15 February 2007

PRC SUBMISSION

PRODUCTIVITY COMMISSION - ASSESSING LOCAL GOVERNMENT REVENUE RAISING CAPACITY, DRAFT RESEARCH REPORT

Draft by: Adrian Ellson, Executive Office, Pilbara Regional Council
Resolution: **0750**

References:

1. Productivity Commission 2007, *Assessing Local Government Revenue Raising Capacity,* Draft Research Report, Canberra.
2. WA Local Government Act 1995
3. 2006 Inter-governmental Agreement Establishing Principles to Guide Inter-Governmental Relations on Local Government Matters
4. WA Government Standing Committee on Public Administration and Finance, November 2004 Review of the Local Government Rating System and Distribution of Funds
5. July 2004 Local Government & Department of Industry and Resources: Protocol for future State Agreements and resource projects of significance to the State
6. WA Government Agreements Act 1979
7. Intergovernmental Agreement on a National Water Initiative signed June 2004 and signed by Western Australia State Government in April 2006

Preamble

The statement below comes from the Productivity Commission 2007, ***Assessing Local Government Revenue Raising Capacity***, Draft Research Report, Canberra, page 173.

> *State Agreement Acts in Western Australia can limit the rating powers of councils in relation to land leased for mining or resource development purposes. The State Agreements are typically long-term contracts between the WA Government and developers of resource projects including the North West Shelf natural gas processing projects, the Pilbara iron ore projects, timber processing, coal and other resource development projects. The State Agreement Acts typically specify that land, which is subject to leases or easements as part of resource development projects is rateable based on its unimproved value. There are exemptions such as land utilised for residential purposes, which is rateable based on the gross rental value. Land covered by State Agreements is generally not subject to discriminatory rates. However, this may not necessarily prevent the use of differential rates, provided that the differential rate is applied to all mining tenements or resource land (not just those covered under a State Agreement) (Hadlow, R., pers. comm., 30 August 2007). There are currently 72 State Agreements including the Government Agreements Act 1979 (DOIR 2007).*

The Pilbara Regional Council appreciates the Commission including State Agreements within its analysis of local government revenue raising capabilities; however, is concerned that the Commission has not grasped the full impact of State Agreements on local government's revenue raising capabilities and responsibilities. And, we are grateful for the opportunity to provide comment on this aspect of the Commission's research.

Unimproved Value of Property under State Agreements

The PRC acknowledges the observation that "*The State Agreement Acts typically specify that land, which is subject to leases or easements as part of resource development projects is rateable based on its unimproved value*"; however, what appears not have been appreciated is the impact of Clause 6.30 of the WA Local Government Act 1995, which states:

> ***"6.30. Valuation of and rates on certain land***
>
> *(1) Subject to subsection (2), the owner of any land —*
>
> *(a) held or granted pursuant to a Government agreement, which agreement provides that for the purposes of imposing rates under this Act, the land is to be assessed on the unimproved value thereof; or*
>
> *(b) held under a production licence for petroleum granted under the Petroleum Act 1967,*
>
> *and to whom this section applies by virtue of the operation of section 533AA of the Local Government Act 1960 4 as in force before the commencement of this Act is to have the land valued for the purpose of imposing rates under this Act on the following basis —*
>
> *$1.00 per 4 000 square metres for each of the first 40 000 hectares or part thereof;*
>
> *$0.75 per 4 000 square metres for each of the second 40 000 hectares or part thereof;*
>
> *$0.50 per 4 000 square metres for each of the third and fourth 40 000 hectares or part thereof;*
>
> *$0.25 for each 4 000 square metres in excess of 160 000 hectares."*[1]

Accordingly the unimproved value of 40,000 hectares of land being mined is only $100,000. And to provide some perspective, this is less than a quarter of the price of an average home in the Pilbara.

This limitation is inequitable when considering that the local residents, commerce and light industries are subsidizing the mineral and petroleum companies' use of local infrastructure and services, noting the size of the profits of the resource companies and these companies adverse effects on the serviceability of local infrastructure. The mineral and petroleum industry sectors are also the major contributor to local upward price movements because of their consumption of local services and accommodation, which too adversely affects the local residents, commerce and light industries, and economy in general.

The Pilbara Regional Council also views this practice to be a form of cost shifting to local government and constituents, which the Commonwealth, State and Local Governments agreed in 2006 should not happen. And the 2006 Inter-governmental Agreement Establishing Principles to Guide Inter-Governmental Relations on Local Government Matters was developed and signed by all three parties as a commitment not to shift costs on to Local Governments and constituents.

We therefore believe that the mining and petroleum companies mining within local government areas should be subject to normal land rates, like counterparts in other forms of commerce and industries.

[1] Local Government Act 1995, page 213

2004 Review of the Local Government Rating System and Distribution of Funds

In November 2004, the WA Government Standing Committee on Public Administration and Finance[2] in its review of the **Local Government Rating System and Distribution of Funds** made 9 recommendations, which included:

- "*That if there are to be future State Agreement Acts that:*
  - *they do not automatically impose rating restrictions on local government authorities, and*
  - *the State will not generally seek to include such provisions in State Agreement Acts*"[3];
- "*That the State should immediately provide funding support, on a needs basis and with full accountability, to the affected local government authorities in regional areas of Western Australia, in a manner that does not impact on the local government authorities' grants. This funding support should continue until such time as the problems affected local government authorities, identified in this report, are resolved*"[4]; and
- "*That, in relation to existing State Agreement Acts, the State Government should enter into negotiations with the parties to the State Agreement Acts, with a view to negotiating a restitution to negate the impact of the rating restrictions imposed on certain local government authorities under the State Agreement Acts*"[5].

The Pilbara Regional Council believes that the Standing Committee on Public Administration and Finance findings and recommendations support the Council's position that the mineral and petroleum companies mining within local government areas should be subject to normal land rates, like counterparts in other industries. And that the State Government should be taking action to implement the recommendations form the Review.

For example, the Shire of Roebourne's revenue from rates is approximately $10.5 million, of which only 8% or less than $1 million is from properties rated on an unimproved valuation, which includes the major resource projects of Rio Tinto (Iron Ore) and the North West Shelf Joint Venture (LNG). The balance of the rate revenue is raised from the gross rental value properties, which include the residential, commercial and light industrial properties. Unlike most local government areas where the major economic drivers for the area contribute significantly towards rate revenue, the Shire of Roebourne's rate effort is restricted to a very narrow rate base.

Study into State Agreements and Local Governments Revenue Planning and Building Issues

In July 2004, the Western Australian Local Government Association (WALGA) successfully negotiated and signed the **Local Government & Department of Industry and Resources: Protocol for future State Agreements and resource projects of significance to the State**. "*This Protocol recognises the complexity of developing major resource projects and the effects that such projects may have on local coummunities, the wider region and the State as a whole.*"

It is understood that during negotiations that WALGA secured from the State Government that it would undertake a study into the impact of State Agreements on Local Government. An extract of the Government's decision is below.

---

[2] This Standing Committee was dissolved in 2005.

[3] **Report of the Standing Committee on Public Administration and Finance in relation to Local Government Rating System and Distribution of Funds,** November 2004, p22

[4] ibid, p66

[5] ibid, p66

CABINET DECISION : STUDY INTO STATE AGREEMENTS AND LOCAL GOVERNMENT REVENUE, PLANNING AND BUILDING ISSUES

Date of decision : 11 May 2004

"Cabinet notes the intention to proceed with a study into:

(1) the effects of State Agreement rating clauses on local government revenue; and

(2) local government planning and building approvals processes under State Agreements.

The Department of Planning and Infrastructure to be included in the Committee of Review."

The Terms of Reference for this Study were not completed until December 2004, after the Standing Committee on Public Administration and Finance published its report and recommendations arising from its review of the **Local Government Rating System and Distribution of Fund.**

The Government's response to the recommendations arising from Standing Committee on Public Administration and Finance review of the **Local Government Rating System and Distribution of Fund** was to include the recommendations within the new Study into State Agreements and Local Governments Revenue Planning and Building Issues for further consideration.

The then Premier of WA, Hon. G. Gallop advised the Chair of the Pilbara Regional Council, in February 2005 that "*No financially responsible Government could contemplate retrospective compensation for an as yet unquantified loss of rates from State Agreements with mining companies. We are however, committed to working with local government to address this concern and to that end we have already agreed to undertake a study* [into State Agreements and Local Governments Revenue Planning and Building Issues] *through the Department of Industry and Resources to examine the degree to which local governments have been disadvantages by State Agreements. Subject to timely input from local government this study will be completed by June this year* [2005]."[6]

This Study has still not been completed and is unlikely to be completed before June 2008. Notwithstanding the Premier Carpenter's March 2007 promise that the Study would be completed before the end of the 2007 calendar year[7], this has not been fulfilled and nor can a completion date be confirmed. The Steering Group, despite request, does not meet regularly to discuss or address impediments to progress.

In addition to the above, the WA State Government has directed a review of the relevant Acts relating to building approvals, outside of and concurrent to the current Study. Early advice is that the proposed Act amendments will provide exemptions to the mineral and petroleum companies regarding the requirement to obtain Local Government building approvals. This is of particular concern because local government does not believe that approvals and inspections can be undertaken properly nor efficiently from a centralized office in Perth. Furthermore, any decision to exempt mineral and petroleum companies having to seek Local Government building approvals and inspections will have a general impact on Local Governments' ability to generate revenue that can be amortized to reduce the base costs associated with the execution of responsibilities in this area. Hence, fees and charges for these services will have to be increased for all other clients in order to cover the base costs correctly.

[6] Premier of Western Australia, 200417647 & 200501024 dated 4 February 2005.
[7] Premier A. Carpenter's letter to the CEO, Town of Port Hedland, dated 16 March 2007

The Pilbara Regional Council believes that the Productivity Commission should note within its Report the WA Government Standing Committee on Public Administration and Finance recommendations from its **Review of the Local Government Rating System and Distribution of Funds,** and to also note that the WA State Government has not fulfilled these recommendations. Furthermore, it is requested that the Productivity Commission provide comment on the State Government's obligation to implement the recommendations from the **Review of the Local Government Rating System and Distribution of Funds.**

WA Government Agreements Act 1979

A copy of the Government Agreements Act 1979 less header and footer detail is at Appendix 1[8]. This Act consists of four clauses, of which the clause below is the primary clause governing the intent of the Act. The other clauses relate to citation, interpretation and offences.

"3. Operation and effect of Government agreements

For the removal of doubt, it is hereby expressly declared that —

> *(a) each provision of a Government agreement shall operate and take effect, and shall be deemed to have operated and taken effect from its inception, according to its terms notwithstanding any other Act or law; and*
>
> *(b) any purported modification of any other Act or law contained, or provided for, in such a provision shall operate and take effect so as to modify that other Act or law for the purposes of the Government agreement, and shall be deemed to have so operated and taken effect from its inception, according to its terms notwithstanding any other Act or law."*

The Pilbara Regional Council has some concerns regarding the above clause and its interpretation with regard to local government revenue raising and execution of assigned responsibilities. This Act is being used to legitimize the State Government trading of Local Governments' natural entitlement to rate and charge mineral and petroleum companies for royalties paid to the State Government. This includes the trading of local government responsibilities through the provision of exemptions.

The Pilbara Regional Council's concern is that the payment of royalties in lieu of other taxes and charges, and exemptions might be introducing misguided bias to the development of government legislation, policies and practices. Examples are:

> the preferential treatment afforded the mineral and petroleum companies with regard to paying Local Government rates;
>
> the potential preferential treatment to be afforded the mineral and petroleum companies with regard to seeking and paying for Local Government building licenses and inspections;
>
> Clause 34 of the 2004 National Water Initiative, which states that:
>
> > "*The Parties agree that there may be special circumstances facing the minerals and petroleum sectors that will need to be addressed by policies and measures beyond the scope of this Agreement. In this context, the Parties note that specific project proposals will be assessed according to environmental, economic and social considerations, and that factors specific to resource development projects, such as isolation, relatively short project duration, water quality issues, and obligations to remediate and offset impacts, may require specific management arrangements outside the scope of this Agreement*."

[8] The Government Agreements Act 1979 was last amended in December 2004 and gazetted in May 2005.

The Pilbara Regional Council supports the development of the Minerals and Petroleum Sectors; however, believes that all industry sectors should be treated equally and that no one sector should be afforded special privilege over any others with regard to rates, building approvals, water management and pricing, nor any other requirements associated with any private venture for the benefit of owners and shareholders.

Conclusion

The Pilbara Regional Council appreciates the opportunity to comment on State Agreements impact on Local Government Revenue Raising Capability. The limitation imposed is greater than what appears to be assessed within the Productivity Commission's draft Research Report and it is hoped that the above clarifies the extent of limitation being imposed.

The Pilbara Regional Council believes that the current policies and processes with regard to State Agreements are inequitable when considered in relation to flow-on impositions on other industry sectors and residents in general. Mineral and petroleum mining companies should be contributing to the development, renewal and maintenance of local infrastructure and services, in the same manner, using the same formulae, commensurate to earning capability, etc as the remainder of the community. It is hoped that the Productivity Commission can understand the Council's concerns and make appropriate findings and recommendations to remedy this inequity sooner than later.

The PRC point of contact regarding this submission is the Executive Officer, Mr. Adrian Ellson, and he can be contacted via 08 9187 0687, 0428 940 632, prc@roebourne.wa.gov.au or usellsons@dodo.com.au.

Appendix 1

GOVERNMENT AGREEMENTS ACT 1979:

Below is the current version of the Government Agreements Act 1979, less header and footer detail:

An Act in respect of Government agreements and for related purposes.

1. Citation

This Act may be cited as the *Government Agreements Act 1979* 1.

2. Interpretation

In this Act —

"Government agreement" means —

(a) an agreement scheduled to, incorporated in, or appearing in, an Act the administration of which is for the time being committed by the Governor to, or approved by the Governor to be placed under the control of, the Minister, and any other agreement scheduled to, incorporated in, or appearing in, an Act and declared by proclamation to be a Government agreement for the purposes of this Act,

and includes —

(b) any variation of that agreement —

(i) which is or has been entered into pursuant to that agreement; or

(ii) the signing or implementation, or both, of which has been ratified, approved, or authorised by Parliament;

and

(c) any document or instrument, including any grant, lease, licence, permit, approval, authorisation, right, concession, or exemption, or any other thing made, executed, issued, or obtained for the purposes of that agreement or its implementation;

"subject land" means —

(a) land that is set aside, or is being used, for the purposes of or incidental to implementing a Government agreement; or

(b) land where activity is being, or is about to be, carried on pursuant to, or for the purposes of or incidental to implementing, a Government agreement.

[Section 2 amended by No. 30 of 1990 s. 4.]

3. Operation and effect of Government agreements

For the removal of doubt, it is hereby expressly declared that —

(a) each provision of a Government agreement shall operate and take effect, and shall be deemed to have operated and taken effect from its inception, according to its terms notwithstanding any other Act or law; and

(b) any purported modification of any other Act or law contained, or provided for, in such a provision shall operate and take effect so as to modify that other Act or law for the purposes of the Government agreement, and shall be deemed to have so operated and taken effect from its inception, according to its terms notwithstanding any other Act or law.

4. Offences

(1) A person shall not without lawful authority remain on any subject land after being warned to leave it by —

(a) the owner or occupier, or a person authorised by or on behalf of the owner or occupier, of that subject land; or

(b) a member of the Police Force.

Penalty: $5 000 or 12 months' imprisonment.

(2) A person shall not without lawful authority prevent, obstruct, or hinder any activity which is being, or is about to be, carried on pursuant to, or for the purposes of or incidental to implementing, a Government agreement, or attempt to do so.

Penalty: $5 000 or 12 months' imprisonment.

(3) For the purposes of any proceedings for an offence under this Act an averment in the prosecution notice —

(a) that an agreement is scheduled to, incorporated in, or appearing in, an Act the administration of which is for the time being committed by the Governor to, or approved by the Governor to be placed under the control of, the Minister; or

(b) that an agreement is scheduled to, incorporated in, or appearing in, an Act and declared by proclamation to be a Government agreement for the purposes of this Act, shall, in the absence of proof to the contrary, be deemed to be proved.

[Section 4 amended by No. 30 of 1990 s. 5; No. 84 of 2004 s. 80.]