
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : LOCAL GOVERNMENT ACT 1995 (WA)

CITATION : CITY OF KARRATHA [2024] WASAT 91

MEMBER : DR S WILLEY, SENIOR MEMBER

HEARD : 30 AUGUST 2024

DELIVERED : 3 SEPTEMBER 2024

FILE NO/S : DR 111 of 2024

BETWEEN : CITY OF KARRATHA
Applicant

Catchwords:

Local government - Rates - Differential rates - Ministerial approval - Annual budget - Referral of general question - Rates not imposed in accordance with Act - Rates quashed

Legislation:

Local Government (Financial Management) Regulations 1996 (WA), reg 52A
Local Government Act 1995 (WA), s 6.2(1), s 6.2(3), s 6.26, s 6.28, s 6.32(1), s 6.33, s 6.33(1), s 6.33(3), s 6.34, s 6.3, s 6.82, s 6.82(1), s 6.82(3), Pt 6, Div 2, Div 6
State Administrative Tribunal Act 2004 (WA), s 27(2)

Result:

Rates quashed

Category: B

Representation:

Counsel:

Applicant : DW McLeod

Solicitors:

Applicant : McLeods

Case(s) referred to in decision(s):

Citygate Properties Pty Ltd and City of Bunbury [2009] WASAT 142
Shire of Toodyay [2022] WASAT 113

REASONS FOR DECISION OF THE TRIBUNAL:

1 On 30 August 2024, at the hearing of the City of Karratha's (**City's**) application, I made an order quashing the Gross Rental Value (**GRV**) differential rates adopted on 30 June 2023, pursuant to s 6.82 of the *Local Government Act 1995* (WA) (**LG Act**). I said I would publish my reasons for doing so later. These are my reasons.

Rates under the LG Act

2 The applicable statutory scheme is as I set out in *Shire of Toodyay*.¹ In short compass, Pt 6 of the LG Act deals with the financial management of local governments.

3 Division 2 of Pt 6 relates to the annual budget. Section 6.2(1) requires a local government to prepare an annual budget for its municipal fund each financial year. The local government is to prepare a detailed estimate for the current year of:

- (a) the expenditure by the local government; and
- (b) the revenue and income, independent of general rates, of the local government; and
- (c) the amount required to make up the deficiency, if any, shown by comparing the estimated expenditure with the estimated revenue and income.

4 All expenditure, revenue and income of the local government is to be taken into account unless otherwise prescribed.²

5 Section 6.3 provides for a budget to be made in other circumstances, including where it is required to do so in consequence of the quashing of either a 'general valuation' or a 'rate or service charge', by a court or by the State Administrative Tribunal (**Tribunal**).

6 Division 6 of Pt 6 deals with rates and service charges.

7 Section 6.26 of the LG Act explains what is regarded as 'Rateable land'. Pursuant to s 6.28 the Minister for Local Government (**Minister**) determines the method of valuation of land to be used by a local government as the basis for a rate. Such determination must be published in the *Government Gazette*. In making that determination, the Minister

¹ *Shire of Toodyay* [2022] WASAT 113 [10] to [27].

² LG Act, s 6.2(3).

is to have regard to the general principle that the basis for a rate on any land is to be:

- (a) where the land is used predominantly for rural purposes, the unimproved value of the land; and
- (b) where the land is used predominantly for non-rural purposes, the gross rental value of the land.

8 Subdivision 2 of Div 6 is directed to 'Rates and service charges'.

9 Section 6.32(1) provides that when adopting the annual budget, a local government, in order to make up a budget deficiency, is to impose a general rate on rateable land within its district, such rate may be imposed 'uniformly' or 'differentially'.

10 Section 6.33 is headed 'Differential general rates'. Section 6.33(1) provides that a local government may impose differential general rates according to any, or a combination, of the following characteristics:

- (a) the purpose for which the land is zoned, whether or not under a planning scheme as defined in the *Planning and Development Act 2005*; or
- (b) a purpose for which the land is held or used as determined by the local government; or
- (c) whether or not the land is vacant land; or
- (d) any other characteristic or combination of characteristics prescribed.³

11 Section 6.33(3) then provides:

[i]n imposing a differential general rate a local government is not to, without the approval of the Minister, impose a differential general rate which is more than twice the lowest differential general rate imposed by it.

12 Local governments cannot use rates as a device to raise unlimited funds. Section 6.34 of the LG Act provides that, unless otherwise approved by the Minister, the amount shown in the annual budget as being the amount it is estimated will be yielded by the general rate is not to:

- (a) be more than 110% of the amount of the budget deficiency; or

³ *Local Government (Financial Management) Regulations 1996* (WA), reg 52A.

(b) be less than 90% of the amount of the budget deficiency.

13 Section 6.82(1) of the LG Act provides that in circumstances where there is a question of general interest as to whether a rate or service charge was imposed in accordance with the LG Act, the local government or any person may refer the question to the Tribunal to have it resolved.

14 The referral of questions under s 6.82 arises in the Tribunal's review jurisdiction.⁴ It follows that my task is therefore to make the correct and preferable decision on the review.⁵

15 Section 6.82(3) then provides that the Tribunal dealing with a referred question, may make an order quashing a rate or service charge which in its opinion has been improperly made or imposed.

The GRV differential rates adopted by the City

16 In April 2023, the Council of the City resolved to generally impose a 5% increase across its differential GRV and Unimproved Value (UV) rate categories. That proposal was advertised, and submissions received.

17 At its May 2023 meeting, the Council further resolved to seek the approval of the Minister because the adopted rate for the Transient Workforce Accommodation/Workforce Accommodation rate was more than twice that of the Residential category, as follows:

Differential Rates Categories 2023/24	Minimum Payment	Rate-in-the Dollar	Multiplier	Basis
GRV				
Transient Workforce Accommodation/Workforce Accommodation	\$1,691	0.295458	3.96x	Maintain 2023/24 relative rate yield by increasing rate-in-the dollar by 5%

⁴ *Citygate Properties Pty Ltd and City of Bunbury* [2009] WASAT 142 [35] - [36].

⁵ *State Administrative Tribunal Act 2004* (WA), s 27(2).

Residential	\$1,691	0.074611		Lowest GRV rate in the dollar for purposes of seeking approval
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18 Ministerial approval was required by reason of s 6.33(3) of the LG Act which, as set out above, provides that a differential rate is not permitted to be more than twice the lowest differential rate without obtaining the approval of the Minister. The Minister approved the differential rate requested for the GRV Transient Workforce Accommodation/Workforce rate by letter dated 29 June 2023.

19 Ahead of the Council meeting at which the budget was to be considered, the officers recommended that a 5% increase be applied across all GRV and UV rates. In doing so, the relativities between each differential rate would have been maintained and thus been compliant with the requirements of s 6.33(3) of the LG Act.

20 However, at the Council meeting, the decision was made to attempt to alleviate the cost-of-living pressures on residential ratepayers by instead increasing the Residential category by only 3.5%, not 5%. This well-intended decision of the Council had the corollary effect that the differential rate adopted for the GRV Airport/Strategic Industry was more than twice that of the Residential category, as shown in the table below:

GRV/UV	Differential Categories 2023/24	Rates	2022/23 Rate in \$	Proposed 2023/24 Rate in \$	Minimum Rate
GRV	Residential		0.071058	0.073545	\$1,666
GRV	Commercial/Industrial		0.097252	0.102115	\$1,691
GRV	Airport/Strategic Industry		0.142115	0.149221	\$1,691
GRV	Transient Workforce Accommodation/Workforce Accommodation		0.281389	0.295458	\$1,691
UV	Pastoral		0.107708	0.113093	\$355

UV	Mining/Other	0.138119	0.145025	\$355
UV	Strategic Industry	0.192140	0.201747	\$355

- 21 While the Minister had approved the Transient Workforce Accommodation/Workforce Accommodation rate, no approval had been given for the Airport/Strategic Industry rate, which was also more than twice that of the Residential category (0.149221 versus 0.073545). Therefore, the adopted differential rates did not comply with the requirements of s 6.33(3) of the LG Act.
- 22 As a result, the City seeks an order quashing the GRV differential rates so that these rates may be reimposed in a manner that complies with s 6.33(3) of the LG Act.
- 23 It is plain, and I find, that the GRV differential rates adopted by the City did not comply with the requirements of Pt 6 of the LG Act. That is sufficient for me to conclude that the differential rates were not imposed in accordance with the LG Act for the purposes of s 6.82 of the LG Act.
- 24 It follows that the correct and preferable decision is to quash the City's GRV differential rates pursuant to s 6.82(3) of the LG Act. I so order.

Orders

The Tribunal orders:

1. The GRV differential rates imposed by the City of Karratha upon rateable land within its district for the 2023/2024 financial year pursuant to s 6.32(1)(a)(ii) of the *Local Government Act 1995* (WA) are quashed pursuant to s 6.82 of the Act.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

DR S WILLEY, SENIOR MEMBER

3 SEPTEMBER 2024