

VICTORIAN PARLIAMENT

ENVIRONMENT, NATURAL RESOURCES AND REGIONAL DEVELOPMENT  
COMMITTEE

SUBMISSION BY GORDON HAMILTON ON BEHALF OF

BETTER LOCAL GOVERNMENT ASSOCIATION INC A 0056847C

1. This written Submission is intended to supplement my oral submissions to the Committee at the hearing held at Shepparton on 24 October 2017.
2. The Committee's Terms of Reference is to conduct an Inquiry into the Sustainability and Challenges of the Victoria's Rural and Regional Councils including but not limited to the following —
  - (a) Local government funding and budgetary pressures;
  - (b) Fairness, equity and adequacy of rating systems;
  - (c) Impact of State Government mandated rate-capping policies;
  - (d) Capacity for rural and regional councils to meet responsibilities for flood planning and preparation, and maintenance of flood mitigation infrastructure;
  - (e) Maintenance of local road and bridge networks; and
  - (f) Weed and pest animal control;

**Background**

3. The Committee's enquiry is in the context of the introduction in 2015 of the Victorian Government's rate capping legislation in the form of its "Fair Go Rates System" (FGRS). The FGRS or rate capping introduced an annual rate cap set by the Minister for Local Government which controls general rate increases for all councils during that financial year.

4. The central thrust of the Terms of Reference is whether the “Fair Go Rates System” has placed undue pressures on rural councils’ budgets, adversely impacting their capacity to deliver services which both metropolitan and rural councils deliver, but having particular regard to the need for rural councils to meet responsibilities for road infrastructure, flood planning and preparation, and maintenance of flood mitigation infrastructure, maintenance of local road and bridge networks etc.
5. The reference to “mandated rate-capping policies” in the Terms of Reference is potentially misleading in implying that there is an absolute cap on rate increases, whereas the government’s policy provides flexibility to meet the needs of individual municipalities. Councils can apply for a higher cap if they can demonstrate community support and a critical need for spending on services or projects that requires a rate rise above 2%. Further, only the general rate and municipal charges part of a rates bill are capped, and other charges such as waste charges and other fees and levies, remain uncapped.
6. Victorian council rate rises in 2017/18 have been capped the forecast CPI of 2%, Six councils were given Essential Services Commission (ESC) approval to adopt rate caps higher than 2.5% in that first year (2016-17). Four were given approval for higher caps for 2017-18.

#### **The Committee’s Terms of Reference are like an iceberg**

7. The Committee’s Terms of Reference are like an iceberg. The Terms of Reference raise issues which are visible, but underneath the visible issues are far greater and more complex issues and problems with Local Government in general and in particular with Local Government in rural areas.
8. All organisations, be they a branch of government, a public company, a private company or a not for profit enterprise, are met with the problem of balancing income with expenditure. The potential income which a local government can raise from rates is in many respects a function of the economic health of individual municipalities.

9. My observation is that to date the Committee has been mainly referred to the question of expenditure, without being referred to the issues which impact the capacity of ratepayers to pay rates at a level which some Councils claim is necessary for them to deliver services.

10. This raises the question of:

- to what extent do variations in the “rate in the dollar” between municipalities impact on variations in the rate of growth over time between municipalities.

Do relatively higher local government rates in some municipalities lead to a brake on economic development compared with the economic development in other municipalities with relatively lower local government rates? What is the effect of higher relative rates over time? If there is a negative impact, will the negative impact then result in additional long term financial pressures being placed on the municipality with the higher “rate in the dollar”?

11. Having lived in the country all my life and been involved in business, my observation is that the economic health and economic growth of rural municipalities is very much impacted by the “rate in the dollar” for municipal rates.

12. The economic health and population growth of Melbourne metropolitan municipalities is to a significant extent a function of the combined mass of the metropolitan area. In contrast to Melbourne metropolitan municipalities, the economic health and population growth of rural municipalities is more reflective of matters pertaining to the individual municipalities. This in turn is reflected in there being significant variations in population growth rates between rural municipalities, with some rural municipalities suffering a net loss of population whilst other rural municipalities having a growing population. Attached at **Annexure 1**, is a table prepared by the Australian Bureau of Statistics for estimated resident population by local government areas in Victoria. The figures for rural municipalities show substantial variations in population growth rates. For example:

- (a) Alpine -1.3%;
- (b) Ararat -1%
- (c) Ballarat 1.3%
- (d) Bass Coast 1.3%
- (e) Baw Baw 1.6%
- (f) Benalla -0.8%
- (g) Buloke -2.2%
- (h) Campaspe 0.4%
- (i) Central Goldfields 0.3%
- (j) Colac Otway -1.2%
- (k) Corangamite -1.6%
- (l) Gannawarra -1.2%
- (m) Greater Shepparton 0.4%

13. This in turn raises questions as to whether relative population decline in some rural municipalities will, over time, result in a negative long-term impact on the rate base of these municipalities and consequential long-term additional budgetary pressures being faced by these municipalities. Further issues that need to be considered in this context are changing demographics within rural municipalities and changing demographics between rural municipalities. This will require significant empirical research.

14. There are significant differences in the budgetary performances of Victorian rural councils. Attached to these submissions is data from the Department of Environment, Land, Water and Planning which compares the financial performance of the City of Greater Shepparton with other rural councils. The

data shows substantial variation in the financial performance between rural councils. See **Annexure 2**.

15. The variations between rural councils in financial performance highlights the need for a continuation of the government's 'Fair Go Rates System' with its inbuilt flexibility subject to proper levels of external scrutiny.
16. Inherent within the present system is the community need for greater transparency with respect to local government finances from both the revenue and expenditure perspectives.

### **Fairness, equity and adequacy of rating systems**

17. With respect to the revenue perspective, an inherent flaw with the current rating system, is the lack of transparency by which the values of properties are determined for rating purposes. Valuations for rating purposes in most rural municipalities are conducted by private valuers appointed by councils.
18. I am of the opinion that the system of councils engaging private valuers is open to abuse notwithstanding the protections that are intended to be built into the system.
19. Under section 9 of the **Valuation of Land Act** 1958, councils are the valuation authority in respect to their own municipal districts. Under section 13DA(1) of the Act, a municipal authority when making a valuation under the Act for the purposes of the **Local Government Act**, may appoint one or more people to carry out the valuation. However, councils can only appoint persons who hold the qualifications or experience specified from time to time by the Minister for Local Government published in the Government Gazette.
20. The 2018 General re-Valuation Tender Guidelines issued by the Department of Environment, Land, Water and Planning specify that:
  - “3.2 Tenderers must also demonstrate that no conflicts of interest will be created during or after the valuation process. If any potential conflicts of interest arise, the tenderer must demonstrate how they will protect the valuation*

*authority from any conflict of interest allegations and/or << Insert relevant procurement clauses >>.*

### 3.16.1 Conflict of interest

*The contractor must provide council with a full description of how they will deal with any conflict of interest issue, including the following:*

- *those circumstances the contractor would perceive to be a conflict of interest*
- *how valuations can be undertaken when the contractor establishes that there is or could be seen to be a conflict of interest*
- *how the contractor would deal with a situation when a client of the contractor objects to a rating valuation.”*

21. Notwithstanding these intended protections, we have in Shepparton a situation where persons who have either directly or indirectly a beneficial interest in the company appointed to conduct valuations, in turn have beneficial interests, either direct or indirect, in two of the largest subdivisions in Shepparton, namely:
- (a) the Sevens Creek development which is undertaken by Sevens Creek Corporation Pty Ltd ACN 606 572 865; and
- (b) the Boulevard development which is being undertaken by Boulevard Corporation Pty Ltd ACN 106 865 678.
22. In Shepparton, Council's contract valuer is LG Valuation Services Pty Ltd. An ASIC search of this company reveals that Peter Hann and David McKenzie are directors of this company – see **Annexure 3**.
23. David McKenzie of LG Valuation Services Pty Ltd and his wife Lisa and McKenzie have or have had a beneficial interest either directly or indirectly in both companies.
24. Peter Hann of LG Valuation Services Pty Ltd and his wife Rae Hann, up until 2014, had a beneficial interest either directly or indirectly in Boulevard Corporation Pty Ltd.

25. Further, Peter Johnson who until recently a member of Council's audit committee and his wife Carmel Johnson, have had a beneficial interest either directly or indirectly in both of the above companies.
26. Such conflicts of interest need to be transparent to ratepayers; in my opinion, in the case of Shepparton, they are not transparent. In my opinion it gets much worse because such conflicts of interest undermine the very integrity of the rate notices issued by Shepparton, with a resultant undermining of confidence in investing in Shepparton.
27. This potential for conflict of interest is highlighted by the 2017-2018 Council budget. On examining Council's adopted 2017-2018 Budget, I noticed that Council has budgeted in 2017-2018 to spend a total of \$650,000 in respect to Seven Creeks Estate, including \$470,000 on the 'Road Infrastructure' being the intersection of Seven Creeks Estate with Goulburn Valley Highway which I understand from reading the Planning Permit is a developer obligation.
28. A further problem with the engagement of private valuers is that the valuations are conducted in large part by reliance on computer based matrices. The private valuers assert that the algorithms that go to make up their computer models are their own private intellectual property, and ratepayers nor for that matter Council, does not have the ability to independently verify the integrity of these matrices.
29. This raises not only transparency problems, but creates difficulties for ratepayers to assess the integrity of the matrices in respect to their application to particular land. These difficulties were referred to in a rating appeal at VCAT, ***Watts v Wellington Shire Council*** [2011 ] VCAT 944 (a copy of which is at **Annexure 4**), where Deputy President Dwyer made the following observations in respect to the computer matrices relied upon by the Council in that case:

*"It appears to the Tribunal that the Council in this case has also overly relied on computer-based matrices as a basis for its valuation. **Whilst these matrices are useful (indeed critical) to the initial valuation***

*returns in the two-yearly revaluation cycle, anomalies may arise in their application to particular land. The objection and review process under the Valuation of Land Act 1960 gives a person aggrieved by the valuation the opportunity to have a more refined assessment of the value of his or her land if there are factors that suggest this is warranted. The importance of this is obvious, given the use of the valuation as a basis for rating and/or taxation.”*

**30. In order to ensure fairness, equity, transparency and integrity of the rating system,** I am of the opinion that the Committee should give consideration to recommending to the Victorian government that:

- (a) It should follow the lead of New South Wales where all municipal valuations have been taken out of the hands of private valuers appointed by councils and have been placed in the hands of the valuer general;
- (b) Alternatively, any intellectual property generated by valuers engaged by municipalities should be the property of the municipality.
- (c) The matrices used by the valuers and all underlying algorithms should be freely available for analysis by ratepayers or experts engaged by ratepayers.

### **Councils must be fully accountable for instances of maladministration**

**31.** It is critical that where there are instances of substandard or maladministration by councils, that both councillors and council officers are fully accountable to ratepayers for the costs of such substandard or maladministration. The “Fair Go Rates System” helps to ensure that councils cannot bury in their accounts unnecessary costs arising from instances of maladministration. If anything, the costs associated with substandard or maladministration should be specifically highlighted in councils’ annual reports, so that ratepayers can properly assess the quality of administration of their local council.

32. In Shepparton, we have recently had two examples of what I classify as substandard or maladministration by Council, and which in my opinion has caused unnecessary extra expense for ratepayers.
33. My first example relates to Council's attempt to impose a special charge scheme for the Shepparton East Drainage scheme. The validity of special charge was challenged by ratepayers at VCAT, which held the special charge invalid due to the cumulative effect of irregularities in its preparation and implementation – see *D'Agostino v Greater Shepparton CC* [2017] VCAT 478 a marked up and emphasis added copy of which is at **Annexure 5**.
34. I draw attention to findings of Deputy President Dwyer that:
- (a) There was questionable and confusing conduct of the Council and its officers.
  - (b) The Council had not been advised by its officers that the figures in a report had been altered which was disturbing conduct, whether deliberate or inadvertent.
  - (c) There seemed to be two parallel processes at play.
  - (d) The Council officers were telling the Council one thing and telling the landowners something different in terms of the liability of individual landowners, without the knowledge of either, or any apparent explanation to either.
  - (e) What followed was very much a mess of the Council's own making, and a mess that was then compounded with each extra step taken by Council.
  - (f) The cumulative and compounding effect of all of the Council's actions was concerning.

- (g) Council's actions lacked transparency.
- (h) Council's action undermined confidence in the Council's overall decision-making processes for the Shepparton East Drainage Scheme.

35. My second example relates to the proposed C199 Amendment to the City of Grater Shepparton Planning Scheme. A marked up copy of the Panel Report is at **Annexure 6**. Attention is drawn to the highlighted passages in the Report.

36. It was necessary for ratepayers to take the matter to a Planning Panel hearing having regard to deficiencies in Council's design of the amendment. Illustrations of this are at:

- (a) page 20 of the Panel Report, where the Panel said:

“the Panel agrees with submissions that Council has afforded a greater weight to the Master Plan through its cross referencing in clause 21.04 and SUZ4 ... The Panel concludes if the Council intended that the Master Plan was to have a statutory function, then it should have proposed that relevant parts of the document be included as an incorporated document. This is not the case.

By inserting explicit “hooks” in clause 21.04 (indirect reference in theSUZ4) the Panel concludes **that Council have, unintentionally**, given greater statutory effect to the Master Plan that perhaps thought. ... **It certainly has elevated the status of the Master Plan beyond that of a reference document.** The Panel concludes that such references be removed from clause 21.04.

.....

The Panel notes that when Council prepares or commissions planning studies in the future, it should give greater thought to how those studies will be implemented through the planning scheme.”

- (b) page 39 of the Panel Report, where the Panel said in relation to flood controls:

**“notwithstanding the poor choice of wording** in the Master Plan suggesting that the planning scheme flood overlays and Flood zone have been “superseded”, it was made very clear by Mr Tierney (for the CMA) that any future changes to the flood controls will flow from the Intelligence Study. Until the studies finalised in any subsequent planning scheme amendment approved, the current LSIO, FO and Flood Zone remain in place and will continue to be applied in assessing development applications.

***The Panel does agree, however, that the wording in the Feasibility Study is misleading and could give rise to concerns for landowners.*** The words pertaining to flooding in the Feasibility Study at pages 4, 15, 18 and 49 should be amended ...”

### **Cost shifting**

37. I note that some submissions to the Committee have raised issues to do with the cost of administering state government services and regulations like statutory planning, environmental health and animal regulation. However, an issue that has not yet been explored are the costs incurred in outsourcing various functions, and the relative cost incurred by Council of the outsourcing compared with the costs which would be incurred by Council if it undertook those activities itself.

### **Roads**

38. I note that some submissions suggest that there is a lack of clarity in respect to who has responsibilities for which roads i.e. VicRoads or Council. There are in fact clear guidelines for the delineation of which roads are the responsibility of VicRoads and which roads are the responsibility of local councils. These guidelines are contained in the “Operational Responsibility for Public Roads” Code of Practice published in the Victorian Government Gazette No. S 174 Tuesday 30 May 2017.