

Response to Supplementary Question

Inquiry - Ability of local governments to fund infrastructure and services

This document provides a response to the Standing Committee on State Development's Supplementary Question for IPART, following the appearance of Carmel Donnelly (Chair of IPART), Andrew Nicholls (CEO of IPART) and Fiona Towers (Executive Director, Pricing and Policy, of IPART) before the Committee on Friday 30 July 2024 for the inquiry into the ability of local governments to fund infrastructure and services.

1 Supplementary Question: Could the Independent Pricing and Regulatory Tribunal please provide the full list of rate exemptions

IPART does not routinely make decisions on exemptions, but the Tribunal did make some recommendations about exemptions in a previous review (see information on our 2016 review of the rating system below).

To assist the Committee, we provide information based on Part 6 of Chapter 15 of the *Local Government Act 1992* (NSW) which sets out what land is rateable and what land is exempt from rating. The Committee may also wish to seek advice on rate exemptions from the Office of Local Government, who administer the relevant legislation.

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

There are different exemptions for different types of rates:

- Section 555 of the LG Act sets out the land that is exempt from **all rates**. We have listed this land in column 1 of Table 1
- Section 556 of the LG Act and clause 123 of the of the *Local Government Regulation 2021* (NSW) set out the land that is exempt from all rates, **other than water supply special rates and sewerage special rates**. We have listed this land in column 2 of Table 1
- Section 557 and 588 of the LG Act set out the land that is exempt from, or may be exempted from, **water supply special rates and sewerage special rates** We have listed this land in Table 2.

The *Local Government Amendment Act 2021* makes some amendments to the exemptions in the *Local Government Act 1993* but the relevant parts of the amendment Act have not yet commenced. These provisions are to commence on a day to be appointed by proclamation.^b

^a LG Act s 554.

^b *Local Government Amendment Act 2021* (NSW) s 2(2).

The rate peg and special variations determined by IPART (under delegation from the Minister for Local Government) impose a limit on a councils 'general income'.^c Special rates for water supply services and sewerage services are excluded from the definition of general income and are therefore not regulated by IPART under its delegated Local Government functions. However, in the case of Central Coast Council, IPART does have a separate function of periodically determining the maximum prices for its water and sewerage business.

IPART also has delegated functions in relation to annual charges for domestic waste management services.^d Councils are not required to make and levy an annual charge for domestic waste management services on land that is exempt from rates.^e However, a council may make an annual charge for the provision of a domestic waste management services for a parcel of land that is exempt from rating if:

- The service is available for that land, and
- The owner of that land requests or agrees to the provision of the service to that land, and
- The amount of the annual charge is limited to recovering the cost of providing the service to that land.^f

Table 1 Rating exemptions

Land exempt from all rates ^g	Land exempt from all rates, other than water supply and sewerage special rates ^h
Land owned by the Crown, not being land held under a lease for private purposes. ⁱ	Land that is a public place.
Land within a national park, historic site, nature reserve, state game reserve or karst conservation reserve (within the meaning of the <i>National Parks and Wildlife Act 1974</i>), whether or not the land is affected by a lease, licence, occupancy or use.	Land used for a public reserve and vested in the Crown, a public body, or trustees.
Land that is the subject of a conservation agreement (within the meaning of the <i>National Parks and Wildlife Act 1974</i>). ^j	Land used for a common and vested in the Crown, a public body or trustees.
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 <i>Nature Conservation Trust Act 2001</i> .	Land used for a public cemetery and vested in the Crown, a public body or trustees.
Land that is within a special area or controlled area (within the meaning of the <i>Sydney Water Act 1994</i>) for Sydney Water Corporation referred to in that Act and is Crown land or land vested in the Corporation.	Land used solely for a free public library and vested in the Crown, a public body or trustees.
Land that is within a special area (within the meaning of the <i>Hunter Water Act 1991</i>) for the Hunter Water Corporation and is Crown land or land vested in that company.	Land acquired under an environmental planning instrument for the public purpose specified in the instrument and not leased for private purposes.
Land that is vested in or owned by Water NSW and in, on or over which water supply works (within the meaning of the <i>Water Management Act 2000</i>) are installed.	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 <i>Mining Act 1992</i> and that the council has declared is not rateable.

^c See LG Act s 505(a) (definition of 'general income').

^d See, e.g. LG Act s 507, 508, 508A.

^e LG Act s 496(1), 554.

^f LG Act, s 496(2).

^g LG Act s 555(1).

^h LG Act s 556(1) and *Local Government (General) Regulation 2021* cl 123.

ⁱ Land is not rateable only because the land is leased by the Crown to a caretaker at a nominal rent: LG Act section 555(2).

^j If a single parcel of land is the subject of a conservation agreement, any rate levied on the whole parcel is to be reduced by the percentage in section 555(3) of the LG Act.

Land exempt from all rates ^a	Land exempt from all rates, other than water supply and sewerage special rates ^b
Land that is within a special area (as declared by an order under section 302 of the <i>Water Management Act 2000</i>) for a water supply authority and is Crown land or land vested in the authority.	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. ^k
Land that belongs to a religious body and is occupied and used in connection with: ^l <ul style="list-style-type: none"> • a church or other building used or occupied for public worship, or • a building used or occupied solely as the residence of a minister of religion in connection with any such church or building, or • a building used or occupied for the purpose of religious teaching or training, or • 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. 	Land that belongs to a public hospital.
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 <i>Education Act 1990</i> or a school in respect of which a certificate of exemption under section 78 of that Act is in force), including: <ul style="list-style-type: none"> • a playground that belongs to and is used in connection with the school, and • 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. 	Land that is vested in the Minister for Health, the Health Administration Corporation or the New South Wales Health Foundation.
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 <i>Aboriginal Land Rights Act 1983</i> to be exempt from payment of rates.	Land that is vested in a local health district constituted under the <i>Health Services Act 1997</i> .
Land that is vested in or owned by Residual Transport Corporation of New South Wales or a public transport agency (within the meaning of the <i>Transport Administration Act 1988</i>) and in, on or over which rail infrastructure facilities (within the meaning of that Act) are installed.	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.
Land that is vested in or owned by Transport Asset Holding Entity of New South Wales and in, on or over which rail infrastructure facilities (within the meaning of the <i>Transport Administration Act 1988</i>) are installed.	Land that is vested in the Crown or Venues NSW and is described in Schedule 4A, Parts 1, 2 or 3 of the <i>Sporting Venues Authorities Act 2008</i> and is used or occupied for the purposes of or in accordance with that Act.
Land that is vested in or owned by Sydney Metro and in, on or over which rail infrastructure facilities (within the meaning of the <i>Transport Administration Act 1988</i>) are installed.	Land that is vested in the Crown or the Zoological Parks Board and is used or occupied by the Board for its purposes.
Land that is below high water mark and is used for any aquaculture (within the meaning of the <i>Fisheries Management Act 1994</i>) relating to the cultivation of oysters.	Land that is vested in the mines rescue company, within the meaning of the <i>Coal Industry Act 2001</i> , and is used for the purposes of a mine rescue station controlled by that company.
	Land that is managed by the Teacher Housing Authority and on which a house is erected.
	Land that is leased to the Crown for the purpose of cattle dipping.

^k The provisions of the *Charitable Fundraising Act 1991* are irrelevant in determining whether a body is a public benevolent institution or public charity: LG Act section 559.

^l A parcel of rateable land belonging to a religious body that is partly occupied and used in such a manner, and partly in a manner that would result in part of the parcel not being exempt from rates under this section, is to be valued in accordance with section 28A of the *Valuation of Land Act 1916* to enable those rates to be levied on the part that is not exempt. Any such valuation is to be made at the request of the council that proposes to levy rates on the parcel concerned: LG Act s 555(5)-(6).

Land exempt from all rates ^a	Land exempt from all rates, other than water supply and sewerage special rates ^b
	Land that is vested in an Aboriginal Land Council and that is reserved under Part 4A of the <i>National Parks and Wildlife Act 1974</i> .
	All land leased by the Royal Agricultural Society in the Homebush Bay area (as defined in the <i>Olympic Co-ordination Authority Act 1995</i> before the repeal of that Act).
	All land occupied by the Museum of Contemporary Art Limited.
	All land comprising the site known as Museum of Sydney, on the site of first Government House,
	All land that is held by a body corporate on behalf of an Aboriginal person or persons pursuant to an indigenous land use agreement registered under the <i>Native Title Act 1993</i> of the Commonwealth.

Table 2 Exemptions for water supply and sewerage special rates

Scope of exemption	Application of exemption
Water supply special rates	Water supply special rates may not be levied on land to which the council has resolved not to supply water.
Sewerage special rates	Sewerage special rates may not be levied on land which the council has resolved not to connect to the council's sewers.
Both water supply and sewerage special rates	Councils have the discretion to exempt payment of water supply and sewerage special rates for: <ul style="list-style-type: none"> • a public reserve • a public hospital • a public charity • land that is: <ul style="list-style-type: none"> - unoccupied, - not supplied with water from a council water pipe and not connected to a council sewer, and - determined by the council to be unsuitable for constructing a building because it liable to flooding or tidal inundation, or liable to be affected by a coastal hazard • 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.
Water supply special rates	Councils have the discretion to exempt payment of water supply special rates for land that is within 225m of a gravitation or rising water main and that is not connected to the main.
Sewerage special rates	Councils have the discretion to exempt payment of sewerage special rates for land that, for the time being, is not rateable in respect of the water supply special rate.

Recommendations on exemptions from IPART's 2016 Review of the Local Government Rating System

Table 3 shows the recommendations related to exemptions from IPART's 2016 [Review of the Local Government Rating System](#). The Government Response to IPART's review is available on [OLG's website](#). Some, but not all, of these recommendations were implemented by the *Local Government Amendment Act 2021* but the relevant provisions of that Act have not yet commenced.

Table 3 Better target rate exemption eligibility recommendations

Rec	Recommendation	Page
14	Sections 555 and 556 of the <i>Local Government Act 1993</i> NSW should be amended to: <ul style="list-style-type: none"> exempt land on the basis of use rather than ownership, and to directly link the exemption to the use of the land, and ensure land used for residential and commercial purposes is rateable unless explicitly exempted. 	98
15	Land that is used for residential care as defined in Section 41-3(1) of the <i>Aged Care Act 1997</i> (Cth) be proportionally rateable according to the share of places whose maximum Refundable Accommodation Deposit is above the level set by the Minister for Health and Aged Care (currently \$550,000).	107
16	Section 556(1)(i) of the <i>Local Government Act 1993</i> (NSW) should be amended to include land owned by a private hospital and used for that purpose.	109
17	The following exemptions be removed: <ul style="list-style-type: none"> land that is vested in, owned by, or within a special or controlled area for, the Hunter Water Corporation, Water NSW or the Sydney Water Corporation (<i>Local Government Act 1993</i> (NSW) section 555(1)(c) and section 555(1)(d)) land that is below the high water mark and is used for the cultivation of oysters (<i>Local Government Act 1993</i> (NSW) section 555(1)(h)) land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim (<i>Local Government Act 1993</i> (NSW) section 556(1)(g)), and land that is managed by the Teacher Housing Authority and on which a house is erected (<i>Local Government Act 1993</i> (NSW) section 556(1)(p)). 	112
18	Section 555(1)(b1) of the <i>Local Government Act 1993</i> (NSW) should be amended to remove the current rating exemption for land that is the subject of a conservation agreement and instead require it to be rated using the Environmental Land category.	112
19	The following exemptions not be funded by local councils and hence should be removed from the <i>Local Government Act</i> and Regulation: <ul style="list-style-type: none"> land that is vested in the Sydney Cricket and Sports Ground Trust (<i>Local Government Act 1993</i> (NSW) section 556(1)(m)) land that is leased by the Royal Agricultural Society in the Homebush Bay area (<i>Local Government (General) Regulation 2005</i> reg 123(a)) land that is occupied by the Museum of Contemporary Art Limited (<i>Local Government (General) Regulation 2005</i> reg 123(b)), and land comprising the site known as Museum of Sydney (<i>Local Government (General) Regulation 2005</i> reg 123(c)). <p>The NSW Government should consider whether to fund these local rates through State taxes.</p>	116
20	Where a portion of land is used for an exempt purpose and the remainder for a non-exempt activity, only the former portion should be exempt, and the remainder should be rateable.	117
21	Where land is used for an exempt purpose only part of the time, a self- assessment process should be used to determine the proportion of rates payable for the non-exempt use.	117
22	A council's maximum general income not be modified as a result of any changes to exemptions from implementing our recommendations.	121
23	A council may apply to IPART for A Special Variation to take account of the changes in exemptions using a streamlined process in the year that our exemption changes came in force. The council would need to demonstrate: <ul style="list-style-type: none"> it satisfies the first criteria for Special Variation applications in the OLG guidelines relating to the need for and purpose of a different revenue path for the council's General Fund, and that any subcategory rating structure applied to previously exempt properties is no greater than the average rate structure across the relevant rating category 	121
24	The <i>Local Government Act 1993</i> (NSW) should be amended to remove the current exemptions from water and sewerage special charges in section 555 and instead allow councils discretion to exempt these properties from water and sewerage special rates in a similar manner as occurs under section 558(1).	124
25	At the start of each rating period, councils calculate the estimated value of rating exemptions within the council area. This information should be published in the council's annual report or otherwise made available to the public.	124

Source: IPART, *Review of Local Government Rating System*, Final Report, pp 19-21.