



Office of  
Local Government

# **GUIDELINES FOR THE PREPARATION OF AN APPLICATION TO INCREASE MINIMUM RATES ABOVE THE STATUTORY LIMIT**



**November 2017**

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**978-1-922001-67-2**

Produced by the Office of Local Government



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## 1. Introduction

Section 548 of the *Local Government Act 1993* allows a council to specify a minimum amount of a rate to be levied on each parcel of land. If a council makes an ordinary rate for different categories or sub-categories of land, it may specify a different minimum amount for each category or sub-category.

If a council resolves to adopt a minimum amount of a rate, the minimum amount must not exceed the relevant permissible limits provided for in section 548(3) of the Act and clause 126 of the *Local Government (General) Regulation 2005* (Regulation), unless Ministerial approval for a higher amount has been granted.

The Independent Pricing and Regulatory Tribunal (IPART) will assess and determine applications by councils to set minimum rates above the statutory limit under powers delegated by the Minister for Local Government.<sup>1</sup>

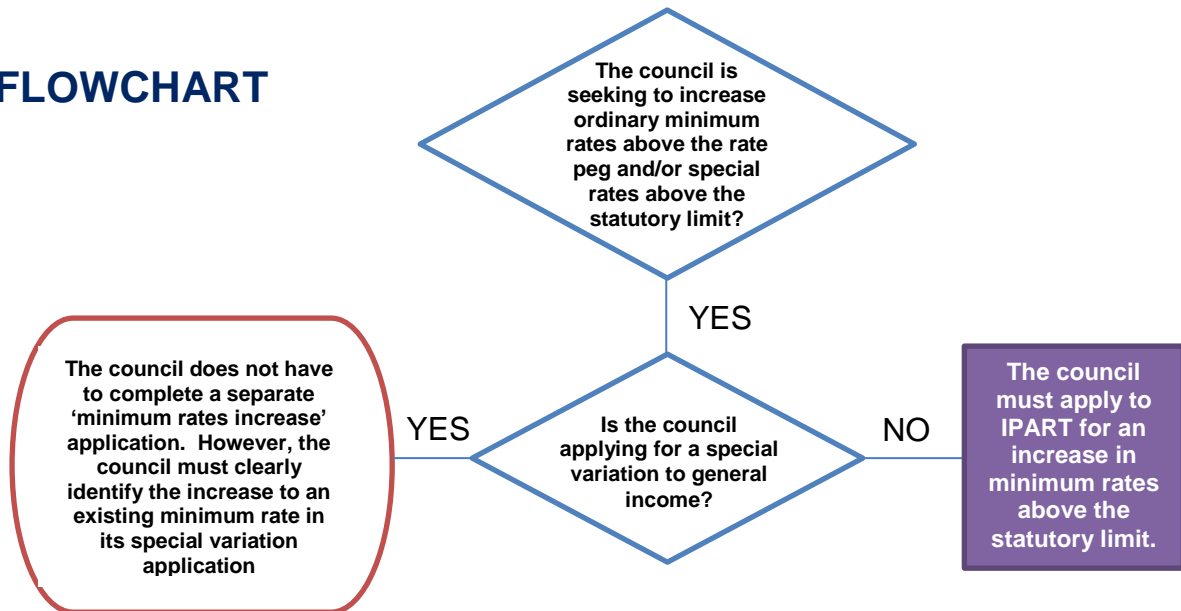
Any council considering applying to increase its minimum rates above the statutory limit must review these guidelines in the first instance. Additional information regarding minimum rates can be found in Attachment 1.

Where a council is submitting a special variation application and wishes to also increase its minimum rates by more than the special variation percentage, or above the statutory limit for minimum rates, it is not necessary to submit a separate application for its proposed minimum rates increase. However, it must clearly address the minimum rate increase in the special variation application. Otherwise, if a council is seeking to introduce a new minimum rate, or increase an existing minimum rate above the statutory limit, a minimum rate application will need to be submitted to IPART for approval.

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<sup>1</sup> 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.

## FLOWCHART



### 1.1 Minimum rates and the principles of rating

While it is a matter for councils to determine their rating structure, including the level of any minimum rates, councils are generally encouraged to ensure that no more than 50% of ratepayers within each respective category or sub-category would pay the minimum rate.

### 1.2 Minimum rates/special variation applications

Where a council applies for a special variation that will result in an existing minimum rate exceeding the statutory limit, and that application is approved, the percentage increase in general income will automatically apply to the minimum ordinary rate.

Councils making a special variation application are generally encouraged to apply the same percentage increase to minimum rates and general income, and maintain the same relative distribution of the rating burden between minimum and other ratepayers that was levied in the previous year. However, in some circumstances, it may be necessary for the council to apply a lower percentage increase to minimum rates than the requested increase in general income.

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

In such circumstances, councils are encouraged to contact IPART to discuss the most appropriate approach.

### 1.3 Minimum special rates

A council must obtain approval on every occasion that it wishes to increase the minimum amount on special rates (above the statutory limit of \$2). This applies even if the increase is by the rate peg percentage or if the council is seeking a special variation increase of the same amount.

## 2. Process for increasing minimum rates above the statutory limit

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 without increasing its general income above the rate peg limit, or
- it is seeking to increase its special rates above the statutory limit.



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

### 2.1 Application forms

In preparing the minimum rates application, councils should note that there are two separate parts to the application: Part A, which is a Microsoft Excel form that gathers data on the minimum amounts proposed; and Part B, which is a Microsoft Word form to explain how the application meets the assessment criteria.

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>

A signed copy of the certification and any supporting documentation must be in electronic format and submitted online with the application. Supporting documentation should be limited to extracts of the relevant publications, rather than full publica



*Any inquiries regarding the application process should be directed to IPART via phone 02 9290 8400 or email [localgovernment@ipart.nsw.gov.au](mailto:localgovernment@ipart.nsw.gov.au)*

## 2.2 Application timetable

Date	Outcome
15 December 2017	Notifications for Special Variation or Minimum Rate Variation applications due to IPART.
12 February 2018	Special Variation applications due to IPART.
12 March 2018	Minimum Rate Variation applications due to IPART.
15 May 2018	Determinations announced for Special Variations and Minimum Rate Variations

The above timetable applies to Special Variation and Minimum Rate Variation applications for 2017-18. In future years this timetable will not be included in the Guidelines, instead it will be communicated in a circular to councils published on the OLG and IPART websites:

- <http://www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/directory-of-policy-advice/rating-and-special-variations>
- <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Special-Variations>

Councils seeking to apply for a Special Variation or Minimum Rate Variation should notify IPART as soon as possible of their intention to apply. 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.

## 2.3 Assessment criteria



***New councils (except for Mid-Coast Council) are not permitted to apply for a special or minimum rate variation until at least the 2020/21 rating year.***

IPART will assess applications for minimum rates above the statutory limit against the following set of criteria (in addition to any other matters which IPART considers relevant):

1. the rationale for increasing minimum rates above the statutory amount,
2. the impact on ratepayers, including the level of the proposed minimum rates and the number and proportion of ratepayers that will be on the minimum rates, by rating category or sub-category, and
3. the consultation the council has undertaken to obtain the community's views on the proposal.

It is the council's responsibility to provide enough evidence in its application to justify the minimum rates increase. Where applicable, councils should make reference to the relevant parts of their Integrated Planning and Reporting documentation to demonstrate how the criteria have been met.



*Councils are encouraged to discuss their applications with IPART if they are unsure about the level of supporting information to provide and/or the level of consultation they need to undertake regarding their proposal.*

### **Tribunal decision-making**

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

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 based on its merits.

IPART will publish on its website a statement of reasons for its decision to approve, either in part or in full, or to decline an application. Councils will also be notified in a letter from IPART regarding the outcome of their 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 minimum rate variation is accepted, partially accepted or declined. This decision is final and IPART will not reassess an application after it has made its decision.*



## **Attachment 1 - Minimum rate framework**

### **What are minimum rates?**

A rate - whether ordinary or special - may, at a council's discretion, consist of:

- a wholly ad valorem amount (i.e. based wholly on land value),
- an ad valorem amount that is subject to a minimum amount, or
- a base amount and an ad valorem amount.

With base amounts, every assessment starts off with the same level of rate, to which an ad valorem component is added.

Under a structure with minimum rates, the ad valorem amount is calculated and then compared with the minimum amount, and the ratepayer is charged the greater amount.

Where a council adopts a minimum rate for a particular category or sub-category, all ratepayers within that category or sub-category will pay at least that minimum amount regardless of their land value. Therefore, in most cases the use of minimum rates will impact ratepayers with relatively lower land values.

### **Ordinary rate minimums**

Under section 548(3)(a) of the Act the minimum amount of an ordinary rate cannot exceed the statutory limit set in the Regulation (clause 126) unless such a greater amount is determined by the Minister. The Minister has delegated this authority to IPART.

Clause 126 is amended each year to increase the statutory limit by the rate peg increase for that year. This amendment ensures that councils can maintain the relative rating burden between those paying the minimum amount and other ratepayers.

Councils are advised, at the time the annual rate peg is announced, what the minimum amount will be for the forthcoming year.

A council must apply for a minimum rate increase if the effect of increasing a minimum rate causes the minimum to exceed the statutory limit. Councils do not have to apply for a minimum rate increase when they are also applying for an increase under section 508(2) or section 508A i.e. Special Variation.

Where a council has previously been granted approval to increase its ordinary minimum rates above the statutory limit, it may increase those minimum amounts by the rate peg percentage or special variation percentage for that council, in subsequent years without the need for further Ministerial approval (as delegated to IPART).

### **Special rate minimums**

Under section 495(1) of the Act, a council may make a special rate for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of the council's area, other than domestic waste management services.

Under section 495, a council could, for example, make and levy:

- different special rates for different kinds of works, services, facilities or activities, or
- different special rates for the same kind of work, service, facility or activity in different parts of its area.

The amount of a special rate is determined according to the council's assessment of the relationship between the cost or estimated cost of the work, service, facility or activity and the degree of benefit afforded to the ratepayer by providing or undertaking the work, service, facility or activity.

A special rate imposed under section 495 (excepting water supply special rates and sewerage special rates) forms part of a council's total general income and, together with ordinary rates, is subject to the rate peg limit. The structure of a special rate is similar to that of an ordinary rate, in that it can consist wholly of an ad valorem amount, a base amount plus an ad valorem amount, or an ad valorem amount with a minimum rate applying.

Section 548(3)(b) of the Act specifies that the minimum amount of any rate other than an ordinary rate (not being a water supply special rate or a sewerage special rate) may not exceed \$2, unless Ministerial approval (as delegated to IPART) for a higher amount has been granted.

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.



***New councils (except for Mid-Coast Council) are not permitted to apply for a special or minimum rate variation until at least the 2020/21 rating year***

### **Minimum rates and the principles of rating**

Local government rates are a form of taxation. Unlike a charge, there is no direct requirement for a council to return a specific level of service to an individual ratepayer commensurate with the level of rates paid. Rather they are a means for raising general income.

While the Act does not specify that council rates must be levied in a way that is “fair” and “equitable”, one of the accepted principles of taxation is that taxpayers should contribute according to their capacity to pay. The use of land values as a basis for determining rates reflects the view that land values provide a reasonable proxy for “capacity to pay”.

This capacity to pay principle should be balanced, however, with the “benefit principle” – that is, those who receive the greatest benefit from the provision of council services should pay a greater share.

Ultimately it is a matter for councils to develop a rating structure that is perceived by their community as “fair” and “equitable”. The Act allows councils to structure their rates (through ad valorem, base amount and minimums) in such a way as to achieve an appropriate balance. However, there are limits on the extent to which councils can move away from an ad valorem rating system. For base amounts, the Act specifies that the base amount is limited to contributing 50% of the total income from a category or sub-category.

For minimum amounts, there is no such legislative restriction. However, there is case law that councils must bear in mind. In *Sutton v Blue Mountains CC (1977) 40 LGRA 51*, the Court found that the overriding characteristic of local government rating is that the assessments that are produced will be primarily and predominantly determined via the ad valorem method whereby the incidence of any rate burden is split differentially according to the value of rateable property.

In *Sutton*, it was held that rates levied by the council were invalid if, in most cases, the minimum rate paid by a ratepayer was greater than that which would otherwise have been payable had the rate been calculated on an ad valorem basis.

The percentage of ratepayers in Sutton paying the relevant minimum rates ranged from 76.2% to 97.1%. The Court did not give any specific indication of what would be an acceptable "cut-off" point. However, it did find that the minimum rate which the council had determined was intended by the council to be "the rule rather than the exception".