

8.2. MM02: Rate-exempt schools and educational institutions

On 9 December 2024, Council considered a Mayoral Minute entitled *“Invitation to non-rateable educational institutions to voluntarily pay rates, and preparation of a policy to guide and regulate intensive “operational”/timetabled use of Council parks by private schools”*

Council relevantly resolved:

2. *THAT Council invite private schools and the Australian Catholic University to voluntarily pay rates (or an equivalent in-kind contribution) on their property holdings within the North Sydney local government area to contribute to maintenance of Council assets including roads, footpaths, and open space.*
3. *THAT Council publish a “Roll of Honour” on Council’s website and social media platforms recording those educational institutions that voluntarily contribute.*

Following that resolution, I wrote to each of the private schools and the Australian Catholic University, inviting them to voluntarily pay rates or an equivalent in-kind contribution on their property holdings within the North Sydney Local Government Area (LGA).

Of course, the context for this invitation was that private schools own approximately 152,566m² of land in the LGA and, if that were rated as a business, it would result in additional rate revenue of over \$1 million.

I received a response from the following institutions:

- Catholic Schools NSW;
- Sydney Catholic Schools;
- Redlands;
- St Aloysius’ College;
- SHORE – Sydney Church of England Grammar School; and
- Wenona.

Each of the schools cited s83C of the *Education Act 1990* (NSW) and/or clause 26 of the *Australian Education Regulations 2023* (Cwlth) as a restriction on their capacity to voluntarily contribute in cash or in kind. That is, they politely declined and expressed a commitment to continuing to work with Council to support the community they are an important part of.

Section 83C of the *Education Act 1990* (NSW) provides:

Financial assistance not to be provided to schools that operate for profit

(1) The Minister must not provide financial assistance (whether under this Division or otherwise) to or for the benefit of a school that operates for profit.

(2) A school operates for profit (without limiting the circumstances in which it does so) if the Minister is satisfied that—

- (a) any part of its proprietor's assets (in so far as they relate to the school) or its proprietor's income (in so far as it arises from the operation of the school) is used for any purpose other than for the operation of the school, or*
- (b) any payment is made by the school to a related entity or other person or body—*
 - (i) for property, goods or services at more than reasonable market value, or*
 - (ii) for property, goods or services that are not required for the operation of the school, or*
 - (iii) for property, goods or services that is in any other way unreasonable in the circumstances having regard to the fact that financial assistance is provided to or for the benefit of the school by the Minister, or*
- (c) any payment is made by the school to a person in connection with the person's activities as a member of the governing body of the school unless it is in reimbursement for a payment made by the person in connection with the operation of the school.*
- (3) The regulations may specify whether or not a school operates for profit because of any particular use of assets or income, any particular payment in relation to the school or any other matter. Any such regulation has effect despite anything to the contrary in subsection (2).*
- (4) The Minister is not obliged to terminate the provision of financial assistance because of this section if, following an investigation under this Division, the Minister is satisfied that—*
 - (a) termination of financial assistance is not justified because of the minor nature of the relevant conduct, or*
 - (b) more appropriate action can be taken under section 83E.*
- (5) In this section—*
 - asset** means an economic resource that may depreciate in value over time.
 - income** means money or other forms of consideration received periodically from the provision of property, goods or services, investments, gifts, donations, grants, financial assistance or any other gain obtained from the use of a school's assets or its proprietor's assets.
 - payment** means a transaction involving consideration (including non-monetary consideration) and includes a commitment to spend or a liability incurred (whether or not the time for payment has arisen).

In short, the schools assert that if they were to provide a payment for “any purpose other than for operation of the school”, financial assistance from the State and Commonwealth Governments would be withdrawn.

It is not clear that the application of s83C would result in such an outcome for the schools. However, given that they all rely upon the provision, it would appear that clarity is required and possible amendments to the Education Act 1990 or to the Local Government Act 1993 to exempt the operation of s83C in respect of any voluntary payment, in cash or in kind, to a council from a rate exempt educational institution.

Following receipt of the correspondence from the various schools, I met with Mr Dallas McInerney, Chief Executive Officer of Catholic Schools NSW, to discuss constraints on voluntary contributions, community access to school facilities, and collaboration between

Council and schools. In addition, we discussed the significant impacts of Marist College on St Leonards Park and Ted Mack Civic Park.

I, too, met with the COO of the Australian Catholic University (the ACU). The ACU cited examples of their contributions over recent years including towards conservation works at Don Bank Museum. Although they expressed a reluctance to voluntarily pay rates, they reconfirmed a desire to revisit and reinvigorate the Memorandum of Understanding between Council and the ACU with a commitment to working together to support the community in which they operate.

Finally, I met with the Minister for Local Government, the Hon. Ron Hoenig, MP and raised concerns about rate-exempt educational institutions in the particular (and somewhat extraordinary) context of the North Sydney LGA. I requested that the Government implement the findings of the Upper House Inquiry into the ability of local governments to fund infrastructure and services, particularly Recommendation 1 “that the NSW Government conduct a comprehensive review of the rate exemptions and concessions under the Local Government Act 1993”.

We also discussed whether an amendment to exempt voluntary payments to councils from rate exempt schools from the operation of s83C of the Education Act 1990 was necessary.

I therefore recommend:

- 1. THAT** Council calls on the State Government to implement the recommendations of the recent Upper House Inquiry into the ability of local governments to fund infrastructure and services, particularly an urgent review of rate exemptions and concessions under the Local Government Act 1993 and, if necessary, urgently amend the Act to exempt voluntary contributions to councils from operation of s83C of the Education Act 1990; and
- 2. THAT** Council seeks to refresh and reinvigorate the Memorandum of Understanding with Australian Catholic University.

**COUNCILLOR ZOË BAKER
MAYOR**