

**Submission
No 67**

INQUIRY INTO LAND VALUATION SYSTEM

Organisation: Broken Hill City Council
Name: Mrs Kate O'Neill
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Mrs. K. O'Neill

March 8, 2013

Mr. Matt Kean Chair
Joint Committee on the Office of the Valuer General
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Chair,

Inquiry into the Land Valuation System

Thank you for the opportunity to provide a submission to the Joint Committee on the Office of the Valuer General in this matter further to a presentation made to Committee Chair, Matt Kean on Wednesday, 30 January 2013 (**Attachment A**) and Council's attendance at the Broken Hill Public Hearing on Wednesday, 6 March 2013.

Council submits that the impacts of the Land Valuation System requires a whole of government and industry approach to enabling real investment and sustainable communities in the regions - in particular Broken Hill and the Far West Region of New South Wales ("NSW").

BACKGROUND

Community Vision:

The Community Vision for Broken Hill is for ***Broken Hill to be a self-reliant, strong regional community with services and facilities to support an active, vibrant residential population, valuing and sharing the regions unique natural and built environment with regional, national and international visitors.***

Broken Hill's Community Strategic Plan is available on the Broken Hill City Council website: www.brokenhill.nsw.gov.au

The City:

The City of Broken Hill (area 179sq km) is the largest regional centre in the western half of NSW. It lies in the centre of the sparsely settled NSW Outback, close to the South Australian border and midway between the Queensland and Victorian borders.

The nearest large population centre is Mildura in Victoria, 300 km distant to the south on the Murray River. The nearest large city is Adelaide, capital of South Australia, approximately 500 km to the southwest. Because of its location, Broken Hill has strong cultural and historical connections with South Australia.

The city area is surrounded by and is a regional service centre to the Unincorporated Area of NSW and adjoining shire and district communities.

The most recent estimates place the population at 19,000. This represents a 30% decline since 1971, mainly related to the decline in the local mining industry. However, in recent years the population has stabilised somewhat and the rate of decline has slowed.

Mining development and exploration activity both in the City and surrounding region has seen resurgence during the past few years around high commodity prices - the cycle continues as it has in the City for the past 130 years, and remains buoyant for the foreseeable term.

Tourism is widely regarded as a strong performer and not subject to the impacts of the mining industry. Although the industry across NSW has been negatively affected by drought, floods and the exchange rate, a number of national and international factors have helped to increase visitor numbers to Broken Hill and region over recent years with domestic visitors to Outback NSW remaining relatively static for 2011 and 2012 at 499,000 total visitors (Travel to Outback NSW Tourism Region Year ended June 2012 - Source: Destination NSW).

Current nomination of Broken Hill for national heritage listing if successful will see "the Hill that changed a nation" rightly recognised for its place and role in the nation's development.

Council infrastructure improvements together with retail, renewable energy, arts and film developments in and around the City will also mean a vibrant and culturally rich Broken Hill will continue to be a liveable regional city for the longer term.

Council's Vision

The Council's Vision for Broken Hill is that ***Broken Hill will be a safe, vibrant, prosperous and culturally rich City through community leadership and sustainable management***

In line with this Vision, the Council aims that Broken Hill in 2030 will be a community that boasts:

- A stable or increasing population;
- A more balanced age structure, especially by retaining young people;
- An expanding economy;
- An increase in employment and education opportunities;
- A safe environment in which to live; and
- A range of services that is comparable with those enjoyed by larger communities, including cultural, community and recreational services.

Council's Mission:

The Council's Mission is that ***"Council will provide responsive community leadership and high quality services in a sustainable manner to maintain and enhance Broken Hill's lifestyle"***

Council's Key Directions:

The following key directions will assist Council to achieve its Vision and Mission:

- Our Community: Council will aim to enhance the quality of life, independence and well being of the Broken Hill Community.

- Our Economy: Council will contribute to achieving a viable cultural and economic base within the City and surrounding region that contributes to a prosperous economy and a vibrant lifestyle.
- Our Environment: Council will work to achieve an attractive and sustainable natural and built environment with protection of our heritage.
- Our Leadership: Council will provide community leadership and good government based on a comprehensive understanding of community needs and aspirations.

The Organisation

The Broken Hill City Council is an award winning organisation recognised by the local government industry and other levels of government and industry sectors in NSW, nationally and internationally with a range of impressive achievements over many years.

Council currently employs 275 full time, part time and casual employees, giving a total of 237 full time equivalent employees.

Council provides a significant range of services to the city and regional community. Council operates a broad “services to property and people” portfolio of community business and invests heavily in social capital.

Council presently owns infrastructure assets valued at \$227m and faces balancing competing community needs and priorities from a limited financial resource base.

Council's annual operating budget is approximately \$36m (2012). Income from rates and annual charges was in the order of \$14.1m (2012) or 45% of its total annual revenue. The balance of income is primarily from Commonwealth and State Government operating grants and contributions (\$12.8m) and user charges and fees (\$3.7m).

This collectively means that service provision and asset management in particular within this environment is a major challenge for the organisation.

Council's challenge is to continue to adjust to change after years of population decline and effectively manage its community assets - in a demanding environment for provision of services with increasing government and community accountability.

Income & Expenditure

For the 2011/2012 financial year, Council reported operating income of \$31.7m and operating expenses of \$36.4m, resulting in a net loss to Council of \$4.7m. A breakdown of these figures is provided below:

Income		Expenditure	
Item	%	Item	%
Rates & Annual Charges	45	Administration	26
Grants & Contributions	41	Recreation & Culture	21
Fees & Charges	12	Community Services & Education	19
Interest & Investments	1	Transport & Communication	12
Other Revenue	1	Environment	6
		Governance	6
		Economic Affairs	4

Income		Expenditure	
Item	%	Item	%
		Housing & Public Amenity	3
		Public Order & Safety	2
		Health	1

In relation to Council's rates for 2012/2013, the following summary is provided:

Rating Category	# Of Properties	Ad-valorem Income	Base Rate Income	Total Income	% of Income
Business	616	\$2,306,105	\$308,000	\$2,614,105	19.62%
Residential	9,555	\$3,600,858	\$3,583,125	\$7,183,983	53.90%
Residential 1(A)	22	\$3,455	\$3,410	\$6,865	0.05%
Rural	11	\$3,452	\$2,475	\$5,927	0.04%
Farmland	5	\$2,954	\$2,000	\$4,954	0.04%
Mine	2	\$3,511,706	\$0	\$3,511,706	26.35%
Total	10,211	\$9,428,530	\$3,899,010	\$13,327,540	

Council has a high reliance on mine rate income – 26% (2013 \$3.5m) of total rates of \$13.3m.

The Mine valuations in Broken Hill account for 5% (\$16.2m – 2010) of the total city land valuation of \$323.5m.

Council's most recent Statement of Compliance is provided at **Attachment B**.

TERMS OF REFERENCE

Broken Hill City Council understands that the Committee is inquiring into and will report on the following Terms of Reference:

1. To investigate the extent to which the current land valuation system delivers transparent, efficient, equitable and consistent outcomes for stakeholders. This includes monitoring and reviewing the exercise of the Valuer General's functions with respect to land valuations under the *Valuation of Land Act 1916* and the *Land Tax Management Act 1956*, including:
 - a. Volatility in land valuations;
 - b. Complexity in the valuation system;
 - c. Drivers of inefficiency in the system including market distortions, and administration and compliance costs; and
 - d. Any inequity in the valuation system.
2. To make recommendations on the issues above, including but not limited to:
 - a. Any legislative changes required;

- b. Changes consistent with best practice in comparable jurisdictions;
 - c. Measures to improve transparency within the system;
 - d. Measures to achieve greater efficiency within the system;
 - e. The need for possible amendments to the Valuation of Land Act; and
 - f. A cost-benefit analysis of proposed changes to the system.
3. This is noting that the focus of the inquiry is not directed at revenue but the valuation system.

BROKEN HILL CITY COUNCIL'S SUBMISSION TO THE INQUIRY

Giving Councils Flexibility in Choice of Valuation Base

1. NSW currently uses the **Site Value ("SV")** definition, which is essentially the value of cleared land that is ready for development.

Council is of the view that the mandated use of SV is an outmoded mechanism by which it is forced to calculate property rates.

Council believes that it should be able to choose the method of valuation that will best enable it to levy rates in a fair and equitable manner, which is most relevant to meeting the needs of its particular community.

Council is seeking an amendment to the Act whereby the valuation of land can be based on either the Site Value, Capital Improved Value or the Net Annual Value.

This would be consistent with the valuation methodology used in Victoria.

2. In particular, the use of **Capital Improved Valuations ("CIV")** would be more consistent with the principle that a rating or taxation system should reflect the ability of the ratepayers to pay the charges levied.

Under the current valuation system, everything else being equal, two (2) otherwise identical properties would be rated at exactly the same level, regardless of the level of improvements that might have been undertaken on one or the other property.

Under the CIV method of valuation, the property with the improvements would be valued at a higher level and therefore would attract a higher level of rates.

3. The ability of Councils to use any of the three (3) possible valuation methodologies would also allow for a clearer definition of each them under the Act, than currently exists for the SV methodology.
4. Since the turn of the last century Local Government rates in most jurisdictions have been levied on the **Unimproved Capital Value ("UCV")** of properties, meaning the value of the land literally without any improvements of any kind (but with all existing amenities).

There are difficulties and anomalies, however, associated with this definition of land. For example, improvements such as levelling, clearing and filling carried out many years previously become virtually impossible to identify.

The definition of "Site Value" elsewhere means the value of land including improvements which have merged with it over time because they have become permanent; require no maintenance; and for all practical purposes have become invisible.

5. The option for the use of the three (3) valuation methodologies therefore would need to be accompanied by a clear distinction as to the extent of their meaning.

The following definitions of the three (3) valuation types could be adapted from Victoria:

- Capital Improved Value: The total market value of the land plus buildings and other improvements.
 - Net Annual Value: The current value of a property's net annual rent (by law, Net Annual Value must be at least five per cent of the Capital Improved Value for commercial property and exactly five percent of Capital Improved Value for residential property).
 - Site Value: The market value of the land only.
6. Considering generally the operation of the land valuation and rating system, Council believes it to be inherently sound - however, the critical importance of frequent and up-to-date valuations, and the need for annual valuations to come into effect as soon as possible after they have been made. This view is based on the assumption that valuations will continue to be (statistically) re-assessed at least annually, and that there will be frequent general revaluations to review relativities over time.

Averaging: Averaging is an approach that has merit and could be used in lieu of annual re-assessment. It involves a council averaging a property's past three land valuations to determine the average rateable valuation. The property's current valuation will be used to calculate rates if it is less than the property's average rateable valuation.

If the property was subdivided or resurveyed, there may not have three past land valuations. In this case, an averaging factor is applied to the current land valuation to calculate the rates. (Source: Brisbane City Council website definition)

Valuation cycle – Council's experience with volatility and reduction of re-valuation cycle from 4 to 3 years

7. Valuation volatility concerns were raised with the Valuer-General by Council in 2006 and 2007 – in particular in relation to significant variations in valuations between different geographical locations in the one regional city – in this case North and South Broken Hill. Following Council and community consultation and support, the 2007 decision by the Valuer-General to review Broken Hill's land valuations every three (3) years, instead of every four (4) years, assisted to bring a more equitable balance, in line with market fluctuations, to land valuations across the City.
8. Council suggests that with the introduction of annual valuations, coupled with increasingly comprehensive land use planning controls; the Council's view is that, at any given time, there is no reason why the Valuer-General's valuations should not accurately reflect the value of all land in the city. Valuations are based on the open market's assessment of the locational characteristics of land (including its size, frontage and shape); the availability of works and services; and its highest and best use.

Council believes that with annual reviews there should be fewer anomalies and fewer "surprise" increases.

Improving Transparency and Accountability

9. **Valuation and rating should continue to be recognised as separate functions**, neither of which should be manipulated for the purposes of the other. Council supports the allocation to separate bodies as is presently the case in NSW and other states.
10. Council concurs that the rights of objection and appeal should continue to be available to all landowners who wish to challenge the Valuer-General's assessment, and Council considers that rights of objection and appeal in respect of both general and annual valuations should also be available to Local Government.
11. In saying that, Council is firmly of the view that there needs to be increased transparency on the part of the Valuer-General with regards to the valuations process, particularly in relation to objections and appeals.
12. Council cannot confidently say the actual date it was made aware of Perilya's objection to its 207 valuation but was aware that it was lodged on 3 May 2010 and was disallowed on 3 December 2010.

Council was not aware that:

- 4 February 2011: Appeal to Land & Environment Court was received
- 10 – 12 October 2012: Appeal was heard in the Land & Environment Court
- 19 October 2012: Decision was handed down by the Land & Environment Court

Council only became aware that the matter had been appealed, on the Thursday, +25 October 2012, after a representative from Perilya contacted Council and provided a copy of the notification for Land & Property Information, after the Court had ruled in its favour.

13. Council is of the view that there should be an increased level of accountability on behalf of the Valuer-General to its client base, including Local Government and rating authorities.

The Valuer-General has a captive market in Local Government, which is unable to contract out the valuation process in its own right, nor exercise any control over that process with regards to professional standards, quality or duty of care.

In the case of the valuation of land for Perilya Broken Hill Limited, through an appeal to the Land and Environment Court, Perilya was successful in having its 2007 property valuation reduced from \$20.9m to \$4.9m. The extreme nature of the variance between the original valuation and that accorded to the property by the Court throws into doubt the competence and integrity of the Valuer-General (or its contractor).

Despite paying the Valuer-General \$49,000 for the valuation of properties in the Council area in 2012, Council has little if any recourse, other than costly litigation, to seek redress against the Valuer-General for what could have been a faulty valuation.

Council does not have a contractual arrangement with the Valuer-General for the provision of the service, the Valuer-General provides no warranty in relation to quality of the service, yet Council is facing a \$6.9m liability to repay overpaid rates as a result of a

suspect valuation. This is not a value for money service for Council or its ratepayers in these circumstances.

Council believes the ability to contract out its own valuation services or at least enter into a professional services contract with the Valuer-General which stipulates service levels, standards and relevant protections. This would also include standards for communication with specific reference for triggers to directly contact Council in relation to an increase of valuation eg % of original valuation or \$ difference.

14. The consequences of the Land and Environment Court decision may end up being borne by all the other ratepayers in the Broken Hill City Council area, depending on the outcome of a further appeal in relation to this matter.

Should Council be required to repay Perilya, it may have to seek loan borrowings, at least in the short term, and possibly apply for a multi-year Special Rate Variation to ensure that it is able to recoup what would otherwise be a significant expense.

Council is also incurring significant legal costs, as well as internal administrative costs, in dealing with the consequences of this matter.

Valuation objection / appeals outcomes not be applied retrospectively

15. Council's recent experience with the mine valuation appeal has the consequence of Council now being liable to repay overpaid rates of \$6.88m relating to the 2008/09, 2009/10 and 2010/11 financial years.

This is despite the fact that Council relied upon the 2007 property valuations in good faith to levy rates upon all its ratepayers over these years. The retrospective nature of the decision reduces the certainty with which Council can plan for the future, as it has deal with the legacy of a past issue that it had for all intents and purposes used as a foundation for the future.

In the era of long-term financial planning and asset management, Council is now making financial decisions across a time span of up to 10 years and needs a solid foundation upon which to do so.

The levying of rates, based upon a sound valuation, is a key aspect of Council's financial management strategies. Rates account for approximately 40% of Council's normal, ongoing operating revenues and should be able to be relied upon as a stable source of income.

Council suggests that the Act should be amended to ensure that valuation objections cannot be considered or applied to past years' rate revenue, where legitimately raised in accordance with Chapter 15 of the Local Government Act 1993.

In this regard, Council suggests that the timeframes for the lodging and consideration of objections, as specified in section 35 of the Act should be vigorously applied and that s35A(1) be repealed, or be amended to a more specific timeframe.

Likewise, s37 of the Act should also be amended to limit the right of appeal to the Land and Environment Court to a specified timeframe.

Metaliferous mines – Council’s experience with volatility, objection and appeal processes for mine valuations

16. Mines and mine land valuations are complex and volatile by their nature. Mine land valuations of between \$10m – \$21m have been allocated since 2000 on Broken Hill’s two (2) operating mines.
17. The 1994 NSW Government arbitrated mine rates known as the Pasmenco determination (**Attachment C**) was an attempt to rationalise the volatility in land valuations (and subsequently mine rates income) for the operations of the Broken Hill mines and remained in place as Council’s guiding framework until 2006.
18. Under the Pasmenco Agreement, dependent on the land valuations and rate pegging legislation the effect of the agreement was to reduce the mine rates by between \$200,000 and \$250,000 in 1995/1996 and a reduction of \$400,000 and \$500,000 in 1996/1997. Further mine rates beyond 1996 / 1997 were to reflect the percentage of Broken Hill’s land valuation occupied by Pasmenco.

Major increases in mine valuations from that year impacted significantly and Council reinstated a mine rate cap strategy from 2008 (**Attachment D**). The strategy was not subsequently applied from 2010 to date.

19. As discussed above, uncertainty presently surrounds mining company Perilya Broken Hill Limited’s repayment / future valuation objections, in addition to those of CBH Rasp.
 - 2007 VG Valuation appeal rates impact - \$6.88m Perilya (subject to VG appeal)
 - 2010 VG valuation impact on rates (if successful) – est. \$6.2m Perilya**
 - 2010 VG valuation impact on rates (if successful) – est. \$1.66m CBH Rasp**
 - Ongoing impact per annum \$2.85m (22%) shortfall in rate income (in addition to one-off repayments above)

** based on similar % reductions in valuations

20. The requirement to refund the overpayment has had an immediate effect on Council’s ability to enter into contracts. The most significant contract that has been impacted is the \$8.2million Heavy Vehicle By-Pass road, which has been funded by the Federal Government (\$3M), State Government (\$1m), Perilya (\$2m) and Council (\$1.2m). This project is vitally important to the Broken Hill Community in diverting mining transport and other heavy vehicles out of the City Streets and stimulating economic development in the City via the Broken Hill Airport redevelopment.
21. Requirement to refund the overpayment has also had an immediate impact on Council’s cashflow and access to internally unrestricted cash, which is already exhausted and raised as a significant concern for Council by its External Auditors.
22. All programs, policies and services have been immediately affected by the need to repay the overpaid rates and urgent action taken to address the issues.
23. Further impact on Council is explained in **Attachment E**.
24. This urgent action is demonstrated by the decision of Council at its December 2012 meeting, where is resolved:

“Reduce its current capital works program and special projects for the remainder of the 2012/2013 financial year as detailed in the schedules to the report in the total amount of \$12,284,000; and

Council place a complete hold on all recruitment, including filling currently vacant positions in the organisation structure - a reduction of 9.8 FTE positions in the amount of \$430,828.

That the General Manager determine further action as necessary for projects commenced and/or currently underway.

That Council endorse that action taken, in submitting an “in-principle” expression of interest to IPART for a “yet to be determined” special rate variation by 14 December 2012 and noting that in order to progress, a detailed formal application to proceed is then required by March 2013 – subject to community consultation and final Council resolution as required.

That correspondence be sent to the Division of Local Government stating that Council takes exception to their recommendations (further borrowings or asset sales) as they are not a practical solution for the Broken Hill community”.

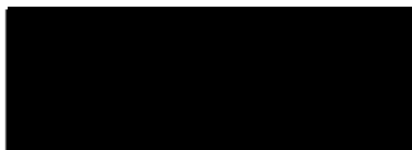
Current Status of Perilya v. Valuer General:

25. Valuer-General (VG) has lodged an appeal to the Supreme Court against the LEC Perilya decision and a hearing date has been set for 23 July 2013.
26. Perilya have indicated that they will continue with legal process to both recoup rates overpayment and have lodged an objection to the 2010 VG valuation.
27. CBH Rasp – Broken Hill Operations has objected to the 2010 VG valuation.
28. Council is continuing open dialogue with Perilya and the NSW Government pending the VG appeal hearing.
29. Council has made no assumptions with respect to a “bailout” by the NSW Government and is taking its own urgent corrective and preliminary action as resolved in December 2012.
30. Further rates implications and cash flow modelling will inform the draft 2013/14 Operational Plan, with capital expenditure being limited to \$2.9m and apart from funded items, only \$1.26m for the road re-sealing program. Special projects have been budgeted at \$1.4m (with funding of \$600,000).
31. A combination of rate increases for non-mine rating categories to fund borrowings and redistribute the lost rate burden together with a reduction in service provision (operating expenditure) is the initial approach envisaged.

Thank you again for the opportunity to assist the Committee by providing information relevant to the Terms of Reference.

Council looks forward to addressing the key issues raised in partnership with the NSW Government to best effect.

Yours faithfully,



KATE O'NEILL

ACTING GENERAL MANAGER

Attachments to Submission:

A: Presentation to Matt Kean MP, 30 January 2013	14 pages
B: Statement of Compliance	2 pages
C: Pasminco Agreement	9 pages
D: Extract from Delivery Program	1 page
E: Letter to the Deputy Premier	8 pages