REPORT BY THE REVENUE AND PROPERTY MANAGER
TO 15 APRIL 2020 ORDINARY MEETING
GOV400087, A0340007

RECOMMENDATION

That Council:

1. receive the report by the Revenue and Property Manager on the Rescission of Policy - Categorisation As Residential For Rating Purposes;

2. endorse the proposal that the Categorisation As Residential For Rating Purposes Policy, subject to public submissions, is proposed to be rescinded, noting that the matters are covered by the Local Government Act 1993 and contemporary case law precedents;

3. place notice on public exhibition for 28 days that the Categorisation As Residential For Rating Purposes Policy is proposed to be rescinded; and

4. rescind the Categorisation As Residential For Rating Purposes Policy if no submissions are received following the public exhibition period.

Executive summary

Council currently has a policy related to Categorisation As Residential For Rating Purposes (the Policy). Council officers have conducted a review of the Policy and recommend that the Policy be rescinded. A copy of the Policy is appended as Attachment 1 to this Report.

Disclosure of Interest

Nil.

Detailed report

The Policy was endorsed by Council on 1/2/2012 Minute No 32/12 and again endorsed upon review on 5/3/2014 Minute No 75/14 although there is no requirement in the Local Government Act 1993 (the Act) or the Local Government (General) Regulations 2005 (the Regulation) for councils to have a policy on the categorisation of properties as Residential for rating purposes.

Upon the current review of the Policy, it has been ascertained that much of the Policy does not provide any additional guidance on how to achieve categorisation of properties as Residential for rating purposes that is not already contained in Chapter 15 Part 3 of the Act and in contemporary case law precedents.

There are also components of the Policy which are not reflective of the Act. It is considered that the legislation and contemporary case law precedents must mandate the determination of properties categorised as Residential for rating purposes. Therefore, it is recommended that the Policy be rescinded to eliminate repetition and confusion. It is proposed to place notice on public exhibition for 28 days that the Policy is proposed to be rescinded; and if no submissions are received following the public exhibition period, the Policy shall be rescinded.
exhibition for 28 days that it is Council's intention to rescind the Policy after the expiration of the exhibition period if no submissions are received.

Community Plan implications

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<th>Theme</th>
<th>Good Governance</th>
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<td>Goal</td>
<td>An effective and efficient organisation</td>
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<tr>
<td>Strategy</td>
<td>Prudently manage risks association with all Council activities</td>
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Strategic implications

**Council Strategies**
Not Applicable

**Council Policies**
Not Applicable

**Legislation**
Local Government Act 1993

Financial implications
Not Applicable

Associated Risks
Nil

DIANE SAWYERS
REVENUE AND PROPERTY MANAGER

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

29 March 2020


APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER
OBJECTIVE

a) To provide clear guidelines and procedures in relation to the assessment of rateable land parcels for the categorisation as Residential for rating purposes and ensure that all residential assessments are determined using consistent measures.

b) To ensure that the guidelines and procedures are implemented efficiently and effectively.

c) To provide staff with authority to assess rateable land parcels for the categorisation of rate assessments as Residential for rating purposes.

d) To afford efficient assessment of residential rating entitlement for land which is readily to be accepted as residential and to make transparent the criteria for assessment.

e) Where a parcel of land is not initially accepted as qualifying for residential rating further assessment criteria and methods are identified.

RELEVANT LEGISLATION

- Local Government Act 1993 NSW
- Local Government (General) Regulation 2005 NSW
- Valuation of Land Act (1916) NSW

RELATED POLICIES

- Nil

POLICY

GUIDELINES FOR ASSESSMENT OF RATEABLE LAND PARCELS FOR CATEGORISATION AS RESIDENTIAL FOR RATING PURPOSES: -

THE LOCAL GOVERNMENT ACT 1993 NSW

In relation to the determination of rateable land parcels for categorisation as residential for rating purposes, Section 516 Local Government Act, 1993, as amended applies -

(1) Land is to be categorised as "residential" if it is a parcel of rateable land valued as one assessment and:

(a) its dominant use is for residential accommodation (otherwise than as a hotel, motel, guest-house, backpacker hostel or nursing home or any other form of residential accommodation (not being a boarding house or a lodging house) prescribed by the regulations), or

(b) in the case of vacant land, it is zoned or otherwise designated for use under an environmental planning instrument (with or without development consent) for residential purposes, or

(c) it is rural residential land.
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(1A) For the purposes of this section, a “boarding house” or a “lodging house” means a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence and in which:

(a) each tariff charged does not exceed the maximum tariff for boarding houses or lodging houses for the time being determined by the Minister by order published in the Gazette for the purposes of this subsection, and

(b) there are at least 3 tariff-paying occupants who have resided there for the last 3 consecutive months, or any period totalling 3 months during the last year,

and includes a vacant building that was so let immediately before becoming vacant, but does not include a residential flat building, licensed premises, a private hotel, a building containing serviced apartments or a backpacker hostel or other tourist establishment.

(2) The regulations may prescribe circumstances in which land is or is not to be categorised as residential.

Vacant Land

Refer Sections 516(1)(b) and 519 Local Government Act 1993 NSW

Local Government General Regulations

In relation to the determination of rateable land parcels for categorisation as residential for rating purposes, the following Local Government (General) Regulations Relating To Residential Categorisation apply:-

Prescribed by Regulations –

516(2) The regulations may prescribe circumstances in which land is or is not to be categorised as residential

This regulatory power has been used in the Local Government (General) Regulation 2005, in clauses 121 & 122:

121. If the dominant use of the land is for a caravan park or a manufactured home estate, the land is not to be categorised as residential for rating purposes. 
Manufactured home and manufactured home estate are defined in the Dictionary to the Act.

122. If the dominant use of the land is for a retirement village, serviced apartments or a time-share scheme, the land is to be categorised as residential for rating purposes.

Mixed Development Rating

Section 518B of the Local Government Act allows for a property to receive a combination of Residential and Business rates due to the property having dual usage.

Local Government Act 1993 518B Mixed Development Land -

(1) Definitions In this section, "mixed development land" and "non-residential land" have the same meanings as in section 14BB of the Valuation of Land Act 1916.

(2) Categorisation of parts of mixed development land if a valuation is furnished under the Valuation of Land Act 1916 for mixed development land:

(a) the part of the land that is non-residential land is taken to have been categorised as business, and
Categorisation As Residential For Rating Purposes Policy

(b) the part of the land that is not non-residential land is taken to have been categorised as residential,

despite sections 515-518.

(3) Sub-categories The council may determine a sub-category for a part of land to which subsection (2) applies according to the category determined by that subsection for the part.

(4) Apportionment of rates and charges. A rate, the base amount of a rate, or the minimum amount of a rate or of a charge, that is made and levied according to categories or sub-categories of land is to apply to a parcel of mixed development land according to the percentages represented by the apportionment factor for the parcel ascertained under section 14X of the Valuation of Land Act 1916.

Considerations For Assessment Of Rateable Land Parcels For Categorisation As Residential For Rating Purposes In Relation To Determining Dominant Use

For those properties where a mixed development factor (MDAF) cannot be obtained, dominant use of that property must be established for rating purposes.

Relevant sections of the Local Government Act 1993 NSW, Local Government (General) Regulations NSW, the Valuation of Land Act (1916) NSW and relevant court precedents must apply with qualifications specific to Mid-Western Regional Council, as follows:

Consideration will be given to, but not limited to, any of the following criteria when determining dominant use for dual use residential/non-residential purposes for properties where a MDAF cannot be obtained:-

- If the use of a parcel of rateable land complies with the Dictionary definition of Home Occupation, as stated in Mid-Western Regional Local Environmental Plan 2012;
- A comparison of the area of land used for residential purposes and non-residential purposes and the intensity of those uses;
- A comparison of rental value of the residential property to the income derived from the non-residential component;
- The general appearance of the property and the area in which it is located;
- If there has been Council approval to use the land for a purpose other than for residential and if the other purpose is operational;
- If there has been any subsequent DA’s in relation to a purpose other than for residential;
- If there is signage located on the land parcel advertising the activity.
- If the activity is advertised. Eg. in telephone directory – White and Yellow pages & or website & or newspapers etc;
- Consideration as to whether the activity would still exist if the residence was not there;
- Consideration as to whether the non-residential activity may be sold off/leased/rented and the balance of the property/premises remain for residential purposes under separate occupation.
Categorisation As Residential For Rating Purposes Policy

- Use refers to right or purpose – whether it be reasonable to assume that the owner would endeavour to maintain that right or purpose in terms of the existing use rights if the parcel of land was put on the market to be sold.

Notice of Declaration of Category, Application for Change of Category and Appeal Against Declaration of Category

Refer Sections 520, 525 and 526 Local Government Act 1993 NSW.

A review of a declaration may be made by a Council officer or an independent person with expertise in the relevant provisions of the Local Government Act, 1993 to be nominated by the General Manager.

Where an appeal to the Land and Environment Court is lodged by the rateable person (or the agent or lessee), the review must be made by an independent person with expertise in the relevant provisions of the Local Government Act 1993 to be nominated by the General Manager to ensure that any declaration and/or subsequent assessment was correct. If this is confirmed, Council will proceed to Court.

PRIVACY

Personal information collected as a consequence of this policy will only be used for the purpose of assessing eligibility under the policy and will not be used for any other purpose or disclosed to any other person unless we are required by law to do so or authorised to do so by the person to whom that personal information relates.

VARIATION

Council reserves the right to vary the terms and conditions of this policy, subject to a report to Council.