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APPLICATIONS FOR MINISTERIAL APPROVAL FOR A SPECIAL VARIATION TO GENERAL INCOME

Councils wishing to apply for a special variation to increase their general income in 2009/2010 will need to determine whether they wish to apply under section 508(2) or section 508A of the *Local Government Act 1993*.

Section 508(2) enables the Minister for Local Government to approve a percentage increase for a specified year that is greater than the general variation percentage approved under section 506 of the Act (the “rate peg”). While an increase under section 508(2) is for a specific year, the period for which the increase is to apply may be fixed or ongoing.

A special variation approved by the Minister under Section 508A allows a council to increase its general income in consecutive years by an amount that is greater than the rate peg for each year, up to a maximum of 7 years.

Prior to submitting an application for a special variation, councils must determine the type of special variation that is required. A guide to assist councils through the application process, ‘*Guidelines for the Preparation of an Application for a Special Variation to General Income – 2009/2010*’, is available in the publications section of the Department’s website at www.dlg.nsw.gov.au.

These Special Variation Guidelines provide detailed information regarding the different types of special variations and the requirements councils must meet in submitting their application.

The guidelines have been developed in accordance with section 23A of the Act. Councils should therefore review the guidelines, in conjunction with this circular, to ensure their application complies with the Department’s requirements. Councils are encouraged to contact the Department well in advance of submitting their application if they have any concerns or unsure of the requirements.

Process for Lodging Applications

To enable the Department to efficiently and effectively process the applications, it is requested that **applications be submitted by 31 March 2009**, or within two weeks of the announcement of the rate peg limit – whichever is later.

All applications and supporting material must be emailed to the Department at sv@dlg.nsw.gov.au.

Councils are requested to adopt the standard naming convention for all special variation related emails, which is set out in the Special Variation Guidelines.

Councils should be aware of the need to provide feedback from the draft management plan exhibition period as part of their application. Therefore, councils intending to apply for a special variation should ensure that their draft management plan is placed on public exhibition as early as possible.

If the draft management plan exhibition period extends beyond the above submission date, applications should be submitted and details of the feedback to the draft management plan consultation forwarded as soon as the exhibition period has expired.

Again, councils should refer to the Special Variation Guidelines for further information regarding the process for lodging their applications.

Application Format

Section 508(2)

Applications under section 508(2) are to be submitted on the SV1 Application Form. This form has been emailed directly to all councils' generic email address, separate to this circular. If your council has not received a copy of the form, please contact the Department.

Councils should be aware that the SV1 Application Form has been subject to significant revision.

The SV1 Application Form now consists of two separate parts:

- **Part A:** Microsoft Excel based form that gathers data to calculate the amount of the special variation in terms of the dollar and percentage amounts, and the average impact on rates. The form also seeks Council contact officer information.
- **Part B:** Microsoft Word based form that gathers information to assist the Department and the Minister in assessing the merits of the application. It also includes a Certification form that must be signed by the General Manager and Responsible Accounting Officer.

Both Part A and Part B of the Application are designed to be completed on computer and then e-mailed together to the Department at sv@dlq.nsw.gov.au.

The Application Form contains detailed notes and instructions to assist councils in its completion.

Section 508A

Applications under section 508A are to be made by written submission covering the minimum requirements set out in the Special Variation Guidelines.

Councils considering applying for a special variation under section 508A are advised to contact the Department in the first instance to discuss their intentions.

As part of a section 508A application, councils are required to submit a rigorous ten-year financial plan (which separately identifies additional income generated through the special variation). Evidence of the council's commitment to the plan, including how this commitment will be sustained over the long-term, must be disclosed. The council would also need to demonstrate its progress in the areas of integrated planning, policy development and benchmarking of standards for its maintenance and construction operations.

The assessment of a section 508A application is extensive and usually requires on-going consultation with the council before an appropriate recommendation can be made to the Minister.

It is therefore unlikely that approval will be granted for the entire period sought in the year the application is lodged. For example, where an application is lodged just prior to the commencement of the 2009/10 rating year, it is likely that the first year of approval under this section will be 2010/11.

If a council lodging an application under section 508A wishes to increase rates in 2009/10, it will be required to complete a totally separate application under section 508(2) for the first year, in addition to its 508A application submission. This will allow the first year of the application to be assessed under section 508(2).

Community Consultation

Councils are reminded of their responsibility to conduct adequate community consultation about their proposed rating and revenue raising policies. This should involve ratepayers being informed of the full range of rating and charging options available to councils, and the reasons upon which proposed policy choices have been based.

Councils should be careful to explain the amount being sought and how it is calculated, including rate-pegging and adjustments such as income adjustments and catchup/excess results from previous years.

It is expected that all special variation applications, whether under section 508(2) or 508A, will relate to initiatives of a specific and strategic nature, which require funding beyond any identifiable sources available to council over either the shorter or longer term.

Councils are required to demonstrate that adequate communication and consultation has been carried out on these initiatives, including the impact upon its ratepayers. Councils must also provide details of the level of community support for the initiatives and any action proposed to address issues of common concern.

Capital expenditure

Where an application relates to funding of capital works, councils are reminded of the requirement to undertake a capital expenditure review in accordance with Council Circular 97/55. If a capital expenditure review is required but has not been completed prior to submission of the special variation application, the Department will not be able to assess the application.

Compliance with conditions of approval

When an application for a special variation is approved by the Minister, the council is issued with an instrument setting out the amount approved and the conditions applying to the approval.

Compliance with conditions of approval is a factor the Department, and the Minister, considers when assessing new special variation applications. Councils should therefore have in place arrangements to ensure that all conditions of approval for existing and proposed special variations are met.

Maximum Minimum Rate

Councils seeking to set a minimum amount of a rate that exceeds the statutory maximum limit will need to apply for the Minister's approval. This is required regardless of whether the council is seeking to increase its general income beyond the rate-pegging percentage.

Where a council is seeking approval for minimum rates under section 548(3) only, the application can be made by way of a letter. The Special Variation Guidelines set out the information that councils must include to support their application.

Where a council is seeking approval for minimum rates as well as an increase in general income under section 508(2), the request for the minimum should be clearly identified in its SV1 Application Form (Part A, Worksheet 1). If the application forms part of a 508A application, the council must include details in its submission.

Where a council already has approved minimum ordinary rates that are in excess of the statutory limit, they are permitted to increase the minimum amounts by the rate-peg percent. This provision does not apply to minimum amounts on special rates.

Note:

Any information forwarded to the Department may be provided to external parties as part of a request under the *Freedom of Information Act 1989*. Councils should therefore ensure that they only provide information that is necessary and relevant to their application.



Ross Woodward
Acting Director General