

12 Urgent and Other Business

12.1 Rate Cap Non-Compliance Acknowledgement and Reformation

Directorate: Corporate Services

Councillor Portfolio: Not applicable

Appendices: Nil

Purpose

To acknowledge that an error occurred during the annual rate setting process, resulting in a rate increase calculation of 2.28 per cent (0.03 per cent higher than the permissible 2.25 per cent rate cap), leading to an average overcharge of 75 cents per property, and to determine the appropriate course of action to address the issue.

Recommendation

That Council:

1. **Acknowledge that Council's rating calculations were unintentionally erroneous resulting in a general rate increase of 2.28 per cent (0.03 per cent higher than the permissible 2.25 per cent rate cap), leading to an average overcharge of 75 cents per property, and that an 'immaterial non-compliant' rate cap status is the intended determination by the Essential Services Commission.**
2. **Correct the error via a reduced rate in next financial year (2019-20).**
3. **Implement changes to rating administration processes to prevent this error from re-occurring.**

Summary

Council set its 'rate in the dollars' at the Ordinary Council Meeting held on 26 June 2018 through the adoption of the 2018-19 Annual Budget and Rating Strategy. 'Rate in the dollars' were calculated based on valuations provided by Council's contract Valuers. At the time of this adoption, Council was compliant with the 2.25 per cent rate cap. Subsequently some adjustments were made to the valuations, including three objections processed at the end of June. These adjustments resulted in a reduction to the baseline valuations, causing a rate increase calculation of 2.28 per cent, 0.03 per cent higher than the permissible 2.25 per cent rate cap and leading to an average overcharge of 75 cents per property (note: this is the average overcharge across all rate classifications i.e. Residential, Commercial, Industrial and Petrochemical). This error has been flagged by the Essential Services Commission (ESC) as 'immaterially non-compliant' with the 2.25 per cent rate cap.

Council acknowledges this error and is committed to ensuring that the overcharge is corrected in the most cost effective manner possible. It is also important to ensure that measures are put in place to prevent this issue from occurring again in the future.

Background

The 2018-19 Annual Budget and Rating Strategy were adopted on 26 June 2018. The budget, Rating Strategy and the setting of the 'rate in the dollars' were based on valuation

data received by Council's independent contract Valuers on 6 June 2018. At this time, Council was compliant with the rate cap of 2.25 percent.

On 28 June 2018 (two days after the Annual Budget and Rating Strategy were adopted), three property valuation objections were processed, reducing valuations in the prior financial year 2017-18. The timing of these changes were erroneously applied to Council's valuations database, effectively lowering the benchmark ('base rate') upon which the ESC rate cap compliance is calculated. Shortly after, Council submitted its ESC Annual Rate Cap Compliance Return.

In completing the return, it was discovered that the calculated rate increase was over by 0.03 per cent, an average of 75 cents per property. This error has been flagged by the ESC as 'immaterially non-compliant'. More importantly, Council recognises this mistake and its potential impact on the community, and is seeking to resolve this issue as soon as practicable.

Discussion

In line with Council's key values of accountability, responsibility, transparency, and efficiency, Council publicly acknowledges the rate cap error and the ESC's pending non-compliance determination. Council also seeks to resolve the issue in the most cost effective manner possible.

To address this rating overcharge, the ESC suggested that Council could reduce its 'rate in the dollars' and apply a rebate within the 2018-2019 financial year in order to rectify the non-compliance determination. Before acting on this advice, Council sought to conduct its own due diligence regarding the implications of this approach, particularly compliance with the *Local Government Act 1989* (Act), and the operational and monetary cost of reversing the overcharge within the existing financial year.

Following this line of enquiry, Council recently sought and received legal confirmation that due to the immaterial nature of the non-compliance, Council could proceed with the approach suggested by the ESC without breaching the Act and revise its 'rate in the dollars' via a Council Resolution.

On face value, this was the preferred option as it would enable Council to compensate all affected rate payers within this financial year, and rectify the ESC's 'immaterial non-compliant' determination.

However, a cost-benefit analysis of this approach revealed that in order to deliver this rebate (75 cents per property average) within this financial year, additional expenditure would be necessary to perform intricate database changes to Council's valuation system. Furthermore, there will be associated impacts on staff resources and other complexities such as adjustments to direct debit accounts, pension rebates, supplementary valuations, and configuring refund mechanisms for those who have already paid their rates upfront, or have set up automatic scheduled payments.

Adjusting the 'rate in the dollars' this late in the process is costly, and will nullify any benefit to the community. This approach would only be valid if applied before rates were raised, the first and second instalments processed, and supplementary adjustments made.

A more pragmatic and cost effective approach is to apply a reduced rate increase in the 2019-20 financial year to the value of this year's overcharge. This will ensure that rate payers are compensated without any additional cost to Council, and by extension, the community.

To avoid this issue in the future, Council will not allow any adjustments to be made to the valuation database after the 'rate in the dollars' have been calculated, and valuation objections will only be considered as part of the following year's processes.

Strategic Alignment

This report specifically addresses the following goals and objectives of the Council Plan 2017-21:

Goal 4: A Council of excellence

- 4.2 Be a more efficient and effective organisation by having a strong focus on continuous improvement, innovation, strategic planning and responsible financial management

Policy and Previous Council Reports

The 2018-19 Annual Budget and Rating Strategy are key Council reports that underpin the annual rate setting process. Policies and procedures that guide the rate setting process have been reviewed and updated to ensure the Council will be compliant in future years with the ESC's rate cap limit and its compliance evaluation process.

Legal/Statutory Obligations/Risk

An assessment of legal and financial risks has been applied to the various options considered to resolve the rate cap 'immaterial non-compliance' determination by the ESC.

The ESC's suggested course of action is in line with the *Local Government Act* 1989 and will enable Council to obtain compliance as part of the ESC's auditing process. However, there is a financial risk that this approach is likely to lead to an unfavourable cost/benefit outcome for the community. This is exacerbated by adjusting rate in the dollars so late in the process.

Based on the recommended approach to rectify the rate overcharge in the next financial year, it is likely that the ESC will maintain its determination of 'immaterial non-compliance' for Hobsons Bay City Council in its annual compliance report (due to be released in early December 2018). Council is willing to accept this risk as the recommended approach is more likely to deliver a greater overall financial benefit to the Hobsons Bay community.

Financial and Resource Implications

The recommended approach to rectify the rate cap overcharge is to apply a reduced rate increase in the 2019-20 financial year to the value of this year's overcharge. This will ensure that all rate payers are compensated in full, without any additional cost to Council, and by extension the community.

Environmental/Social/Economic Impacts

Council's recommended approach to resolve the current rate overcharge is likely to have the least economic impact when compared to the alternative option put forward by the ESC. It is hoped that Council's transparent, accountable, and diligent approach to resolving this issue will have a positive social impact on the community. No environmental impacts have been identified.

Consultation and Communication

This issue has been brought to Council and made public at the first opportunity, as part of the Ordinary Council Meeting process. Council Officers have also brought this issue to the attention of Council's Audit Committee.

The Annual Budget 2018-19 and Rating Strategy are the key bodies of work relevant to this report. The 2018-19 budget consultation was undertaken in accordance with Council's Community Engagement Framework. The Rating Strategy is considered a public document and has been subject to consideration by Council at a formal meeting. Both documents were adopted by Council on 26 June 2018, and placed on Council's website.

Officer Declaration of Conflict of Interest

Section 80C of the *Local Government Act* 1989 requires members of Council staff and persons engaged under contract to provide advice to Council, to disclose any direct or indirect interest in a matter to which the advice relates.

Council officers involved in the preparation of this report have no conflict of interest in this matter.