



# COMMISSION OF INQUIRY

INTO ARARAT RURAL CITY COUNCIL

AN INDEPENDENT COMMISSION OF INQUIRY  
ESTABLISHED BY THE MINISTER FOR LOCAL GOVERNMENT

## COMMISSIONERS

MS FRANCES O'BRIEN QC (CHAIR)

MR JOHN TANNER AM

MR MARK DAVIES FCA

1 AUGUST 2017



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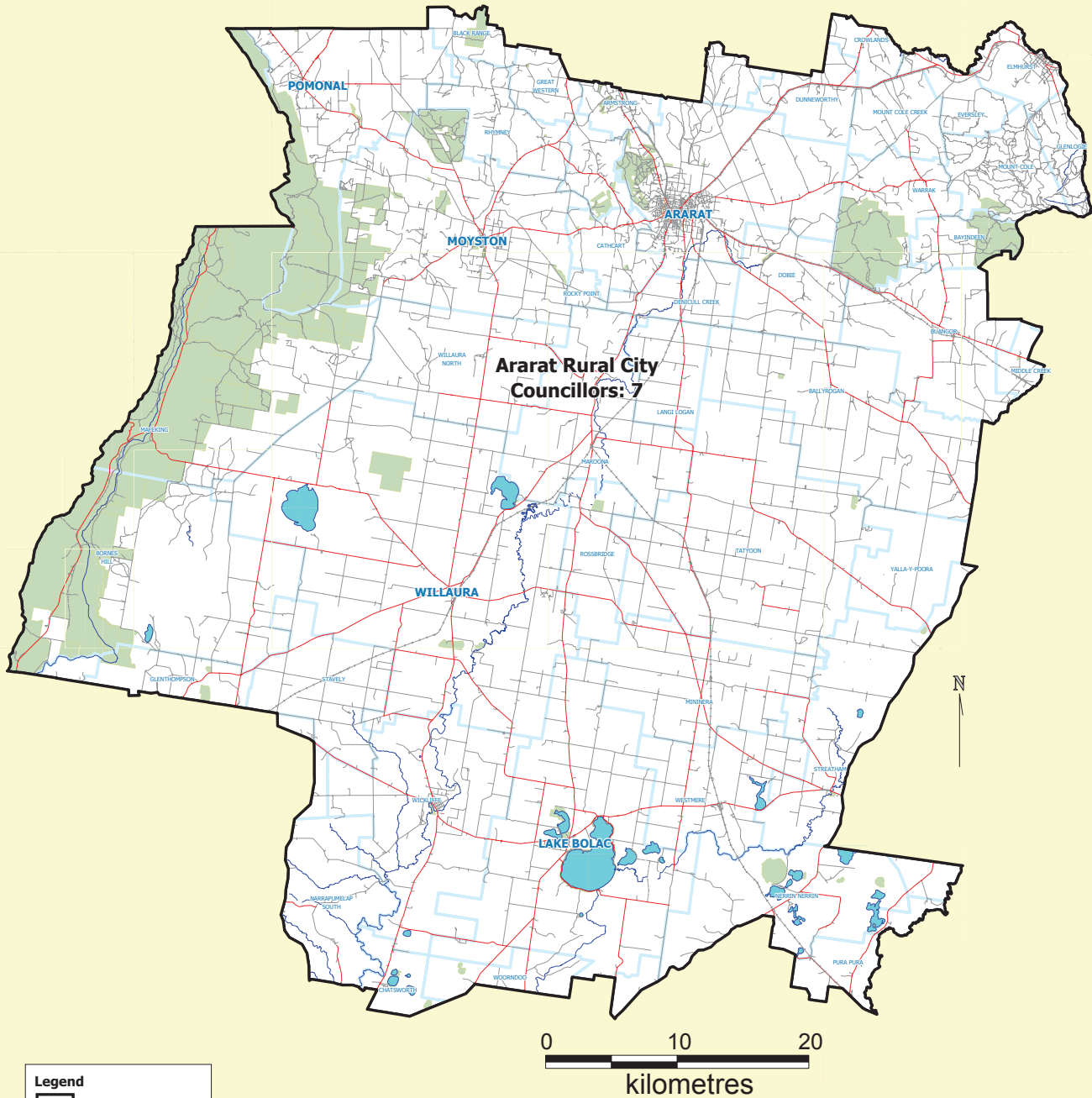
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OF INQUIRY

INTO ARARAT RURAL CITY COUNCIL

**Local Government Act 1989**  
**ELECTORAL STRUCTURE OF ARARAT RURAL CITY COUNCIL**



- Legend**
- Ward Boundary
  - Locality Boundary
- Map Symbols**
- Freeway
  - Main Road
  - Collector Road
  - Road
  - Unsealed Road
  - River/Creek
  - Railway Line
  - Lake
  - Parks & Reserves

Electoral Structure of  
 Ararat Rural City Council

**LEGL./07-320**



AN INDEPENDENT COMMISSION OF INQUIRY ESTABLISHED BY THE MINISTER FOR LOCAL GOVERNMENT

1 August 2017  
Hon Natalie Hutchins MP  
Minister for Local Government  
1 Spring Street  
MELBOURNE VIC 3000

Dear Minister,

In accordance with the Terms of Reference, the report of the independent Commission of Inquiry into Ararat Rural City Council (Commission) is submitted for your consideration.

Consistent with the Terms of Reference the report includes an investigation and analysis of:

- The efficiency and effectiveness of Council governance processes in the development of its rating strategy and budget for the 2017/18 financial year, including its consultative processes with the local community and relevant interest groups
- The efficiency and effectiveness of Council's implementation of the principles of sound financial management under the *Local Government Act 1989* in the development of its rating strategy and budget for the 2017/18 financial year
- The views and opinions of the local community and any relevant interest groups in relation to the Council's rating strategy and budget for the 2017/18 financial year
- The capacity of the Council's senior administration to deliver good governance for the Council and the local community

The Commission's report has been prepared following a series of public and private hearings, an invitation to the Ararat Rural City community to submit written submissions for the Commission's consideration, and a review of relevant documents provided to the Commission during the course of the inquiry.

The report provides recommendations to restore the good governance by the appointment of a Monitor. Importantly the report recommends that community harmony and trust be restored by the establishment of an independent Rating Strategy Advisory Group comprising of an independent Chair and representatives of key groups of rate payers.

The Commission would like to acknowledge the work of and thank its Secretariat and specialist support and advice staff for an outstanding contribution towards the preparation of the report in a prompt, competent and thorough manner.

The Commissioners would like to take this opportunity to express our appreciation for being appointed to undertake this very important task.

Yours sincerely,

**Ms Frances O'Brien QC**  
Commissioner Chair

**Mr John Tanner AM**  
Commissioner

**Mr Mark Davies FCA**  
Commissioner



AN INDEPENDENT COMMISSION OF INQUIRY ESTABLISHED BY THE MINISTER FOR LOCAL GOVERNMENT

1 August 2017

The Commission orders pursuant to section 214 (3) of the *Local Government Act 1989* that Ararat Rural City Council pay all of the costs of the Commission of Inquiry.

**Ms Frances O'Brien QC**  
Commissioner Chair

**Mr John Tanner AM**  
Commissioner

**Mr Mark Davies FCA**  
Commissioner

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# EXECUTIVE SUMMARY



The Ararat Rural City Council failed comprehensively to act in the interest of the Municipality on some of the most important functions of any council; namely, the rating strategy, community engagement, the termination of the Chief Executive Officer (CEO), appointment of an interim CEO and fulfilling its budgetary obligations.

These failures were due to poor governance practices by Councillors and senior staff.

Accordingly the Commission of Inquiry into the Ararat Rural City Council (the Commission) recommends the appointment of a Monitor to ensure Councillors address their responsibilities for formulating strategy and policy and maintaining high standards of good governance.

The Commission also recommends the Minister recommends to the Mayor of Ararat Rural City Council the appointment of an independent rating strategy advisory group with a non-voting Chair with knowledge of local government rating and representatives of key groups of rate payers with voting rights.

The Commission also recommends the Minister recommends to the Mayor of Ararat Rural City Council the appointment of an external interim CEO for an extended period to enable restructure of the organisation to put it on a contemporary footing consistent with its obligations to provide effective and efficient service delivery, sound financial and asset management and good governance.

# FINDINGS



## RATING STRATEGY

The Commission finds the draft rating strategy 2017 of Ararat Rural City Council (the Council) is inconsistent with the local government better practice guide *Revenue and Rating Strategy (2014)* for the following reasons:

- The strategy only makes reference to the benefit principle when considering the equitable imposition of rates and charges. There is no consideration of other principles
- In justifying its decision to move to a uniform rate, it has largely relied on restoring the rates burden for each differential rate category to that which existed just after amalgamation
- There is only consideration of the status quo and uniform rate options. No modelling has been undertaken of any other options such as the '75% farm rate' which was put forward prior to consideration of the proposed budget.

The Commission finds the draft rating strategy does not make the case that a uniform rate would provide a more equitable imposition of rates and charges.

The Commission finds the proposal to move to a uniform rate in the 2017/18 year would have a significant impact on farming properties and is inconsistent with the requirement of the *Local Government Act 1989 (the Act)* that a Council must pursue rating policies that are consistent with a reasonable degree of stability in the level of rates burden.

The Commission finds there was no clear rationale for a change to the 2016 rating strategy and that the explanations provided by the Councillors in support of the change were flimsy and unsubstantiated.

## COMMUNITY ENGAGEMENT

The Commission finds when on 2 May 2017 the four Councillors (the majority Councillors) decided to discontinue the use of differential rates and apply uniform rates for 2017, they effectively ignored the informal consultation and rendered it irrelevant.

The Commission finds that in relation to the formal consultation under section 223 of the *Act*, the majority Councillors continued to ignore strong community opposition to uniform rates by proposing to adopt uniform rates

The Commission finds the published material on the rating strategy was misleading in using median and average values to illustrate the impact of the rating strategy option on productive farm properties and any person reading the material would have formed the view that farm rates were similar to rates paid by the residential sector.

The Commission finds there was no justification for the failure of the majority Councillors to attend the community forums on the rating strategy.

The Commission finds the community properly found the failure of the majority Councillors to attend the community forums disrespectful and demonstrated unwillingness on the Councillors' part to account to their community for their actions.

The Commission finds there has been a serious disruption to community harmony caused by Council's failure to communicate and/or communicate effectively in accordance with its own policy.

The Commission finds community confidence and trust needs to be restored in the community consultation and engagement processes.

The Commission finds the Council failed to engage with the community on the rating strategy in accordance with the provisions of its own community engagement policy but nevertheless the policy needs to be reviewed, in particular for the purposes of establishing good engagement processes.

## FINANCIAL STABILITY

The Commission finds a current majority of the Councillors have a disregard for the expenditure of funds with a proper policy justification and sound analysis

The Commission finds an amount of \$171,000 in excess of what was necessary was paid to the CEO upon his termination without regard to the future financial stability of the Council.

The Commission finds there also appeared to be no appreciation that the sum of \$271,044 gross paid to the CEO as an *ex gratia* payment raised risk issues as to whether Council had paid the CEO's contractual entitlements.

The Commission finds the Council budget was almost wholly ignored by the Councillors, while the rating strategy was discussed and the necessity to proceed with the council plan, the strategic resource plan and the budget as an integrated process did not occur.

The Commission finds the Council does not generate sufficient cash to fund its current level of service provision and fully fund its asset renewal requirements.

The Commission finds the Council does not have the capability to make decisions to ensure the Council can remain financially viable in the future while funding its current level of service provision and fully funding its asset renewal requirements.

## ROLE OF COUNCILLORS

The Commission finds that on 2 May 2017 at the Council meeting after passing the uniform rate proposal, the conduct of Cr McLean where she turned to the public gallery and addressed it with the words "suck it up, princesses" was abusive and a breach of the Councillor Code of Conduct and Council meeting procedures.

The Commission finds Cr McLean has also breached the Councillor Code of Conduct as she had no proper or sound reason to make and receive calls from a non-director member of staff, Mr Neil Manning, about his occupation of the interim CEO position.

The Commission finds Councillors McLean and Allgood despite extended experience on Council, demonstrated they did not accept they should not involve themselves in operational matters nor did they understand their strategic and policy role as Councillors.

## TERMINATION OF THE CEO

The Commission finds there was no sound or defensible reason for the termination of the CEO on 7 July 2017.

The Commission finds the CEO was paid the sum of \$171,000 in excess of what was legally necessary without any sound or defensible reason.

The Commission finds the majority Councillors failed in their obligation to act in the interest of the Municipality at arm's length from the CEO in the decision as to the termination.

The Commission finds the majority Councillors failed in their obligation to act in the interest of the Municipality at arm's length from the CEO in failing to obtain independent and impartial advice as to the amount payable to him upon termination.

## THE INTERIM CEO

The Commission finds the preparedness of the majority Councillors to appoint Mr Neil Manning, was intended to enable those Councillors to have him do their bidding as required.

The Commission finds whilst there appears now to be a commitment to appoint an independent interim CEO it appears to have only occurred by reason of what was perceived to be imminent adverse public comment by the Commission.

## **CAPACITY OF SENIOR ADMINISTRATION TO PROVIDE GOOD GOVERNANCE**

The Commission finds the endeavours to improve Councillors' conduct and performance over the years appear to have had marginal impact on the governance of the Council.

The Commission finds the organisational restructure begun in late 2016 was wholly necessary both operationally and by reason of capacity.

The Commission finds there is urgent need to complete the organisational restructure for responsibilities and reporting lines to be put on a contemporary footing.

The Commission finds there is insufficient expertise in the organisation at director level in physical asset management.

The Commission finds community services are not given the primacy in the organisational structure that the size of its budget justifies.

The Commission finds staff appear to retain the hallmarks of the old-style information and decision making approach and are unable or unwilling to make the break into a corporate strategic and policy approach to decision making *the Act* prescribes.

The Commission finds the role of senior administration in the report of 13 June 2017 to Council on the termination of the CEO failed to address fundamental principles of good governance.

## **ELECTORAL STRUCTURE**

The Commission finds the unsubdivided electoral structure of the Ararat Rural City Council municipality may have contributed to a divide within the community.

# RECOMMENDATIONS



## MONITOR

1. **The Commission recommends to the Minister that at a minimum, she appoint a Monitor to the Council for the next two years to:**
  - a) Oversee the implementation of the recommendations of the Commission of Inquiry on the rating strategy
  - b) Undertake an assessment of individual councillors' capability to deliver good governance and develop a program of improvement for each councillor
  - c) Conduct and oversee the implementation of an induction and education program for the Councillors elected in 2016 as a group on contemporary good governance practice
  - d) Work with the interim CEO to achieve contemporary good governance practices by senior staff
  - e) Monitor the rebuilding of community harmony and community trust in Council and Council's ability to make decisions in the best interest of the community
  - f) Attend Assemblies of Council and Council Meetings to review and provide advice
  - g) Report to the Minister monthly and immediately report any issues to the Minister that may require urgent attention
  - h) Monitor the recruitment and appointment of a permanent CEO at the conclusion of the interim CEO's appointment
  - i) Provide a report at the end of the Monitor's term containing details on actions taken and outcomes achieved in regard to the Monitors Terms of Reference.

## EXTERNAL INTERIM CEO

2. **The Commission recommends that the Minister recommends to the Mayor of the Council that:**
  - a) Council appoint an external interim CEO to the Council for a fixed period of 12 months to undertake an organisational restructure of responsibilities and reporting lines, with a capacity to extend the term.
  - b) The interim CEO works with the Monitor to achieve contemporary good governance practices within the Council senior staff.

## RATING STRATEGY

3. **The Commission recommends to the Minister that the Minister recommends to the Mayor that the Council retain the 2016 rating strategy as the 2017 rating strategy.**
4. **The Commission recommends to the Minister that the Minister recommends to the Mayor of the Council that Council establish a Rating Strategy Advisory Group that:**
  - a) Has Terms of Reference to assist the Council develop its rating strategy by:
    - i. Identifying and recommending principles for formulating a rating strategy
    - ii. Advising on the residential rate and consideration of differential rates
    - iii. Advising on the equitable sharing of the rate revenue and changes to current charges and rebates
    - iv. Proposing improvements to communication and engagement on the budget and rating strategy

- v. Producing a discussion paper with recommendations for Council before public comment
  - b) Comprises an independent non-voting Chair with knowledge of local government rating and representatives of key groups of rate payers with voting rights
  - c) Is assisted by an external rating expert and Council staff in administration and management support
  - d) In approaching its task has regard to the operation of the Wyndham City Council Rating Strategy Advisory Group; the findings of the Victorian Auditor-General's Office (VAGO) *Rating Practices in Local Government*; and the findings of the VAGO *Audit of Public Participation and Community Engagement in Local Government*.
5. **The Commission recommends to the Minister that the Minister recommends to the Mayor of the Council that Council thereafter considers the recommendations of the Rating Strategy Advisory Group and public comment on the recommendations before developing a draft rating strategy.**
  6. **The Commission recommends to the Minister that the Minister recommends to the Mayor of the Council that Council prepare a rating strategy in accordance with the Local Government Better Practice Guide to determine the rating structure that will provide the most equitable imposition of rates and charges. The strategy should be developed after the results of the 1 January 2018 general revaluation of properties is known.**
  7. **The Commission recommends to the Minister that the Minister recommends to the Mayor of the Council that Council develop an implementation plan, which will transition the current rating structure to the proposed rating structure, with the aim of providing a reasonable degree of stability in the level of the rates burden.**

## PROPOSED CHANGES TO THE LOCAL GOVERNMENT ACT 1989

8. **The Commission recommends to the Minister that accountability to the community be improved by amending the Act to require a council to justify the use of a uniform rate as a method for the equitable imposition of rates as it currently requires for the use of differential rates.**

## FINANCIAL STABILITY

9. **The Commission recommends that the Minister recommends to the Mayor of the Council that the Council undertake a review of its current range and level of service provision to the community with a view to making structural changes that ensure it can fully fund its asset renewal requirements and remain financially viable over the long term.**

## COMMUNITY ENGAGEMENT

10. **The Commission recommends that the Minister recommends to the Mayor of the Council that:**
  - a) Council reviews its community engagement policy
  - b) Council processes for documenting and evaluating community engagement be included in the policy
  - c) Council considers the findings of the VAGO *Audit of Public Participation and Community Engagement in Local Government* in reviewing its community engagement policy.

## **ELECTORAL STRUCTURE**

11. The Commission recommends that the Minister recommend to the Electoral Commission that prior to its next statutory review it undertake a review of the unsubdivided electoral structure at the Council in light of the findings of this report.

## **AUDIT COMMITTEE**

12. The Commission recommends that the Minister recommends to the Mayor of the Council that it adopt best practice and restrict Councillor access only to the minutes of the Audit Committee meetings and Councillors no longer approve recommendations of the Internal Auditor.

# 1

## • Terms of Reference and Context of Inquiry



### TERMS OF REFERENCE

On 23 June 2017, the Victorian Government announced the appointment of a Commission of Inquiry to consider the efficiency and effectiveness of the Council's rating strategy. The decision came after a request for Government intervention was made by the Victorian Farmers Federation (VFF) and the Mayor of the Council.

On 26 June 2017, the Hon Lily D'Ambrosio MP, the Acting Minister for Local Government announced the appointment of Ms Frances O'Brien QC (Chair), Mr John Tanner AM and Mr Mark Davies FCA as Commissioners and the Terms of Reference of the Inquiry. The Commission is required to report to the Hon Natalie Hutchins MP, Minister for Local Government, by 1 August 2017.

The Terms of Reference of the Inquiry are:

1. **The Commission of Inquiry is to conduct an inquiry into the adequacy of the current governance and operational structures and processes at the Ararat Rural City Council (Council), with particular regard to the following matters:**
  - a) The efficiency and effectiveness of –
    - (i) Council governance processes in the development of its rating strategy and budget for the 2017/18 financial year, including its consultative processes with the local community and any relevant interest groups on these matters;
    - (ii) Council's implementation of the principles of sound financial management under the *Local Government Act 1989* in the development of its rating strategy and budget for the 2017/18 financial year.
  - b) The views and opinions of the local community and any relevant interest groups in relation to the Council's rating strategy and budget for the 2017/18 financial year.
  - c) The capacity of the council's senior administration to deliver good governance for the Council and the local community.
2. **To provide a report to the Minister for Local Government containing:**
  - a) The findings of the Commission; and
  - b) Recommendations for action by the Minister for Local Government.



## EVENTS LEADING TO THE APPOINTMENT OF THE COMMISSION

### Election of new Council

At the election in 22 October 2016, residents elected seven Councillors from 13 candidates, who commenced four-year terms in November 2016. There were three Councillors returned from the previous Council (Councillors Paul Hooper, Glenda McLean and Gwenda Allgood) and four new Councillors (Councillors Jo Armstrong, Peter Beales, Darren Ford and David Pettman).

At the Statutory Meeting of Council held on 8 November 2016, Councillors took the oath of office, made declarations to abide by the Councillor Code of Conduct and elected Cr Paul Hooper as Mayor, and Cr Glenda McLean as Deputy Mayor for 2016-17. A councillor induction program was conducted over November 2016.

### Review of rating strategy

Council commenced development of the draft 2017-18 budget, council plan 2017-21 and rating strategy 2017 in late 2016. Workshops were held at Assemblies of Council to review and guide the development of the budget, council plan and rating strategy over January – March 2017.

On 4 April 2017, Council agreed to undertake preliminary community consultation on two options for the 2017 rating strategy, with community feedback invited by 21 April 2017:

- Option One: maintain the status quo by applying a differential rate of residential 100%, commercial 160%, industrial 130%, farm 55% and a municipal charge of \$92; and
- Option Two: apply a differential rate of residential 100%, commercial 200%, industrial 150%, farm 75% and a municipal charge of \$150.

Option Two proposed a significant redistribution of the rates burden. A newspaper advertisement was published in the local press on 13 April 2017. This showed the rates applicable to the median property value for each class of property under each option and advised that these included the effect of a 2% rate rise. The advertisement advised that the purpose of the rating strategy is to consider what rating options are available and how Council can best move to a more equitable rating system.

The community was invited to comment on the two options by completing an online survey on the Council's website or making a written submission to the Council. By 21 April 2017, 131 online surveys had been completed and 25 written submissions received. Of the 131 online surveys, 108 (82%) supported Option One.

At the Special Meeting of the Council held on 2 May 2017 to consider submissions and adopt the draft 2017-18 budget, council plan 2017-21 and rating strategy 2017 for public exhibition, a motion to adopt Option One as the rating strategy was lost. A motion without notice proposed that Council adopt a draft rating strategy that included a uniform rate of 100% for all property classes and abolition of the municipal charge. This motion was carried by a vote of four Councillors in favour and three against.

A uniform rate, together with the abolition of the municipal charge, would see a further significant redistribution of the rates burden to the farming sector, much greater than the redistribution proposed under Option Two, with a significant reduction in rates paid by the commercial and industrial sectors and a further reduction in rates for the residential sector.

Table 1 shows the effect on the different classes of property of the initial two options and the proposed uniform rates.

Table 1

Type or class of land	Average rate Option 1	Average rate Option 2	Average rate Uniform	Change Option 2	Change Option 2	Change Uniform	Change Uniform
Residential	\$1,466	\$1,323	\$1,120	-\$143	-10%	-\$346	-24%
Commercial	\$3,828	\$6,180	\$1,904	\$2,352	6%	-\$1,924	-50%
Industrial	\$2,395	\$2,410	\$1,445	\$15	1%	-\$950	-40%
Farm	\$3,105	\$3,639	\$4,521	\$534	17%	\$1,416	46%

NOTE: The impact of the proposed 2% rate increase in 2017/18 has been removed for comparative purposes. Figures also include the municipal charge where applicable. Each change column has been measured against Option 1.

In accordance with Council obligations under *the Act*, the draft budget, council plan and rating strategy were subject to public exhibition, that is, formal consultation for a period of 28 days. All ratepayers were sent a notice advising what their 2017/18 rates would be as result of uniform rates and abolition of the municipal charge. Online comments and written submissions were invited. Community information sessions were also held at four locations over 23 - 26 May 2017. At the end of the formal consultation period, 448 written submissions and 250 online comments had been received, making a total of 698 written responses.

On 6 June 2017, a Special Meeting of Council was held to hear submissions. Around 270 people attended the meeting and 44 people spoke to their submissions. The overwhelming majority of submissions were opposed to the draft rating strategy, with many expressing serious concern that the uniform rates option had not been included in the informal community consultation process and despite imposing an extreme redistribution of the rates burden, appeared to have been adopted for formal consultation without a clear rationale.

Despite this significant opposition, at the Special Meeting of Council on 27 June 2017 to consider submissions and adopt the final budget, council plan and rating strategy a motion was put to adopt the draft

budget, council plan and rating strategy with the uniform rate, subject to this Commission's findings. This motion was lost. Motions to defer adoption of the budget, council plan and rating strategy until after the Commission had reported were carried.

### Termination of the CEO of Council

On 30 May 2017, an Assembly of Councillors was held to discuss the scheduled performance review of the CEO. At this meeting the early termination of the CEO's contract, due to end on 14 August 2018, was discussed with the CEO.

On 13 June 2017, a Special Meeting of Council was called to consider the CEO's contractual arrangements. A motion was put to make the CEO an *ex gratia* payment of \$271,044 plus accrued annual leave entitlements in consideration of the CEO's employment terminating on 7 July 2017 and the CEO signing the appropriate confidentiality documents. The motion was carried, with four Councillors voting for the motion, and three against.

As part of the resolution, the Mayor was authorised to release the information that the CEO was retiring from Council.

## CONDUCT AND METHODOLOGY FOR THE INQUIRY

The Commission commenced on 3 July 2017 and invited witnesses to appear and/or make written submissions relevant to the terms of reference.

The Commission conducted private and public hearings over the two weeks 3 - 14 July 2017, spending seven and a half days in total hearing evidence. The Commission received evidence from all Councillors, senior members of staff and a number of other members of staff, the independent chair of the Audit Committee, representatives of a number of third party organisations and a number of members of the local community. The Commission received 28 written submissions and reviewed more than 75 documents.

The Commission gave public assurance, repeated prior to each interview, that the evidence given by interviewees would be treated confidentially, to ensure that witnesses gave frank evidence that could guide the Commission in its investigations.

Any evidence of egregious conduct was put to the relevant witness for response.

All interviews were conducted either under oath or affirmation. The Commission was also supported by a small Secretariat of departmental officers and the Commission wishes to record its appreciation of the support it received.

## STRATEGIC CONTEXT

Ararat Rural City Council is a local government area located in western Victoria, 200 kilometres from Melbourne. It covers an area of 4,230 square kilometres with a population of over 11,000. It includes the towns of Ararat (with a population of 8,000), Armstrong, Dunneworthy, Lake Bolac, Moyston, Pomonal, Streatham, Tatyoon, Wickliffe and Willaura. It was formed in 1994 from the amalgamation of the City of Ararat, Shire of Ararat and parts of the Shire of Mortlake and Shire of Stawell.

Industries include health services, correctional services, manufacturing, construction, education, local government, retail, hospitality, agriculture and viticulture and tourism.

The Council population has a high degree of socio-economic disadvantage compared to the general Victorian population. In 2015, the Ararat (postcode 3377) was one of the 40 most disadvantaged postcodes in Victoria.<sup>1</sup> The Council residents had higher rates of government income support than the Victorian population and on average, worse physical and mental health.<sup>2</sup> A community strength is that compared to other Victorian municipalities, a higher percentage of residents from the Grampians and Pyrenees region, that includes Ararat Rural City Council local government area, volunteer for community activities and describe their community as close knit.<sup>3</sup>

In 2014, 21% of Council residents were aged 65 years and older, compared to 15% of the Victorian population, while 27% of residents were aged less than 25 years, compared to 31% of the Victorian population. Residents aged 25 to 64 years comprised 51% of the Ararat population, compared to 53% of the Victorian population.<sup>4</sup>

In 2016 the unemployment rate in Ararat was 7.6% compared to 5.8% across Victoria and labour force participation, that is being available for work or working, in the 15-64 years age group was lower at 68% than the Victorian rate of 72%.<sup>5</sup>

The Commission was advised that there are approximately 1,000 job vacancies in the Ararat and Stawell region, suggesting a disjunct between availability of jobs and the availability of a suitable workforce.

1 Grampians Pyrenees Primary Care Partnership Population Health and Wellbeing Profile – December 2016. Nancy Vaughan, Grampians Pyrenees Primary Care Partnership, Ararat, Victoria, p36

2 *ibid*, p32 and pp111-124

3 Grampians Pyrenees Primary Care Partnership Health and Welfare Snapshot 2017

4 Grampians Pyrenees Primary Care Partnership Population Health and Wellbeing Profile – December 2016. Nancy Vaughan, Grampians Pyrenees Primary Care Partnership, Ararat, Victoria, p16.

5 *ibid*, p27

The Commission's analysis of the Council's financial position is that while the Council is currently in a strong financial position, its operating position is poor. According to the Council's draft strategic resource plan 2017-21, it is forecasting to incur increasing deficits over the four-year period and is not fully funding its asset renewal requirements over that period.

This indicates that the Council is not generating sufficient cash from its operations to fund its service delivery and asset management requirements. A comparison of its rates and expenditure bases to similar councils in the small rural group shows that it is the second highest rating council and has the highest expenditure base. If the Council does not act to address the deteriorating operating trend, it will continue to build an asset renewal backlog resulting in significant asset renewal costs in the future as assets wear out prematurely.

In the 2017 Community Satisfaction Survey commissioned by Local Government Victoria, the Council recorded an overall score of 53 out of 100. This was significantly lower than the average rating for both small rural councils and councils state-wide and had decreased by 2 points from 2016. Most demographic and geographic sub-groups rated the Council's overall performance less favourably in 2017 than in 2016.

Survey respondents rated the top three performing areas of the Council as 'emergency and disaster management', 'arts centres and libraries' and 'elderly support services'. The three top areas nominated for improved performance were 'maintenance of unsealed roads', 'informing the community' and 'consultation and engagement.'

More than half (59%) of surveyed residents reported they had recent contact with the Council office. Those living in Lake Bolac and those aged 35 to 49 years were more likely to have contacted Council (71% and 67% respectively) than their counterparts. Responses from Lake Bolac residents and those aged 35 to 49 years also appeared to have driven the negative opinion expressed in the 2017 survey.

Areas where community satisfaction has consistently scored 51 points or less out of 100 are maintenance of unsealed roads (39 in 2017, 40 in 2016 and 39 in 2015), making decisions in the interests of the community (50 in 2017, 48 in 2016 and 49 in 2015), and overall Council direction (47 in 2017, 46 in 2016 and 51 in 2015).

# 2.

“Efficiency and effectiveness of Council governance processes in the development of its rating strategy and budget for the 2017/18 financial year, including its consultative processes with the local community and relevant interest groups”



## DEVELOPMENT OF RATING STRATEGY AND BUDGET

Evidence given to the Commission indicated that preparation on the 2017-18 budget began in late 2016.

On 17 January 2017, the Manager, Corporate Support made a presentation to the Assembly of Councillors, having been made aware by a phone call from a Councillor while he was on holidays that one or more Councillors were interested in the rating differential. He provided a rates calculator as part of the presentation on 17 January 2017 so that Councillors could calculate the impact of different rating strategies on different classes of rateable properties. A timeline for the development of the budget was also presented.

The Manager, Corporate Support gave evidence that there was initially a lack of engagement with the budget development process, with no feedback from Councillors on the 17 January 2017 presentation and no direction provided by Councillors on the rating strategy. This evidence was disputed by a Councillor who submitted having tried to raise Option Two earlier, and trying to “flag” having no differential at all, but not getting any traction at that stage.

The Manager, Corporate Support reported that low Councillor interest in the budget may have been because the 2% rate increase limited the opportunity for new initiatives.

A draft council plan including the strategic resource plan for 2017-21 was presented to Councillors on 28 February 2017, as well as a rating strategy that maintained the status quo. Councillors then asked for another meeting on 7 March 2017 to workshop different scenarios. It was at this meeting that the initial

two options were developed. A table provided to the Commission showed that each Councillor had been asked to indicate rating differentials they would like to explore. Interest was shown in exploring a change to the farming differential from 55% to 60%, 65% and 75%. One Councillor also indicated interest in changing the commercial and industrial differential and the municipal charge in conjunction with changing the farm differential to 75%.

On 4 April 2017 Council agreed to engage the community to get feedback on two differential rating options: Option One (no change to differential and a municipal charge of \$92) and Option Two (residential 100%, commercial 200%, industrial 150%, farm 75% and a municipal charge of \$150).

Council also agreed to consider feedback before adopting the draft budget, council plan and rating strategy for 2017 at the Special Council Meeting scheduled for 2 May 2017.

In their evidence, the majority Councillors in favour of changing the rating strategy offered very little explanation as to why they considered any change from the status quo, and why, ultimately, they supported a uniform rating system.

The rationales provided in the evidence of the majority Councillors is summarised below.

One Councillor stated that pensioner ratepayers were struggling and deserved some relief, supporting this statement by a claim that “nearly all pensioners in the Council had experienced a pension cut in January 2017”, apparently referring to the changes to the asset test for the Age Pension introduced on 1 January 2017 when about 10% of age pensioners lost some or all of their pension due to significant private assets.

This Councillor also stated that “curiosity” and a desire to see change drove her support for consulting on the initial two options and the option to adopt a uniform rating strategy, as well as a desire to support Councillors who wanted to review the strategy.

Two Councillors had supported moving the farm differential from 60% to 55% in 2015, because of farmer representations about the effect of drought. One councillor stated that this had to be re-considered because farmers needed “to pay their fair share.”

This Councillor also stated that she believed a uniform rate would provide stability and certainty, given her view that local government is inept in using rating differentials.

The third Councillor stated that he felt the existing differentials were unfair to the commercial and industrial sectors and that a uniform rate would be good for industry.

The fourth Councillor provided evidence that achieving equity was his prime motivation in seeking to review the rating strategy and move to uniform rates, without further explanation of how uniform rates would achieve equity.

## **INFORMAL COMMUNITY CONSULTATION PROCESS ON THE INITIAL TWO OPTIONS**

Council embarked on a preliminary community consultation on the two options for inclusion in the rating strategy 2017 from 5 April to 21 April 2017.

The community consultation and information on the two options were advertised in the local press and via the the Council website with a calculator to enable property owners to identify the impact of change.

Council stated in its materials that all feedback would be reviewed prior to consideration of the draft budget and draft rating strategy at the Special Council Meeting scheduled for 2 May 2017.

As shown in table 1 (p.18), the change from Option One to Option Two would reduce the rates payable by the residential sector, have minimal impact to the commercial and industrial sectors and increase the average rates paid by the farming sector by 17%.

The necessity to establish credible information at the outset was vital. However, the document disseminated to ratepayers demonstrating the effects of the proposal whilst true was misleading. It did not illustrate the true impact on productive farming properties.

The use of the median value to illustrate the effect on property classes failed to show the effect on productive farm properties because a large number of small acreages and hobby farms in the farming classification had contributed to a low median value.

Further the statement that change “would come at the expense of the farm sector” did not inform the community of the magnitude of the increase for the productive farm properties because it only contained the calculation of the impact of the median rate for all farm properties. Any person reading the document would have formed the view the rates for farmers in the Municipality were around \$2,200.

At the Special Council Meeting of 2 May 2017, the report presented to Council and recorded in the minutes re-printed 22 pages of feedback provided online but did not analyse or summarise the feedback. Despite asserting a commitment to a strategy underpinned by sound well understood principles, the report did not enunciate the principles nor assess the two options against any principles. Such information together with the analysis and summary of feedback would have been of crucial information for the decision makers.

On the 2 May 2017 meeting of the Council by reason of the concern that arose from the content of the publicly released rating document, the Mayor allowed gallery members to speak on the then two options. Several residents spoke to their written feedback. There is no record in the minutes of either the number of residents who presented or the numbers of written feedback, other than the written feedback being printed at over 22 pages. The officer’s report did tally the online preferences for each option: Option One was supported by 108 respondents; and Option Two was supported by 23 respondents. There were also 25 postal submissions, which were not broken down by preference in the officer’s report.

When on 2 May 2017 the majority of Councillors decided to discontinue the use of differential rates and apply uniform rates for 2017/18, they effectively ignored the informal consultation and rendered it irrelevant.

The rate modelling workshopped over many months by Council had not included a uniform rate model. On 2 May 2017 there was no informed discussion, debate or input by Councillors, contrary to good decision making.

The importance of active and open participation by the community in the decision-making process was scorned. This resulted in a sense of exclusion and mistrust across the community and community harmony was deleteriously affected.

## **FORMAL COMMUNITY CONSULTATION PROCESS ON PROPOSAL FOR UNIFORM RATE**

The Council developed a communication and engagement plan for the formal consultation on the uniform rating strategy. No such plan was formulated for the informal consultation process.

The communication and engagement plan identified individual impacts and needs regarding communication with the four rating sectors. The plan referred to farming ratepayers' potential to feel "disrespected" (sic) in the engagement process. It also noted that farming ratepayers make up 10% of the population, and that other areas of the community may have a very different opinion to this group. The plan noted that farmers had requested more data and the opportunity to hear the reasons for Councillors' decisions.

However, this communication plan failed to include strategies that addressed the position of mistrust created by the change in the rating position. It treated the whole of the community in the same way, save for the meagre inclusion of proposed councillor forums in Ararat and two rural locations on 23 May 2017. Also, it did not include any plan to communicate the basis for the decision for the uniform rate adopted by the Council on 2 May 2017.

The plan noted only about the residential, commercial and industrial sectors that they would experience a decrease, except for a small number of residential ratepayers whose rates would increase as a result of the abolition of the municipal charge.

On 3 May 2017, Council announced the 28-day formal submission period in a media release, with a closing date of 2 June 2017 for submissions on the three documents. The media release advised submissions would be heard at a Special Council Meeting on 6 June 2017 with consideration of the documents for adoption at the 27 June 2017 Council Meeting.

The media release referred to consultation sessions to be advertised the following week and published on the Council web site, and a social media posting on 3 May 2017.

On 10 May 2017, Council sent a letter to all rate payers informing them of the change they could expect to their rates and advised them of the availability of the Council web site 'have your say'.

On 23 May 2017 councillor forums, later referred to as community information sessions, were held in Lake Bolac, Moyston and Ararat. A further session was held on 26 May at Elmhurst. These sessions were the only opportunity for the majority Councillors to explain their reasons for proposing the uniform rating strategy to the community, as set out in the communication and engagement plan.

Serious concerns have been raised that Councillors supporting the draft rating strategy did not attend the information sessions, citing fears for their personal safety. One of the majority Councillors attended the 26 May session in Elmhurst. There was no basis for alleged fears, as demonstrated by the community conduct at the Elmhurst meeting which was attended by one of the majority Councillors.

On 6 June 2017 a Special Council Meeting was convened to hear submissions. It received 448 submissions, 250 online comments and heard from 44 people who spoke to their written submissions.



The 27 June 2017 Council Meeting considered the submissions received and the rating strategy. The officer's report refers to the more than 690 submissions received. The clear majority were made by the farming community which had serious concerns about the proposal to abolish the differential rating system. The officer's report identified 10 general themes from the farming sector, four examples or themes from the residential sector and two examples or themes from the commercial sector, some supporting the uniform rate and others not. The report also included a one and half page officer comment.

The report to the Council on the 27 June 2017 contains no evidence of any evaluation of the information collected. The report consisted of quotes from the submissions and a critique of points in the submissions. This critique was largely defensive. It failed to address the arguments made, relied on superficial commentary on the rating position of other councils and supported a general assumption that the ratepayers with higher valued properties had a higher capacity to pay. It nevertheless failed to evaluate whether this assumption was true in any of the sectors in Ararat Rural City Council.

The Council has an engagement policy. This is vital to communicate how issues are considered and how informed decisions are made by Council.

The Council has failed to follow best practice as set out in its own policy in what may have been its largest public engagement process. Alternatively, Council could have followed best practice identified in the VAGO (*Audit of Public Participation and Community Engagement in Local Government*).



# 3.

"Efficiency and effectiveness of Council's implementation of the principles of sound financial management under the *Local Government Act 1989* in the development of its rating strategy and budget for the 2017/18 financial year"



## PRINCIPLES OF SOUND FINANCIAL MANAGEMENT

Section 3C of the *Act* states that the primary objective of a 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 to "ensure the equitable imposition of rates and charges".

Section 136 of the *Act* requires a council to implement the following principles of sound financial management.

- Manage financial risks faced by the council prudently, having regard to economic circumstances
- Pursue spending and rating policies that are consistent with a reasonable degree of stability in the level of rates burden
- Ensure that decisions are made and actions are taken having regard to their financial effects of future generations
- Ensure full accurate and timely disclosure of financial information relating to the council.

## ASSESSMENT OF COUNCIL'S IMPLEMENTATION OF THE PRINCIPLES IN THE DEVELOPMENT OF ITS RATING STRATEGY

### Requirements of the *Local Government Act 1989*

Section 155 of the *Act* allows a council to declare the following rates and charges on rateable land:

- General rates
- Municipal charges
- Service rates
- Service charges
- Special rates
- Special charges.

Section 158 of the *Act* requires a council when declaring rates and charges to declare whether the general rates will be raised by the application of a uniform rate; differential rates; or urban farm rates, farm rates or residential use rates. If a council declares a differential rate for any land, the council must:

- Specify the objectives of the differential rate
- Specify the characteristics of the land, which are the criteria for declaring the differential rate.

Section 161 of the *Act* requires a council to have regard to any Ministerial guidelines before declaring a differential rate for any land. At the date of the Inquiry the Minister had issued *Ministerial Guidelines for Differential Rating (2013)*.

## The Council Rating Structure

At the end of the 2016/17 year the Council had in place the following rating structure:

- General rates raised through the following differential rates:
  - Residential
  - Commercial
  - Industrial
  - Farm
- Municipal charge
- Service charges as follows:
  - Waste
  - Recycling
  - Drainage
  - Water supply

The Council proposed in its draft budget – 2017/18, to move to the following rating structure:

- General rates raised through the application of a uniform rate
- Service charges as follows:
  - Waste
  - Recycling
  - Drainage
  - Water supply

The decision to adopt the proposed draft budget – 2017/18 was deferred at a Special Meeting of Council on 27 June 2017.

## History of Rates and the Rating Burden

The raising of general rates through the application of differential rates was introduced by the Council after amalgamation in the 1995/96 year. A municipal charge was introduced in the 2010/11 year.

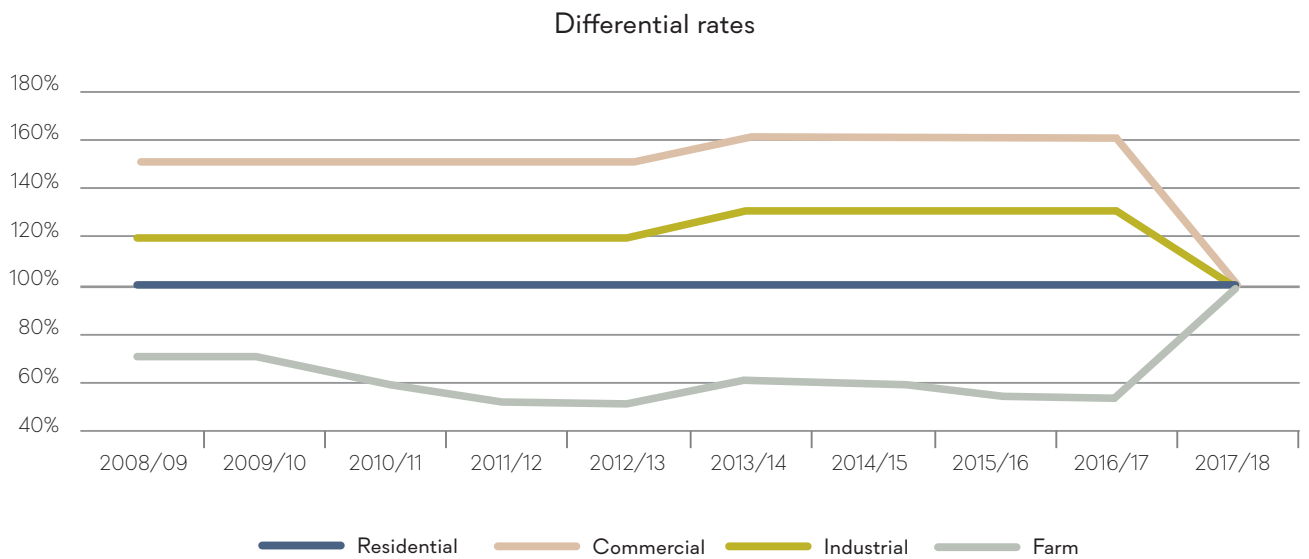
Graph 1 (overpage) shows the application of differential rates over the period from 2008/09. The rates for each type or class of land are shown as a percentage of the residential rate.

Graph 1 shows that over the period the differential rate for farming properties has varied from a high of 70% in 2008/09 to a low of 52.5% in 2011/12 and a final differential rate of 55% in 2016/17. The commercial and industrial differential rates have remained relatively steady over the period with one adjustment to each in 2013/14 (commercial 150% to 160%; industrial 120% to 130%). This would suggest that the rating burden on farming properties has reduced over the period and the burden on commercial and industrial properties has increased. However, while the rating burden is impacted by the level of differential rates it is also impacted by changes in property valuations.

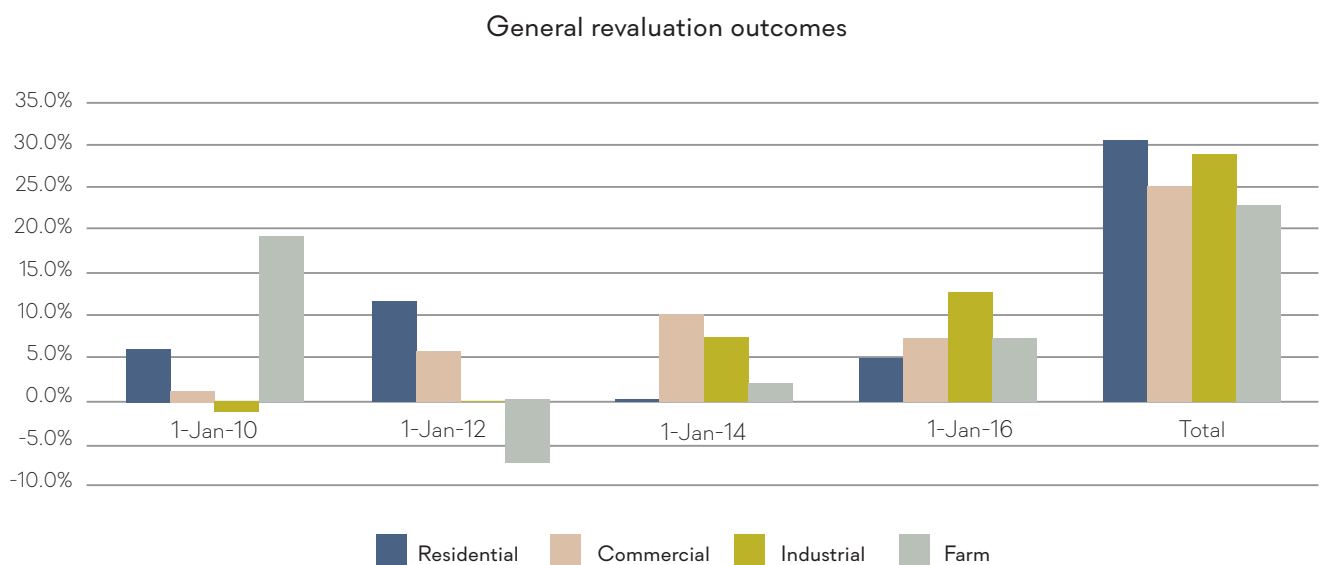
Section 11 of the *Valuation of Land Act 1960* states that a Valuation Authority (i.e. a council) must cause a general valuation of rateable land within the relevant municipal district to be made as at 1 January in every even calendar year. The new valuation of rateable land is applied in the following financial year by the Council and used to declare the general rate in that year. For example, the general revaluation as at 1 January 2016 was used by councils in the declaration of general rates in the 2016/17 year.

Graph 2 (overpage) shows the impact of each general revaluation on the valuation of each type or class of land subject to the differential rate at the Council over the period from 1 January 2010. It also shows the total impact of the four general revaluations on the valuation of each type or class of land subject to the differential rate.

Graph 1



Graph 2



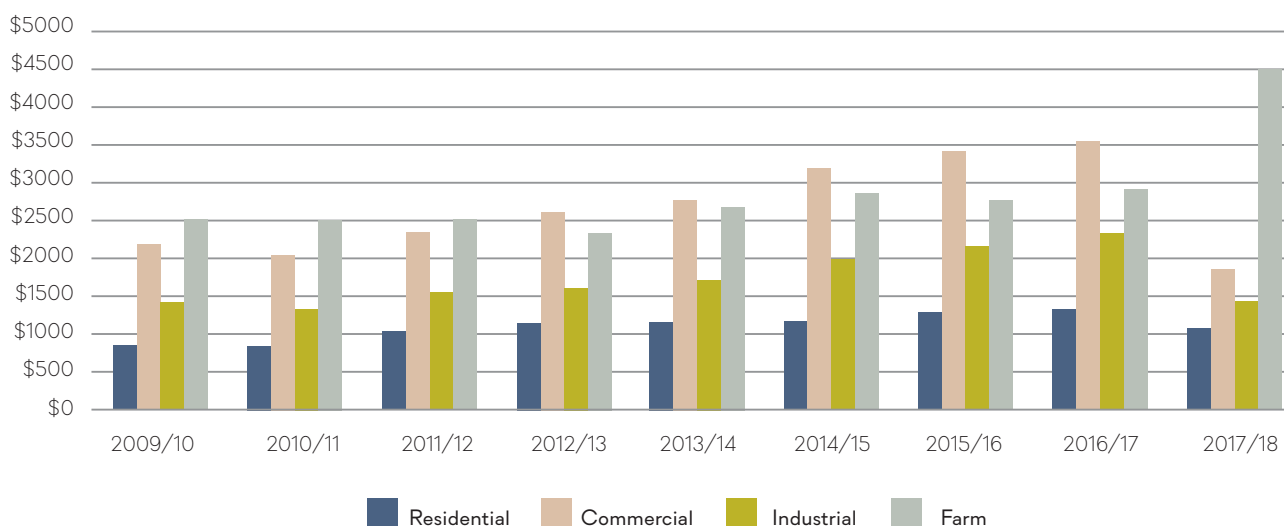
Graph 2 shows that over the period the general revaluations have had the greatest impact on residential properties with a 31% increase, followed by industrial at 29%, commercial at 25% and farms at 23%. This would suggest that the rating burden on residential properties has been most impacted by recent general revaluations and farms the least. However, these increases have not occurred equally over the period with farms experiencing an almost 20% increase in 2010 and industrial properties experiencing a 13% increase in 2016. The Commission received evidence during the enquiry that recent farm land sales would indicate that the general revaluation of properties due on 1 January 2018 would result in another significant increase in farm land valuations and consequential increase in the rating burden.

It is also worth noting that the number of residential properties has increased by 201 assessments over the period compared to commercial properties with three, industrial properties with zero and farms with 40 assessments. When you consider the average valuation increase in rateable land per assessment over the period, residential, commercial and industrial properties have increased by around 24% and farms by 20%.

Graph 3 below combines the impact of the changes in differential rates and impact of general revaluations over the period from 2008/09. The impact of the proposed uniform rate is also shown for the 2017/18 year.

Graph 3 shows that over the period industrial and commercial properties have experienced the greatest increase in rates with a 69% and 67% (\$958 and \$1,438) increase per property respectively. This is compared to residential properties with a 56% (\$480) increase and farms with an 18% (\$445) increase. The Commission makes no assessment about whether this outcome is equitable as this should be the subject of a properly prepared rating strategy as discussed in the next section.

Graph 3  
Average rate per assessment



## Rating Strategy

The Council proposed in its draft budget – 2017/18, to remove the municipal charge and raise general rates through the application of a uniform rate. To support this decision, it prepared a draft rating strategy 2017 and issued this as a public document along with its proposed budget as part of the public consultation process required by section 223 of *the Act*.

The Department of Environment, Land, Water and Planning (DELWP) has issued a better practice guide for local governments *Revenue and rating strategy (2014)* (the Guide). It was developed to support councils to take an integrated approach to developing a revenue and rating strategy which considers all council revenue components. A key focus of the Guide is the levying of rates and charges as this the major source of council revenue.

A key step in developing a revenue and rating strategy is consideration of several principles including:

- **Wealth tax:** Rates paid are dependent upon the value of a ratepayer's real property and have no correlation to the individual ratepayer's consumption of services
- **Equity:** Consideration of horizontal equity – ratepayers in similar situations should pay similar amounts and vertical equity – those who are better off should pay more than those worse off
- **Efficiency:** The extent to which production and consumption decisions by people are affected by rates
- **Simplicity:** How easily a system can be understood by ratepayers and the practicality and ease of administration
- **Benefit:** What is the nexus between consumption/benefit and the rate burden
- **Capacity to pay:** What are the factors relevant to particular property classes in order to make informed observations about their capacity to pay rates
- **Diversity:** Who are the different groups in the municipality where council may need to have regard to the general capacity of those classes of property to pay rates.

The Guide also recommends that the revenue and rating strategy should include a presentation of the different options for rating and their effect on the rate burden for different types or classes of land in the municipality. In this way, the impact of the proposed options on the lowest valued properties, the median and different property categories (among others) can be ascertained.

Lastly the Guide states that a public consultation is an important part of the revenue and rating strategy. Such an undertaking and its importance warrants a council engaging with their community about the revenue picture, its aims and its impact upon the municipality. Options for public consultation range from a process such as that prescribed in section 223 of *the Act* to appointing a community based committee or panel to advise on the development of a revenue and rating strategy.

The Commission is of the view that the draft rating strategy 2017 is of poor quality and wholly inadequate as it does not make the case that a uniform rate would provide a more equitable imposition of rates and charges. The Commission makes the following observations about the adequacy of the Council rating strategy:

- The rating strategy only refers to the benefit principle when considering the equitable imposition of rates and charges and is a direct copy of the text from the Guide. There is no consideration of other principles
- In justifying its decision to move to a uniform rate, it has largely relied on restoring the rates burden for each differential rate category to that which existed just after amalgamation. The Commission also received evidence that pensioner ratepayers were struggling and deserved relief however, it should be noted that the Council proposed to provide pensioners with an additional rate rebate of \$92 per assessment over and above that already provided by the government
- There is only consideration of the status quo and uniform rate options. No modelling has been undertaken of any other options such as the Option Two which was put forward prior to consideration of the proposed budget

- The analysis of the impact of the proposed uniform rate focuses mainly on the change in the average rate for each type or class of land and by valuation band. However, the latter is clearly misleading as the farming properties include both productive and numerous non-productive hobby type farms with the latter having a significant impact on the average increase in farm rates.

The Commission is of the view that the rating strategy and information provided to individual ratepayers about the proposed change in the rating structure was misleading and wholly aimed at justifying the move to a uniform rate.

### Stability in the Level of Rates Burden

Section 136 of *the Act* states that a council must pursue spending and rating policies that are consistent with a reasonable degree of stability in the level of rates burden. This means that if a council is able to establish a case that the imposition of rates and charges is inequitable in accordance with section 3C of *the Act*, it needs to consider how any change in the rating burden would impact ratepayers or groups of ratepayers and how any change should be implemented. As mentioned above, differential rates have been in place at the Council since amalgamation in 1995/96 and graph 1 shows that the differential rates for each type or class of land have remained relatively consistent over the period since 2008/09. This includes a steady change in the farm differential from 70% in 2009/10 to 55% in 2015/16. The Commission considers that there is evidence of stability in the rating burden over the period from 2008/09 and a view that the rating burden on farms should be reduced.

The draft budget – 2017/18, proposed to move to raising general rates through the application of a uniform rate. The impact on the average rate for each type or class of rateable property is set out in table 2 below.

Table 2

Type or class of land	Average rate 2016/17	Average rate 2017/18	Change	Change
Residential	\$1,466	\$1,120	-\$346	-24%
Commercial	\$3,828	\$1,904	-\$1,924	-50%
Industrial	\$2,395	\$1,445	-\$950	-40%
Farm	\$3,105	\$4,521	\$1,416	46%

NOTE: The impact of the proposed 2% rate increase in 2017/18 has been removed for comparative purposes. Figures also include the municipal charge where applicable.

Table 2 shows that the move from differential rates to uniform rates will have a significant impact on the rating burden being borne by farming properties. While the other types or classes of land will receive rate reductions of up to 50% farming properties will receive rate increases of 46%. The quantum of the average increase for farms would appear to be modest at \$1,416 however, there is a significant range of farm sizes within the 1,718 assessments. Table 3 shows the average increase in rates for a range of farm valuations.

Table 3

Valuation of farm land	Assessments	Average rate 2016/17	Average rate 2017/18	Change
>\$10,000,000	2	\$53,144	\$80,211	\$27,067
>\$5,000,000	8	\$24,657	\$37,142	\$12,485
>\$1,000,000	418	\$6,907	\$10,337	\$3,430
>\$500,000	390	\$2,064	\$2,995	\$931
>\$100,000	750	\$1,177	\$1701	\$524
>\$0	150	\$293	\$406	\$113
<b>Total</b>	<b>1,718</b>	<b>\$3,105</b>	<b>\$4,521</b>	<b>\$1,416</b>

NOTE: The impact of the proposed 2% rate increase in 2017/18 has been removed for comparative purposes. Figures also include the municipal charge where applicable.

Table 3 shows that while the average increase for farm properties is \$1,416, the property valuation bands show that the average increase will range from \$113 to \$27,067. It is also worth noting that the farm properties valued at \$1,000,000 or above account for 25% of the total number of assessments but generates more than 60% of the total farm rates raised. A number of Victorian councils have overcome this issue by breaking up farm land between those above 40 hectares and those below, with the latter being called "Rural Living" land and given its own differential rate.

The Commission considers that the proposal to move to a uniform rate in the 2017/18 year would have a significant impact on farming properties and does not comply with the requirement of *the Act* that a council must pursue rating policies that are consistent with a reasonable degree of stability in the level of rates burden.

## ASSESSMENT OF COUNCIL'S IMPLEMENTATION OF THE PRINCIPLES IN THE DEVELOPMENT OF ITS BUDGET

### Requirements of the *Local Government Act 1989*

Section 3D of the *Act* requires a council to maintain the viability of the council by ensuring that resources are managed in a responsible and accountable manner. A key role of council in ensuring the viability of the council is the preparation of the strategic resource plan and the budget.

### Viability of the Council

The Commission has undertaken an analysis of the Council's draft strategic resource plan 2017-21 to determine if it is financially viable over this four year period. The analysis is shown in table 4 based on key performance measures of financial performance in the Local Government Performance Reporting Framework.

Table 4 shows that while the Council is in a strong financial position as demonstrated by the working capital ratio and the loans and borrowings ratio which are both favourable against the suggested target ranges its operating position is poor. It is currently expecting

to incur increasing adjusted underlying deficits over the four-year period and is not funding its asset renewal requirements. This indicates that the Council is not generating sufficient cash from its operations to fund its service delivery and asset management requirements. If Council does not take action to address this deteriorating operating trend, the asset renewal backlog will continue to grow resulting in significant asset renewal costs in the future as assets wear out prematurely.

### Rating and Expenditure Levels

In the previous section the analysis indicated that the Council was not generating sufficient cash from its operations to fund its service delivery and asset management requirements. This is either because its income base is low or its expenditure base is high or some combination of both. The following graphs explore these propositions in more detail.

Graph 4 compares the rates and charges of the Council as a percentage of total property values compared to other similar councils within the small rural council group. Moyne Shire Council has been included for the purposes of completeness as it borders the southern part of the Municipality although it is part of the large rural group of councils as it has a significantly higher population.

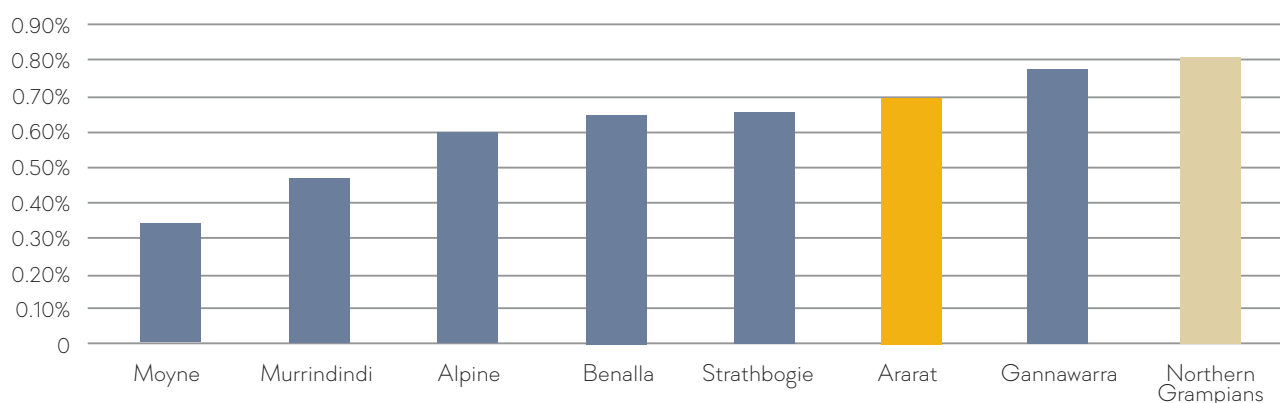
Table 4

Key performance measure	Target	2017/18	2018/19	2019/20	2020/21
Adjusted underlying result	>0%	-11%	-13%	-14%	-16%
Working capital	120%-200%	352%	374%	391%	273%
Asset renewal	90%-110%	78%	56%	55%	53%
Loans and borrowings	20%-60%	18%	18%	18%	17%



Graph 4

### Rates compared to property valuations



NOTE: The information in the graph is taken from the "Know Your Council" website for the 2015/16 year.

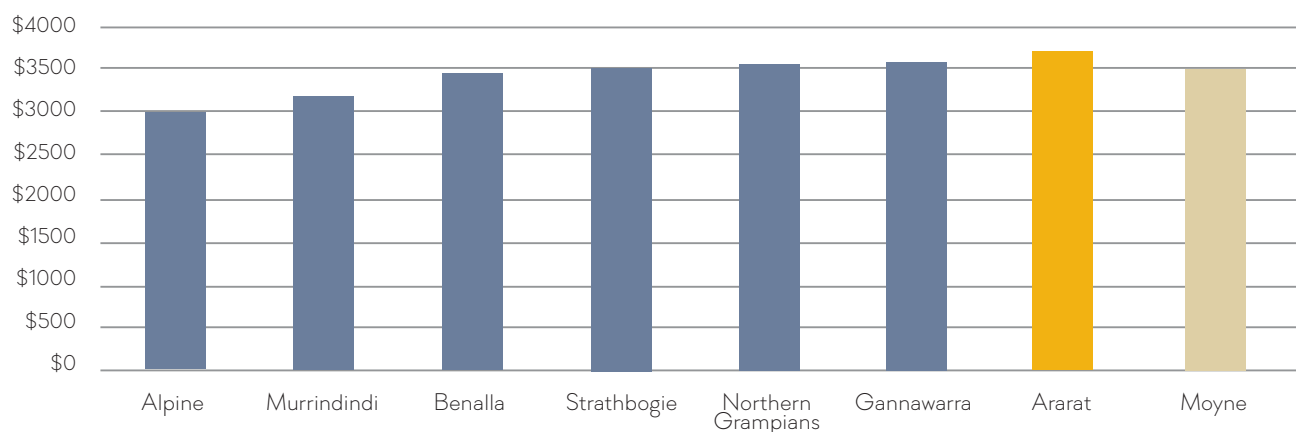
Graph 4 shows that Council has the second highest rates and charges as a percentage of property valuations in comparison to other similar councils in the small rural group. Moyne Shire Council has the lowest. This indicates that Council is a relatively high rating council compared to similar councils in the small rural group.

Graph 5 compares the total expenses of the Council per property assessment compared to other similar councils within the small rural council group.

Graph 5 shows that the Council has the highest expenditure per assessment in comparison to other similar councils in the small rural group. It also exceeds Moyne Shire Council. This indicates that the Council has a high expenditure base compared to similar councils in the small rural group.

Graph 5

### Expenses per assessment



NOTE: The information in the graph is taken from the "Know Your Council" website for the 2015/16 year.

## Financial effects on future generations

Section 136 of the Act states that a council must ensure that decisions are made and actions are taken having regard to their financial effects of future generations. This means that a council must ensure that decisions it makes do not result in a financial burden being placed on future generations particularly regarding its future viability.

Based on the financial analysis in the previous section Council does not have the capacity to make decisions which ensure that the Council can remain financially viable in the future while funding its current level of service provision and fully funding its asset renewal requirements.

## OTHER MATTERS

The Commission also received evidence that:

- There is a serious question over the financial and economic literacy of some of the councillors.
- The majority Councillors have a disregard for the expenditure of funds with a proper policy justification and sound analysis, demonstrated by paying an amount of \$171,000 in excess of what was necessary to be paid to the CEO upon his termination.
- The budget was almost wholly ignored by the Councillors, while the rating strategy was discussed. The necessity to proceed with the council plan, the strategic resource plan and the budget as an integrated process did not occur. It also appears the integrated element was simply not understood.
- One Councillor considered relief from rates could be paid out of the cash reserves of the Council.

- Following the adoption of the proposed budget on 2 May 2017, the Council undertook a most unusual process at its meeting on 16 May 2017, whereby two proposals were adopted to expend funds which were not provided for in the proposed budget despite the latter being subject to a section 223 public submission process. These were: \$150,000 for the refurbishment of the performing arts centre fountain; and \$300,000 to upgrade the Bill Waterson skate park.
- One Councillor provided the Audit Committee with her own extensive notes on the expenditures of staff food and many other very small expenditure items and insisted a review of these matters was necessary. The Independent Chair of the Audit Committee responded by courteously advising that the Councillor's role would be best addressed by the formulation of a cost reduction strategy by her. Despite this the Councillor provided this same material to the Commission without advising of the Auditor's response. This demonstrates an unwillingness to accept the strategic and policy role of the Councillor.

# 4.

“The views and opinions of the local community and any relevant interest groups in relation to the Council’s rating strategy and budget for the 2017/18 financial year”



## SUMMARY OF EVIDENCE OF THE LOCAL COMMUNITY AND INTEREST GROUPS AT COMMISSION HEARINGS

The Commission held private hearings over six and a half days where 31 individuals and groups from the community provided evidence and a public hearing over one day and evening where eight individuals from the community provided evidence. It also received 28 written submissions from community members and groups.

The Victorian Farmers Federation (VFF) State officeholders made a written submission and provided evidence at a private hearing. Working groups of the VFF Ararat and Tatyoon Branches gave evidence at private hearings.

The 31 community members and groups that gave evidence at the private and public hearings, comprised members of the farming community, business owners and operators and town residents, including retired farmers. Two former Councillors were among the 31 individuals and groups who gave evidence.

The Commission was impressed by the quality of the evidence and written submissions provided by community members. All community interviewees, whether in favour of the draft rating strategy or not, provided their evidence respectfully and with due consideration of the issues. The Commission found the evidence provided valuable, insightful and well-articulated.

Five individuals/groups supported changing the 2016 rating strategy to move the farm rate differential closer to 100%. However, most felt the process for developing the draft uniform rating strategy was inadequate and that there had been poor communication with, and engagement of, the community on the rationale for the draft rating strategy.

The overwhelming majority of community members interviewed by the Commission or providing written submissions supported retaining the 2016 rating strategy, i.e. the 55% differential rate for farmers and a municipal charge. Several also had views regarding the draft budget for the 2017/18 financial year.

## COMMON THEMES FROM THE EVIDENCE OF THE LOCAL COMMUNITY AND INTEREST GROUPS

The most common themes emerging from the community members in their evidence concerned lack of due process, communication and consultation and the capacity of the Council for good governance. Budget issues were also commented upon.

### Lack of due process

The very poor process demonstrated by consulting on two draft options but adopting a third draft option, as a motion without notice and without community consultation or debate in the Council chamber was raised in almost all submissions and by almost all interviewees.

Community members were concerned that there had been little modelling of the impacts, and no economic modelling or analysis of the flow-on effects of the proposed significant and sudden increase in farmers rates. There had not been any investigation into the economic benefit to the community of the significant decrease in commercial and industrial rates, with many people questioning whether the positive benefit would flow on to the local economy.

## Lack of communication

Community members consistently provided evidence on the lack of a clear rationale for changing the rating strategy or for adopting either one of the alternate options. The only proposed strategy provided in the Council's plan for communicating the reasons behind the rating change was to hold Councillor forums. As noted elsewhere, Councillors in favour of the rating change failed to attend three of the four forums, which by then had been styled community information sessions, and only one of the majority Councillors attended the fourth session.

Failure to attend the forums was seen to be disrespectful of the community members by the majority Councillors, as was the abusive language directed towards members of the public gallery at the Special Meeting of Council held on 2 May 2017. Evidence was provided to the Commission that some Councillors seemed affronted by the number of phone calls and emails from community members they received.

## Poor consultation and consideration of the issues

Community members felt that both the informal and formal consultation processes were inadequate, with very little opportunity for the community to be involved in reasoned consideration of the issues other than at emotionally charged public meetings of Council. The written information provided to ratepayers was basic and did not encourage community members to consider anything more than the direct impact of the rating strategy on themselves.

In the consultation documentation, there was very little modelling of the impacts, and no economic modelling or analysis of the flow-on effects of the proposed changes.

There was no analysis provided to inform the community consultation, such as the ability of different classes of businesses, including farm businesses to absorb the rate increase or pass on rate increases. There was no acknowledgment of issues unique to the farm sector, such as the annual return on productive land relative to other businesses and farmers' inability to pass on the additional cost through prices, which reflect international markets.

It was also put to the Commission that the consultation materials did not give a true picture of the heterogeneity of farming businesses. The large variations in farm size, debt levels and capacity to pay were in their view not considered. The inclusion of hobby farms and very small acreages in the farm classification distorted the average and median values of farm properties provided in the consultation materials, which was misleading.

## Divisiveness

The Commission was provided with evidence of deep community division caused through the process and the promotion of a 'winners and losers' mentality, especially through the mail out to ratepayers advising their individual impact of the draft rating strategy, and provision of misleading information on the impact on farmers.

One Councillor also misrepresented a farm family's written submission as a threat to boycott local businesses. This misrepresentation was published in the media, to the distress of the family concerned.

It was put to the Commission that many examples of rural and townspeople working together for community benefit has been jeopardised by unnecessary polarisation of the community on the ratings issue.

## Council Budget and Governance issues

Several interviewees and correspondents expressed concerns about the level of services provided to rural communities and there being no proposed increase in Council services to rural communities arising from increasing farmers' share of the rate burden. There was acceptance that the Council did not have to allocate services in proportion to the rates contributions of the different sectors but community members said there should be some consideration of access to, and delivery of, services in setting budgets and rates.

There was a concern that the draft 2017/18 budget had not been well examined or considered in the consultation process, due to the enormous interest centred on the rating strategy.

Rural community members were particularly concerned about lack of attention in the budget to the maintenance of rural roads, particularly unsealed roads.

Community members presenting to the Commission were concerned about lack of representation of the farming and rural communities on Council, due to the electorate not being sub-divided and there were calls to restore ridings, undertake a municipal electoral representation review or consider further amalgamations.

Many community members drew attention to the level of rates in the Council compared to neighbouring councils.

Issues associated with attracting skilled councillors were also raised with the Commission. It was stated that Councillors need better education, upskilling and capacity building and there was concern about actions an inadequately skilled Council majority may take in the future.

The impact of a dramatic increase in rates on the health and wellbeing of those members of the farming community with limited capacity to pay was also raised with the Commission. This included farming community members who had recently entered into long term leasing arrangements.

Of note, business owners and operators interviewed did not support the draft rating strategy 2017 despite being advantaged by the abolition of the commercial and industrial differentials. Evidence was provided that the decrease in rates would be inconsequential to their businesses, but that the financial impact on farmers could have an adverse flow-on effect to many businesses. One business operator believed that any further decline in business activity in the towns would also impact on the ability to attract workers and business investment to the Council. Business operators also expressed the view that the Council required improved economic development strategies to attract workers to the town and to improve the amenity of Ararat as a place in which to do business.

Interviewees and submission writers also cited instances of poor culture within the Council administration, including poor customer service, lack of professionalism and perceived prejudice against the farming community in general and one rural area in particular.

# 5.

“The capacity of the Council’s senior administration to deliver good governance for the Council and the local community”



## HISTORY OF POOR GOVERNANCE AND UNSUSTAINED ATTEMPTS TO IMPROVE FUNCTIONING OF THE COUNCIL

The Commission enjoyed the opportunity to be informed by a former Councillor as to the history of the difficulties the Council has undergone in the last 15 years or so.

On 19 December 2011 the former Mayor Cr Marian was convicted by Ararat Magistrates Court on three counts of conflict of interest and was disbarred from standing as a Councillor or being appointed as a member of a board for seven years. On 23 August 2012 an appeal against the conviction was lost.

The Minister for Local Government appointed a Monitor to the Council, for the period 9 January 2012 to 27 October 2012. The role of the Monitor was to monitor the activities and performance of Council and provide advice to the Council, individual Councillors and the CEO about good governance and administration. Current Cr Allgood was a member of this Council.

In August 2011, Mr Andrew Evans was appointed CEO.

The Commission was provided with evidence that the Monitor was welcomed to the role by a community that had experienced poor governance over a long period of time. A number of issues were identified, inspected and acted on including service delivery agreements, expired local laws, conflict of interest procedures, council policies, special committees, procurement/tender issues and ordinary returns.

The Monitor found that 130 invalid decisions had been made in Assemblies of Council, which do not have the power to make decisions.

A positive working environment was established with the Mayor and CEO. Councillors accepted and offered support to the Monitor to carry out his duties.

All Assemblies of Council and Council Meetings were monitored during the term of the Monitor’s appointment. The Monitor at the request of the CEO assisted in the selection process for vacant director positions.

On 21 March 2012, the CEO reported Cr Allgood to the Office of Local Government Investigation and Compliance Inspectorate (Inspectorate) for conflict of interest and on 23 March 2012, former Cr Marian reported Cr Allgood for an alleged breach of *the Act*.

During various Council meetings and individually, the Monitor provided advice to Councillors, the CEO and Council officers. This advice included the development and review of policy documents, good governance practices, compliance and understanding of *the Act*. Specific advice and training was provided to individual Councillors having difficulty in understanding their legal obligations under *the Act*, including current Cr Allgood.

In the Monitor’s final report to the Minister, reference is made to there remaining some difficulty in several Councillors fully understanding their legal obligations.

It was put to the Commission that after the Monitor’s appointment and supervision concluded, some Councillors reverted to lesser standards.

The Commission was provided with evidence to support that currently, some Councillors continue to have difficulty recognising the separate roles and responsibilities of Councillors and Council senior administration. This has been demonstrated by some Councillors seeking to involve themselves in the day to day administration of the Council, and believing they have a role in determining the directions taken by the CEO on operational matters. These Councillors appear to have developed personal grudges against the CEO for challenging their perceived right to involve themselves in operational matters.

## COUNCILLOR CODE OF CONDUCT

Councillors of the Ararat Rural City Council have declared that they will abide by the Councillor Code of Conduct. The Council's meeting procedures are a local law. The Council meeting procedures requires, among other things, Councillors to address all comments in the chamber to the Mayor at all times.

At the 2 May 2017 Special Council Meeting after passing the uniform rate proposal, Cr McLean turned to the public gallery and addressed it with the words "suck it up, princesses". This conduct was abusive and a breach of the Councillor Code of Conduct and the Council meeting procedures.

## TERMINATION OF THE CHIEF EXECUTIVE OFFICER

### Lack of reasons for termination

To the extent any reason was enunciated by the Councillors who voted for the termination of the CEO, the reasons given related to their personal differences with the CEO. One described he found the CEO "annoying" prior to becoming a Councillor.

Another Councillor used extremely derogatory personalised language to describe the CEO. The Councillor proffered a series of written reasons and extensive documentation. None of these related to the performance or capacity of the CEO. These concerned operational matters. None of these reasons founded the descriptor used by her.

The materials and her evidence before the Commission was unfocused, reran old disputes and demonstrated an absence of understanding of her obligations to confine herself to policy and strategic matters.

Another Councillor used a similar descriptor and alleged the CEO bullied her. Her central concern was by reason that the CEO had reported her to the Inspectorate on

two or three occasions. The CEO said he had reported her to the Inspectorate on five occasions. He established on each occasion to the Commission's satisfaction a prima facie basis for so doing. Bullying does not include legitimate complaint about how a person is performing her duties.

This Councillor also asserted by analogy that the CEO had "driven out" a series of employees named by her. The CEO satisfied us that most of the named employees had left before he was even employed at Council. The Councillor could not or would not accept staff matters were operational and not within her remit as a councillor.

Her written material mainly concerned her personal relations with the CEO and goes over old complaints investigated by outside authorities and reran old longstanding disputes. Her evidence and the materials betray a lack of understanding of the contemporary obligations of a Councillor to confine herself to policy and strategic matters. At one point she said she didn't know anymore who she could speak to at Council, despite the Code of Conduct making this unequivocally clear.

These comments betrayed an unwillingness or inability to confine herself to her obligations under *the Act* and not interfere in operational matters.

Accordingly, the exasperation portrayed to the Commission by the CEO in his dealings with this Councillor was reinforced in the mind of the Commission when after more than thirty years as a Councillor, she voted on 2 May 2017 to support a radical change in the rating strategy proposal without notice to the public.

A fourth Councillor proffered the CEO's proposal to accept contract tenders higher than that budgeted as his reason for proposing the CEO's termination. He appeared not to appreciate that the CEO had acted appropriately in resubmitting the proposals to Council to obtain direction on re-tendering the contracts, which was achieved and was the outcome desired by the Councillor.



## PROCESS OF TERMINATION

The CEO's annual performance review was imminent and had already been scheduled by Councillors to take place in August 2017. No reason was given for the failure by these councillors to take part in that process and rely on any performance issues arising.

The Councillors were aware the CEO had forewarned that he would not seek renewal of his contract in August 2018. In practical terms, they were aware he would be gone from the office by 30 June 2018 some 12 months away. No reasons were proffered as to why the termination was urgent or necessary.

The sum of \$271,044 gross was paid to the CEO as an *ex gratia* payment. This constituted a substantial proportion of the 2% rate increase of the Council for 2017/18. The Commission is also concerned that an *ex gratia* payment raised risk issues as to whether the CEO has been paid his entitlements under the contract.

All of the Councillors were aware of the entitlement in clause 10.3 of the contract to terminate the contract without cause by the payment of only six months' pay in lieu of notice. This represented the sum of \$110,804 plus accrued annual leave but no long service leave. This was so because long service leave did not fall due until August 2018. This was the only proper payment that could have been justified in these circumstances.

On 13 June 2017 the decision was made to terminate the CEO's employment and pay the \$271,044 as an *ex gratia* payment plus annual leave. Accordingly, an amount of \$171,000 was paid to the CEO in excess of the amount properly due to him.

The report for the 13 June 2017 meeting by the Director of Corporate Strategy, Risk and Governance on the termination of the CEO was actually written by the former CEO. The report notes his involvement but does not say it was wholly written by him. The report purports to justify this \$271,044 payment plus annual leave by asserting it was budget neutral.

The recording of the meeting shows no comment was made about the involvement of the CEO in the writing of the report on his own termination.

No independent or impartial legal advice was sought or obtained at any time prior to agreeing to pay the CEO the whole of his remuneration until the end of his contract on 14 August 2018 which included \$40,000 of long service leave. In addition to the \$271,044 payment the CEO was paid annual leave to 14 August 2018.

No sound or defensible reason was given for this excess payment over and above the six months provided for in the contract. It was claimed by a number of Councillors that it was paid to avoid a "fight". As there was no basis in law for any dispute by the CEO where termination occurred on six months' notice they were unable to point to what the "fight" could be about and accordingly what the payment was for.

## CAPACITY OF SENIOR ADMINISTRATION TO PROVIDE GOOD GOVERNANCE

As the facts of the matters described in this report demonstrate there remain inappropriate dealings between staff and Councillors, due to Councillors seeking to involve themselves in operational matters. Consequently, senior staff have a certain battle-weary outlook and a tendency to treat their responsibilities as simply going through the motions. The quality of advice provided in the rating strategy proposals material and the evaluation of the public submissions readily demonstrates this.

The minutes of Council meetings are also replete with information statements and reports from unnamed officers. Where strategic or policy materials appear they are almost always to the back of the agenda. It appears some staff retain the hallmarks of the old-style information and decision-making approach and are unable or unwilling to make the break into corporate strategic and policy approach to decision making the Act prescribes.



The officers' reports in the minutes often do not contain recommendations and where they do, recommendations are often not clear or soundly reasoned. The proposed interim CEO position is an example of this. It was not clear or justified by the recommendation why the officer's report on 4 July 2017 recommended an interim appointment to 30 July 2017. The alternative recommendation was that the Council not appoint and "determine its position on the matter."

The necessary continuity in the business of the council unimpeded by the termination of the CEO was surely the paramount consideration and the frank and fearless nature of such advice should have been reflected in the recommendation.

The acceptance of a report from the former CEO on his own termination package that is described above, even if merely an involvement in the preparation of the report, highlights fundamental misunderstanding of how modern good governance is properly performed.

There is no engineer in a director's position. The physical asset management and maintenance is neglected along with the increasingly important environmental sustainability issues. Back of house functions are all over the place in the current structure. Community services are not given the primacy in the organisational structure the size of its budget justifies. There is some evidence that the strategic planning in this area is neglected.

Consequently, there is urgent need for the organisational restructure of responsibilities and reporting lines. The current arrangement is half way to where it should be. The structure is too hierarchical and hence unresponsive.

The renewal of culture that the service reviews engender must be completed if Council is to continue to increase its productivity and justify its wages and salaries bill.

## PROPOSAL TO APPOINT AN INTERIM CEO

Evidence provided to the Commission shows that the proposed appointment of an executive manager as the interim CEO was supported from the beginning by the four Councillors who voted for the termination of the CEO. They each said so during interviews with the Commission they proposed to appoint him interim CEO.

The executive manager Mr Neil Manning had formerly occupied the position of director but since the restructure in late 2016 was demoted to an executive manager. Since the termination of the CEO was mooted, he had openly admitted to the executive leadership group that he was to become the acting CEO and was speaking to Councillors.

At the executive leadership group meetings, he said that is "how you get things done, that's how you get rid of a CEO." There was also evidence that he had announced the names of staff who he proposed to terminate upon taking up the position.

He admitted to the Commission he was speaking to Cr McLean about the interim CEO position and claimed he did not believe this was in breach of the employee code of conduct.

Mr Manning failed to report to the CEO his conversations with Cr McLean about his occupation of the interim CEO's position. This was a breach of his code of conduct and a prima facie evidence case of serious misconduct.

He maintained that his demotion in a restructure in late 2016 was by reason of a professional dispute with the CEO in early 2016 and was motivated only by the CEO's animus towards him. He persisted in this position at the Commission and it appears he has relayed these views of his personal dealings with other staff and Councillors.

Although questioned by the Commission about the terms of his contract he failed to advise the Commission that the CEO had renewed his contract in March 2017 for three years. This is plainly inconsistent with the alleged animus by the CEO arising from disputes some 12 months before.

Further he conceded the Director of Corporate Strategy, Risk and Governance had acted as acting CEO during the last three years. He admitted he had had an opportunity to do so alternatively with her from 2011-14. He also conceded she was better equipped to do the job.

The Commission endeavoured to impress upon each of the Councillors the wisdom of the appointment of an independent interim CEO or of the director who most recently filled the acting CEO position. At the meeting of the Council on 4 July 2017 the majority appointed the most recent occupant of the acting CEO position but only until the 20 August 2017, after the departure of the Commission.

On the last day of the Commission hearings in Ararat on Friday the 14 July 2017, the Commission requested all the Councillors attend and asked each of them their intention as regards the interim position on the 20 August 2017. They each advised they proposed to support an independent interim CEO.

On Monday 16 July 2017, the Commission was delivered of a lever arch file of materials from Cr McLean which persisted in asserting that the appointment of Mr Manning as interim CEO was a matter only for the majority of Councillors.

## ELECTORAL STRUCTURE

There is a mutual lack of familiarity between the members of the community of outlying areas and in many instances distant small towns and farms and the unusually large urban area that is Ararat. This was much commented upon during the Commission by city, town and country community members.

Lack of specific ward structure exacerbates this divide as there is no need for any Councillor to familiarise him or herself with any particular members of the electorate.

The 10% voter numbers variance in the ward structure under *the Act* would require the Municipality to be wedged to comply. However, this could well provide the balance to enable Councillors to identify with a multiplicity of community interests.

In 2012 the Victorian Electoral Commission (VEC) undertook an electoral representation review of the Surf Coast Shire Council. The Surf Coast Shire Council at the time was unsubdivided. The make-up of the Surf Coast Shire Council is not dissimilar to that of the Council in that it has a large urban centre Torquay, a number of small towns and a large rural farming area.

In its final report the VEC concluded that rural areas have very different concerns to the other areas of the Shire and that the provision of a ward structure would ensure that the principle of fair and equitable representation would be met and give residents a better opportunity in the decision making process.

