

# Future Options for Council Rating

Dealing with the Separation of Water from  
Land Under the *Water Management Act*  
*2000*

**NSW Department of Local Government**

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## Foreword

### About the Discussion Paper

The discussion paper examines the potential implications for local government rates revenue of the separation of water access from land title and canvases options that may allow councils to address the circumstances provided by the *Water Management Act 2000*. This paper has been prepared, under the direction of the Senior Officer's Group on Land Valuation chaired by the Department of Local Government and comprising the Valuer-General, the Department of Infrastructure, Planning & Natural Resources, the Cabinet Office and Treasury. Its purpose is to assist public understanding of the issues and to generate comment on potential mechanisms, their application and effect.

The Terms of Reference for the Senior Officer's Group are:

1. To examine the possible impact of the commencement of Schedule 8.29 of the *Water Management Act 2000* on land valuations and council revenue collection from ordinary rates in NSW.
2. To develop options that:
  - (a) enable councils to generate the same level of revenue from rates on land after the full implementation of the *Water Management Act* as they do now with water entitlements being a factor in the valuation of land; and
  - (b) maintain, in broad terms, existing equities between identifiable categories of ratepayers in terms of contributions to council rates revenue.
3. To oversee the preparation and publication of a public discussion document outlining the major issues and any potential options (from ToR 1 & 2 above) that may contribute to the mitigation of any negative financial consequences for local government of the separation of water access licences from land.
4. To assess public submissions in response to the consultation document (ToR 3).
5. To prepare and make recommendations to Cabinet on any changes to land valuation and rating processes and the associated legislative or regulatory framework identified by the Senior Officers' Group as necessary to mitigate the consequential effects for local government of the full operation of the *Water Management Act*.

### Making a Submission

Anyone can make a submission on any or all aspects and issues contained in the Discussion Paper. While the Paper is intended to be as comprehensive as possible it may not cover all possibilities. Submissions may include material and comment on issues additional to those in the Discussion Paper. They should, however, be directly relevant to the Terms of Reference of the Senior Officer's Group.

Public submissions should be received no later than the **close of business on 14 February 2005**.

### Where to Send Your Submission

Submissions should be sent to:

Water and Land Valuation Submissions  
NSW Department of Local Government  
Locked Bag 3015  
NOWRA NSW 2541

Email: [water&land@dlg.nsw.gov.au](mailto:water&land@dlg.nsw.gov.au)

### **Further Information**

A copy of the paper is available on the Department of Local government Web site at [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).

If you have any questions about the Discussion Paper please contact Henry Musidlak on 02 4428 4181 or by email at the address above.

## 1. Introduction

The valuation of land, under the *Valuation of Land Act 1916*, is integral to the making of rates and council's revenue collection. Councils take land values derived from an independent process, provided to them by the Valuer General and, in setting an ordinary rate under ss. 497 and 498 of the *Local Government Act 1993*, apply an ad valorem amount to those values for all rateable land within their boundaries.

Where a water entitlement, under the *Water Act 1912*, attaches to any parcel of land the value of that entitlement has, to date, been included in the valuation of that land for rating purposes (s. 6A(3) of the *Valuation of Land Act*).

The *Water Management Act 2000* is a key component of the NSW Government's water reform agenda flowing from the 1994 Council of Australian Governments (CoAG) Strategic Water Reform Framework. It effectively converts current water entitlements to three separate licences or approvals:

- An access licence. This effectively entitles the holder to a share of a water resource as specified in a water sharing plan and does not relate to any particular parcel of land or property on which that water may be used;
- A water use approval. This attaches to a specific piece of land and confers the right to use water for a particular purpose according to specific conditions; and
- A water supply work approval. This also attaches to a specific piece of land. It confers the right to construct or use a water supply work for the purposes of bringing water to a specified property.

For water to be used on a particular piece of land, all three elements must be present in at least some part (depending on the amount of water applied). The holder of the access licence need not be the owner of the property that the two approvals are valid for.

The change comes into effect with the making and implementation of water sharing plans, which allocate access shares and make rules for the utilisation of the designated water resource under the *Water Management Act*. Thirty-six gazetted plans, covering approximately 80% of water users in regulated river and groundwater systems, have taken effect from 30 June 2004. Those areas of the State not covered by a water sharing plan will continue to operate under the *Water Act 1912* until such time as a plan under the *Water Management Act* is developed, gazetted and implemented.

Importantly for local government finance, a natural consequence of this is the rescission of s. 6A(3) of the *Valuation of Land Act*. The ability to trade in water access without a concomitant transfer of land ownership is a key principle underlying the CoAG water reform agenda. The separation of water access from land title is a necessary component in ensuring the most economically efficient use of water resources. Existing entitlement holders who use water more efficiently will be able to sell their "surplus" to the highest bidder, presumably reflecting the expectation of higher value productive outcomes, on the open market.

## 2. Financial Implications for Local Government

Around 40 of the 154 local government areas in NSW have a component of their land valuations deriving from water entitlements. These reflect irrigation activities based on the Murray, Murrumbidgee, Lachlan, Castlereagh, Macquarie, Bogan, Namoi, Gwydir, Barwon and Darling Rivers and various groundwater sources west of the Great Dividing Range.

Total assessed value of farmland in these areas exceeds \$12,000 million. The estimated water component is approximately \$4,000 million. Just under 15% of these farmland properties have a water entitlement. Annual revenue from farmland rates exceeds \$60 million.

In the absence of market evidence it is impossible to accurately estimate the effects on land values of the full implementation of the *Water Management Act*. How much of any current water entitlement's value will devolve to the access licence post-separation will vary according to a number of factors including the level of security of the water (general or high), land type, alternative production and land utilisation options (dependent on rainfall patterns) and geography.

Clearly the same price will not be paid for land minus the access component of its water entitlement as is paid now. The worst-case scenario is that all the water component value transfers to the access licence. This would mean significant falls in farmland valuations for rating purposes, particularly in areas where irrigation is a significant factor. The other extreme is that little or no change to land prices and therefore valuations will occur.

Both scenarios appear unlikely. The actual post-*Water Management Act* situation is likely to be somewhere in between these. Differences between regions are also likely given the heterogeneous nature of land and agricultural practices, possible and existing, across the State.

A fall in land valuations could flow through to lower revenues from ordinary rates unless councils respond by adjusting their rating structures to compensate. The degree of adjustment required will be proportional to the water value component's prominence in total land value for each local government area (LGA). The water value component is in the 0-20% range for 19 LGAs, >20-40% range for 12, >40-60% for 6 and >60% for 4.

## 3. Adjustment Principles

The NSW Government is concerned that any adjustment effects for councils and their communities are minimised. To this end, any potential remedial options must have, as major considerations or guiding principles, the following characteristics or be able to contribute to these outcomes:

- councils should have the flexibility to be able to generate the same level of rates revenue as they do now;
- existing equity relationships between categories of ratepayers be maintained in broad terms; and
- no or minimal increase in administrative complexity.

## 4. Adjustment or Recovery Options

There appear to be three categories of options for sustainable revenue recovery strategies:

- from the access licence holders;
- from the rating process; and
- from the land valuation process.

There are a number of options within each category, as identified below. Some options may be combined. Comment is sought on each option that

is listed and on any other potential options for recovering revenue shortfalls for affected councils.

### 4.1. From Access Licence Holders

Replacement of “lost revenue” to councils by water entitlement holders would appear, on the face of it, to be the fairest and most efficient resolution. Appropriate mechanisms

to this end are however difficult to identify. A number of possibilities are briefly outlined below

#### Option 1

*Apply some form of charge to the access component of water commensurate with its volume or value and hypothecate this back to the shires of origin.*

#### **For**

Direct form of recovery mechanism

#### **Against**

There are a number of problems with this approach. It could be interpreted as an excise and would, therefore, appear to be a Commonwealth matter outside the jurisdiction of the State.

As access licences are not property or area linked, except in irrigation areas where a corporation holds the access licence and individual irrigators hold shares in the corporation, there is nothing to prevent them from being

traded and used on a property not in the area or shire where the previous water entitlement originated. Other than in the case of irrigation corporations, no explicit link will exist between an access licence and a local government area.

If it is to be applied on a volumetric basis, it would mean that water prices would not reflect the costs of provision.

As the value of water will be determined in a different market from that for land (with or without water entitlements) there may be little or no connection to the apparent losses in land valuations arising from the separation of land and water.

## Option 2

Apply a fixed levy to licences and return revenue to affected councils.

### **For**

Direct recovery mechanism.

### **Against**

Problem of equity between licence holders as it would apply regardless of productive capability or value. Small and low value irrigators would be burdened to the same extent as large enterprises. While difficult to be precise, an estimate based on available Valuer General data of the maximum possible revenue shortfall to local government is \$22 million. This would

translate to approximately \$2200 per licence per year.

Disbursement and level of levy is also an issue. A shire with a large number of licence holders and a small water component in land valuations would potentially benefit more from disbursement on the basis of actual licence holders in a local government area, than a shire with a small number of large irrigators and consequent high water component in land valuations. Setting a levy amount to recover any projected or notional “revenue shortfall” in the absence of market evidence would be difficult.

## 4.2. From the Rating Process

A key question is whether the existing valuation and rating framework allows councils the flexibility to recover any “notional” shortfalls in revenue? If not the case, what changes are required?

In shires where there is a significant water component in farmland valuations, the valuation base could fall to a fraction of the water entitlement based valuation. At existing ad valorem rates in these areas, this would translate into a rates revenue shortfall in the absence of compensating action.

To recover the same rates revenue from the farmland category under the existing provisions of the *Local Government Act* would require:

- an increase in the base rate applied to individual properties in the farmland category ; or

- an increase in the ad valorem rate applied to the residual farmland valuations; or
- a combination of both.

There may be a number of issues arising from such a strategy for councils:

- an increase in the base rate to compensate for the loss of income could be an illegal rate under s.500 (>50% of the rates total from that category);
- an increase in the ad valorem rate to compensate might require the farmland rate to be raised to the point where it is no longer the lowest rate compared to all other categories. This would be illegal under s.530;
- maintaining the farmland rate as the lowest rate may require the raising of rates in other categories (further to s.530) thereby redistributing part of the original farmland rates burden to other categories of ratepayers; and

- increasing the ad valorem (and base rate) for the farmland category alone could see farmland properties with no water entitlements pay more per assessment than they do

presently, as their land values will not change, while those with water entitlements would see a fall in their assessments due to a “fall” in their land valuations.

### **Option 3**

*Amend or repeal s.500 of the Local Government Act (“The amount specified as the base amount of a rate must not be such as to produce more than 50 per cent of the total amount payable by the levying of the rate on all rateable land subject to the rate.”).*

#### **For**

Increasing or removing the limit on revenue that can be derived from the base amount would allow councils a mechanism to recover any notional losses in income.

#### **Against**

The base amount, being applied to the existence of a property rather than its value or productive characteristics, does not discriminate between ratepayer ability to pay. Raising it would

disproportionately affect those at the lower end of the property value scale and advantage high value, irrigation properties. If the base amount for farmland alone were to be raised, it would, in effect, result in dryland properties (of lower land value) subsidising irrigation properties (currently of higher land value) through the rating system. If the base amount were to be raised across all rate categories in a shire this would mean a redistribution of rates payable such that a higher proportion is derived from non-agricultural and non-irrigable land.

The base amount may also be interpreted as a common service fee in the community. Using it as a revenue recovery mechanism would appear to contradict this “principle”.

#### Option 4

Amend or repeal s.530 of the Local Government Act (“If the ad valorem amount is different for different categories or different sub-categories within a category, the ad valorem amount for the category “farmland” (or each sub-category within that category) must be lower than the ad valorem amount in each other category (or each sub-category within those other categories).”).

##### **For**

Removing the constraint that farmland be the lowest ad valorem rate in any local government area would allow councils the flexibility to recover any “notional revenue” shortfall from the farmland category alone thereby removing some of the potential for adverse redistribution effects for other ratepayer categories. South Australia, which effectively separated water licences from land in 1983, does not have any such restriction on local government rate setting.

##### **Against**

Opens up the possibility that for some local government areas, perhaps dominated in numerical terms by urban

residents, farmland rates could rise out of proportion to their previous overall contribution to rates revenue collection. This possibility could be removed by explicitly limiting (in the *Local Government Act* for example) the potential increase for any rates assessment on a year-to-year basis.

This might be a maximum allowable increase in rates for any property, expressed as a proportion of its previous year rates assessment and taking into account the variation in general income allowed by the Minister for Local Government pursuant to s.506 of the *Local Government Act*.

In the first year of operation, the base year for comparison and rate setting would include any water entitlements in the assessed land value of that property. Such a mechanism could be part of a staged transition process or alternatively be maintained as a core principle within the *Local Government Act*.

While seeming to offer part of a solution, this alone, does not fully address all the issues within the farmland category. To generate the same amount of revenue from the same irrigation properties after the implementation of the *Water Management Act* as now, a higher ad valorem rate needs to apply as the valuation base is, potentially, much smaller. An option available is to sub-

categorise according to the “intensity of land use or economic factors affecting the land” (s.529 of the *Local Government Act*) such that the same rate contribution is brought forth after the implementation of the *Water Management Act* as is now the case. Such a strategy would still appear to require the removal of s.530.

### Option 5

Characterise (sub-categorise) individual farmland property according to the intensity of land uses therein and allow for the application of different ad valorem rates to those different categories within a single rates assessment notice.

#### **For**

This recognises the fact that many properties are not homogenous and extends the principle of mixed development land (s.518B of the *Local Government Act* which allows an individual property to be assessed as part residential and part business) to farmland. In the event that irrigation land values revert to those for dryland (or near to), any higher rate to reflect higher intensity of land use need only apply to that parcel of land. Revenue recovery strategies could therefore be focussed on the actual land previously associated with any water

entitlement. More accurately reflects the differentiating role previously performed by the inclusion of water entitlements in land valuation for a property. Provides assurance to landholders that their entire properties will be not unfairly subject to a higher ad valorem rate (and potentially a higher rates assessment) as an artefact of any adjustment process.

#### **Against**

Potentially a significant increase in the level of administrative complexity. Requires a valuation process that provides councils with more differentiated detail than is currently the case (although this may be limited by restricting the number of possible categories to just two for example: high intensity ie irrigable and low intensity ie non-irrigable). Resource implications may exist for councils and the Valuer General.

### 4.3. From the Valuation Process

With the advent of the Water Management Act, water access licences will be grandfathered to property holders that currently have water entitlements on their land titles.

Current land use outcomes can be expected to persist until access licences are transferred independent of the ownership of land.

However, it is not an option to retain s.6A(3) of the Valuation of Land Act, i.e. not separate land and water for

rating purposes following the implementation of water sharing plans. Such a course of action would be in conflict with the objectives of the Water Management Act.

With trading in the water market, this will increasingly cease to reflect actual land use and asset ownership in shires. This will make valuations on the current basis less realistic and, consequently, challengeable.

#### 4.3.1. Change the *Valuation of Land Act 1916*

Assuming that s.6A(3) is not retained, land valuations may fall following the separation of water access/entitlements from land titles and the consequential repeal of s.6A(3) of the *Act*. It may be

possible to limit the potential fall in valuations by amending the *Act* in a number of ways that incorporate additional values inherent in the processes of irrigation.

##### Option 6

*Specifically provide for the inclusion of use and works approvals in the valuation of land.*

##### **For**

Desirable to increase the level of surety in land valuation processes, particularly in cases where the works pertaining to a certain parcel of land may not be physically located on that land. Explicit confirmation of components or factors that may determine the actual productivity of land in the valuation process. As only the

access licence will be excluded from the valuation of land this approach should minimise changes to existing valuation parities between irrigation and dryland properties.

##### **Against**

As valuations of other classes of land only include the potential to gain approval for a particular use it could be argued that, by including the value of the approvals, irrigation properties will be treated differently to all other properties in the state.

### Option 7

Provide for the potential to irrigate to be included in the valuation of land.

#### **For**

Links land valuation to productive capacity rather than base level dryland purposes. Consequently, may recapture some of the value of current water entitlements in land valuations thus ensuring a higher valuation for rating purposes where irrigation is possible (where use and works approvals exist).

An analogous situation exists in metropolitan areas where, for the purposes of valuation, the highest value purpose for which the land may be used (even if the land is vacant), as indicated by zoning, is taken as the basis for valuation.

#### **Against**

Where the potential for irrigation is not realised this may mean a higher rates assessment, driven by the highest value alternative use eg horticulture or viticulture, for dryland agriculture.

### Option 8

Provide for actual use to be a factor to be considered in the valuation of farmland.

#### **For**

Reflects the current agricultural practise on each landholding through, for example, intensive or non-intensive categories in the valuation process. Therefore, may be an inherently fairer method of assessment. Higher land valuations will be the rule for those areas consistently associated with more intensive farming. Has the potential to allow for the incorporation of enhanced values related to parcels of irrigation land within the valuation of larger properties.

#### **Against**

Possible increase in administrative complexity. Requires a definition of consistent use that both reflects actual land use and, at the same time, takes account of not irrigating land for:

- seasonal reasons eg abundant rainfall for crop type, crop/land rotation etc; and
- opportunistic behaviour by land holders to limit their exposure to rates.

In the event of a dispute between the landholder and the Valuer General about the status of any particular parcel of land, may require that the onus fall on the landholder to demonstrate a change in land-use to a less intensive purpose.

It is, of course, possible that no one option alone will provide for a workable or sustainable solution in all cases. In this context, submissions are encouraged to consider what options, working together, would provide for outcomes that fully incorporate the adjustment principles outlined in section 3.

Any future valuation and rating framework, incorporating any or all of

the options above, is likely to involve a significant change in the practices associated with the payment of council rates by ratepayers. Implementation of a new framework brings forth a number of issues for the process of land valuation for rating purposes requiring consideration from a community and public resource perspective. These are outlined in section 4.4 below.

## 4.4. Options For Managing Valuation Timetables

Valuation lists are currently updated on a rolling, four year cycle. Not all affected shires will receive new lists at the same time should the normal timetable be maintained. This may mean the delay, by up to four years in the event of a shire revalued immediately prior to implementation of water sharing plans, of revised valuation data that reflects the separation of land from water.

Revised valuation data will only apply for areas that are covered by water sharing plans under the *Water Management Act*. It is possible that some shires will have areas within their boundaries operating under the *Water Management Act* and the *Water Act* (and hence incorporating water entitlements in land valuations for some properties), until such time as water sharing plans are made for all water sources in NSW.

### Option 1

Maintain the current valuation cycle.

#### **For**

Continuation of existing processes and therefore few, if any, additional resourcing implications for the valuation process and the Valuer General. Allows a phasing in period for the implementation of a new rating/valuation regime across the State.

Allows for the accumulation of market evidence to guide the valuation process in later years.

#### **Against**

Would not completely reflect the new circumstances arising from the *Water Management Act*.

### Option 2

Change the existing revaluation timetable such that all shires with water sharing plans are revalued at the same time.

#### **For**

Immediately and evenly gives effect to the consequences of new water arrangements.

#### **Against**

Possible resource implications for the Valuer General in meeting this advanced schedule. Likely to take some time before sufficient market evidence, under the new water management arrangements, emerges on which revaluations can be reliably

based. Without a revised rating/valuation regime and adequate transition arrangements in place this may have the effect of properties irrigating under the provisions of the *Water Act* paying more in rates than a similar property under the *Water Management Act*, should both types exist in the same shire.

Delaying the implementation of an alternative regime and associated revaluations may mitigate some of the potential issues associated with an across-the-board approach.

## Appendices

### Appendix 1 - SITUATION IN OTHER JURISDICTIONS

#### Tasmania

Water has been separated from land titles for approximately two years. There has, as a result, been very little impact on local government. This is consistent with advice from the Valuer General when the water management legislation was being developed.

General rates may include a fixed charge (equivalent to a base amount in NSW) component. The amount able to be raised from this charge is limited by legislation. There is no stipulation that farmland must have the lowest general rate applied to it.

#### Western Australia

Land valuations for local government rating have not included the value of licensed water entitlements. In areas where water access has a significant impact on land value, such as in irrigation schemes, the situation will continue to be monitored for any implications arising from changing values.

The basis of rural rates is the unimproved value of the land. No restriction on farmland rate exists.

#### Queensland

Water entitlements have traditionally been tied to land. A range of flexibility measures including variable annual allocations and trade in annual allocations, to enable water allocations to move from being tied up in unproductive land to areas where irrigators either relied on excess water or went without, have been implemented over the past twenty years.

Trade in water entitlements, as opposed to allocations, was made possible under the *Water Act 2000*. Conversion of existing entitlements to tradeable entitlements can only take place after a comprehensive basin wide water resource plan has been approved. These provide for transfer rules arising from the resource operation plans for catchments. Water entitlements will remain specified with respect to location but they will not be tied to land, thus it will be possible for water entitlements to be owned by non-land holders or transferred to non-land holders and leased to water users. A number of draft resource plans were released in mid 2002.

Once a resource operation plan (ROP) has been approved and tradeable allocations converted to personal chattels, the value of water entitlements will be excluded from the valuation of unimproved land. A 12 month transition period to the implementation of new valuations has been provided for with changes to the *Valuation of Land Act 1944* in mid 2003. As a consequence, new valuations will not apply until the next 30 June that is at least 12 months from the adoption of the ROP for that catchment.

This provides local government authorities with time to adjust their rate categories so that they will be able to maintain their overall revenue base. Those councils affected by the separation of land and water will have the option of using a differential rating system which will have the least impact upon individual property rates. Queensland's *Local Government Act 1993* allows for 7 categories of land; residential, commercial and industrial, grazing and livestock, rural (sugar cane), rural (other), sugar milling and other. There is no restriction on the differential rates that may apply to different categories. There is a broad power for councils to levy a minimum general rate on identified rateable land.

### **South Australia**

South Australia has, in effect, allowed trading of water entitlements and allocations since 1983 under the "Transfer and Amalgamations Policies Statement for River Murray Water Proclaimed Watercourse in respect of Licensed Water Allotments" further to the *Water Resources Act 1976*. Explicit provision for trade was subsequently introduced in the *Irrigation Act 1994* and then the *Water Resources Act 1997*.

The *Water Resources Act 1997* formally separates water rights from land. In essence, any person or legal entity anywhere in Australia can own an entitlement.

A water licence under the Act, and water allocation endorsed upon it, is treated as personal property. Its value cannot be included as part of a rating or taxing valuation under the *Valuation of Land Act 1971*.

For rating purposes, the enhancement to the value that results from increased productivity as a consequence of having the ability to access a reliable and suitable water source is a consideration in land valuation. This is linked to a purchaser's expectation of higher productivity reflected in the purchase price of a property with the potential to irrigate.

Current valuation policy requires that primary production land be categorised by its actual use as either "non-intensive" or "intensive" and be valued accordingly. In applying this policy, consideration is given to the property's actual use as part of the ongoing average farming practice for the locality and industry. If a property has been endorsed upon a water licence with a water taking allocation that is taken as evidence that it has the ability to access a reliable source of water and may be categorised as "intensive" and valued accordingly.

The *Local Government Act 1999* provides for 9 different land uses that councils can differentiate between and only one of these relates to primary production. Rates may comprise both a value of land and/or a fixed charge component. There is no restriction in the Act as to the relative level of rates that may apply to different categories or to amount that can be raised from the fixed charge component.

### **Victoria**

The *Water Act 1989* provides for both trade in entitlements and annual water allocations. Entitlements given to irrigators within irrigation areas still attach to land. Trade takes place by the irrigation authority detaching the water from one piece of land and then reattaching it to another. On the other hand, entitlements given to private pumpers (diversion licences) are vested in the licensee and are thus a personal possession.

Under current rating and taxing legislation, water rights continue to be included in the value of land for rating purposes. Section 5A of the *Valuation of Land Act 1960* makes the use of land and the actual or potential capacity of the land to yield a monetary return relevant to valuation. The *Local Government Act 1989* allows for a municipal charge to be levied that covers administrative costs but the total return from this is limited in legislation. Farmland may be exempted from this charge. Farmland rates are not prescribed.

**Table 1 Summary of existing valuation and rating arrangements**

	NSW	Tas	WA	Qld	SA	Vic
<b>Water value in land</b>	✓	X	X	X	X	✓
<b>Base charge limited (ref Opt 3)</b>	✓	✓	X	X	X	✓
<b>Farmland rate restricted (ref Opt 4)</b>	✓	X	X	X	X	X
<b>Intensity of land use or potential in valuations (ref Opts 5-8)</b>	X	X	X	X	✓	✓
<b>Actual land use in valuation (ref Opt 9)</b>	X	X	X	X	✓	✓

## Appendix 2 - MAKING OF RATES

Chapter 15 of the *Local Government Act 1993* outlines the basis of council revenues. One of the major elements is the making and collection of ordinary rates. Sections 497 and 498 define the structure of an ordinary rate to be an ad valorem amount or a base amount to which an ad valorem amount is added to apply to the land value of all rateable land in the council's area. Land value for this purpose is a value specifically determined by the Valuer General under the *Valuation of Land Act 1916*.

Sections 497 and 498 of the *Local Government Act* outline the use of land value, as determined by the Valuer-General, in the structure of ordinary and special rates. In the case of ordinary rates, the ad valorem amount is an amount in the dollar determined for a specified year and applied to the land value of all rateable land in the council's area within the category or sub-category.

Different categories or sub-categories of land eg residential, farmland, business, residential area A, residential area B etc may have a different ad valorem applied. All property with the same category (or sub-category where it exists) must be subject to the same ad valorem rate. An additional provision is that land categorised as "farmland" must, under s. 530, have a lower ad valorem amount applied to it than any other category. The categorisation of land is set out in Chapter 15, Part 3 of the *Local Government Act*.

The steps relating to the making of a rates and charges are as follows:

1. Receipt of land valuations from the Valuer General;
2. Minister specifies % by which the previous year's general income and annual charges are to vary;
3. Council prepares a draft management plan which includes revenue policy for the forthcoming year on the basis of 1 and 2 above;
4. Draft management plan exhibited for not less than 28 days;
5. Submissions on the plan considered by council;
6. Council adopts the management plan; and
7. Makes rates and charges by resolution.

This process takes place in the first half of the calendar year. Rates (and charges) must be made before the 1<sup>st</sup> of August in the year in which they are made for or apply in. This deadline may be extended by the Minister for Local Government in the event of the Minister being satisfied that special circumstances exist. Rates notices are subsequently sent out and revenue collections begin.

## Appendix 3 - RELEVANT NSW LEGISLATION

### ***Local Government Act 1993***

#### **s. 497 What is the structure of a rate?**

A rate, whether an ordinary rate or a special rate, may, at a council's discretion, consist of:

- (a) an ad valorem amount (which may, in accordance with section 548, be subject to a minimum amount of the rate), or
- (b) a base amount to which an ad valorem amount is added.

#### **s. 498 The ad valorem amount**

(1) The ad valorem amount of a rate is an amount in the dollar determined for a specified year by the council and expressed to apply:

- (a) in the case of an ordinary rate – to the land value of all rateable land in the council's area within the category or sub-category of the ordinary rate, or
- (b) in the case of a special rate – to the land value of all rateable land in the council's area or such of that rateable land as is specified by the council in accordance with section 538.

(2) The ad valorem amount of a rate is to be levied on the land value of rateable land, except as provided by this or any other Act.

(3) An ad valorem amount specified for a parcel of land may not differ from an ad valorem amount specified for any other parcel of land within the same category or sub-category unless:

- (a) the land values of the parcels were last determined by reference to different base dates, and
- (b) the Minister approves the different ad valorem amounts.

#### **s. 499 The base amount**

(1) A council may, in a resolution making a rate, specify a base amount of the rate, or a base amount for a category or sub-category of an ordinary rate.

(2) The base amounts so specified may be the same or different amounts.

(3) The appropriate base amount so specified is to form part of the rate levied on each separate parcel of rateable land subject to the rate.

(4) A base amount specified for a parcel of land may not differ from a base amount specified for any other parcel of land within the same category or subcategory unless:

- (a) the land values of the parcels were last determined by reference to different base dates, and
- (b) the Minister approves the different base amounts.

**s. 500 Limit on revenue that can be raised from base amount**

The amount specified as the base amount of a rate (or the base amount of the rate for a category or sub-category of an ordinary rate) must not be such as to produce more than 50 per cent of the total amount payable by the levying of the rate (or of the rate for the category or sub-category concerned) on all rateable land subject to the rate (or the rate for the category or sub-category concerned).

**s. 514 Categorisation of land for purposes of ordinary rates**

Before making an ordinary rate, the council must have declared each parcel of rateable land in its area to be within one or other of the following categories:

- farmland
- residential
- mining
- business.

Note.

Land falls within the "business" category if it cannot be categorised as farmland, residential or mining. The main land uses that will fall within the "business" category are commercial and industrial.

**s. 518B Mixed development land**

(1) Definitions

In this section, mixed development land and non-residential land have the same meanings as in section 14BB of the Valuation of Land Act 1916.

(2) Categorisation of parts of mixed development land

If a valuation is furnished under the Valuation of Land Act 1916 for mixed development land:

- (a) the part of the land that is non-residential land is taken to have been categorised as business, and
- (c) the part of the land that is not non-residential land is taken to have been categorised as residential, despite sections 515–518.

(3) Sub-categories

The council may determine a sub-category for a part of land to which subsection (2) applies according to the category determined by that subsection for the part.

(4) Apportionment of rates and charges

A rate, the base amount of a rate, or the minimum amount of a rate or of a charge, that is made and levied according to categories or sub-categories of land is to apply to a parcel of mixed development land according to the percentages represented by the

apportionment factor for the parcel ascertained under section 14X of the Valuation of Land Act 1916.

**s. 529 Rate may be the same or different within a category**

- (1) Before making an ordinary rate, a council may determine a sub-category or sub-categories for one or more categories of rateable land in its area.
- (2) A sub-category may be determined:
  - (a) for the category "farmland"—according to the intensity of land use or economic factors affecting the land, or
  - (b) for the category "residential"—according to whether the land is rural residential land or is within a centre of population, or
  - (c) for the category "mining"—according to the kind of mining involved, or
  - (d) for the category "business"—according to a centre of activity.

Note.

In relation to the category "business", a centre of activity might comprise a business centre, an industrial estate or some other concentration of like activities.

- (3) The ad valorem amount (the amount in the dollar) of the ordinary rate may be the same for all land within a category or it may be different for different sub-categories.

**s. 530 Ad valorem rate for the category "farmland"**

If the ad valorem amount is different for different categories or different sub-categories within a category, the ad valorem amount for the category "farmland" (or each sub-category within that category) must be lower than the ad valorem amount in each other category (or sub-category within those other categories).

**s. 554 What land is rateable?**

All land in an area is rateable unless it is exempt from rating.

**s. 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,
- (d) land that is within a special area (within the meaning of the Water Supply Authorities Act 1987) 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 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.

### *Valuation of Land Act 1916*

#### **s. 6A Land value**

- (1) The land value of land is the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona-fide seller would require, assuming that the improvements, if any, thereon or appertaining thereto, other than land improvements, and made or acquired by the owner or the owner's predecessor in title had not been made.
- (2) Notwithstanding anything in subsection (1), in determining the land value of any land it shall be assumed that:
- (a) the land may be used, or may continue to be used, for any purpose for which it was being used, or for which it could be used, at the date to which the valuation relates, and
  - (b) such improvements may be continued or made on the land as may be required in order to enable the land to continue to be so used, but nothing in this subsection prevents regard being had, in determining that value, to any other purpose for which the land may be used on the assumption that the improvements, if any, other than land improvements, referred to in subsection (1) had not been made.

(3) Notwithstanding anything in subsection (1), in determining the land value of any land, being land in relation to which, at the date to which the valuation relates, there was a water right:

- (a) the land value shall include the value of the right, and
- (b) it shall be assumed that the right shall continue to apply in relation to the land.

### ***Water Management Act 2000***

#### **Schedule 8 Amendment of Other Acts**

##### **8.29 Valuation of Land Act 1916 No 2**

- [1] Section 4 Definitions  
Omit the definition of Water right from section 4 (1).
- [2] Section 6A Land value  
Omit section 6A (3).
- [3]–[6] (Repealed)
- [7] Section 58F Land rating factors—certain classes of lease from the Crown  
Omit section 58F (1) (f).
- [8] Section 60A Determination of values at request of council  
Omit section 60A (1) (b).
- [9] Schedule 2 Savings, transitional and other provisions  
Insert at the end of clause 1 (1):

#### **Water Management Act 2000**

- [10] Schedule 2, Part 3  
Part 3 Provisions consequent on enactment of Water Management Act 2000  
3 Water rights
  - (1) Section 6A (3), as in force immediately before the commencement of clause 9 of Schedule 9 to the Water Management Act 2000, continues to apply as if an access licence arising under subclause (1) (a) of that clause were a water right in relation to:
    - (a) the land specified in the entitlement from which the access licence arose as the land to which that entitlement related immediately before that commencement, or
    - (c) if the access licence is transferred or amended so as to specify some other land as the land to which the access licence relates, that other land.
  - (2) This clause ceases to apply on the commencement of Schedule 8.29 [2] to the Water Management Act 2000.