

Our Ref: F27/A03/000001

9 September 2015

Local Government Act Steering Committee
Local Government Victoria
PO Box 500
MELBOURNE 3002

Dear Sir/Madam

Re: Review of the Local Government Act 1989 - Submission to Discussion Paper

Please find enclosed

- Horsham Rural City Council's submission relating to Chapter 6 – Council rates and charges
- Business Case Rating of the Mining Industry in Victoria prepared by Financial Performance Solutions for Horsham Rural City Council

Yours faithfully



Graeme A Harrison
Director Corporate Services

Encls

Financial Performance Solutions

ABN: 48299050496

Unit 114 / 445 Royal Parade
Parkville VIC 3052

Mobile: 0419 750 354

Email: mark.fpsolutions@gmail.com

7 April 2015

Peter Brown
Chief Executive
Horsham Rural City Council
PO Box 511
HORSHAM VIC 3400

Dear Peter

Rating of the Mining Industry in Victoria

I provide below my report and attached business case on the rating of the mining industry in Victoria.

1. Background

Horsham Rural City Council (HRCC) has raised concern that as mining increases within its Municipality the impact that it has upon the community and local infrastructure is both positive and negative.

Positive economic benefits, which are often identified up-front can be offset by significant increased impact on council services such as community facilities, community services and physical services (i.e. waste and road infrastructure). In other commercial and industrial situations growth in industry will generally lead to a growth in the rate base, however with mining the result is a reduction in the rate base as farm land is lost and the mining activity that replaces it is exempt from rates under Section 154 of the Local Government Act 1989 (the Act).

HRCC has been keen to explore why this exemption exists, as it is very clearly different to all of the other exemptions provided under Section 154 of the Act. It is also apparent from HRCC's limited research that Victoria stands alone in this regard as other states and territories do appear to have methodology in place to rate mining activities.

To this end HRCC has sought assistance from the North West Municipal Association (NWMA) and its member Councils to firstly put a resolution at the MAV State Council seeking their support to have government repeal Section 154 (2)(e) of the Act and secondly to prepare a report and business case to justify the changes to the legislation.

2. Purpose

The purpose was to produce a report and business case detailing the justification for legislative change to the current rateability of land used exclusively for mining.

3. Approach

The review included the following:

- Researching the rating of mining operations in other states and territories
- Contacting various Victorian state departments to gather information on the current exemption and extent of mining operations across Victoria
- Surveying the NWMA member councils to understand the scope and impact of mining operations in their municipalities
- Preparing a report and business case.

4. Key Findings

The key findings of the review included the following:

- All Australian states including the Northern Territory, rate mining operations
- The Victorian mining rate exemption first appeared in the 1958 Act, however the predominant mining activity has changed significantly since this time
- The Capital Improved Value of mining assessments was \$654 million at 1 January 2014 representing 0.4% of the total valuation of all private properties in Victoria of \$1.5 trillion
- The annual rates foregone by all councils in Victoria for the 2014/15 year assuming all mining assessments were active was \$3 million
- The Victorian council experience of mining operating supports the positive impact on economic growth particularly in the area of local job creation. It also supports the negative impacts of mining on infrastructure, services and the environment
- The introduction of rate capping from the 2016/17 year onwards will force councils to seek new revenue sources to offset the impact on future operating and capital works budgets. The rating of mining activities is one such possible new source of revenue
- The exemption of mining from council rates is not consistent with the 'equity' principle both from a horizontal and vertical equity point of view.

5. Recommendation

It is recommended that the State make mining land rateable or subject to a payment in lieu of rates based on the unimproved value of the land subject to mining activity and certain improvements on that land.

6. General

I would like to acknowledge the support of Graeme Harrison, Director Corporate Services, Horsham Rural City Council who contributed much of the original content and data for the report and business case.

Thank you for the opportunity to work with you on this project. If you have any questions regarding this report and attached business case, please contact me on 0419 750 354.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Davies', with a small dot at the end.

Mark Davies
Consultant

[Page intentionally left blank]

**BUSINESS CASE
RATING OF THE MINING INDUSTRY IN
VICTORIA**

APRIL 2015

TABLE OF CONTENTS

1. Executive Summary	3
2. Rating of Mining Operations within Australia	4
2.1 Victoria	4
2.2 New South Wales	4
2.3 Northern Territory.....	6
2.4 Queensland	7
2.5 South Australia.....	7
2.6 Tasmania	8
2.7 Western Australia.....	9
3. Purpose and Intent of Section 154 (2) (e) of the Act.....	11
3.1 What land is rateable?.....	11
3.2 Intent of Section 154 of the Act.....	12
3.3 Rateability of mining companies under other Victorian legislation	12
4. Current Extent and Impact of Mining Operations Within Victoria	13
4.1 Extent of mining operations.....	13
4.2 Lost rate revenue to councils	14
4.3 Economic and social impacts on councils	15
5. Other Relevant Information	17
5.1 Rate capping	17
5.2 Rating principles.....	17
6. The Case for Rating Mining Land	19
6.1 Business case	19
6.2 MAV position	19
6.3 Recommended system of rating.....	20
Appendix A: Policy – The Application of Gross Rental Valuation to Mining, Petroleum and Resource Interests (extract)	21
Appendix B: Definitions of Terms in Section 154 of the Act.....	23
References.....	25

1. Executive Summary

Under the Act Section 154 (2)(e) of the Victorian Local Government Act 1989, land used exclusively for mining purposes is exempt from the payment of rates. This exemption is in contrast to all other states of Australia (including the Northern Territory) which rate mining operations. There is also evidence that certain mining activities in Victoria are being rated such as coal mining associated with the electricity industry.

The Victorian mining rate exemption first appeared in the 1958 Local Government Act, however no information has been able to be discovered to support the reason(s) for including a mining rating exemption, although it would seem that given the speculative and capital intensive nature of mining in the early 1900s (particularly gold which was the predominant mining activity), exempting it from rates might have been done in the 'public interest'. The predominant mining activity has changed significantly since this time.

There are extensive tracts of land throughout Victoria that are subject to mining activity either currently or potentially in the future. The Capital Improved Value of all Victorian mining assessments was \$654 million at 1 January 2014 representing 0.4% of the total valuation of all private properties in Victoria.

Mining can have a positive impact on economic growth but on the other hand, mining can have an adverse impact on community services and infrastructure, as well as demographic and population changes. The Victorian council experience of mining operating supports the positive impact on economic growth particularly in the area of local job creation. It also supports the negative impacts of mining on infrastructure, services and the environment.

The introduction of rate capping from the 2016/17 year onwards will force councils to seek new revenue sources to offset the impact on future operating and capital works budgets. The rating of mining activities is one such possible new revenue source. The annual rates foregone by all councils in Victoria for the 2014/15 year based on the average farm rate (or equivalent) applied to the unimproved value of land only and assuming all mining assessments were active was \$3 million.

The exemption of mining from council rates is not consistent with the 'equity' principle both from a horizontal and vertical equity point of view and it is therefore recommended that the State make mining land rateable or subject to a payment in lieu of rates based on the unimproved value of the land subject to mining activity and certain improvements on that land.

2. Rating of Mining Operations within Australia

All Australian states including the Northern Territory, rate mining operations.

2.1 Victoria

In Victoria, land used exclusively for mining purposes is exempt from the payment of rates under the Section 154 (2)(e) Act. The Act is silent on the definition of what is mining but case law provides the following definition: "the primary meaning of the word "mine" is a subterranean excavation for the purpose of getting minerals" Federal Commissioner of Taxation v Henderson (1943) 68 CLR 29 per Latham CJ at 44.

2.2 New South Wales

In NSW mining is rated as per a separate ordinary rate category. It allows councils to set an ad valorem amount of the ordinary mining rate as a percentage of the ordinary business rate. The Minister can intervene as to what the percentage can be. The New South Wales Local Government Act 1993 (NSW Act) does not make any provision for a valuation based on output. It also states that mining must be the dominant use of that land parcel but does not provide any definitional direction as to what is "dominant use".

There are of two types of rates¹ that can be levied:

- Ordinary rates
- Special rates.

There are 4 categories² of the ordinary rate:

- Farmland
- Residential
- **Mining**
- Business.

These categories may, at a councils' discretion, be divided into sub-categories³ and for land that is to be categorised as mining⁴ it is:

- A parcel of rateable land
- Valued as one assessment
- The dominant use of which is for a coal mine or metalliferous mine.

The expression "parcel of land" is defined in the Act to mean a portion or parcel of land separately valued under the Valuation of Land Act. It has been established in a number of cases that the question whether land is one or more parcels for the purposes of the NSW Act and the Valuation of Land Act is a question of fact.

¹ NSW Local Government Act 1993 Section 492

² NSW Local Government Act 1993 Section 493

³ NSW Local Government Act 1993 Section 529

⁴ NSW Local Government Act 1993 Section 517(1)

As to the meaning of the word 'dominant', councils need to look at not just the actual area of land used but also at the intensity of use.

It is important to note that the word 'mine' is not a definite term, but is one susceptible of limitation or expansion according to the intention with which it is used. "The primary meaning of the word "mine" is a subterranean excavation for the purpose of getting minerals": Federal Commissioner of Taxation v Henderson (1943) 68 CLR 29 per Latham CJ at 44. However, in the definition of "mine" contained in the NSW Act, this so-called "primary meaning" has been extended to mean used or held for any mining purpose.

As to the meaning of the words metalliferous mine, the word "metal", implicit in the expression, should be given its ordinary meaning, namely "any of a class of elementary substances, such as gold, silver, copper, etc. (Concise Macquarie Dictionary).

By virtue of section 517(2) of the NSW Act, the regulations may prescribe circumstances in which land is or is not to be categorised as mining. To date, there has been no such regulation. Thus, in the absence of any prescription, covered by section 517(1) of the NSW Act it must be categorised as business.

Section 528(2) of the NSW Act allows a regulation to be made to regulate the level of an ordinary "mining" rate in a particular council or across all councils by specifying that the ad valorem amount of the ordinary "mining" rate is to be a percentage of the ordinary "business" rate. Although no such percentage has been specified, or is currently proposed, the Minister has the power to prescribe this percentage by way of a regulation.

Where a new mine is established in a council area with no previous mining activities, and therefore no ordinary rate for "mining", councils have options available to them that would enable them to avoid any rating problems that could arise.

It could reasonably be assumed that a significant new mining operation would not become operative without some exploration and surveys that would need to be completed beforehand. This may provide enough time for the council to make sufficient planning arrangements for the rating of the new mine.

If a council believes that mining will begin in its area, the council can adopt a rate for a mining category as part of its Statement of Revenue Policy within the council's Management Plan (refer to sections 404, 405, 406 of the NSW Act). This would enable a parcel of land in which a new mining operation has begun at any time throughout the following year, to be rated at an appropriate level, from the day the category of the land was changed to mining. This option would ensure the council's level of general income remained appropriate.

Should the pre-emptive setting of a mining category rate not be possible the council could, if it believed that its financial arrangements would be adversely affected, simply rate the new mine at the valuation provided by the Valuer General in the existing category for the remainder of the year in which the

activity of the land had changed to mining, then re-categorise the mine and set the rates at an appropriate level from the beginning of the next rating year.

2.3 Northern Territory

In the Northern Territory mining operations are rated through a provision for conditional rating of mining tenements. This requires Councils to make application to the Minister justifying the impact that the mining operations have on the local community and the specific services provided. It is a consultative process between the Council, Minister and Mine owner.

Generally, all land within a council area is rateable unless it is specifically exempted by Section 144 of the NT Local Government Act 2008 (NT Act). Such exemptions include, for example, crown land occupied for a public purpose, public places, land belonging to a religious body, land used for public educational purposes and council occupied land. However, conditionally rateable land is rateable only if there is a rating proposal relating to the land approved by the Minister in force. In the case of a mining tenement rates are based on its unimproved capital value, which is calculated as 20 times its rental value⁵.

The NT Act provides that land that is conditionally rateable is only rateable if "...a rating proposal approved by the Minister at least one month before the commencement of the financial year for which the rates are declared..."⁶ has been obtained by Council.

Conditionally rateable land is defined⁷ as:

- Land held under a pastoral lease
- **Land occupied under a mining tenement**
- Other land so classified by the regulations under the NT Act⁸.

Ministerial Guideline 6, issued under Section 258 of the NT Act, sets out the criteria for preparing a rating proposal for conditionally rateable land and requires a council to list the services available to conditionally rateable properties under three categories:

- Services which the residents of conditionally rateable land have the opportunity to take advantage of – this is essentially all of the services provided by the council, available to all ratepayers and residents, whether used by residents of conditionally rateable land or not. The services provided by the council may be used by ratepayers, residents, businesses (and their employees) and visitors.
- The services funded by conditionally rateable land revenue – these are the specific services or works that the revenue from conditionally rateable land will fund. They do not have to be specifically provided to the properties from which the revenue was derived. For example it could include infrastructure works or the provision of sporting facilities in a nearby town.

⁵ NT Local Government Act 2008, Section 149(3)

⁶ NT Local Government Act 2008, Section 142(2)

⁷ NT Local Government Act 2008, Section 142(1)

⁸ No such classification has yet been made

- The direct property services funded from conditionally rateable land – these are the specific services that the council will, or is willing to, provide to the conditionally rateable properties. For example, the portions of a road upgrade that service conditionally rateable properties – this will provide a direct benefit to the conditionally rateable properties. Note that these will be a sub-set of 2 above.

2.4 Queensland

Queensland has no exemption for land with mining leases and therefore all mining land is rateable under the Queensland Local Government Act 2009 (QLD Act). Queensland councils rate on the unimproved capital value of the land.

There are 4 types of rates and charges⁹:

- General rates (including differential rates)
- Special rates and charges
- Utility charges
- Separate rates and charges.

Rates may be levied on rateable land¹⁰, which is any land or building unit, in the local government area, that is not exempted from rates.

Councils may levy rates on mining claims for the purpose of covering the costs of municipal services. The value of mining claims for fixing minimum general rates are set out in section 79 of the Local Government Regulation 2012.

For fixing a minimum amount of general rates for land subject to a mining claim, the value of the mining claim is:

- For a mining claim over land that is 900m² or less—\$150; or
- For a mining claim over land that is larger than 900m²—\$450.

2.5 South Australia

In South Australia, the Local Government Act 1999 (SA Act) has provision for an exemption from rates on land that is within the area of the District Council of Coober Pedy that is subject to a mining lease. All other mining land is rateable based on capital improved values.

A council may impose rates and charges of the following kinds¹¹ on land within its area:

- General rates
- Separate rates
- Service rates
- Service charges.

All land within the area of a council is rateable, except for land within a specific exemption. The following is not rateable¹²:

⁹ QLD Local Government Act 2009 Section 92

¹⁰ QLD Local Government Act 2009 Section 93

¹¹ SA Local Government Act 1999 Section 146

¹² SA Local Government Act 1999 Section 147

- Unalienated Crown land
- Land used or held by the Crown or an instrumentality of the Crown for a public purpose (including an educational purpose)
- Land (not including domestic or residential premises) occupied by a university established by statute
- Land that is exempt from rates or taxes by virtue of the Recreation Grounds Rates and Taxes Exemption Act 1981
- **Land within the area of the District Council of Coober Pedy that is subject to a mining lease under the Mining Act 1971 or a precious stones tenement under the Opal Mining Act 1995**
- Land occupied or held by the council, except any such land held from a council under a lease or licence
- Land occupied by a subsidiary where the land is situated in the area of the council that established the subsidiary or a constituent council (as the case may be)
- Land occupied or held by an emergency services organisation under the Fire and Emergency Services Act 2005
- Land that is exempt from council rates under or by virtue of another Act.

Land means¹³, according to the context:

- Land as a physical entity, including any building or structure on, or improvement to, land; or land covered by water and, in such a case, the overlying water; or a strata lot under the Community Titles Act 1996 or a unit under the Strata Titles Act 1988 ; or
- Legal estate or interest in, or right in respect of, land;

A rate may be¹⁴:

- A rate based on the value of land subject to the rate; or
- A rate based on two components, one being based on the value of land subject to the rate; and the other being a fixed charge; or
- a rate based on some other factor or factors specifically allowed under the SA Act.

The value of land for the purpose of rating is its capital value¹⁵.

2.6 Tasmania

Tasmania has no exemption for land with mining leases and therefore all mining land is rateable under the Tasmania Local Government Act 1993 (TAS Act). Tasmanian councils rate on any of the three property values determined by the Valuer-General – land value, capital value or assessed annual value (AAV)¹⁶. In practice, however, all Tasmanian councils use AAV for local government rating.

The TAS Act permits councils to set one general rate and a minimum (but a minimum may only be set where the general rate does not include a fixed

¹³ SA Local Government Act 1999 Section 4

¹⁴ SA Local Government Act 1999 Section 151(1)

¹⁵ SA Local Government Act 1999 Section 151(2)

¹⁶ TAS Local Government Act 1993 Section 89A(2)

charge).¹⁷ The composition of the general rate may comprise both an ad valorem component and a fixed charge. A fixed charge must apply equally to each property that is being rated and total revenue from the fixed charge must not be more than either the council's total recurrent administrative expenditure in the previous financial year, or 20% of the council's general rate revenue for that particular year (whichever is the least amount).¹⁸

Councils may vary the general rate within different parts of the municipal area according to one or more of the following factors¹⁹:

- The use (or predominant use) of the land
- Non-use of the land
- Locality of the land
- Planning zones.

'Use' of land is divided into several categories:

- Residential purposes;
- Commercial purposes;
- Industrial purposes;
- Public purposes;
- Primary production;
- Sporting or recreation facilities; and
- **Quarrying or mining.**

The terms quarrying or mining are not defined in the Act.

2.7 Western Australia

In Western Australia, mining has historically been rated based on unimproved values, which has collected some minimal amount of rates. The Western Australian Government has recently adopted a Policy for the application of Gross Rental Valuation (GRV) in the rating of land by local government for mining, petroleum and resource interests. This change will apply on a trial basis for three years to all new mining, petroleum and resource interests but not affect existing arrangements. This pressure for change is due to the growth in mining and impacts for local communities.

The Policy was developed through discussion between the Chamber of Minerals and Energy, the Western Australian Local Government Association, the Association for Mining and Exploration Companies and the Departments of State Development and Local Government.

The Policy applies to land defined as either:

- A relevant interest (under the Local Government Act 1995) such as a mining tenement held under the Mining Act 1978 or a permit, drilling reservation, lease or licence held under the Petroleum and Geothermal Energy Resources Act 1967; or
- A resource interest used for the extraction, processing or refining of minerals or petroleum.

¹⁷ TAS Local Government Act 1993 Section 90

¹⁸ TAS Local Government Act 1993 Section 91

¹⁹ TAS Local Government Act 1993 Section 107

GRV will apply to relevant interests and resource interests only in respect of certain improvements including all permanent accommodation, recreation and administration facilities, and maintenance workshops within 100 metres of these facilities.

The policy (refer Appendix A for extract) is being applied on a trial basis for three years from 1 July 2012 to 30 June 2015, after which is to be reviewed.

3. Purpose and Intent of Section 154 (2) (e) of the Act

The Victorian mining rate exemption first appeared in the 1958 Local Government Act, however the predominant mining activity has changed significantly since this time.

3.1 What land is rateable?

Section 154

- (1) Except as provided in this section, all land is rateable.
- (2) The following land is not rateable land—
 - (a) land which is unoccupied and is the property of the Crown or is vested in a Minister, a Council, a public statutory body or trustees appointed under an Act to hold that land in trust for public or municipal purposes;
 - (b) any part of land, if that part—
 - (i) is vested in or owned by the Crown, a Minister, a Council, a public statutory body or trustees appointed under an Act to hold that land in trust for public or municipal purposes; and
 - (ii) is used exclusively for public or municipal purposes;
 - (c) any part of land, if that part is used exclusively for charitable purposes;
 - (d) land which is vested in or held in trust for any religious body and used exclusively—
 - (i) as a residence of a practising Minister of religion; or
 - (ii) for the education and training of persons to be Ministers of religion; or
 - (iii) for both the purposes in subparagraphs (i) and (ii);
 - (e) land which is used exclusively for mining purposes;**
 - (f) land held in trust and used exclusively—
 - (i) as a club for or a memorial to persons who performed service or duty within the meaning of section 3(1) of the Veterans Act 2005 ; or
 - (ii) as a sub-branch of the Returned Services League of Australia; or
 - (iii) by the Air Force Association (Victoria Division); or
 - (iv) by the Australian Legion of Ex-Servicemen and Women (Victorian Branch).

The Act is silent on the definition of what is 'mining, but case law provides the following definition: "the primary meaning of the word 'mine' is a subterranean excavation for the purpose of getting minerals" Federal Commissioner of Taxation v Henderson (1943) 68 CLR 29 per Latham CJ at 44. 'Exclusive use' is also not defined in the Act but is understood to have a broader meaning of "predominant" use. (See Appendix B for further discussion on the definition of terms in section 154 of the Act)

Any accommodation that may be provided on site for workers is not exempt from rates under section 154 of the Act.

3.2 Intent of Section 154 of the Act

Section 154 of the Act is a carry over provision from the Local Government Act 1958 (1958 Act). The 1958 Act at section 251 states that all land is rateable property with the exception of land used exclusively for Mines.

Section 253 of the 1958 Act goes on to define 'Mines' as meaning all lands held or hereafter to be held as a claim under a miner's right for mining purposes, or included or hereafter to be included in any lease granted by the Crown for mining purposes, and shall include all buildings covering machinery on any mine, except such buildings and machinery not used exclusively for the purposes of such mine, and except the surface of lands alienated from the Crown included in any such lease or claim, which shall not for the time being be actually occupied or used for shafts and approaches thereto, for the storage of debris, or for mining machinery and buildings enclosing or covering the same used exclusively for the purposes of such mine.

No information has been able to be discovered to support the reason(s) for including a mining rating exemption, although it would seem that given the speculative nature of mining in the early 1900s (particularly gold which was the predominant mining activity) and capital intensive nature, exempting it from rates might have been done in the 'public interest'.

3.3 Rateability of mining companies under other Victorian legislation

The Electricity Industry Act 2000 at section 94(2) states that the Loy Yang B land is rateable land. The Loy Yang B land includes mines, open cuts and quarries²⁰. Section 94(5) allows the generation company rather than paying rates in respect of the rateable land, enter into an agreement with the relevant council to pay such amount agreed between the parties.

²⁰ Loy Yang B Act 1992 Section 3

4. Current Extent and Impact of Mining Operations Within Victoria

The Capital Improved Value (CIV) of mining assessments was \$654 million at 1 January 2014 representing 0.4% of the total valuation of all private properties in Victoria of \$1.5 trillion. The annual rates foregone by all councils in Victoria for the 2014/15 year assuming all mining assessments were active was \$3 million.

The Victorian council experience of mining operations supports the positive impact on economic growth particularly in the area of local job creation. It also supports the negative impacts of mining on infrastructure, services and the environment.

4.1 Extent of mining operations

The Valuer General Victoria (VG), Mr Robert Marsh was contacted to obtain information about current mining activities within the state of Victoria. Specifically, it was requested that the VG provide information on the details of land that is currently exempt from rating under the Valuations of Land Act 1960 including area, municipality, valuation (as at 1 January 2014) and mining industry. The following table provides a summary of the information received from the VG.

Mining Categories	Valuation CIV	Valuation SV	No. Assessments	Site Size Hectares
▼ Dredging Operations	1,610,000	1,500,000	1	0.2
dredging (minerals)	1,610,000	1,500,000	1	0.2
▼ Mine (deep shaft)	2,436,500	1,865,500	6	762.2
Gold	1,669,000	1,377,000	4	543.9
Metals (other than gold)	344,000	65,000	1	6.6
Non-metals	423,500	423,500	1	211.7
▼ Mine (open cut)	494,000	462,000	5	141.3
Gold	286,000	270,000	3	94.0
Metals (other than gold)	208,000	192,000	2	47.3
▼ Other Unspecified	50,536,500	46,907,604	77	2,070.2
Extractive less than 2 metres operating mine (unspecified)	17,745,000	17,078,000	20	922.4
Vacant land mining (unspecified)	13,226,500	10,985,604	9	623.7
	19,565,000	18,844,000	48	524.1
▼ Quarry (in use)	478,471,750	389,905,054	280	13,598.0
Gravel/Stone	445,155,250	360,129,554	239	11,648.3
Manufacturing (Materials)	4,720,000	3,143,000	4	160.0
Sand	28,207,500	26,262,500	33	1,787.1
Soil	389,000	370,000	4	2.6
▼ Salt Pan (evaporative)	6,682,000	5,955,000	7	5,211.6
lake (salt extraction)	2,742,000	2,234,000	3	4,130.9
Manmade evaporation basin (salt extraction)	3,940,000	3,721,000	4	1,080.7
▼ Site with permit or reserve not in use	113,073,500	108,394,500	93	184,326.4
Gravel/Stone	13,159,500	12,717,500	32	1,004.8
Manufacturing (Materials)	51,487,000	48,217,000	21	168.8
Quarry/Mine (open cut) - Exhausted (dry)	18,425,000	18,273,000	9	1,237.5
Quarry/Mine (open cut) - Exhausted (wet)	1,010,000	1,010,000	1	18.7
Sand	28,992,000	28,177,000	30	181,896.6
▼ Well/Bore	564,000	429,000	4	1.9
Disused bore well	1,000	1,000	1	1.2
gas	250,000	115,000	1	0.0
water (irrigation)	312,500	312,500	1	0.6
Water (stock and domestic)	500	500	1	0.1
Total	653,868,250	555,418,658	473	206,111.7

As at 1 January 2014, 59 councils within Victoria were impacted by mining activities. The total number of assessments was 473 covering an area of 206,112 hectares. The total Site Value (SV) of the assessments was \$555.4 million and the Capital Improved Value (CIV) was \$653.9 million. The latter represents 0.4% of the total valuation of properties in Victoria (\$1.495 trillion as at 1 January 2014²¹). The most common mining category was Quarries (Gravel/Stone) with 280 assessments (or 51% of total assessments), SV of \$360.1 million (or 65% of total SV) and CIV of \$445.2 million (or 68% of total CIV). All of these mining assessments are currently in use.

4.2 Lost rate revenue to councils

Under section 154(2)(e) of the Act, land which is used exclusively for mining purposes is exempt from rates. In attempting to understand the financial impact on Victorian councils of this exemption, the rate in the \$ of CIV for land rated as farming was applied to the SV for mining land. This approach was taken as in most cases the mining assessments are situated on farming land, which is currently rateable and represents the minimum rates foregone (NB The rates foregone would be higher if capital improvements were taken into account).

The following table provides a summary of the council farm rates (where applicable) for the 2014/15 year and the rates foregone on mining assessments for the NWMA group of councils based on the information provided by the VG.

Council²²	Rate² Cents/\$CIV	Mining Valuation \$\$V	Rates Foregone \$
Gannawarra	0.6586	180,000	1,185
Hindmarsh	0.5128	189,000	969
Horsham	0.4056	4,182,000	16,962
Mildura	0.6419	0	0
Northern Grampians	0.4495	1,063,500	4,780
Swan Hill	0.5692	375,000	2,135
West Wimmera ¹	0.3441	156,600	539
Yarriambiack	0.5455	15,400	84
Total		6,161,400	26,654

¹ West Wimmera has a uniform rate

² The average rate in the \$/CIV is 0.5416

The total annual rates forgone by the MWMA group of councils for the 2014/15 year assuming all mining assessments were active was \$26,654.

The total annual rates foregone by all councils in Victoria for the 2014/15 year assuming all mining assessments were active based on an average rate of 0.5416 cents/\$CIV was \$3 million. This represents 0.06% of the total \$4.9 billion²³ in rates budgeted to be raised by councils in the 2014/15 year.

²¹ Property Victoria November 2014 Edition 34

²² Rating information taken from adopted council budgets for the 2014/15 year

²³ Total rates and charges budgeted to be raised by Victorian local governments for the 2014/15 year as advised by Local Government Victoria

4.3 Economic and social impacts on councils

Mining can have a positive impact on economic growth through the creation of local jobs, addition of new properties to the rate base (depending on whether on-site accommodation with fly in fly out employees were utilised or not) and the availability of cheaper business inputs (e.g. sand, gravel).

On the other hand, mining can have an adverse impact on community infrastructure, particularly roads and local services such as waste disposal. Demographic and population changes can also impact on general community services.

The Centre for Social Responsibility in Mining in a 2014 report²⁴ summarising the findings of a two year research project into the governance challenges posed by large scale resource development in mining intensive regions in Australia noted that there were particular community concerns in relation to economic, social and environmental impacts as follows:

- Economic impacts – chronic skills shortages and the two-speed economy, which resulted in uneven wealth creation
- Social impacts – availability/affordability and the challenges in managing and accommodating a rapidly expanding fly-in fly-out workforce
- Environmental impacts – conflicts between resource developers and other rural residents over land use, and over water quality and supply.

The main challenges faced by local governments were:

- Changing expectations of their role, in particular, the expectation that they would provide a greater range of services to expanding populations
- A narrow revenue base and difficulties in attracting and retaining staff
- Legislative barriers that prevent them taking a more active role in planning for major resource projects.

A survey was conducted of a sample of Victorian councils known to have mining sites currently in use or had been in use in the past to confirm the economic and social impacts on council's facilities and services as a result of mining activities.

The following positive and negative impacts were advised.

Positive impacts:

- Local product for council roads, which is more efficient and cheaper than carting in material (sandstone)
- Direct and indirect employment in the town and surrounding districts benefit from the money invested in the area (gold)
- Jobs and economic prosperity as gypsum makes agriculture more productive and profitable and local gravel sources provides an opportunity for cheaper and better roads (gravel and gypsum)
- Jobs and investment but activity can fluctuate with gold price. The company has contributed funds and in kind donations to community projects (gold)

²⁴ Centre for Social Responsibility in Mining “Local government, mining companies and resource development in regional Australia – Meeting the governance challenge” 2014 p5

- Local employment (gypsum)
- Local employment opportunities and economic injection in immediate local community (mineral sands - rutile, zircon and limonite)
- Local employment (mineral sands and salt)
- Jobs, population and economic growth (mineral sands)
- Mining history is now a prime tourist attraction. Extractive industry provides employment, a resource source direct to product users such as construction industry, dairy farmers, council works with lower transportation costs (sand).

Negative impacts:

- The exemption means that any future potential mining operation's effects on council's local road network may not be adequately captured in the planning permit process. The rates exemption for mining operations is inequitable especially when considered against competing land uses on the same properties or on properties that may be effected by mining operations (coal)
- Disruption of the natural environment and daily explosions felt throughout town (gold)
- Impact on roads (gravel and gypsum)
- Some impact on roads (gold)
- Road usage and maintenance costs (gypsum)
- Noise and dust from operations and short term clearing of mined area (mineral sands - rutile, zircon and limonite)
- Environmental impact on primary sand dune on foreshore (sand)
- Large impact on physical infrastructure such as roads. Significant growth would also see the need for the expansion of a range of additional community services (mineral sands)
- Road damage, environmental impacts, including aesthetic/landscape impact (sand).

The Victorian council experience of mining supports the positive impact of mining on economic growth particularly in the area of local job creation. It also supports the negative impacts of mining on infrastructure, services and the environment.

5. Other Relevant Information

The introduction of rate capping from the 2016/17 year onwards will force councils to seek new revenue sources to offset the impact on future operating and capital works budgets. The rating of mining activities is one such possible new source of revenue.

The exemption of mining from council rates is not consistent with the 'equity' principle both from a horizontal and vertical equity point of view.

5.1 Rate capping

The Victorian Labor government has introduced a policy which caps rate increases in line with the inflation rate. Councils will need to support increases above the cap through a business case assessed by the Victorian Efficiency Commission. This policy will apply from the 2016/17 budget year.

At the Municipal Association of Victoria (MAV) State Council in May 2014, Victorian councils unanimously opposed any proposal to cap council rates as it would hurt communities over the long-term as capital programs would be underfunded and higher costs imposed on future generations to renew and upgrade under-maintained community infrastructure currently valued at \$73 billion.²⁵

The impact of rate capping is exacerbated by:

- Council cost movements do not mirror those in the common household goods and services as measured by CPI
- Government grant increases are limited to CPI or less
- Financial assistance grants have been frozen by the Federal government for three years.

Councils will be seeking new revenue sources to offset the impact of rate capping. The rating of mining activities is one such possible new source of revenue.

5.2 Rating principles

The rating system is one of the most sensitive issues on which a council will make decisions. In developing a rating system it is important to consider the principle of equity (i.e. the equitable imposition of rates and charges). There are two main equity concepts used to guide the development of rating systems:

- Horizontal equity – ratepayers in similar situations should pay similar amounts (ensured mainly by accurate property valuations, undertaken in a consistent manner, their classification into homogenous property classes and the right of appeal against valuation)
- Vertical equity – those who are better off should pay more than those worse off (the rationale applies for the use of progressive and proportional

²⁵ State Election 2014 Local Government Call to Parties MAV p6

income taxation. It implies a “relativity” dimension to the fairness of the tax burden).

Rates are essentially a wealth tax, determined on the value of property. A pure “wealth tax” approach implies that the rates paid relate directly to the value of a ratepayer’s real property. The tests of horizontal and vertical equity are solely based on a property’s value.²⁶

Another principle ‘capacity to pay’ is also relevant to consider when developing a rating system. Councils may decide that capacity to pay is fundamentally reflected by property value. However, as rates are levied on unrealised wealth in the form of property, their nexus with a ratepayer’s capacity to pay may be tenuous – ratepayers may be asset rich but cash poor or vice versa. Councils have under the Act a number of rating instruments that allow them to address the capacity to pay issue to varying degrees, including differential rates, waivers and deferrals.

The exemption of mining from council rates is not consistent with the ‘equity’ principle both from a horizontal and vertical equity point of view. Any arguments around capacity to pay can easily be dealt with through other rating instruments such as differential rates.

²⁶ Local Government Better Practice Guide: Revenue and Rating Strategy Guide DTPLI 2014 p7-11

6. The Case for Rating Mining Land

It is recommended that the State make mining land rateable or subject to a payment in lieu of rates based on the unimproved value of the land subject to mining activity and certain improvements on that land.

6.1 Business case

This business case argues that there is a strong case for rating mining operations in Victoria as follows:

- All Australian states including the Northern Territory, rate mining operations
- The mining rate exemption first appeared in the 1958 Act, however the predominant mining activity has changed significantly since this time
- Land on which coal is situated and used for the purposes of generating electricity is rateable land under the Electricity Industry Act 2000
- The Capital Improved Value (CIV) of mining assessments was \$654 million at 1 January 2014 representing 0.4% of the total valuation of all private properties in Victoria of \$1.5 trillion
- The annual rates foregone by all councils in Victoria for the 2014/15 year assuming all mining assessments are active was \$3 million
- The Victorian council experience of mining operating supports the positive impact on economic growth particularly in the area of local job creation. It also supports the negative impacts of mining on infrastructure, services and the environment
- The introduction of rate capping from the 2016/17 year onwards will force councils to seek new revenue sources to offset the impact on future operating and capital works budgets. The rating of mining activities is one such possible new source of revenue
- The exemption of mining from council rates is not consistent with the 'equity' principle both from a horizontal and vertical equity point of view.

6.2 MAV position

Trevor Koops, Senior Economist at the MAV provided the following case for rating mining operations.

The non-rateability of mining land is presumed to arise from its tendency to be highly capital intensive. Extraction, conveying and crushing plant may contribute substantially to values. Mining may therefore attract significant levels of rates where improvement bases such as CIV are used and particularly where they account for a significant proportion of total valuations in rural local government areas.

Councils have responsibility for the equitable imposition of rate and charges. This is prejudiced by the exclusion of mining land, particularly given the demands mining places on local infrastructure such as depreciating local road assets and pressure on services arising from demographic population changes. Mines also operate for private profit. The fact that mining operations generate State royalties or that the mining is undertaken on crown land is irrelevant to the cost being borne by local governments and because other crown lease tenants are generally liable.

The non-rateability of mines in Victoria is inconsistent. While the State Government continues to provide the exclusion to some private operations including rail freight and passenger transport because of their deemed 'public purpose', the exclusion has been removed for gas pipelines and electricity transmission infrastructure. The contradictory approach of the State Government is also exemplified with respect to electricity where it provides a legislated arrangement where electricity generators either pay rates or opt to make a payment in lieu of rates according to a specific formula. Interestingly, coal mining forms a significant part of the operation of electricity generators so it may be interpreted that (coal) mining is already being indirectly taxed in some instances in Victoria.

Capital intensity, in itself, should not be regarded as a rationale for the exclusion of mining. There are numerous industrial operations run for a profit that comprise significant plant. In a number of councils such operations attract higher rates via differential rates. It is difficult to see how the argument differs.

6.3 Recommended system of rating

Given the likelihood of growth in mining arising from coal-seam gas and other activities, it is recommended that the State:

- Make mining land rateable or ensure that some form of payment in lieu of rates can be negotiated with the mining operator
- Allow councils to raise the rate or payment in lieu of rates as the sum of the following:
 - The farm rate (or the general rate applied to residential properties if no farm rate) multiplied by the unimproved value of the land occupied by the mining activity; and
 - The farm rate (or the general rate applied to residential properties if no farm rate) multiplied by the value of certain improvements including all permanent accommodation, recreation and administration facilities, and maintenance workshops within 100 metres of these facilities.
- Exempt from the rates that, which, is owned by the Crown, a Minister, a Council, a public statutory body or trustees appointed under an Act to hold that land in trust for public or municipal purposes or where the predominant activity on the land is exploration or testing.

Appendix A: Policy – The Application of Gross Rental Valuation to Mining, Petroleum and Resource Interests (extract)

1. Introduction

This Policy provides guidelines for the application of gross rental valuation (GRV) to mining, petroleum, and other resource interests.

2. Legal Context

- 1) In terms of Section 6.28(1) of the Local Government Act 1995 (the WA Act), the Minister can determine the method of valuation of land to be used by a local government as the basis for a rate.
- 2) In terms of Section 6.29 of the WA Act, the Minister can determine that gross rental valuation can apply to a portion of land defined as a relevant interest on which capital improvements are located.
- 3) The Minister for Local Government has the authority, in terms of the legal provisions above, to implement the guidelines.

3. Land subject to the policy

- 1) The policy will apply to land defined as:
 - a) a relevant interest in Section 6.29(1) of the WA Act meaning:
 - i) a mining tenement held under the Mining Act 1978 (whether within the meaning given to that term by that WA Act or by the Mining Act 1904); or
 - ii) a permit, drilling reservation, lease or licence held under the Petroleum and Geothermal Energy Resources Act 1967.
 - or
 - b) a resource interest used for:
 - i) the extraction, processing or refining of minerals as defined in the Mining Act 1978, Section 8; or
 - ii) the extraction, processing or refining of petroleum as defined in the Petroleum and Geothermal Energy Resources Act 1967, Section 5.

4. Improvements to be considered for gross rental valuation

- 1) Subject to the provisions of Section 6.28 and 6.29 of the WA Act, gross rental valuation will apply to relevant interests and resource interests only in respect of the following improvements:
 - a) All permanent (in situ for at least 12 months):
 - i) Accommodation, recreation and administration facilities and associated buildings; and
 - ii) Maintenance workshops existing within 100 metres of facilities listed in Section 4.1(a)(i).
- 2) Nothing in this Policy prevents a local government for gross rental valuation.

5. Transitional arrangements

- 1) The Policy will apply for a trial period of three years from July 1st 2012 to June 30th 2015.
- 2) During the three year trial period, the following arrangements will apply:
 - a) The Policy will apply to all new mining, petroleum and resource interests as defined in Section 3.

- b) The Policy will not affect existing arrangements between local government and proponents, unless both parties agree, through mutual consent, to adopt the Policy.
- c) Projects that operate under existing State Agreements and are currently exempt from rates may apply the policy as part of their respective agreement variation processes.
- d) All other relevant provisions under the WA Act will apply.

6. Implementation guidelines

- 1) Government will review the success of the Policy against agreed key performance indicators and prepare recommendations in consultation with key stakeholders.
- 2) Subject to the findings and recommendations in 6.1, the Policy will apply to:
 - a) all projects, from the date determined in the recommendations;
 - b) projects operating under State Agreement Acts, as part of their respective agreement variation process.

Terms used

minerals means naturally occurring substances obtained or obtainable from any land by mining operations carried out on or under the surface of the land, but does not include —

- a) soil; or
- b) a substance the recovery of which is governed by the Petroleum and Geothermal Energy Resources Act 1967 or the Petroleum (Submerged Lands) Act 1982; or
- c) without limiting paragraph (b), geothermal energy resources as defined in the Petroleum and Geothermal Energy Resources Act 1967
- d) a meteorite as defined in the Museum Act 1969
- e) any of the following substances if it occurs on private land —
 - i) limestone, rock or gravel; or
 - ii) shale, other than oil shale; or
 - iii) sand, other than mineral sand, silica sand or garnet sand; or
 - iv) clay, other than kaolin, bentonite, attapulgite or montmorillonite;

petroleum means —

- a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; or
- b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide, and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir, but excludes oil shale.

Appendix B: Definitions of Terms in Section 154 of the Act

Definitions from Clause 74 of the Horsham Planning Scheme (NB: These definitions are standard in all Victorian Planning Schemes)

Land Use Term	Definition	Includes*	Included in*
Earth and energy resources industry	Land used for the exploration, removal or processing of natural earth or energy resources. It includes any activity incidental to this purpose including the construction and use of temporary accommodation.	<ul style="list-style-type: none"> • Greenhouse gas sequestration • Greenhouse gas sequestration exploration • Geothermal energy exploration • Geothermal energy extraction • Mineral exploration • Mineral extraction • Petroleum exploration • Petroleum extraction • Stone exploration • Stone extraction 	
Mineral extraction	Land used for extraction of minerals in accordance with the Mineral Resources (Sustainable Development) Act 1990.		Earth and energy resources industry
Stone extraction	Land used for the extraction or removal of stone in accordance with the Mineral Resources (Sustainable Development) Act 1990.		Earth and energy resources industry

* Land use definitions are "nested", meaning that some terms have finer levels of definitions within the term, and conversely, some definitions are themselves finer level terms

Definitions from the Mineral Resources (Sustainable Development) Act 1990

"quarry" means—

- (a) a pit or excavation made in land below the natural surface for the purpose of extracting or removing stone if a primary purpose of the extraction or removal is the sale or commercial use of the stone or the use of the stone in construction, building, road or manufacturing works; or
- (b) any place or operation involving the removal of stone from land, declared by the Minister by notice published in the Government Gazette to be a quarry— and includes access ways on private land and the works, machinery, plant, equipment, buildings and structures above or below ground used for or in connection with—

- (a) making, enlarging or deepening the pit or excavation; or
- (b) carrying on the operation; or
- (c) the extraction or removal of stone from the pit or excavation; or
- (d) the treatment on or adjacent to the land in which the pit or excavation is made of stone extracted or removed from the land or the manufacture on or adjacent to that land of bricks, tiles, pottery or cement products substantially from stone so extracted or removed;

"mine" means any land on which mining is taking place under a licence;

"mining" means extracting minerals from land for the purpose of producing them commercially, and includes processing and treating ore;

"mineral" means any substance which occurs naturally as part of the earth's crust—

(a) including—

- (i) oil shale and coal; and
- (ii) hydrocarbons and mineral oils contained in oil shale or coal or extracted from oil shale or coal by chemical or industrial processes; and
- (iii) any substance specified in Schedule 4;

(b) excluding water, stone, peat or petroleum;

Mineral Resources (Sustainable Development) Act 1990 – Schedule 4

Minerals include:

1. Bentonite (aluminium phyllosilicate).
2. Fine clay (hydrous aluminium phyllosilicates, sometimes with variable amounts of iron, magnesium, alkali metals, alkaline earths).
3. Kaolin (soft white clay that is an essential ingredient in the manufacture of china and porcelain and is widely used in the making of paper, rubber, paint, and many other products).
4. Lignite. (Brown Coal)
5. Minerals in alluvial form including those of titanium, zirconium, rare earth elements and platinum group elements.
6. (deleted from the Act)
7. Quartz crystals.
8. Zeolite (microporous, aluminosilicate minerals).

References

Department of Local Government (2011), *Policy on the Application of Gross Rental Valuation to Mining, Petroleum and Resource Interests*, State of Western Australia

Centre for Social Responsibility in Mining (2014), *Local Government, Mining Companies and Resource Development in Regional Australia: Meeting the Governance Challenge*'

Department of Transport, Planning and Local Infrastructure (2014), *Local Government Better Practice Guide: Revenue and Rating Strategy*, State of Victoria