited in accordance with this Part and any other matters it considers relevant.

(2) In deciding on the final plan to be adopted, a council must take into consideration any submissions that have been made concerning the draft management plan prepared and exhibited in accordance with this Part.

**407 General manager to report periodically on implementation of management plan**

(1) The general manager must report to the council within 2 months after the end of each quarter as to the extent to which the performance targets set by the council's current management plan have been achieved during that quarter.