



SHIRE OF WYNDHAM | EAST KIMBERLEY

# AGENDA SPECIAL COUNCIL

22 July 2021

## **DISCLAIMER**

Members of the Public are advised that recommendations to Council contained within this Agenda and decisions arising from the Council meeting can be subject to alteration.

Applicants and other interested parties should refrain from taking any action until such time as written advice is received confirming Council's decision with respect to any particular issue.

An audio and/or video record will be made of these proceedings to assist in the taking of minutes.

Signed on behalf of Council



**VERNON LAWRENCE**

**ACTING CHIEF EXECUTIVE OFFICER**

### **NOTES**

- 1. Councillors wishing to make alternate motions to officer recommendations are requested to provide notice of such motions electronically to the minute taker prior to the Council Meeting.**
- 2. Councillors needing clarification on reports to Council are requested to seek this from relevant Officers prior to the Council meetings.**

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**SHIRE OF WYNDHAM EAST KIMBERLEY  
SPECIAL COUNCIL MEETING AGENDA  
KUNUNURRA COUNCIL CHAMBERS  
TO BE HELD ON 22 AT 5:30PM**

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**1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS**

**2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE  
(PREVIOUSLY APPROVED)**

**3. DECLARATION OF INTEREST**

- Financial Interest
- Impartiality Interest
- Proximity Interest

**4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil

**5. PUBLIC QUESTION TIME**

Nil

**7. PETITIONS**

Nil

**8. ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION**

Nil

**9. DEPUTATIONS / PRESENTATIONS / SUBMISSIONS**

Nil

**10. MATTERS FOR WHICH THE MEETING MAY BE CLOSED**

Nil

## 11. REPORTS

### 11.1. ANNUAL BUDGET 2021/22 - DIFFERENTIAL GENERAL RATES AND MINIMUM PAYMENTS

<b>DATE:</b>	22 July 2021
<b>AUTHOR:</b>	Director Corporate Services
<b>RESPONSIBLE OFFICER:</b>	Felicity Heading, Director Corporate Services
<b>FILE NO:</b>	FM.05.14
<b>DISCLOSURE OF INTERESTS:</b>	NIL

#### VOTING REQUIREMENT

Simple Majority

#### OFFICER'S RECOMMENDATION

##### That Council:

1. Endorse revised Council Policy *CP/FIN-3200 Strategic Rating* as per Attachment 1; and
2. Endorse the revised 2021/22 Rating Model as follows and as per Attachment 2, with the intention of striking the rates as part of the 2021/22 Budget adoption, subject to receiving Ministerial approval for the UV Rural Residential differential rating category.

Differential Rating Category	Total Properties	Total Rateable Value of Properties \$	Proposed Minimum Payment \$	Proposed Rate in the Dollar	% of Properties on Minimum Payments	Proposed Concessions	Proposed Rates Revenue Budget 2021/22 \$
GRV - Residential	1,697	32,493,871	1,123	0.1463	1.30%		4,760,031
GRV - Other Vacant	126	520,841	1,123	0.2269	77.78%		178,805
GRV - Commercial	188	12,871,625	1,123	0.1443	8.51%		1,863,081
GRV - Industrial	178	7,457,086	1,123	0.1403	5.06%		1,052,089

GRV - Rural Residential	26	272,424	1,123	0.1463	11.54%		41,521
UV - Rural Residential	200	28,935,000	1,123	0.0168	21.50%		488,634
UV - Pastoral	21	17,364,229	1,123	0.0570	0.00%	569,058	420,703
UV - Commercial/ Industrial	68	12,516,580	1,123	0.0078	35.29%		117,912
UV - Agriculture	80	60,935,109	1,123	0.0117	1.25%		713,093
UV - Horticulture	93	27,215,000	1,123	0.0102	0.00%		277,593
UV - Mining	64	1,832,448	1,123	0.2767	43.75%		525,518
UV - Mining Exploration and Prospecting	41	490,179	313	0.1383	24.39%		68,842
UV - Other	5	8,960,000	1,123	0.0066	20.00%		59,368
<b>TOTALS</b>	<b>2,787</b>	<b>211,846,392</b>				<b>569,058</b>	
<b>Total Budgeted Net Rates Revenue Raised</b>							<b>10,567,190</b>

## **PURPOSE**

For Council to consider endorsing the revised Council Policy *CP/FIN-3200 Strategic Rating* and the revised 2021/22 rate model for inclusion in the 2021/22 Annual Budget.

## **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

Regulator - enforce state legislation and local laws

## **BACKGROUND/ PREVIOUS CONSIDERATIONS BY COUNCIL/ COMMITTEE**

### **Background**

As part of the rate setting and annual budget process each year, Local Governments in Western Australia are required to seek Ministerial approval for any proposed differential rate that is more than twice the lowest differential rate imposed. Advertising the rates and seeking Ministerial approval is part of the normal process undertaken each year prior to Council adopting its Annual Budget.

At the 27 April Ordinary Council meeting the revised Council Policy *CP/FIN-3200 Strategic Rating* and the proposed differential rates and minimum payments for the 2021/22 financial year were adopted for advertising incorporating a 1% average increase. Advertising of the proposed rates commenced on 1 May 2021 with a closing date for public submissions on 28 May 2021.

On 26 May 2021 the annual Unimproved Value (UV) valuation rolls were received from Landgate and loaded into the Shire's rates model for 2021/22. The rolls included significant and varying reductions in values for the UV Rural Residential category.

At the 1 June 2021 Special Council Meeting, Council considered public submissions received and endorsed a revised rating model which included an adjusted rate in the dollar and proposed rate concessions for the UV Rural Residential rating category designed to mitigate the impact of the changes in values to ensure that the rates for individual ratepayers in this category received the intended 1% increase in rates for the 2021/22 financial year.

On 4 June 2021 applications were submitted to the Minister for Local Government for the differential rates and minimum payments with the expectation that the approvals would be received prior to Council adopting the 2021/22 Annual Budget at the 29 June 2021 Ordinary Council Meeting.

On 29 June 2021 Ministerial approval was received for all the proposed differential rates and minimum payments with the exception of the differential rate for the UV Rural Residential rating category. This notification was received 19 minutes before the Ordinary Council Meeting was scheduled to start. As the rating model and the annual budget can not be adopted without the required Ministerial approval for all differential rates, the proposal to adopt the 2021/22 Annual Budget was withdrawn from the agenda at the 29 June 2021 Ordinary Council Meeting.

Subsequent to 29 June, amendments to the rating model were made to ensure that the differential rate for the UV Rural Residential rating category met the requirements for Ministerial approval. A revised rating model was presented to Council at a Special Council Meeting on 8 July 2021. At this meeting Council resolved not to endorse the amended rating model and strategic rating policy and requested the CEO to obtain a definitive legal position on the application of concessions within the UV Rural Residential and UV Pastoral rating categories.

Further clarification was sought from the Department of Local Government, Sport and Cultural Industries regarding the decision not to approve the UV Rural Residential rates, and legal advice was sought regarding the proposed application of concessions. Details of the Department's response and the legal advice received are provided in the comments section of this report.

### **Council Decisions relevant to this report**

At the 27 April 2021 Ordinary Council Meeting, Council resolved the following:

## Council Decision

**Minute Number: 118424 - 27/04/2021**

**Moved: Cr M McKittrick**

**Seconded: Cr G Lodge**

**That Council:**

- 1. Endorse the revised Council Policy CP/FIN-3200 Strategic Rating;**
- 2. Endorse the 2020/21 Rating Model as follows, with the intention of seeking public submissions thereon and thereafter reporting to Council before striking the rates as part of the 2021/22 Budget adoption, subject to receiving Ministerial approval where required by legislation;**

Differential Rating Category	Total Properties	Total Rateable Value of Properties \$	Proposed Minimum Payment \$	Proposed Rate in the Dollar	% of Properties on Minimum Payments	Proposed Rates Revenue Budget 2021/22 \$
GRV - Residential	1,697	32,481,391	1,123	0.1463	1.30%	4,758,205
GRV - Other Vacant	124	514,841	1,123	0.2269	78.23%	176,922
GRV - Commercial	188	12,864,449	1,123	0.1443	8.51%	1,862,045
GRV - Industrial	178	7,457,086	1,123	0.1403	5.06%	1,052,089
GRV - Rural Residential	26	272,424	1,123	0.1463	11.54%	41,521
UV - Rural Residential	200	43,920,000	1,123	0.0111	0.00%	487,512
UV - Pastoral	21	21,053,985	1,123	0.0570	0.00%	425,932*
UV - Commercial/Industrial	68	13,550,080	1,123	0.0078	30.88%	125,549
UV - Agriculture	81	60,726,109	1,123	0.0117	1.23%	711,501
UV - Horticulture	93	28,651,000	1,123	0.0102	0.00%	292,240



UV - Mining	64	1,815,307	1,123	0.2767	43.75%	520,933
UV - Mining Exploration and Prospecting	45	524,542	313	0.1383	24.44%	73,861
UV - Other	5	8,975,000	1,123	0.0066	20.00%	59,368
<b>TOTALS</b>	<b>2790</b>	<b>232,806,214</b>				<b>10,587,678</b>

\* includes proposed concession subject to Council approval

**3. Endorse for advertising for a minimum of twenty-one (21) days and seek public submissions on:**

- a. **Council Policy CP/FIN-3200 Strategic Rating (Attachment 1) that outlines the principles which underpin the proposed 2021/22 rating model, including the Object of and Reasons for Differential Rates;**
- b. **The 2021/22 Rating Model (Attachment 3) which incorporates the Object of and Reasons for Differential Rates, along with the proposed differential rates and minimum payments to be applied from 1 July 2021 for the 2021/22 financial year in accordance with section 6.36 of the Local Government Act 1995.**

**4. Hold a Special Council Meeting on 1 June 2021 to:**

- a. **Consider Public Submissions received in relation to the Proposed Differential General Rates and Minimum Payments and Strategic Rating Policy;**
- b. **Endorse Council Policy CP/FIN-3200 Strategic Rating Including the 2021/22 Rating Model, with the intention of striking rates as part of the 2021/22 Budget adoption;**
- c. **Request the CEO, or their delegate to seek Ministerial approval where required by legislation.**

**Carried: 9/0**

At the 1 June 2021 Special Council Meeting, Council resolved the following:

**Council Decision**

**Minute Number: 118451 - 1/6/2021**

**That Council:**

- 1. Notes the submissions received in relation to the proposed Differential General Rates and Minimum Payments and Strategic Rating Policy, and thanks the respondents for their input;**

**2. Notes that Budget efficiencies have been identified as part of the 2021/22 Budget process and these efficiencies will be included in the Annual Budget presented to Council for adoption; and**

**3. Adopt revised Council Policy CP/FIN-3200 Strategic Rating as per Attachment 1.**

**Moved: Cr D Menzel**

**Seconded: Cr N Brook**

**Against: Cr A Petherick**

**Decision: 6/1**

**Council Decision**

**Minute Number: 118452 - 1/6/2021**

**That Council:**

- 1. In accordance with Section 6.47 of the Local Government Act 1995, endorse Rate Concessions with a total value of \$569,058 under Differential Rating Category UV Pastoral as detailed in Confidential Attachment 2, with the intention of granting them as part of the 2021/22 Budget adoption; and**
- 2. Endorse that should the 1 July 2021 valuation for any UV Pastoral property be revised down, the concession amount for that property will be recalculated and adjusted for the new valuation so that the revised rates for the 2021/22 financial year will be no greater than 140% of the 2019/20 rates.**

**Moved: Cr J Farquhar**

**Seconded: Cr M McKittrick**

**Decision: 7/0**

**Council Decision**

**Minute Number: 118453 - 1/6/2021**

**That Council:**

- 1. In accordance with Section 6.47 of the Local Government Act 1995, endorse Rate Concessions with a total value of \$782,321 under Differential Rating Category UV Rural Residential as detailed in Confidential Attachment 3, with the intention of granting them as part of the 2021/22 Budget adoption; and**
- 2. Endorse that should the 1 July 2021 valuation for any UV Rural Residential property be revised down, the concession amount for that property will be recalculated and adjusted for the new valuation so that the revised rates for the 2021/22 financial year will be no greater than 101% of the 2020/21 rates.**

**Moved: Cr M Dear**  
**Seconded: Cr J Farquhar**

**Decision: 7/0**

**Council Decision**

**Minute Number: 118454 - 1/6/2021**

**That Council**

- 1. Endorse the 2021/22 Rating Model as follows, with the intention of striking the rates as part of the 2021/22 Budget adoption, subject to receiving Ministerial approval where required by legislation.**

Differential Rating Category	Total Properties	Total Rateable Value of Properties \$	Proposed Minimum Payment \$	Proposed Rate in the Dollar	% of Properties on Minimum Payments	Proposed Concessions	Proposed Rates Revenue Budget 2021/22 \$
GRV - Residential	1,697	32,493,871	1,123	0.1463	1.30%		4,760,031
GRV - Other Vacant	126	520,841	1,123	0.2269	77.78%		178,805
GRV - Commercial	188	12,871,625	1,123	0.1443	8.51%		1,863,081
GRV - Industrial	178	7,457,086	1,123	0.1403	5.06%		1,052,089
GRV - Rural Residential	26	272,424	1,123	0.1463	11.54%		41,521
UV - Rural Residential	200	28,935,000	1,123	0.0439	0.00%	782,321	487,926
UV - Pastoral	21	17,364,229	1,123	0.0570	0.00%	569,058	420,703
UV - Commercial/Industrial	68	12,516,580	1,123	0.0078	35.29%		117,912
UV - Agriculture	80	60,935,109	1,123	0.0117	1.25%		713,093
UV - Horticulture	93	27,215,000	1,123	0.0102	0.00%		277,593
UV - Mining	64	1,832,448	1,123	0.2767	43.75%		525,518
UV - Mining Exploration and Prospecting	41	490,179	313	0.1383	24.39%		68,842
UV - Other	5	8,960,000	1,123	0.0066	20.00%		59,368

TOTALS	2,787	211,846,392				1,351,379	
<b>Total Budgeted Net Rates Revenue Raised</b>							<b>10,566,482</b>

**Moved: Cr N Brook**  
**Seconded: Cr M Mckittrick**  
**Against: Cr A Petherick**

**Decision:**

**6/1**

At the 8 July 2021 Special Council Meeting, Council resolved the following:

**Council Decision**

**Minute Number: 08/07/2021 – 118470**

**That Council:**

- 1. Does not endorse revised Council Policy CP/FIN-3200 Strategic Rating as per Attachment 1; and**
- 2. Does not endorse the revised 2021/22 Rating Model as follows (Table omitted) as per Attachment 2, with the intention of striking the rates as part of the 2021/22 Budget adoption, subject to receiving Ministerial approval for the UV Rural Residential differential rating category.**
- 3. Request the CEO to obtain a definitive legal position on the application of the concessions within the UV-Rural Residential rating category and the UVPastoral rating category and to clarify the inconsistent treatment of concessions by the Department of Local Government Sport and Cultural Industries with respect to Ministerial approval of differential rates.**

**Moved: Cr D Menzel**  
**Seconded: Cr A Petherick**

**Decision: 6/0**

**STATUTORY IMPLICATIONS**

In accordance with Section 6.33 the *Local Government Act 1995* as detailed below, Ministerial approval is required for the imposition of a differential general rate which is more than twice the lowest differential general rate imposed.

## **Local Government Act 1995**

### **Part 5**

#### **Division 6 – Disclosure of financial interests**

##### 5.63. Some interests need not be disclosed

- (1) Sections 5.65, 5.70 and 5.71 do not apply to a relevant person who has any of the following interests in a matter —
- (a) an interest common to a significant number of electors or ratepayers; or
  - (b) an interest in the imposition of any rate, charge or fee by the local government; or
  - (c) an interest relating to a fee, reimbursement of an expense or an allowance to which section 5.98, 5.98A, 5.99, 5.99A, 5.100 or 5.101(2) refers...

## **Local Government Act 1995**

### **Part 6**

#### **Division 6 – Rates and service charges**

##### 6.33. Differential general rates

- (1) A local government may impose differential general rates according to any, or a combination, of the following characteristics —
- (a) the purpose for which the land is zoned under a local planning scheme in force under the Planning and Development Act 2005;
  - (b) the predominant purpose for which the land is held or used as determined by the local government;
  - (c) whether or not the land is vacant land; or
  - (d) any other characteristic or combination of characteristics prescribed.
- (2) Regulations may —
- (a) specify the characteristics under subsection (1) which a local government is to use; or
  - (b) limit the characteristics under subsection (1) which a local government is permitted to use.
- (3) In imposing a differential general rate a local government is not to, without the approval of the Minister, impose a differential general rate which is more than twice the lowest differential general rate imposed by it.
- (4) If during the financial year, the characteristics of any land which form the basis for the imposition of a differential general rate have changed, the local government is not to, on account of that change, amend the assessment of rates payable on that land in respect of that financial year but this subsection does not apply in any case where section 6.40(1)(a) applies.

## **Local Government (Financial Management) Regulations 1996**

### 52A. Differential general rates — s. 6.33(1)(d)

- (1) In this regulation —
- commencement day** means the day on which the Local Government (Financial Management) Amendment Regulations (No. 2) 2012 regulation 5 comes into operation;
  - relevant district** means a district that —

- (a) is declared to be a district by an order made under section 2.1(1)(a) on or after commencement day; or*
- (b) has its boundaries changed by an order made under section 2.1(1)(b) on or after commencement day.*

*(2) For the purposes of section 6.33(1)(d), the following are prescribed characteristics-*

- (a) whether or not the land is situated in a townsite as defined in the Land Administration Act 1997 section 3(1);*
- (b) whether or not the land is situated in a particular part of the district of the local government.*

## **Local Government Act 1995**

### **Part 6**

#### **Division 6 – Rates and service charges**

##### **6.35. Minimum payment**

- (1) Subject to this section, a local government may impose on any rateable land in its district a minimum payment which is greater than the general rate which would otherwise be payable on that land.*
- (2) A minimum payment is to be a general minimum but, subject to subsection (3), a lesser minimum may be imposed in respect of any portion of the district.*
- (3) In applying subsection (2) the local government is to ensure the general minimum is imposed on not less than -*
  - (a) 50% of the total number of separately rated properties in the district; or*
  - (b) 50% of the number of properties in each category referred to in subsection (6), on which a minimum payment is imposed.*
- (4) A minimum payment is not to be imposed on more than the prescribed percentage of*
  - (a) the number of separately rated properties in the district; or*
  - (b) the number of properties in each category referred to in subsection (6), unless the general minimum does not exceed the prescribed amount.*
- (5) If a local government imposes a differential general rate on any land on the basis that the land is vacant land it may, with the approval of the Minister, impose a minimum payment in a manner that does not comply with subsections (2), (3) and (4) for that land.*
- (6) For the purposes of this section a minimum payment is to be applied separately, in accordance with the principles set forth in subsections (2), (3) and (4) in respect of each of the following categories -*
  - (a) to land rated on gross rental value;*
  - (b) to land rated on unimproved value; and*
  - (c) to each differential rating category where a differential general rate is imposed.*

##### **6.36. Local government to give notice of certain rates**

- (1) *Before imposing any differential general rates or a minimum payment applying to a differential rate category under section 6.35(6)(c) a local government is to give local public notice of its intention to do so.*
- (2) *A local government is required to ensure that a notice referred to in subsection (1) is published in sufficient time to allow compliance with the requirements specified in this section and section 6.2(1).*
- (3) *A notice referred to in subsection (1)*
  - (a) *may be published within the period of 2 months preceding the commencement of the financial year to which the proposed rates are to apply on the basis of the local government's estimate of the budget deficiency;*
  - (b) *is to contain -*
    - (i) *details of each rate or minimum payment the local government intends to impose;*
    - (ii) *an invitation for submissions to be made by an elector or a ratepayer in respect of the proposed rate or minimum payment and any related matters within 21 days (or such longer period as is specified in the notice) of the notice; and*
    - (iii) *any further information in relation to the matters specified in subparagraphs (i) and (ii) which may be prescribed; and*
  - (c) *is to advise electors and ratepayers of the time and place where a document describing the objects of, and reasons for, each proposed rate and minimum payment may be inspected.*
- (4) *The local government is required to consider any submissions received before imposing the proposed rate or minimum payment with or without modification.*
- (5) *Where a local government -*
  - (a) *in an emergency, proposes to impose a supplementary general rate or specified area rate under section 6.32(3)(a); or*
  - (b) *proposes to modify the proposed rates or minimum payments after considering any submissions under subsection (4), it is not required to give local public notice of that proposed supplementary general rate, specified area rate, modified rate or minimum payment.*

#### **6.47. Concessions**

*Subject to the Rates and Charges (Rebates and Deferrals) Act 1992, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive\* a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.*

*\* Absolute majority required.*

### **POLICY IMPLICATIONS**

Council Policy CP/FIN-3200 *Strategic Rating* has been revised and is attached to this report at Attachment 1.

The proposed differential general rates and minimum payments in the rate model are based on the Council's revised Policy *CP/FIN-3200 Strategic Rating* that aligns the rating model closely to the LPS9 in terms of land use.

### **FINANCIAL IMPLICATIONS**

The differential general rates, minimum payments, and proposed concessions as per the revised rating model outlined below and in Attachment 2 are expected to yield net total rate revenue of \$10,567,190, an increase of \$708 from the original rate model presented.

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2017-2027*

Focus Area 4: PERFORMANCE - Civic Leadership.

Goal 4.4: Sustainably maintain the Shire's financial viability.

Strategy 4.4.3: Adequately plan for and fund asset maintenance and renewal to deliver planned services.

Strategy 4.4.4: Apply best practice financial management to ensure long term sustainability.

### **RISK IMPLICATIONS**

Risk: Failure to adequately resource and manage funding requirements which meet the needs of the Shire's service delivery requirements and strategic objectives.

Control: Implementation of LTFP and Annual Budget.

Policies updated in accordance with schedule and operational requirements.

### **COMMUNITY ENGAGEMENT**

Local public notice took place from 1 May 2021 to 28 May 2021 in accordance with legislative requirements and the Shire's Community Engagement Plan. Public submissions were considered at the 1 June 2021 Special Council Meeting.

Ratepayers in the UV Rural Residential rating category affected by the changes to the valuations and the differential rate will be contacted by the Shire to advise them of the Minister's decision, the required changes to the proposed rating model, and the impact of the changes on their individual rates.

### **COMMENTS**

#### **Annual UV revaluations**

All properties valued on an Unimproved Valuation basis are revalued annually by the Valuer General's Office. These revaluations are conducted around August each year with the new valuations taking effect from 1 July of the following year. Council usually adopts the rate in the dollar for advertising in March or April each year prior to the new valuation roll being



received. Normally there are no large variations in valuations on an annual basis and when the valuation roll is received in May the new valuations are incorporated into the final rate model for adoption by Council with the annual budget in June. Any changes to the rate in the dollar required to ensure the budgeted yield from each rating category is maintained are generally minor and are implemented following the public submission period.

#### UV Rural Residential Properties

There are currently 200 properties within the Shire's UV Rural Residential rating category that are zoned Rural Residential or Rural Small Holding. The 2021 UV Valuation Roll includes significant valuation changes for properties in this rating category with large variations in valuation across the category due to the sale of a large number of properties in Valentine Falls Estate in 2020. Valuations in this rating category have decreased by an average of approximately 35% with decreases for individual properties varying from 0 to 75%. This has meant that the usual method of adjusting the rate in the dollar to achieve the desired total rate yield from the rating category would result in large variations in individual rate assessments with some ratepayers receiving large increases in their rates while others receive significant decreases.

Officers investigated options to determine the best way to address the variations in valuation changes across the UV Rural Residential rating category including the creation of a separate differential rating category for the Valentine Falls Estate. Advice was received however, that this option is not possible as the properties concerned do not meet the required characteristics that allow the imposition of a separate differential rating category under Section 6.33 of the *Local Government Act 1995*.

Following further investigations and advice, it was determined that the most equitable option to achieve the desired outcome of a 1% overall average rate increase was through the use of rate concessions. Officers considered that this option was available as the power to grant concessions is a discretionary power of Council under s6.47 of the *Local Government Act 1995* and has previously been used in dealing with the phasing in of increases in values for the UV Pastoral rating category.

The proposed model allowed the Shire to keep total rates payable for individual ratepayers in the UV Rural Residential rating category at a level that incorporated the desired 1% increase. This was achieved by applying a rate in the dollar that resulted in the rates for the property with the greatest decrease in valuation being equal to their 2020/21 rates plus 1% and applying concessions to all other UV Rural Residential properties so that their rates are equal to their 2020/21 rates plus 1%.

Officers considered that the use of concessions was appropriate in this instance as the variations in valuations within the UV Rural Residential rating category are due to unusual market conditions caused by the sale of a large number of properties in the Valentine Falls Estate. It is considered likely that there will be a correction in the market and that future valuations will be more in line with the true market value of rural residential properties and that the current variations will even out over time. The use of concessions would have allowed the Shire to mitigate the impact of these short term fluctuations to ensure the most

fair and equitable outcome for individual ratepayers as well as for all ratepayers across the Shire.

The proposed rating model and concessions were endorsed by Council at the 1 June 2021 Special Council Meeting subject to receiving Ministerial approval as required. Applications for Ministerial approval of the differential rates and minimum payments were submitted to the Department of Local Government, Sport and Cultural Industries (the Department) on 4 June 2021.

On 29 June 2021 Ministerial approval was received for all the proposed differential rates and minimum payments with the exception of the differential rate for the UV Rural Residential rating category (refer Attachment 3). The reason given by the Department for not approving the UV Rural Residential differential rate is that the application of concessions in the manner proposed by the Shire could be seen to be bypassing the valuation of land process and effectively imposing a different rate in the dollar to that approved by the Department. Ostensibly the Department has advised that whilst they recognise that there are anomalies in the Valuer General's valuation process relating to the affected properties, it is not within their power to address this.

Following the Minister's decision, Officers liaised with the Department to determine options available that would meet the Ministerial approval requirements. Based on the advice received it was determined that the only option available that would not result in a significant reduction in rate revenue was to adjust the UV Rural Residential rate in the dollar so that the desired total rate yield for this rating category is achieved without the application of concessions. This option was presented to Council for consideration at the 8 July Special Council Meeting. At this meeting Council resolved not to endorse the amended rating model and strategic rating policy, and requested the CEO to obtain a definitive legal position on the application of concessions within the UV Rural Residential and UV Pastoral rating categories.

#### Department Response

Clarification was sought from the Department regarding the rationale behind the decision not to approve the UV Rural Residential rates. The full response is provided at Confidential Attachment 4, but in summary the response reaffirms the Department's decision on the basis that the Minister cannot approve an unusually high rate in the dollar increase on the promise that concessions will be issued at a later date as there is no guarantee that the concessions will be granted, and that Council's discretionary power to grant concessions is not 'unfettered' and cannot be used in a way which circumvents the requirement to use the valuation of land as the general basis for determining rates.

The Department response also advises that they consider the Shire's proposed use of concessions for the UV Rural Residential rating category differs from that used for the UV Pastoral rating category as the increase in the UV Pastoral rate in the dollar was not significant and therefore the concessions were not considered as part of the Ministerial approval process, whereas the proposed UV Rural Residential rate in the dollar increase is

significant and therefore the use of concessions was taken into consideration and deemed to not meet the approval requirements for the reasons given above.

It should also be noted that the above response received from the Department on 16 July 2021 advised that this was their final response and that they consider the matter closed.

#### Legal advice

Legal advice received (see Confidential Attachment 5) recommends that the Shire propose to the Minister that it will give an undertaking to apply the concessions and provide further explanation of the reasoning for the proposal. Officers do not consider that this option would result in a change to the outcome as considerable written and verbal correspondence already undertaken with the Department confirms that although the Department understands the intent and reasoning behind the Shire's proposed use of concessions, they consider the Minister's decision to be final and that the matter is closed. In any event, if the Shire was to take this course it would take considerable time to progress resulting in further delays in obtaining Ministerial approval and adoption of the 2021/22 Annual Budget.

The legal advice received also confirms previous advice from WALGA that the creation of a separate differential rating category for Valentine Falls Estate would not meet the requirements of the Local Government Act and was therefore not an option.

Whilst the above does not necessarily provide a definitive legal position regarding the use of concessions, Officers consider that it confirms that the Department is not prepared to consider a change to their decision at this time and that any further action required to obtain a more definitive legal position needs to be taken outside the Ministerial approval process.

Officers are therefore re-presenting the revised Council Policy CP/FIN-3200 Strategic Rating and the revised Rating Model 2021/22 as presented at the 8 July Special Council Meeting and recommending that Council endorse them in order to allow Ministerial approval to be obtained and the 2021/22 Annual Budget to be adopted.

#### **ATTACHMENTS**

Attachment 1 - Revised Council Policy CP/FIN-3200 Strategic Rating

Attachment 2 - Revised Rating Model 2021/22

Attachment 3 - Approval Letter Differential Rates 2021/22

Confidential Attachment 4 - DLGSC Response 16.07.21 (provided under separate cover)

Confidential Attachment 5 - Legal Advice HopgoodGanim 20.07.21 (provided under separate cover)

**12. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**13. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN**

Nil

**14. URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY  
DECISION**

Nil

**15. MATTERS BEHIND CLOSED DOORS**

Nil

**16. CLOSURE**