Office of Local Government

Circular to Councils

Circular Details	22-03 / 7 March 2022 / A811946
Previous Circular	20-38 Special Rate Variation and Minimum Rate Variation Guideline and Process
Who should read this	Councillors / General Managers / Rating and Finance Staff
Contact	Policy Team / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Information

Subject

Guidelines for Additional Special Variation (ASV) Process for 2022-23

What's new or changing

- The Independent Pricing and Regulatory Tribunal (IPART) will accept and process an additional round of 2022-23 Special Variation (ASV) applications from councils.
- For applications made under the ASV process, the ASV Guidelines set out in this circular apply in place of the Guidelines for the preparation of an application for a special variation to general income issued by the Office of Local Government in 2020.
- For more information on when these ASV Guidelines apply, please see 'What this will mean for your council' below.
- This one-off ASV round is available for the 2022-23 financial year only.
- This one-off ASV round is for councils that can demonstrate the need for a special variation to meet the obligations they set for 2022-23 in their 2021-22 Integrated Planning and Reporting (IP&R) documentation.
- Councils seeking a permanent special variation will also need to demonstrate the financial need for the special variation to be included in their rate base on an ongoing basis.
- Separately, IPART has also agreed to undertake a broader review of its rate peg methodology, including the Local Government Cost Index, with outcomes from the review expected to shape rate peg determinations in future years.

What this will mean for your council

- The ASV Guidelines set out in this Circular apply where council is applying for:
  - a temporary or permanent single year special variation for 2022-23 under section 508(2) of the *Local Government Act 1993* (the Act), AND
  - the percentage sought in the application is the lower of:
    - 2.5% (including population factor) or
    - the council's assumed 2022-23 rate peg as exhibited in its 2021-22 Long Term Financial Plan (LTFP) (including population factor)

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Strengthening local government

- For ASV applications made under the Guidelines set out in this Circular, councils will need to demonstrate that:
    - Council has demonstrable financial need such that, in the absence of a special variation, council would not have sufficient funds to meet its obligations as identified in its 2021-22 LTFP as and when they fall due in 2022-23; and
    - Where councils are applying for a permanent special variation, in addition to the above criterion, the council has demonstrable financial need for the special variation to be retained in its rate base on an ongoing basis; and
    - Council's 2021-22 IP&R documentation budgeted for an income increase above the percentage specified for the council for 2022-23 under section 506 of the Act; and
    - Council has resolved to apply for the special variation under section 508(2) of the Act and that the resolution clearly states:
        - whether the resolution is for a temporary or permanent special variation under section 508(2) of the Act; and
        - the additional income that council will receive if the special variation is approved; and
        - why the special variation is required; and
        - that the council has considered the impact on ratepayers and the community in 2022-23 and, if permanent, in future years if the special variation is approved and considers that it is reasonable.
- The ASV application process will be a simpler more targeted application process.
- IPART will not require councils to demonstrate community consultation outside of the processes outlined above. To demonstrate community consultation, IPART will consider the consultation undertaken through the IP&R process and consider the resolution to apply for a ASV meets the requirements outlined above.
- IPART will release streamlined application forms and further information shortly.
- Under this ASV round of applications:
    - IPART will accept applications until 29 April 2022;
    - IPART will publish applications to enable community consultation for a period of at least three weeks; and
    - IPART will notify councils of its decision no later than 21 June 2022.

Key points

- In late 2021, IPART announced the rate peg for the 2022-23 financial year was set at an increase of between 0.7% and 5.0%.
- Special variations provide an opportunity for councils to vary general income by an amount greater than the annual rate peg. However IPART's normal period for special variation applications in relation to the 2022-23 rate peg has now passed.
- The Office of Local Government and IPART recognise that, due to the delayed council elections and the determination of the 2022-23 rate peg at a lower rate than councils had forecast, councils may not have had sufficient time to prepare special variation application within the normal timeframe.

This may result in some councils not having sufficient funds to pay for required infrastructure and services.

- As such the NSW Government and IPART have agreed to a one-off ASV round for the 2022-23 financial year only.
- This process is not intended to address applications from councils that require a special variation (above 2.5%) to achieve long term financial sustainability for reasons other than those set out in the criteria above, which should be addressed through the standard special variation process.
- Application forms, information papers, and submission details will be published shortly on IPART's website.

Where to go for further information

- For further information please contact IPART on 02 9290 8400 or by email to ipart@ipart.nsw.gov.au.

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Strengthening local government

NSW GOVERNMENT | Office of Local Government

GUIDELINES FOR THE PREPARATION OF AN APPLICATION FOR A SPECIAL VARIATION TO GENERAL INCOME

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1. Introduction

Special variations provide an opportunity for councils to vary general income by an amount greater than the annual rate peg.

The Independent Pricing and Regulatory Tribunal (IPART) will assess and determine special variation applications by councils under powers delegated to it by the Minister for Local Government[1]. These powers include:

- setting the annual rate peg based upon an IPART-published Local Government Cost Index; and
- assessing and determining applications for special variations.

The Office of Local Government (OLG) establishes guidelines for applying for special variations. These guidelines set the criteria against which applications will be assessed and provide information on how and when to apply.

Councils must take these guidelines into consideration before applying for a special variation.[2]

In addition to these guidelines, IPART may publish fact sheets on how it will assess applications for special variations. Councils are encouraged to review any fact sheets available on IPART's website before making an application for a special variation.[3]

Only those councils that have the additional funding decision i.e. special variation in their Integrated Planning and Reporting process should consider applying.

All special variation applications must comply with the requirements set out in these guidelines.

It is the responsibility of councils to ensure their application is fully compliant and that all relevant information is provided as part of their application.

Any inquiries regarding these ***Guidelines*** *should be directed to the Office of Local Government on (02) 4428 4100.*

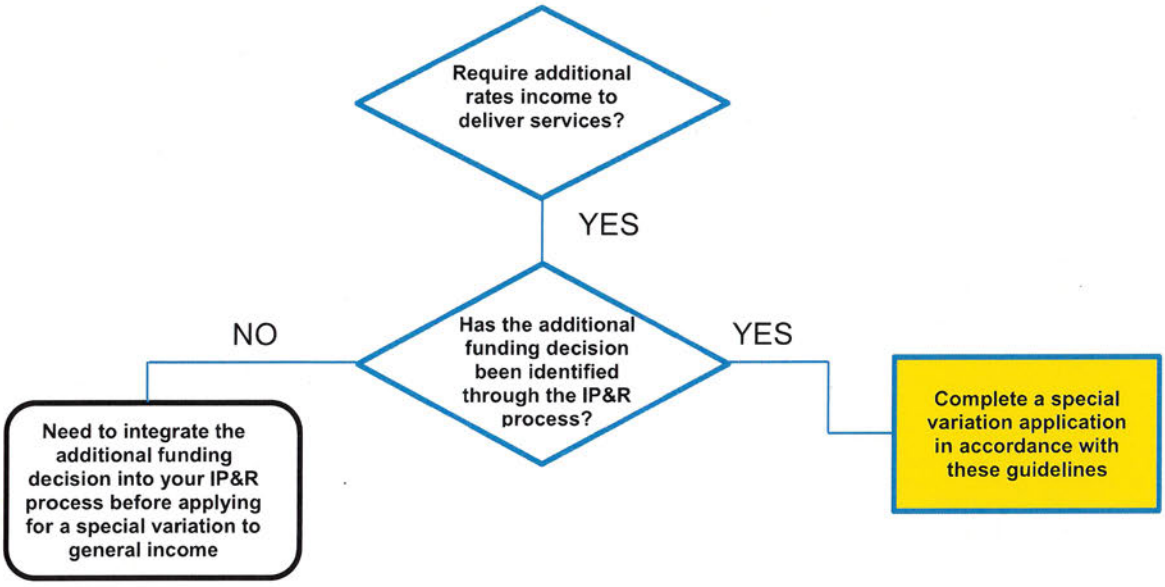
Council must apply to IPART for a special variation.

[1] On 6 September 2010, the Minister for Local Government, delegated authority under the following sections of the Local Government Act 1993: sections 506, 507, 508(2), 508(3), 508(6), 508(7), 508A, 548(3) and 548(8) to IPART.

[2] *Local Government Act 1993* (NSW) sections 23A(3) and 508A(3).

[3] https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/For-Councils/Apply-for-a-special-variation-or-minimum-rate-increase

1.1 Flowchart



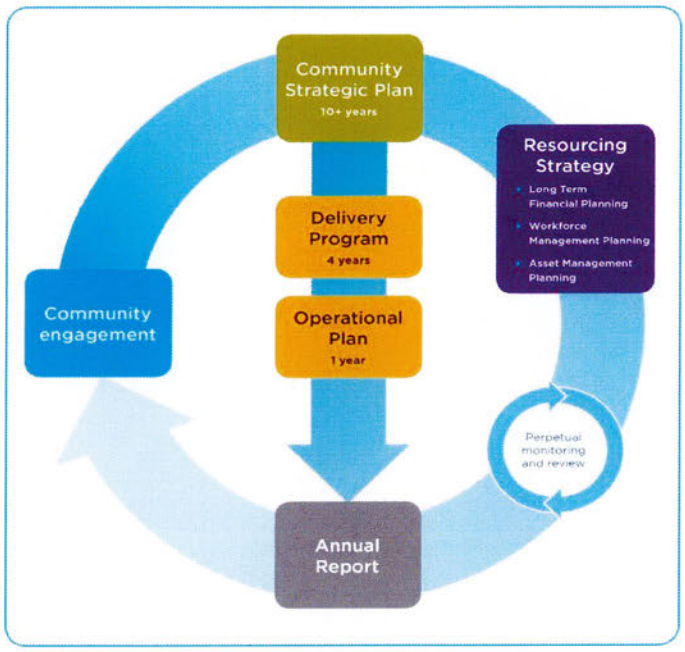
This document is structured as follows:

- **Section 2** discusses the importance of the Integrated Planning and Reporting framework (IP&R) in informing a council's decision to apply for a special variation.
- **Section 3**, and in particular subsection 3.1, outlines the criteria that IPART will assess a council's special variation application against.
- **Section 4** outlines which councils may apply for a special variation.
- **Section 5** explains the purpose and types of special variations available, providing scenarios and the impact of each type.
- **Section 6** outlines how IPART will assess special variation applications.
- **Section 7** provides other information such as link to the IPART website, reporting mechanisms and council resolution.
- **Section 8** outlines the application process, including application forms.

There are 4 attachments to this document as follows:

- Attachment 1 – Calculation of expiring special variations
- Attachment 2 – Other adjustments to general income
- Attachment 3 – Increasing minimum rates
- Attachment 4 – SV application checklist

2. Integrated planning and special variations



The Integrated Planning and Reporting (IP&R) framework provides a mechanism for councils and the community to engage in important discussions about service levels and funding priorities and to plan in partnership for a sustainable future.

IP&R therefore underpins decisions on the revenue required by each council to meet the community needs and demands, and in particular, whether the council requires a special variation to meet those needs.

All NSW councils have implemented IP&R. The special variation guidelines and IPART's assessment process are based on an expectation that councils will have engaged the community in a discussion about the funding required to deliver community priorities through the IP&R process.

Before applying to IPART for a special variation to general income, councils must adopt the Community Strategic Plan, Delivery Program, Long Term Financial Plan and where applicable, Asset Management Plan. Absent any exceptional circumstances, councils may only apply to IPART for a special variation to general income on the basis of those adopted IP&R documents. However, councils do not have to adopt their Operational Plan for the coming year before applying to IPART for a special variation.

More information on implementing IP&R can be found in the Integrated Planning and Reporting Manual for local government in NSW located on OLG's website at the following link:

- https://www.olg.nsw.gov.au/councils/integrated-planning-and-reporting/

3. Assessment criteria for special variation applications

When IPART assesses applications for a special variation, it will examine the extent to which councils have fulfilled their obligations under IP&R, in accordance with the criteria.

The IP&R Manual for Local Government *"Planning a Sustainable Future"*, March 2013, outlines what is expected of councils in completing IP&R. In particular it discusses the importance of linking community outcomes and aspirations (as identified in the Community Strategic Plan) to key actions (the Delivery Program). It also identifies the need for councils to ensure that the appropriate resources are available at the right time (Resourcing Strategy).

The IP&R Manual states that in considering the likely revenue that will be available to meet the community's long term objectives, the Long Term Financial Planning process needs to address capacity for rating, fees and charges, grants and subsidies, borrowings and cash reserves. In particular page 69 of the IP&R Manual states:

"The planning process should include an assessment of the community's capacity and willingness to pay rates and whether there is the potential for changes in that capacity. In making that judgement, the council might review information relating to:

- *Separate or specific rates and charges*
- *The potential to reduce the reliance on rates through increased revenues from other sources e.g. fees and charges*
- *Potential growth/decline in rating revenues from changing demographic and industry makeup*
- *Possible need to increase reliance on rating due to reduction of revenues from other sources e.g. a decline in grants or subsidies*
- *Projected impact of the rate peg*
- *Opportunities for a special variation to general income*
- *Council's current rating policy and likely changes to that policy in the future."*

Impact of COVID-19

The Special Variation process applies as normal during the COVID-19 pandemic period. IPART expects councils to complete the process and meet the criteria to the fullest extent possible.

To the extent compliance has been or is anticipated to be affected by COVID-19, councils should explain this impact in their application. IPART will take these explanations into consideration when assessing the application.

For example:

- Where some consultation strategies such as face-to-face meetings are not possible, IPART expects that the council will provide evidence that the council has pursued alternative arrangements such as virtual meetings or the use of electronic platforms.

- Councils should be mindful of the impact of COVID-19 when assessing the ratepayer impact of a proposed Special Variation. This may include consideration of hardship measures the council may have implemented.

3.1 Criteria for special variation applications

Undertaking the IP&R process, and in particular developing the Long Term Financial Plan as outlined in the IP&R Manual, should provide sufficient information to meet the criteria against which IPART assesses applications provided that the special variation is clearly identified in this process.

The criteria against which IPART is to assess each application are based on what councils are required to do under IP&R. These criteria are:

1. **The need for, and purpose of, a different revenue path for the council's General Fund (as requested through the special variation) is clearly articulated and identified in the council's IP&R documents**, in particular its Delivery Program, Long Term Financial Plan and Asset Management Plan where appropriate. In establishing need for the special variation, the relevant IP&R documents should canvas alternatives to the rate rise. In demonstrating this need councils must indicate the financial impact in their Long Term Financial Plan applying the following two scenarios[4]:
   - Baseline scenario – General Fund revenue and expenditure forecasts which reflect the business as usual model, and exclude the special variation, and
   - Special variation scenario – the result of implementing the special variation in full is shown and reflected in the General Fund revenue forecast with the additional expenditure levels intended to be funded by the special variation.

   The IP&R documents and the council's application should provide evidence to establish this criterion. This could include evidence of community need/desire for service levels/project and limited council resourcing alternatives. Evidence could

[4] Page 71, IP&R Manual for Local Government *"Planning a Sustainable Future"*, March 2013

also include analysis of council's financial sustainability conducted by Government agencies.

In assessing this criteria, IPART will also take into account whether and to what extent a council has decided not to apply the full percentage increases available to it in one or more previous years under section 511 of the Local Government Act. If a council has a large amount of revenue yet to be caught up over the next several years, it should explain in its application how that impacts on its need for the special variation.

2. **Evidence that the community is aware of the need for and extent of a rate rise.** The Delivery Program and Long Term Financial Plan should clearly set out the extent of the General Fund rate rise under the special variation. In particular, councils need to communicate the **full cumulative increase** of the proposed SV in percentage terms, and the total increase in dollar terms for the average ratepayer, by rating category. Council should include an overview of its ongoing efficiency measures and briefly discuss its progress against these measures, in its explanation of the need for the proposed SV. Council's community engagement strategy for the special variation must demonstrate an appropriate variety of engagement methods to ensure community awareness and input occur. The IPART fact sheet includes guidance to councils on the community awareness and engagement criterion for special variations.[5]

3. **The impact on affected ratepayers must be reasonable**, having regard to both the current rate levels, existing ratepayer base and the proposed purpose of the variation. The council's Delivery Program and Long Term Financial Plan should:
   - clearly show the impact of any rate rises upon the community,
   - demonstrate the council's consideration of the community's capacity and willingness to pay rates, and
   - establish that the proposed rate increases are affordable having regard to the community's capacity to pay.

   In assessing the impact, IPART may also consider:

[5] https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/For-Councils/Apply-for-a-special-variation-or-minimum-rate-increase

- Socio-Economic Indexes for Areas (SEIFA) data for the council area; and
- Whether and to what extent a council has decided not to apply the full percentage increases available to it in one or more previous years under section 511 of the Local Government Act.

4. **The relevant IP&R documents[6] must be exhibited (where required), approved and adopted by the council** before the council applies to IPART for a special variation to its general income. It is expected that councils will hold an extraordinary meeting if required to adopt the relevant IP&R documents before the deadline for special variation applications.

5. **The IP&R documents or the council's application must explain and quantify the productivity improvements and cost containment strategies** the council has realised in past years and plans to realise over the proposed special variation period.

   Councils should present their productivity improvements and cost containment strategies in the context of ongoing efficiency measures and indicate if the estimated financial impact of the ongoing efficiency measures have been incorporated in the council's Long Term Financial Plan.

6. **Any other matter** that IPART considers relevant.

The criteria for all types of special variation are the same. However, the magnitude or extent of evidence required for assessment of the criteria is a matter for IPART.

***Smaller councils** with limited resources with which to prepare an application or councils that are considering a very small increase should still consider applying.*

*IPART is required to consider the assessment criteria and the level of information required in relation to the **particular circumstances of individual councils**. Generally the application and evidence required is to be in keeping with the scale of the variation sought.*

Councils are strongly encouraged to contact IPART early in the application process, to discuss the information requirements for their particular circumstance.

[6] The relevant documents are the Community Strategic Plan, Delivery Program, and Long Term Financial Plan and where applicable, Asset Management Plan. Of these, the Community Strategic Plan and Delivery Program require (if amended), public exhibition for 28 days. It would also be expected that the Long Term Financial Plan (General Fund) be posted on the council's web site.

3.2 Exemption

There may be exceptional circumstances in which unforeseen events have occurred outside a council's control, which:

- have a demonstrated material impact on the council's general income, and
- prevent the council from being able to reflect the special variation in its IP&R documentation.

Should these conditions occur, IPART may consider and approve the council's application for a special variation where it determines that the approval is appropriate, including whether the council would have met the criteria for a special variation even though the evidence that it would have done so is not necessarily reflected in the council's IP&R documentation. Councils considering doing this are advised to contact IPART as soon as possible to discuss the implications and their options in this regard.

4. New councils

With the rate path protection ending in the 2020/21 rating year, any new council must submit a Special Variation application in line with these guidelines to IPART if the council wishes to harmonise rates in a way that increases general income above the rate peg from the 2021/22 rating year onwards.

5. Purpose and types of special variations

Special variations are an important means of providing additional funding to councils to allow them to deliver services and infrastructure that the community has requested, and the council is unable to fund within its existing revenue.

The reasons an individual council may require a special variation are wide and varied. Special variations do not have to be tied to a particular project or series of projects. A council may need a special variation to either maintain current service levels or to increase service levels where the community has clearly indicated a desire to do so.

The need for additional funding through a special variation must be identified through the Council's IP&R processes. The adopted Delivery Program should include the rationale, impact on ratepayers and the benefits of the proposed special variation.[7]

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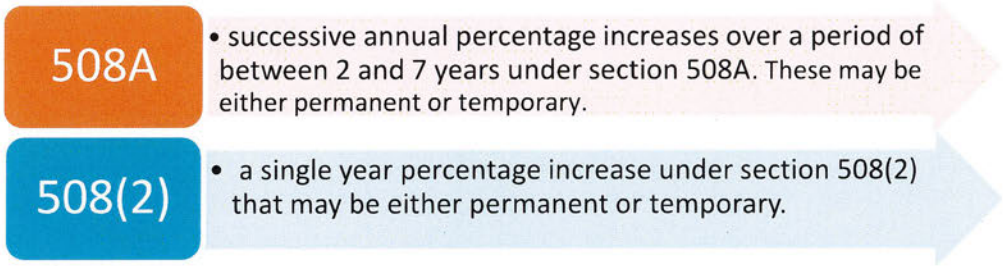
[7] The Delivery Program is required to outline the impact of the proposed special variation, including the annual, cumulative dollar and percentage increases in rates for the various rating categories respectively.

This framework provides councils with a clear path for consulting with their communities on needs, priorities and willingness to pay rates at levels above the projected rate peg. However, where there are exceptional circumstances that prevent councils from reflecting the special variation in their IP&R documentation, IPART may approve a special variation (see section 3.2 for further details).

The type of special variation that is appropriate will depend on councils' IP&R deliberations. The criteria for assessing both types of special variation are the same, but councils are required to specify the type of special variation for which they are applying. Further information on this is contained at section 5.1 below.

5.1 Types of special variations

There are two special variation options under the *Local Government Act 1993.* When seeking a special variation, councils may apply under section: -



The type of special variation that is appropriate for each council will be determined by the General Fund revenue requirements of the council, as outlined in the adopted Long Term Financial Plan. This will depend on a number of factors including:

- the size of the variation required,
- the reason for the variation,
- the need for the increase to be either permanent, or temporary for a fixed term,
- the fluctuation of expenditure over time,
- the financial objectives of a council, and
- the rate at which a council wishes to recover its costs.

It is important to understand the difference between each type of variation and the impact each will have on a council's financial position, the provision of services and the ability of ratepayers to pay the additional rates.

In general, a council's general income could follow one of five paths:

Scenario 1
s508A permanent

- Successive annual percentage increases (between 2 and 7 years), which remain permanently in the rate base;
- **Example Scenario 1 - s508A permanent** – successive annual percentage increases (5 years) of 7.0%, 7.0%, 6.0%, 5.0%, 4.0%, which are permanently retained within the rates base (ie, General Income). The rate peg increase applies from Year 6 (or in any of the five years if the rate peg for that year is greater than the percentage for that year under the special variation).

Scenario 2
s508A temporary

- A council may be given a s508A special variation subject to a condition to reduce its general income at the expiry of the special variation to the level that it would have been without the special variation (i.e. the rate peg path) or to some other level. This is referred to as a 's508A temporary' special variation.
- **Example Scenario 2 - s508A temporary** - successive increases of 7.0%, 7.0%, 6.0%, 5.0%, 4.0%, including the rate peg. The cumulative increase above the rate peg is removed from the rate base in year 6.

Scenario 3
s508(2) permanent

- a one-off (single year) percentage increase that remains permanently in the rate base.
- **Example Scenario 3 - s508(2) permanent** – one off increase of 7.0% in Year 1 which is retained within the rates base permanently. Rate peg increases apply from Year 2.

Scenario 4
s508(2) temporary for x years

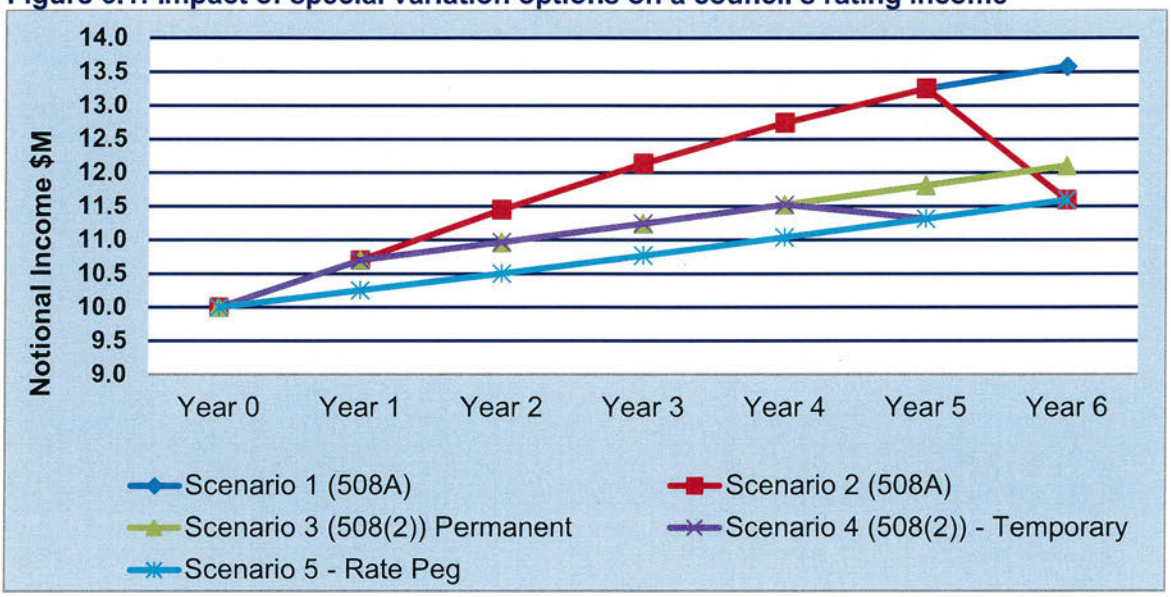
- a one-off (single year) percentage increase subject to a condition to return to the rate peg path (or some other level) after a period of *x* years.
- **Example Scenario 4 - s508(2) temporary** – one off increase of 7.0% in Year 1 which is retained within the rates base for four years. Rate peg applies from Year 2 with general income returning to the rate peg path in Year 5

Scenario 5
Rate Peg

- IPART determined rate peg applies each year.
- Scenario 5 – annual rate peg increases are 2.5% in Years 1 to 6.

Figure 5.1 charts the resulting revenue path for a council under each of these scenarios.

Figure 5.1: Impact of special variation options on a council's rating income



Scenario 1 – 508A permanent special variation

Scenario 1 allows successive annual percentage increases to a council's general income for between 2 to 7 years.

The council identifies the additional revenue required over the period of the proposed increases, as indicated by the IP&R. The council then determines the annual percentage increases for the proposed special variation (including the assumed rate peg of 2.5% pa) required over the period to match this total amount.

There is no automatic adjustment to the approved percentage as a result of the actual rate peg in a particular year being higher or lower than what was assumed when the increase was approved. However, if the percentage approved for the special variation is lower than the rate peg in that year, the rate peg applies.

The increases for each year for this special variation are cumulative and compounding. The following example, scenario 1, illustrates how this variation would operate for a council that was seeking to increase its general income by $3.25 million by the end of a five year period. In doing so, the council is proposing to increase its rates by 7%, 7%, 6%, 5% and 4% over a 5-year period or a total amount of 32.52%. It is assumed that the rate peg is 2.5% in Year 6:

Table 5.1: Impact of a scenario 1 (508A) variation on total income yield

Year	Special Variation	Cumulative increase	Notional General Income ($000s)
0	-	-	$10,000
1	7%	7.00%	$10,700
2	7%	14.49%	$11,449
3	6%	21.36%	$12,136
4	5%	27.43%	$12,743
5	4%	32.52%	$13,252
6	2.5% (rate peg)	35.84%	$13,584

Under scenario 1, a council is able to phase in a potentially significant rate increase over a number of years, rather than concentrate the increase in rates in one year, as under scenario 3. This type of variation can have a significant impact on a council's rating income and ratepayers. This is due to the cumulative nature of the rate increases over successive years and because the increases are retained permanently in the revenue base.

Scenario 2 – 508A temporary special variation

Scenario 2 is the same as scenario 1 but subject to a condition that makes it temporary. With a 508A temporary special variation the council must either adjust its general income to the level that it would have been without the SV (or some other level required by the relevant condition) or apply for a new special variation on expiry of the fixed term (see expiring scenarios 2 & 4 below).

Scenario 3 – 508(2) permanent special variation

Scenario 3 allows a single percentage revenue increase for a specified year that is greater than the rate peg for that year.[8]

While the percentage increase in general revenue is only for a specific year, the period to which the increase in general income is to be retained in the council's income base may be permanent (scenario 3) or temporary for a determined number of years (scenario 4).

Under scenario 3, the percentage increase is a permanent one and therefore has a greater impact on income. That is, the additional revenue generated from the special variation in the specified year permanently goes into the council's revenue base.

[8] Note: An instrument under section 508(2) may require a council to *reduce* its general income.

Scenario 4 – 508(2) temporary (for x years) special variation

Under scenario 4, the single percentage increase is subject to a condition to adjust the council's general income to a certain level after a fixed period of time. The condition will typically require a council to remove the additional revenue generated from the special variation (excluding the rate peg increases) from the rate base after a fixed period of time. This provides the council with the additional revenue for every year of a fixed term, indexed by the rate peg amount. On expiry of the fixed term, the council must either adjust its general income in accordance with the conditions of the SV or apply for a new special variation (see expiring scenarios 2 & 4 below).

The council should be aware that while a temporary variation may allow infrastructure upgrades to be undertaken, these assets may require ongoing maintenance on completion. Additional funding may therefore still be required on an ongoing basis to meet this commitment.

Scenarios 2 and 4 – expiring special variations

Where a s508(2) or s508A special variation is subject to a condition to remove a certain amount from its general income, a council must comply with that condition. A typical condition will require a council to deduct the value of an expiring special variation on the date of the special variation's expiry or at some other point in the future.

The value of the deduction will typically be equal to the total increase in general income under the special variation less the general income the council would have received under the rate peg had the special variation not been approved.

Councils that currently have a temporary (i.e. fixed term) special variation approaching its expiry date may:

- accept the required income adjustment on expiry of the variation, usually reflecting that the council no longer needs the additional funds, or
- apply for a new special variation to partially or fully continue the funding from the expiring variation and, in effect, avoid the income adjustment that would otherwise occur.

It is important for the council to clearly communicate the impact of the expiring variation when consulting with the community on a special variation proposal. This applies even if the new special variation is to continue essentially the same level of funding for the same projects.

For expiring variations, councils are required to contact the Office of Local Government to confirm the calculation of the expiring variation (see Attachment 1 for more information).

In exceptional circumstances a council may need to end an existing special variation earlier than its approved term to form part of a new special variation application. Councils considering doing this are advised to contact IPART to discuss the implications and their options in this regard.

5.2 Variations to ongoing s508A special variations

Where a council has an ongoing s508A special variation and the council is seeking additional changes to its general income during the term of that existing special variation, the council must apply to IPART for a variation of the existing instrument.

IPART will assess an application for a variation using the same broad criteria (set out in section 3.1) as for an original application. While IPART's assessment will typically focus on the *additional* percentage sought, IPART may also consider whether it is appropriate to maintain the *existing* component of the s508A special variation.

In demonstrating the need for the variation to the ongoing s508A special variation, councils must indicate the financial impact of the special variation in their Long Term Financial Plan applying the following three scenarios:

- Baseline scenario – General fund revenue and expenditure forecasts that would apply if there was no special variation. This excludes the already approved component of the special variation and the additional percentage applied for.

- The status quo scenario – General fund revenue and expenditure forecasts which reflect the status quo. This includes the already approved component of the existing special variation but excludes the additional percentage applied for in the application for variation.

- The varied special variation scenario – the result of implementing the varied special variation in full is shown and reflected in the General Fund revenue forecast with the additional expenditure levels intended to be funded by the varied special variation.

When communicating the full cumulative increase of the proposed varied special variation, the council must communicate the full cumulative increase of the whole special variation (including the previously approved component of the existing special variation) to place the variation application in context. However, the focus of the community consultation may be on the difference between the status quo scenario and the varied special variation scenario.

5.3 Other types of income adjustment

Councils must identify in their application any other adjustments to their general income such as:

- catch up or excess results from previous years,
- valuation objections successfully claimed in the previous year, and
- Crown land adjustments for newly rateable Crown land.

The requirements of these guidelines do not apply to these adjustments. See Attachment 2 for further information.

Councils can also apply to increase minimum ordinary rates or special rates above the statutory limits under sections 548(3) (a) and (b) of the *Local Government Act 1993*. Applications to increase minimum amounts above the statutory limit are the subject of a separate assessment process also undertaken by IPART in accordance with the "*Guidelines for the Preparation of an Application to Increase Minimum Rates above the Statutory Limit*" (see also Attachment 3) or visit the Office's website link:

- http://www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/directory-of-policy-advice/rating-and-special-variations

6. IPART's assessment approach for special variation applications

The Independent Pricing and Regulatory Tribunal (IPART) comprises three permanent members appointed by the Premier.

IPART will assess applications for special variations against the criteria set out in these guidelines. Councils should be aware that if they provide all of the required information, this does not guarantee that applications will be approved by IPART. IPART will assess each application on its merits. In doing so, IPART may consider:

- size of the council,
- resources of a council,
- size (both actual $ and %) of increase requested,
- current rate levels and previous rate rises,
- purpose of the special variation,
- compliance with this or any other applicable guideline,
- compliance with the conditions of any previous special variations, and
- any other matter considered relevant in the assessment of a special variation application.

Based on these considerations, IPART will determine the level and length of the increase in general income. It is generally expected that special variations will be for up to four years, to align with a council's Delivery Program and to avoid committing future councils to rate rises. However, in some circumstances a period of longer than four years (and up to seven years) may be appropriate.

IPART will assess each application based on its merits. To assist IPART in assessing the application while also reducing the burden on councils to provide additional documents, council applications must be based on their adopted IP&R documentation and relevant application forms should provide IPART with relevant extracts of the IP&R documentation (including web links to the relevant plans once they have been finalised and published on a council's website). IPART does not anticipate that a council will provide a complete suite of IP&R documents to IPART, unless IPART requests it. Some supplementary material will also be necessary, as outlined in the application forms.

IPART will publish on its website a statement of reasons for its decision to approve, either in full or in part, or not approve an application. Where an application is approved, IPART will issue the council with an instrument setting out the amount approved and any conditions applying to the approval.

*IPART will make the **final decision** as to whether the proposed special variation is approved, partially approved or not approved. This decision is final and IPART will not reassess an application after it has made its decision.*

7. Other information requirements

In its application forms IPART may require councils to provide specific information to address the assessment criteria. These application forms are available on the IPART website link:

- https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/For-Councils/Apply-for-a-special-variation-or-minimum-rate-increase

Councils are encouraged to read these guidelines in conjunction with the application forms.

7.1 Reporting mechanisms

Where a special variation is approved, IPART issues the council an Instrument which sets out the conditions of that approval. These conditions typically include minimum annual reporting requirements.

IPART expects that councils seeking a special variation will propose, as part of their application, annual reporting requirements to transparently report to their communities. This may be done through supplements to existing reporting processes and should include reporting on the additional income obtained through the variation, and if the special variation relates to a specific project:

- the projects or activities funded from the variation,
- details of any changes to the projects or activities funded from the variation compared with the council's initial proposal *(*any such changes must be consistent with the terms of the Instrument of Approval*)*, and
- the outcomes achieved as a result of the projects or activities.

The application should include the reporting mechanisms which should align with the reporting processes identified through IP&R. A council's Annual Report must provide a report on the achievements through the Delivery Program. The End of Term report should also outline detailed performance indicators to report against the Delivery Program achievements in relation to the special variation.

7.2 Council resolution

A council must supply a copy of the resolution(s) to apply for the special variation, with its application. IPART will not assess a special variation application unless the council demonstrates its commitment to its proposal. It is expected that councils will hold an extraordinary meeting if necessary to meet this requirement.

8. Application process

8.1 Application forms

The forms for a special variation application consist of 2 separate parts:

- SV Part A – Microsoft Excel form that gathers data to calculate the amount of the special variation in terms of the dollar and percentage amounts, the impact on rates and the proposed program of expenditure. The form also seeks a council's contact information. Note that merged councils are required to use the 'merged councils' version of the Part A application form.
- SV Part B – Microsoft Word template for providing information to assist IPART in assessing the merits of the application. It also includes a certification page that must be signed by the council's General Manager and Responsible Accounting Officer.

Information on the application process and forms is available from the IPART website link:

- https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/For-Councils/Apply-for-a-special-variation-or-minimum-rate-increase

Councils that are seeking to apply for a Special Variation are urged to notify IPART of their intention to apply

Any inquiries regarding the application process should be directed to IPART via phone 02 9290 8400 or email localgovernment@ipart.nsw.gov.au

IPART will not accept late applications, unless it grants an extension to a particular council. IPART encourages councils to submit applications as early as possible.

Attachment 1 – Calculation of expiring special variations

For illustration, a council is approved a scenario 3 – s508(2) special variation for a fixed term of three years to fund infrastructure projects with a new infrastructure levy.

This special variation will expire at the end of the third rating year, having been in place for three years.

When this infrastructure levy ends, the council must comply with the terms of any conditions included in the special variation instrument. The conditions in a 'temporary' s508(2) special variation will typically require a council to deduct the additional income from the levy (or the value of this expiring variation) from the council's notional general income (rate base) before the council may apply the rate peg or other special variation percentage in the fourth rating year.

The value of the expiring variation will typically equate to the original value of the special variation plus the equivalent cumulative proportion of this increase under the rate peg or a subsequent special variation.

If the special variation approved in the first year was 6% and the rate peg increase in the second and third year were 2.5% and 2.6% respectively, the value of the expiring variation would equate to the dollar value of the initial special variation (detailed in the original special variation approval instrument) plus 2.5% for the second year, plus a further 2.6% for the third year (note: each annual increase is cumulative).

Another example shows the impact on a council's general income where the council is seeking to continue the funding from an expiring special variation and at the same time increase its general income over two years. The value of the expiring special variation shown in Table A1 is $50,000, but the council wants to continue the expiring special variation and further increase its income by $45,000. In the following year council wants an increase of $104,500 (Note that this proposal would require a scenario 1 (s508A) application as it represents two years of increases above the rate peg percentage).

Table A.1: Example of the impact of an expiring special variation on permissible general income in a special variation application

Year	Unadjusted or Permissible General Income	Value of expiring variation	Adjusted General Income	Special Variation	Increase in income due to special variation	Net increase to income on previous year
Year 1	$1,000,000	$50,000	$950,000	10%	$95,000	$45,000
Year 2	$1,045,000	-	$1,045,000	10%	$104,500	$104,500

In this example, the net increase in income in Year 1 is $45,000. This is less than the increase due to the special variation of 10% ($95,000) due to the deduction of the expiring special variation. The net increase in income in Year 1 is 4.5%, not the special variation percentage of 10%.

In these circumstances, the net increase in average rates levels in the first year is also likely to be around 4.5%. However, if the special variation was not approved, and assuming that the rate peg is 2.5% in the first year, the council's general income and average rates would actually fall by approximately 2.6% without the new special variation.

Attachment 2 – Other adjustments to general income[9]

Councils may also be entitled to other adjustments to their permissible general income in the coming financial year (generally the first year of a new special variation period). These adjustments are for:

a) catch up or excess results from previous years,
b) valuation objections successfully claimed in the previous year, or
c) Crown land adjustments (CLA) for newly rateable Crown land.

The requirements of these guidelines do not apply to these adjustments.

Catch-up or excess results from previous years and valuation objections claimed for previous year

The adjustments to the income base for a) catch up/excess amounts and b) valuation objection income successfully claimed in the previous year will not form part of the special variation percentage which may be approved by IPART. Should the special variation not be approved by IPART, the council will still be entitled to these income adjustments in addition to the rate peg.

Newly ratable Crown Land

Any income adjustment for c) newly ratable Crown Land must be approved by IPART. A council wishing to make a crown land adjustment (CLA) may apply to IPART for a discrete special variation under s508(2) of the *Local Government Act 1993*. The requirements of these guidelines do not apply to such applications. However, if a council is also applying for a broader special variation, it may request that a percentage component for a CLA form part of the total percentage to be approved in the s508(2) special variation or s508A special variation.

Where a council has an ongoing s508A special variation and the council is seeking a CLA, the council's application will be taken to be an application to vary the existing instrument. As part of its assessment of the CLA application, IPART may consider any significant developments that have taken place since the original special variation

[9] This information is provided as a brief summary of the various adjustments which may be applicable to councils on an annual basis. For more detail, councils should refer to the Office's Rating and Revenue Raising Manual located at: www.olg.nsw.gov.au

application was made and determine whether the existing component of the special variation should be maintained. This assessment may include consideration of any subsidies or grants that have affected the financial need for the existing component of the special variation as well as the council's compliance with the conditions of the existing special variation.

Councils are generally not expected to undertake further community consultation where they are only seeking a special variation to effect a CLA.

Where a council is not applying for a broader special variation, it should submit its request for a CLA to IPART. IPART will send all requests to OLG to confirm the amount of additional general income, and IPART will separately assess those where the council is also asking for a SV. IPART will make the final assessment as to whether or not to grant a CLA.

IPART will then decide whether to approve the increase having regard to OLG's assessment of eligibility, the council's application for the adjustment and any other matter considered relevant to the application.

Catch up/excess amounts and adjustments to income for successful valuation objection income claimed in the previous year ***do not form part of the special variation percentage, but Crown Land adjustments do.***

Attachment 3 – Increasing minimum rates

Section 548 of the *Local Government Act 1993* (Act) allows a council to specify a minimum amount of a rate to be levied on each parcel of land within a particular category or sub-category.

The size of any minimum amount must not exceed the relevant permissible limits provided for in section 548(3) and clause 126 of the *Local Government (General) Regulation 2005,* unless Ministerial approval for a higher amount has been granted or where the council is entitled to increase its minimum rate under section 548(4) and (5) of the Act.

The Minister for Local Government has delegated to IPART responsibility for approving higher minimum rates.

A council must apply to IPART for an increase in minimum rates above the statutory limit when:

- it is seeking to increase its ordinary minimum rates above the statutory limit for the 'first time' with or without increasing its general income above the rate peg limit,
- it is already above the statutory limit but is seeking to increase its ordinary minimum rates by a higher percentage than it is permitted to under section 548(4) and (5) of the Act, or
- it is seeking to increase the minimum amount of its **special rates** above the statutory limit.

Council should contact IPART to confirm whether or not an application is necessary.

If a council is seeking to apply a higher rate of increase to its minimum rates than to its other rates in a special variation application, this must be clearly identified and addressed in the special variation application.

Ordinary rate minimums

Clause 126 of the Regulation is typically amended each year to increase the statutory limit on ordinary rate minimums by the rate peg increase for that year. This means that

councils do not need to make applications for ordinary rate minimum increases if the amount proposed is within that limit.

Under section 548(4) and (5) of the Act, a council is also entitled to increase the minimum amount of an ordinary rate in line with an approved special rate variation, if the council was previously granted approval to increase its minimum rate above the statutory limit provided for in section 548(3) of the Act and clause 126 of the Regulation.

Special rate minimums

For special rates, s548(3)(b) of the Act specifies that the minimum amount of a special rate (other than a water supply special rate or a sewerage special rate) may not exceed $2 unless Ministerial approval for a higher amount has been granted. The Minister for Local Government has delegated the function of approving higher amounts to IPART.

Unlike the minimum amount for an ordinary rate, the Act does not provide the flexibility to increase the special rate limit through an amendment to the Regulation. Rather, a council must obtain approval on ***every*** occasion (including the application of the rate peg) that it wishes to increase the minimum amount on special rates.

Once a council receives approval to increase a special rate minimum, this increase is ongoing and continuing. However, should a council wish to increase the approved special rate minimum by the rate peg, by virtue of s 548(3)(b) of the Act, a council must complete an application.

*If a council levies minimum amounts for ordinary or special rates **and** it is seeking a special variation, it must show the impact on these minimum rates by its proposed special variation as part of its special variation application.*

Minimum rates applications

Where a council wishes to increase its minimum rates above the statutory limit as part of a special variation application, it should submit *both* a special variation application and a minimum rate increase application.

A council that is considering increasing its minimum rates (ordinary or special) above the statutory limit must refer to the *Guidelines for the Preparation of an Application to*

increase Minimum Rates above the Statutory Limit. These guidelines are available from the Office's website link:

- http://www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/directory-of-policy-advice/rating-and-special-variations

Applications to increase minimum rates must be made on the Minimum Rates Application Form available on the IPART website link:

- https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/For-Councils/Apply-for-a-special-variation-or-minimum-rate-increase

Attachment 4 – SV Application Checklist

- ☐ Council has contacted IPART early in the application process to discuss the information requirements for its particular circumstance.
- ☐ Council resolution has been passed to apply for a special variation.
- ☐ Council has notified IPART of their intention to apply for a special variation on or before the due date as specified by IPART.
- ☐ Council's application is based on adopted IP&R documentation which identifies: -
    - ☐ The need and purpose of a different revenue path is clearly articulated and identified in the councils Delivery Program.
    - ☐ Evidence that the community is aware of the need for and extent of a rate rise.
    - ☐ The impact on affected ratepayers is reasonable.
    - ☐ IP&R documents are exhibited, approved and adopted by council.
    - ☐ IP&R documents explain the productivity improvements and cost containment strategies.
- ☐ Council has completed special variation application forms Part A (excel workbook) & Part B (word document) (available on IPART's website).
    - ☐ SV Part B certification page has been signed by the council's General Manager and Responsible Accounting Officer.
- ☐ Council's application includes a copy of the council's resolution(s) to apply for the special variation.
- ☐ Application which includes Part A and B, certification and council resolution and other supporting documentation, is lodged on or before the due date as specified on the OLG Council Circular and on the OLG and IPART websites.