

Ministerial Guidelines for Differential Rating

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Introduction

These Ministerial Guidelines for Differential Rating (Guidelines) have been prepared to guide Councils in the application of differential rates under **S.161** of the *Local Government Act 1989* (the Act). Councils must have regard to these guidelines before declaring a differential rate for any land.

Pursuant to section **161** of the Act a Council may raise any general rates by the application of a differential rate if it uses the Capital Improved Value system of valuing land. Pursuant to section 161A of the Act a Council may raise any general rates by the application of Limited Differential rates if it uses the Net Annual Value or Site Value system of valuation.

For some time concerns have been raised with Government as to how a particular Council may or may not be meeting the objectives of the Act by the application or (non) application of differential rating decisions affecting them. Little information has been available to Councils to assist them in understanding *why* they might choose to use differential rating and the *advantages and disadvantages* of using differential rating to achieve specific *objectives*.

Across the 79 municipal councils in Victoria many different rating practices and strategies for differential rating have been developed over the years with little guidance provided in the legislation as to how to achieve the facilitating objective in the Act of ensuring the equitable imposition of rates and charges.

As at April 2013, there is a need for greater consistency, transparency and certainty across the 79 municipalities in Victoria.

In 2012 the Parliament passed the Local Government Amendment Act 2012 which introduced section **161(2B)** of the Act. Section **161(2B)** provides that the Minister may, by notice published in the Government Gazette, make guidelines for or with respect to:

- (a) the objectives of differential rating;
- (b) suitable uses of differential rating powers;
- (c) the types or classes of land that are appropriate for differential rating.

Further, by reason of section **161(2A)** a Council must have regard to any Ministerial guidelines made under subsection **(2B)** before declaring a differential rate for any land.

Further, section **161(4)** provides that on the recommendation of the Minister, the Governor in Council may by Order in Council prohibit any Council from making a declaration of a differential rate in respect of a type or class of land, if the Minister considers that the declaration would be inconsistent with any guidelines made under subsection **(2B)**.

The intention of the Guidelines is to provide clarity, consistency and transparency for Councils in their decision making for or with respect to:

- the objectives of differential rating;
- suitable uses of differential rating powers;
- the types or classes of land that are appropriate for differential rating.

Using these Guidelines

These Guidelines are issued pursuant to **S.161 (2B)** of the *Local Government Act 1989*.

The Guidelines aim to promote good practice and greater consistency in the application of differential rating in Victoria.

Subject to the requirements of the Act and application of these Guidelines, Councils can exercise discretion in developing and declaring differential rates. In exercising these broad powers, Councils must have regard to these guidelines to avoid the risk of their decisions being found to be inconsistent under **S.161(4)** of the Act. Where differential rates are found to be inconsistent with these Guidelines the Minister can seek an Order in Council under **S.161(4)** to prohibit Councils from applying such non-compliant differential rates.

Legislation

S.161 provides that a Council may raise general rates by applying differential rates if it uses the Capital Improved Value (CIV) system of valuing land and **S.161A** provides that a Council may apply limited differential rates where CIV is not used (that is, where either the Site Value or Net Annual Value systems of valuing land are used).

Section **3A(1)** of the Act provides that the primary objective of a municipal Council is to “endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.” In seeking to achieve its primary objective, a Council must have regard to a number of facilitating objectives including the objective in section **3C(2)(f)** of the Act to “ensure the equitable imposition of rates and charges”.

Pursuant to section **161** of the Act a Council may raise any general rates by the application of a differential rate if it uses the Capital Improved Value system of valuing land.

Section **161** of the *Local Government Act 1989* provides:

S.161 Differential rates

- (1) *A Council may raise any general rates by the application of a differential rate if it uses the capital improved value system of valuing land.*
- (2) *If a Council declares a differential rate for any land, the Council must—*
 - (a) *specify the objectives of the differential rate which must include the following—*
 - (i) *a definition of the types or classes of land which are subject to the rate and a statement of the reasons for the use and level of that rate in relation to those types or classes of land;*
 - (ii) *an identification of the types or classes of land which are subject to the rate in respect of the uses, geographic location (other than location on the basis of whether or not the land is within a specific ward in the Council's municipal district) and planning scheme zoning of the land and the types of buildings situated on it and any other criteria relevant to the rate;*
 - (iii) *if there has been a change in the valuation system, any provision for relief from a rate for certain land to ease the transition for that land; and*
 - (b) *specify the characteristics of the land which are the criteria for declaring the differential rate.*
- (2A) *A Council must have regard to any Ministerial guidelines made under subsection (2B) before declaring a differential rate for any land.*
- (2B) *The Minister may, by notice published in the Government Gazette, make guidelines for or with respect to—*
 - (a) *the objectives of differential rating;*
 - (b) *suitable uses of differential rating powers;*
 - (c) *the types or classes of land that are appropriate for differential rating.*

- (3) A Council which declares a differential rate must ensure that copies of the following information are available on its Internet website and for public inspection at the Council office—
 - (a) the definition of the types or classes of land which are subject to the rate;
 - (b) the objectives of the differential rate;
 - (c) the rate and amount of rates payable in relation to each type or class of land and what proportion of the total rates and charges this represents;
 - (d) any other information which the Council considers it necessary to make available.
- (4) On the recommendation of the Minister, the Governor in Council may by Order in Council prohibit any Council from making a declaration of a differential rate in respect of a type or class of land, if the Minister considers that the declaration would be inconsistent with any guidelines made under subsection (2B).
- (5) The highest differential rate in a municipal district must be no more than 4 times the lowest differential rate in the municipal district.

161A Limited differential rates

- (1) This section only applies to a Council that does not use the capital improved value system of valuing land.
- (2) The Council may raise general rates by applying a differential rate in relation to farm land, urban farm land or residential use land across the whole of the municipal district or between particular wards but in the case of particular wards only if—
 - (a) the farm rate, urban farm rate or residential use rate is applied on the basis of whether or not any land is within a specific ward in the Council's municipal district; and
 - (b) a majority of the Councillors for any such ward which is to be subject to the higher differential rate agree to that differential rate.
- (3) If a Council declares a differential rate under this section, sections 161(2), (3) and (5) apply in respect of the declaration.

These Guidelines provide guidance to enhance consistency and transparency of decision making by Councils. They address how Councils should specify the objectives of differential rating, the suitable uses of differential rating powers and the types and classes of land appropriate for differential rating.

The objectives of differential rating

Section **3A(1)** of the Act provides that the primary objective of a municipal Council is to “endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.” In seeking to achieve its primary objective, a Council must have regard to a number of facilitating objectives including the objective in section **3C(2)(f)** of the Act to “ensure the equitable imposition of rates and charges”.

Pursuant to section **161** of the Act a Council may raise any general rates by the application of a differential rate if it uses the Capital Improved Value system of valuing land.

When declaring general rates, a Council must consider how the use of differential rating contributes to the equitable and efficient carrying out of its functions compared to the use of uniform rates. Such a determination and its rationale must be disclosed in the Council's proposed budget and any revised budget or referenced in the Council's rating strategy.

In specifying the objective of each differential rate, a Council should be able to provide evidence of having had regard to:

- good practice taxation principles and their assessment against a particular differential rate objective and determination;
- modelling or consideration of the impact of the rating decision on those rated differentially and the consequential impact upon the broader municipality; and
- rating strategies or related Council documents;
- The Victorian Government's *Developing a Rating Strategy: A Guide for Councils* as amended from time to time.

In specifying objectives of differential rates, a Council should also have regard to the strategic objectives set out in the Council Plan (**S.125**) to ensure its objectives for differential rates (and thereby a percentage of Council revenue) accords with the strategic objectives.

Other documents a Council may have regard to in order to specify the objectives of a differential rate include issuing specific Council plans and Council policies. Where such documents have been incorporated into determining the objectives of each differential rate, a Council should provide evidence through disclosure in their annual budget documents.

Uses of differential rating powers

Differential rates are a useful tool to address equity issues that may arise from the setting of Council rates derived from property valuations. To this end, it is important that they are considered in the context of the range of revenue instruments¹ or options available to local governments. Following the specification of the objectives, Councils should undertake a process of deliberation to determine the suitability of applying one or more differential rate(s) in their municipality.

To determine the suitability of a differential rate, a Council should consider:

- other revenue instruments available under the *Local Government Act 1989* and the merits or shortcomings of each in achieving specified objectives compared to differential rates;

¹ Revenue instruments available to councils include: General Rates (s.158); Municipal Charge (s.159); Differential Rates (s.161); Limited Differential Rates (s.161A) where the NAV and Site Value valuation base is used; Service Rates and Service Charges (s.162); and Special Rates and Special Charges (s.163). Councils also have powers to provide Rebates (s.169) and Waivers (ss.171, 171A).

- the anticipated effectiveness of the proposed differential rate to achieve the specified objectives determined by Council; and
- the characteristics of the land used as the criteria for declaring a differential rate.

Circumstances whereby common types and classes of land use consistently demonstrate significant relative rate disparities, including access to services arising from the use of a uniform rate, may be addressed by use of the differential rate powers. Common types and classes of land use where such circumstance can arise and where a Council **must give consideration** to reducing the rate burden through use of a reduced differential rate include (but are not limited to):

- Farm land (as defined by the *Valuation of Land Act 1960*); and
- Retirement village land (as defined by the *Retirement Villages Act 1986*).

The Act empowers Councils (**s.161(2)(a)(ii)**) to identify the types or classes of land subject to a differential rate by geographic location (other than location on the basis of whether or not the land is within a specific ward in the Council's municipal district). Where a Council considers that types and classes of land located in broad and distinctly identifiable geographic areas, for example towns, may consistently demonstrate significant disparities in access to services or rates, it may be appropriate to apply differential rates defined on such broad geographic basis, consistent with the requirements of the Act. It is not appropriate to define differential rates by geographic location to specifically apply to very few assessments.

Circumstances whereby significant rate volatility occurs as a result of large movements in valuation may be more appropriately addressed through the use of other revenue instruments such as a rebate or deferred payment, instead of through use of differential rating. This applies in particular to land in the Urban Growth Zone without an approved Precinct Structure Plan in place.

It is not appropriate to utilise differential rating powers to prevent, mitigate, or discourage legitimate land uses (with the exception of vacant or derelict land). This includes the use of differential rate powers to:

- lessen the impact of externalities arising from the type of business conducted on the land;
- fund actions intended to ameliorate the externalities arising from such business on the land; or
- fund expenditure relating to a special benefit yet to be realised on the land subject to a proposed differential rate.

Examples of inappropriate uses of differential rating powers include (but are not limited to) *specific* application on the following:

- electronic gaming machine venues or casinos;
- liquor licensed venues or liquor outlet premises;
- business premises defined whole or in part by hours of trade;
- fast food franchises or premises; and

- land within the Urban Growth Zone without an approved Precinct Structure Plan in place.

The use of a differential rate applicable to very few assessments in a municipality should be considered with great caution and have regard to the impact on the land subject to the proposed rate and the consequential impact upon the broader municipality through consideration of equity. This is especially so in the case of differential rates applied to narrowly or specifically defined activities or land use types. For example, whilst it is a long standing practice in many municipalities and may be permissible for a Council to set a higher differential rate for a broad class such as Commercial or Industrial properties, it is not permissible under these Guidelines as a matter of equity for narrow selective classes such as “late night venues” or “gaming machines” to be subject to specific higher differential rating decisions.

The ‘progressive’ use of differential rates applicable at specified property valuation bands to a certain type and class of property within a municipality should be considered with great caution and have regard to the impact of the rating decision on those rated differentially.

Identification of the suitable use of a differential rate through the above process should form part of a Council’s determinations, and evidence for this consideration and determination should be provided to the community as part of the budget process and disclosed in the budget documentation.

Types and classes of land appropriate for differential rating

The differential rate category terminology must unambiguously correspond with clearly identified uses, geographic location, planning scheme zoning of the land and types of buildings situated on it. The types and classes of land must be described:

- clearly and consistently so as to avoid any community uncertainty with regards to application; and
- in a manner that is consistent with the fulfilment of the stated council objectives.

For the purposes of reading these guidelines the following differential rates hierarchy has been adopted to:

- those that are appropriate;
- those that require careful consideration; and
- those that are not appropriate.

Types and classes of land categories and their combination that are considered **appropriate** for differential rates include the following:

- general land;
- residential land;
- farm land;

- commercial land;
- industrial land;
- retirement village land;
- vacant land;
- derelict; and
- cultural and recreational.

Types and classes of land categories that must be ***carefully considered*** as to whether they are appropriate for the application of differential rates include (but are not limited to) the following:

- holiday rental;
- extractive;
- landfill;
- dry land farming;
- irrigation farm land;
- automobile manufacture land;
- petroleum production land; and
- aluminium production land.

The use of a differential rate applicable to very few property assessments in a municipality should be considered with caution, particularly in relation to setting of higher differential rates, and have regard to the impact on the land subject to the proposed rate and the consequential impact upon the broader municipality through consideration of equity. This is especially so in the case of differential rates applied to narrowly or specifically defined activities or land use types.

It would ***not be appropriate*** to declare a differential rate that is defined narrowly and applied specifically or exclusively to the following types and classes of land:

- electronic gaming machine venues or casinos;
- liquor licensed venues or liquor outlet premises;
- business premises defined whole or in part by hours of trade;
- fast food franchises or premises;
- tree plantations in the farming and rural activity zones; and
- land within the Urban Growth Zone without an approved Precinct Structure Plan in place.

The use of specific differential rates on these types and classes of land is ***not appropriate***. The use of differential rate powers to lessen the impact of externalities arising from the type of legitimate business conducted on the land or fund actions intended to ameliorate the externalities arising from such business on the land is ***not appropriate***.

The use of differential rates to fund a specific service or benefit provided to the land subject to a particular rate is also not appropriate. In circumstances whereby additional services or special benefit are provided, a service rate or charge or alternatively a special rate or charge may be more appropriate as it can be targeted and correctly apportioned.

For example, the use of a differential rate as a revenue instrument to raise funding for a specific action to ameliorate the effects of problem gambling or late night venues is **not an appropriate** use of general rates which are intended for consolidated revenue and allocation via the Council budget process.

It is Victorian Government policy under the *Timber Industry Action Plan* to recognise timber plantations as an 'as of right' crop-raising activity in the farming and rural activity zones, consistent with other crop types. Therefore it is **appropriate** to consider timber plantations consistently with farm land for the purpose of setting rating strategies.

Transparency and disclosure

Providing transparency to the community is an essential part of the budget setting process and by extension, the application of differential rates. Under the Act, **S.129** and **S.223** form the basis of public consultation requirements of Councils.

S.161(3) specifies the information requirements for a Council to fulfil if declaring a differential rate. **S.161(3)(d)** offers an opportunity for a Council to consider a range of information and disclosure material to their community. Councils may also consider the use of impact assessment tools and modelling where appropriate to support their decision making.

Implementation of these Guidelines

The Minister for Local Government has issued these Guidelines under the provisions of **S.161(2B)**. The Minister is empowered to make a recommendation to the Governor in Council to make an Order in Council to prohibit a differential rate if it is considered to be inconsistent with the Guidelines.

The Minister will have close regard to the proposed differential rates of Councils (as per their draft budgets) with the intention to utilise **S.161(4)** powers during the 28 day statutory draft budget public notice and consultation period in advance of Councils adopting their annual budgets.

The Minister will utilise **S.161(4)** powers to prohibit any proposed differential rates which these Guidelines have identified as **not appropriate** types and classes of land for the application of differential rates.

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