

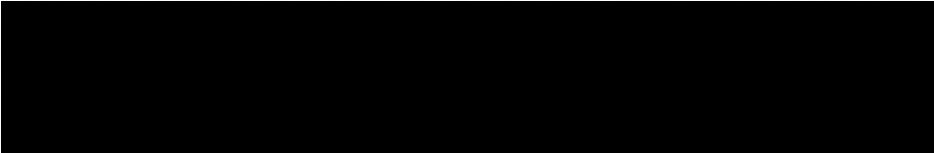
12 March 2018

Local Government Team
Independent Pricing and Regulatory Tribunal of NSW
PO Box K35
Haymarket Post Shop, NSW 1240

Also by email: localgovernment@ipart.nsw.gov.au

Dear Tribunal Members,

Local Government - Randwick City Council - Application for a Special Rate Variation - NSW Ports' submission

1. We refer to the application by Randwick City Council (**Council**) under s.508A of the *Local Government Act 1993* lodged with the Independent Pricing and Regulatory Tribunal of NSW (**IPART**) on 16 February 2018 (**Application**).
 2. NSW Ports respectfully opposes the Application on the sixteen (16) grounds identified below.
 3. In short, these grounds objectively demonstrate that the Application fails to meet the substantive requirements of certain aspects of the assessment criteria under the Office of Local Government (**OLG**) Capital Expenditure Guidelines, as outlined in OLG Circular 10-34 and the Guidelines for the Preparation of an Application for a Special Variation to General Income, published November 2017 (**Guidelines**).
 4. As a result, NSW Ports submits that IPART should approach the assessment of the Application with caution and carefully consider and weigh these grounds in reaching its determination.
 5. First, we note that the Application was lodged out of time and as such should not be considered by IPART.
 6. Second, it is clear from the Application (including the supporting materials), that the Council is financially strong and the community is happy with the current level of services. NSW Ports understands that the special rate variation (**SRV**) is sought so that Council can fund a long list of new major projects; implement an ambitious digital strategy and anti-terrorism measures, all of which will be completed within the relatively short timeframe of 7 years.
 7. The Application highlights that the Council has intentionally bolstered its position by providing additional justification for the proposed SRV, which was not explained to the community as part of the mandated consultation process. For example, the additional justification includes:
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8. A "...development agreement with Transport for NSW which resulted in Council committing \$36 million to a Light Rail Support Plan" – NSW Ports wishes to make IPART aware that the Council claims that its previously successful funding strategies have been "hugely impacted" by the light rail system. If this statement was accurate, it is difficult to comprehend that no reference was made by the Council of this fact in the consultation documents.
9. Of more concern to IPART should be the fact that Council's 10 year Long Term Financial Plan only includes a total of \$11.15 million for the Light Rail Support Plan, not the \$36 million referred to in the Application. These discrepancies raise serious concerns about the accuracy of Council's Application.
10. "Significant expenditure incurred by Council over the past 2 years preparing for the now aborted merger with Waverly and Woollahra Municipal Councils." – After careful review of the consultation material, there is no evidence that this issue was raised and as such should not be advanced to garner favourable support for its Application.
11. Third, NSW Ports makes the observation that the Council has operated under a SRV for eight (8) of the past ten (10) financial years, and that the only reason why it did not seek a SRV this past financial year is because it was prevented from doing so while the proposed council merger was on foot.
12. The statutory limit on rate income increases has a legitimate purpose. Special variations to this, particularly significant variations that remain permanently in the rate base, should be the exception, and not the norm. In Council's case, they are becoming the norm and, as such, IPART should take this into account in its determination.
13. NSW Ports contends that the Council is overly reliant on rate income for the funding of community infrastructure and it does not, and is not proposing to, make proper use of other funding options.
14. This is demonstrated by examining the history of the Council's over reliance on SRVs, which is discussed below in further detail (and at paragraphs 83 to 92).
15. For example, NSW Ports notes that in 2010, the Minister for Local Government approved a three (3) year SRV in order to provide funding for the *Buildings for our Community Program*, which was a seven (7) year building capital, upgrade and replacement program. One of the reasons provided for the SRV the subject of this Application, is that 21 incomplete projects, which have existing funding under the current *Buildings for our Community Program*, need additional funding because the scope or priority of the projects has materially changed.
16. Despite this statement, the Application is devoid of any material information, which would satisfy IPART as to how the scope has changed or what quantum of additional funding is required to complete these projects.
17. NSW Ports notes that in 2013, IPART approved a four (4) year SRV, with the cumulative increase remaining permanently in the rate base. While the 2013 SRV was relatively modest, it was replaced by a higher variation in 2014.

18. Regarding each of the SRV determined above, the Council has not demonstrated compliance with the conditions attached to the approved SRV as mandated by IPART in its determinations.

Council's failure to consider other sources of funding

19. Fourth, is the Council's failure to consider other sources of funding and accordingly, IPART would not be satisfied that Council meets the criteria under the Guidelines.
20. For example, in the 2013 application, Council conceded that it was "highly dependent on rate revenue" and explained that the SRV was needed in order to "secure funding for the programs, services, and management of community assets as outlined in the *Delivery Program 2013-17*." In 2013, rates and annual charges represented approximately 74% of Council's total operating revenue.
21. Today, that figure is largely unchanged, at approximately 75% and a full 50% of Council's total operating revenue is from rates alone (refer Council's Long Term Financial Plan).
22. Against this background, it is important for IPART to note that there are other potential sources of funding for many of the new major projects, which on the face of the Application, were not considered or, at best, do not appear to have been adequately explored by Council.
23. Although the Application refers, in passing, to s.94 Developer Contributions (now legislated under s.7.11 of the *Environmental Planning and Assessment Act 1979*) as a potential source of funds, this is not examined in any detail as a potential source of revenue. Moreover, the Application refers to s.94 Contributions being 'capped', presumably as a reason why Council does not consider this an adequate source of funding. The Council has erred in this statement due to the fact that the 'cap' was removed on 1 June 2017. Council is able to charge more than \$20,000 per residential lot, subject to IPART approval of its s.94 Contributions Plan, yet this has not been explored or properly considered by Council.
24. IPART should note that Council does not have an LGA-wide s.94 Plan and has instead limited itself to collection of s.94A Contributions of only 0.5-1% of the cost of development.
25. The use of s.94A Contributions to the exclusion of s.94 Contributions constrains Council's ability to fund community infrastructure through developer contributions, as much higher contributions are generally able to be collected under s.94.
26. A charge per residential unit, even if that charge is capped at \$20,000, will usually yield a higher contribution payment than a 1% levy on the cost of the construction works.
27. IPART will recognise the significance of this fact; given that many of the new major works and *Buildings for our Community Program* would fall within the "essential works list" relevant to IPART's approval of higher development contributions.
28. It is also significant to note the effect of the Anzac Parade Priority/Planned Precinct, which is likely to result in the rezoning of land along the new light rail corridor for higher residential densities. IPART can take notice of the fact that Council would (if it so decided) be able to raise significant funds for community infrastructure through s.94 Developer

Contributions, if it were to make a new s.94 Contributions Plan and seek approval from IPART for contributions greater than \$20,000 per residential lot.

29. To be clear, even if Council did not seek approval for such contributions over \$20,000, it is likely to raise substantially more funds through the use of s.94 Developer Contributions, as opposed to s.94A Contributions.
30. It is not clear whether Council has considered the possibility of taking on greater debt levels.
31. Fifth, the Digital Strategy apparently involves elements of Smart City technology. We note that Federal funding of between \$100,000 to \$5 million is available for smart city projects, and Council states that it has applied for such funding, but has not provided details of the project for which funding is sought or the level of funding sought.
32. It is not clear whether the SRV funds proposed to be allocated to this purpose have taken into account potential Federal funding or not. Accordingly, due to this uncertainty, IPART would not be satisfied that there is sufficient evidence on which to determine this aspect of the Application.
33. Sixth, two of the new major works items relate to the repair and restoration of heritage fabric on buildings recently handed back from the State to Council. We note that grants are available from the State government for such works, but do not appear to have been considered or explored by Council. Accordingly, due to this uncertainty, IPART would not be satisfied that there is sufficient evidence on which to determine this aspect of the Application.
34. Seventh, in regards to the anti-terrorism measures, Council has expressed an intention to seek federal funding toward these costs, although the current SRV proposes to fully fund these measures through rate increases. Once again, due to this uncertainty, IPART would not be satisfied that there is sufficient evidence on which to determine this aspect of the Application.

Council's current financial position

35. Eighth, Council is currently in a very strong financial position. Council, as assessed by New South Wales Treasury Corporation (**TCorp**) in May 2014, is in a "sound" financial position with the outlook for the future being "positive" with the potential of reaching "strong" in a few years. Council is now of the view that it would be rated as "strong" if assessed again by TCorp today.
36. As of 30 June 2017, Council had:
 - (a) retained earnings of \$801 million;
 - (b) no debt;
 - (c) cash and cash equivalents of \$81.8 million.
37. NSW Ports notes that Council is expecting to achieve net operating surpluses of between \$9 - \$11 million each year for the next 10 years based on Council's operating surplus of

\$9.9 million in the last financial year and in its income statement for Option 3 under its Long Term Financial Plan 2018-28.

38. NSW Ports has been unable to discern from Council's previous financial statements or the Long Term Financial Plan 2018-28, what use Council makes or proposes to make of its retained earnings. Because Council has been debt-free since 2001 and has been operating at surplus throughout most, if not all, of that period, it is reasonable to expect that it has accumulated surpluses available, which is consistent with the cash and cash equivalents figure from its most recent annual report.
39. While we have not been able to discern Council's current infrastructure backlog from the Application, we note that Council itself concedes that its infrastructure backlog is relatively low compared to other councils.
40. In these circumstances, where Council has been operating at a surplus over a number of years, while being debt free, it is hard to understand why there are apparently insufficient funds available to complete already committed major projects under the Buildings for Our Community Program. No explanation has been provided in relation to what the surpluses have been used for, and no consideration appears to have been given to utilising cash and cash equivalents (presumably held as a result of accumulated surpluses) as a funding mechanism for the projects for which funding is sought by the SRV.

Significant uncertainty regarding Council's proposed major works

41. Ninth, while anti-terrorism measures should obviously be a priority, which will apparently only require \$4 million of funds, the other new major projects are not of such high priority.
42. In particular, we note that the digital strategy appears to relate to the transition of Randwick into a "smart city", including things such as the use of sensor technology on public rubbish bins to alert Council staff when a bin is full and needs to be emptied. Although it is admirable that Council is ambitious and making plans to bring the local area into the future and make it a leader in NSW in this regard, this strategy is costly and far from essential. The community will not expect this type of advanced technology within the next 7 years and it is an indulgence rather than a necessity.
43. Tenth, the level of community support for the major projects is also mixed, and the community was informed of the estimated costs of each major project. Of the six (6) major projects that community support was specifically gauged for via the Community Feedback Form, three (3) of them achieved a mean rating of less than 3, when asked to rate the project in terms of priority on a scale of 1 to 5, with 1 being low priority and 5 being high priority, clearly suggesting they are of low to medium priority.
44. Eleventh, NSW Ports has scrutinised the Application and has been unable to determine the estimated cost of most of the major projects referred to in Council's consultation materials. Accordingly, due to this uncertainty, IPART would not be satisfied that there is sufficient evidence on which to determine this aspect of the Application. For example:
 - (a) *Anti-terrorism measures*: Council appears to have allocated \$4 million in funds for these works.

- (b) *Women's Refuge Centre*: NSW Ports cannot ascertain from the Application or the consultation materials the estimated cost associated with this item.
 - (c) *Undergrounding power lines*: NSW Ports cannot ascertain from the Application or the consultation materials the estimated cost associated with this item.
 - (d) *Arts and Cultural Centre*: It is unclear if the SRV will fund this as a project, as the consultation materials simply disclose an intention to "explore options for an arts and cultural centre". Accordingly, we cannot ascertain the estimated cost associated with this item.
 - (e) *Randwick Literary Institute*: We cannot ascertain from the Application or the consultation materials the estimated cost associated with this item.
 - (f) *New Customer Service location and offices*: It is unclear if the SRV will fund this as a project, as the Application and consultation materials simply disclose an intention to investigate the creation of a new major customer service centre and repair and upgrade works to the existing offices in Randwick. An amount of \$8 million appears to be allocated to the repair and upgrade works under the heading "Administration Building Renewal".
 - (g) *Indoor sports and gymnastics centre at Heffron Park*: The Long Term Financial Plan allocates \$22 million of works to Heffron Park in 2019. It is not clear how much of this \$22 million is already funded, and how much is proposed to be funded by the SRV.
 - (h) *Digital Strategy*: Part A of the Application suggests that \$7.1 million will be allocated to the digital strategy, and we note that the Long Term Financial Plan allocates \$12 million to something called "IT strategy".
45. Twelfth, other major projects referred to, without any real detail; include new public plazas in Randwick and Kingsford town centres, Randwick Environment Park upgrade, and increasing accessibility by building footpaths on both sides of the road in priority areas.
46. Part A of the Application also suggests that \$33.2 million of the additional funds raised from the SRV will be used for major capital projects over the next 10 years. The lack of detail in relation to the costs of each new proposed major project is significant and should be of significant concern to IPART as it assesses the Application.
47. NSW Ports, respectfully reminds IPART that any project exceeding \$6.75 million (10% of the revenue received from ordinary rates in 2017) is subject to the Department of Local Government Capital Expenditure Guidelines.
48. Although an expenditure review in relation to the Heffron Centre was apparently submitted to the Office of Local Government on 7 February 2018, it does not appear that any expenditure review has been carried out in relation to any other major project.
49. NSW Ports is concerned about the lack of transparency and accountability in relation to both the currently funded major projects (which were already the subject of an earlier SRV) that apparently require additional funds, as well as the new major projects that are now proposed by Council.

Proposed Port Botany subcategory – failure of Council to consult and assess impact on Port Botany ratepayers

50. Thirteenth, although the Application notes that Port Botany was identified as a key stakeholder for which a specific community engagement approach was adopted, the Port was in fact not notified of the proposed SRV and sub-category introduction until the letter dated 19 January 2018 (received 21 January 2018), some 7 weeks after consultation commenced.
51. As a result, Port Botany ratepayers only had approximately one (1) week to consider the proposal and make a submission.
52. This highlights a fundamental failure by the Council to consult.
53. This failure is amplified by Council's acknowledgement in its Application that "the increase for Port Botany ratepayers is significant".
54. NSW Ports and Port Botany ratepayers are extremely disappointed with the level of consultation that occurred and submits that the Council's failure is of such significance that IPART would find that the Council has failed to satisfy the relevant criteria under the Guidelines.
55. NSW Ports respectfully submits that no genuine attempt was made by Council to consult and assess the impact on these affected ratepayers. We note that the Guidelines require that impact must be reasonable, having regard to both the current rate levels, existing ratepayer base and the proposed purpose of the variation.
56. There is no evidence in the Application that satisfies these criteria.
57. Rather, we note that Council relies heavily on the fact that Bayside Council already has a subcategory for Port Botany and charges rates equivalent to the rates that Council now proposes to charge, as justification for its proposed treatment of the Port Botany.
58. This statement of fact by the Council is inaccurate.
59. Although Bayside Council does have this sub-categorisation, the rate increase proposed by Council is not consistent with the Bayside Council rates over the next three (3) years.
60. Table 1 below helpfully summarises the proposed rates increases for the tenanted land at Port Botany.

Table 1.

Council	Council Rates FY18 \$ / sqm	Council Rates FY19 \$ / sqm	Increase FY18-19 %	Council Rates FY20 \$ / sqm	Increase FY19-20 %	Council Rates FY21 \$ / sqm	Increase FY20-21 %	Total Increase FY18-FY21 \$	Total Increase FY18-FY21 %
Randwick	2.10	3.45	64.38%	3.64	5.52%	3.84	5.52%	\$2,090,372	83.03%
Bayside	2.31	2.47	6.99%	2.53	2.61%	2.60	2.58%	\$325,849	12.61%

Please note: The rate increases for Bayside Council are calculated based on historical increases for that LGA and in the context of rate restrictions for four years for amalgamated councils in NSW.

61. Further to the above summary, the three (3) maps attached to **Annexure A** and marked Attachments 1, 2 and 3 respectively provide additional support for this proportion.
62. **Attachment 1** shows the industrially zoned land (i.e. SP1, IN1, and IN2) within the context of the southern portion of the Randwick LGA (LGA boundary shown in red).
63. **Attachment 2** indicates the port land that is leased by NSW Ports within Bayside and Randwick council areas. It is the tenanted areas within these holdings that are used to calculate the rates as summarised above (i.e. common user areas such as roads and pipeline corridors are not included in these figures).
64. **Attachment 3** is a comparison of future Council rates on a square metre basis within the Randwick Council area SP1 zoned land, which is the subject of the 83.03% rate increase (which in monetary terms is equivalent to \$2.1 million), as compared to surrounding IN1&IN2 zoned land within the Randwick Council area, which is not subject to that rate increase.
65. Attachment 2 also provides a comparison of future Council rates on SPI1 sites within the Bayside Council area. The analysis within Attachment 3 indicates that for comparable sites (i.e. stevedoring terminals and industrial sites of similar size etc.), the proposed rate increase by Randwick Council for Port Botany SP1 zone is disproportionately high when compared with both the Bayside LGA SP1 zone and similar industrial properties (IN1 & IN2 zones) within the Randwick LGA.
66. In its letter to Port Botany owners notifying them of the proposed introduction of the sub-category, Council seeks to justify the proposal as a means:
- (a) To distinguish the unique activities of the Port from surrounding land uses, and
 - (b) To acknowledge the impacts these activities have on council infrastructure and community amenity, including increased heavy traffic on local roads.
67. NSW Ports note that, on page 57 of the *Randwick City 20 Year Plan*, Council confirms that a significant proportion of the industries located in the industrially zoned land adjacent to the Port service the Port.
68. This is significant for two (2) reasons:
- (a) because it confirms that the Port serves an important employment generating function within the LGA; and
 - (b) because it confirms that the Port related “centre of activity” extends beyond the Port land and into the adjacent industrial lands, which will not be included in the proposed subcategory.
69. **Attachment 4** depicts the local road network around Port Botany used by port vehicles including roads for which the Roads and Maritime Services is responsible for the funding and maintenance (State Roads – shown in green) and Council maintained roads (shown in blue).

70. Also shown in Attachment 4, are the areas to which truck restrictions apply within the Randwick Council LGA.
71. The traffic volumes shown in Attachment 4 are from NSW Ports' recent investigations. It should be noted that 'HCVs' (heavy commercial vehicles) include buses and some 480 buses leave from and arrive at the bus depot on Bumborah Point Road on a typical weekday.
72. A portion of HCVs heading towards Bunnerong Road, east of Bumborah Point Road, would be attributable to this fact.
73. Attachment 4 also indicates that a very low proportion of trucks going to and from Port Botany would adversely impact the roads for which Council is responsible.
74. The vast majority of heavy commercial vehicles leave the Port precinct in a westbound direction along the State Road network to the Sydney Motorway network.
75. Further, containers are usually destined for industrial warehousing uses and as per Attachment 1, there are no industrially zoned lands in Randwick LGA beyond the immediate precinct. Truck restrictions are in place on the majority of local roads and therefore the impact of trucks on the council infrastructure is minimal.
76. Accordingly, by reason of the above, IPART would not be satisfied that the Council has met the required criteria under the Guidelines, namely, that it has discharged its obligation to consult all aspects of the community and genuinely assess the impact on Port Botany ratepayers, which as a group, are impacted more than any other ratepayer.

Council's non-adherence to the objective of rate pegging

77. Fourteenth, given Council's current financial position, its failure to properly consider other sources of funding and the significant uncertainty regarding the proposed major works, NSW Ports contends that IPART should approach its assessment of the Application in line with the recommendations of IPART's published *Revenue Framework for Local Government Final Report December 2009 (Report)*.
78. As you would be aware, IPART considered the purpose and continued validity of rate pegging in NSW in its Report.
79. In summary, NSW Ports notes that IPART expressed the view that the regulation of rates revenue in NSW continues to be desirable to protect consumers from excessive increases in rates.
80. Moreover, the reforms to the rate revenue process that, was recommended by the Report and subsequently implemented, focussed on improving councils' accountability to the community.
81. One of the objectives was to increase the standard of information provided to the community in terms of accessibility and meaningfulness.
82. Council, by failing to provide any meaningful explanation of:

- (a) the costs of the proposed major projects for which the SRV is proposed to fund, or
- (b) why the currently funded projects require additional funding, and how much funding, fails this important accountability objective.

Analysis of Council's excessive dependence on rate income

- 83. Fifteenth, the *Department of Local Government Council Rating and Revenue Raising Manual 2007* suggests that, as at the date of that publication, rates and annual charges accounted for only 48% of NSW local council revenue. This figure of 48% was relatively consistent over the 10 year period 1997 – 2006, as set out in IPART's *Revenue Framework Local Government Issues Paper July 2008* (refer Table 4.3).
- 84. The April 2017 Australian Bureau of Statistics publication *General Finance Statistics Australia 2015-16, Cat No. 5512.0*, at table 331, provides 10 years of revenue data for all NSW local councils (**ABS data**).
- 85. Over the last ten (10) years of ABS data, from 2006 to 2015, the total proportion of all revenue raised by rates annually by local councils in NSW has remained relatively steady at between 31% and 35% of total revenue.
- 86. Keeping in mind that these taxes also include special rates and levies, it is clear that Council, whose ordinary rate income alone accounts for 50% of its revenue, is much more dependent on rate income than the vast majority of other local councils in NSW.
- 87. While metropolitan councils tend to raise a higher proportion of revenue from rates and annual charges than regional and rural councils do, the available data again confirms that the proportion of income raised from rates and annual charges by Council significantly exceeds that of its metropolitan peers.
- 88. IPART's *Revenue Framework Local Government Issues Paper July 2008* contains the data extracted below (**Table 2**), which confirms that the average proportion of revenue from rates and annual charges amongst metropolitan councils in 2006/07 was 60.6%.
- 89. Given the relatively steady figures for rate revenue across NSW over the past 10 years (explained above), it can be reasonably assumed that this 60.6% figure is representative of current figures as well.
- 90. At 75% of income from rates and charges (essentially unchanged from the 2013 figure of 74%), it can be seen that Council is far more dependent on rate income than its metropolitan peers are.

Table 2.

Table 4.2 Composition of local government revenue by council category, 2006/07 (%)

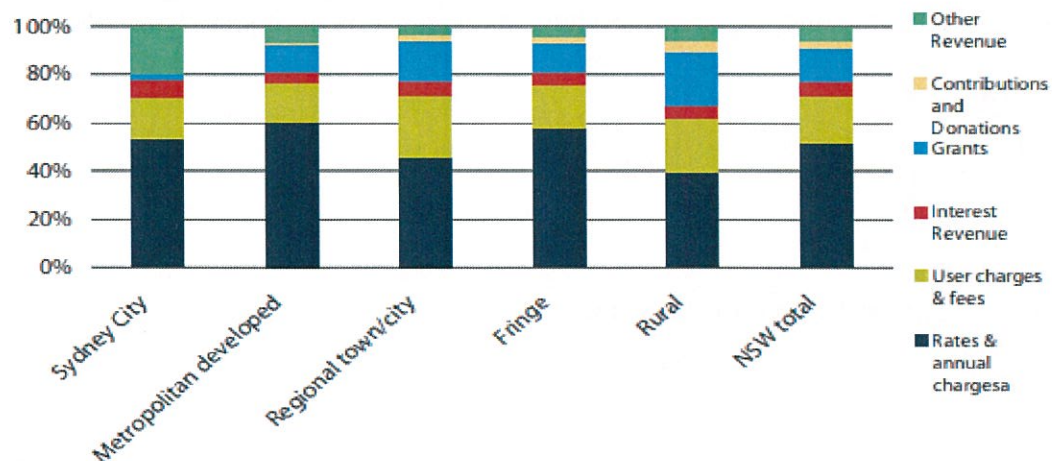
Classification	Rates & annual charges ^a	User charges & fees	Interest Revenue	Grants	Contributions and Donations	Other Revenue ^b
Sydney City	53.2	17.2	7.1	2.3	0.5	19.7
Metropolitan developed	60.6	15.6	5.1	10.8	1.3	6.5
Regional town/city	45.5	25.4	6.4	16.2	3.0	3.5
Fringe	58.2	17.1	5.6	12.1	2.6	4.4
Rural	39.9	21.9	5.5	22.4	4.5	5.8
NSW total	51.4	19.9	5.8	14.4	2.6	6.0

^a Excludes water, sewerage and drainage.

^b Includes fines, external works, and business activities.

Note: Total may not add due to rounding.

Source: DLG, unpublished data.

Figure 4.1 NSW Local government revenue distribution 2006/07

Note: Rates and annual charges excludes water, sewerage and drainage.

Data source: DLG, unpublished information.

91. NSW Ports note that *The Department of Local Government Council Rating and Revenue Raising Manual 2007* states, at page 73:

'Generally, an application to exceed the rate pegging limit under section 508A will only be considered where, following an exhaustive examination of alternative funding options, the additional income is deemed necessary to implement these essential and strategically significant initiatives.'

92. NSW Ports submits that there has clearly been no exhaustive examination by Council of alternative funding options, despite there being both clear evidence and an express acknowledgement from Council that it is overly reliant on rate income.

Other considerations

93. Sixteenth, Council's questionnaire, *Community Survey – Special Rate Variation*, was clearly designed to be aimed at only residential rate payers and not any other category. The questionnaire clearly demonstrates this fact and omits the fact that the overwhelming impact of the preferred option will fall to rate payers within the proposed subcategory of Port Botany. This is all the more salient when you consider that the proposed rate increase for Port Botany SP1 zone within the Randwick Council LGA is disproportionately high when compared with both the Bayside Council LGA and similar industrial zoned properties within the Randwick Council LGA.

94. As such, the survey results should be qualified by this fact. Moreover, the sample size was not large enough to qualify as a representative sample.

For the reasons set out above, NSW Ports does not support the exorbitant rate variation proposed by Council for the grounds explained above and, in particular, it does not support the introduction of a new rating sub-category charged at a higher rate for the Port Botany land.

NSW Ports does not consider that this submission should be treated as confidential and therefore does not object to this submission being made publicly available by IPART.

Please contact the undersigned if you have any questions or require clarification.

Yours sincerely



Julian Sefton
General Counsel & Company Secretary
NSW Ports

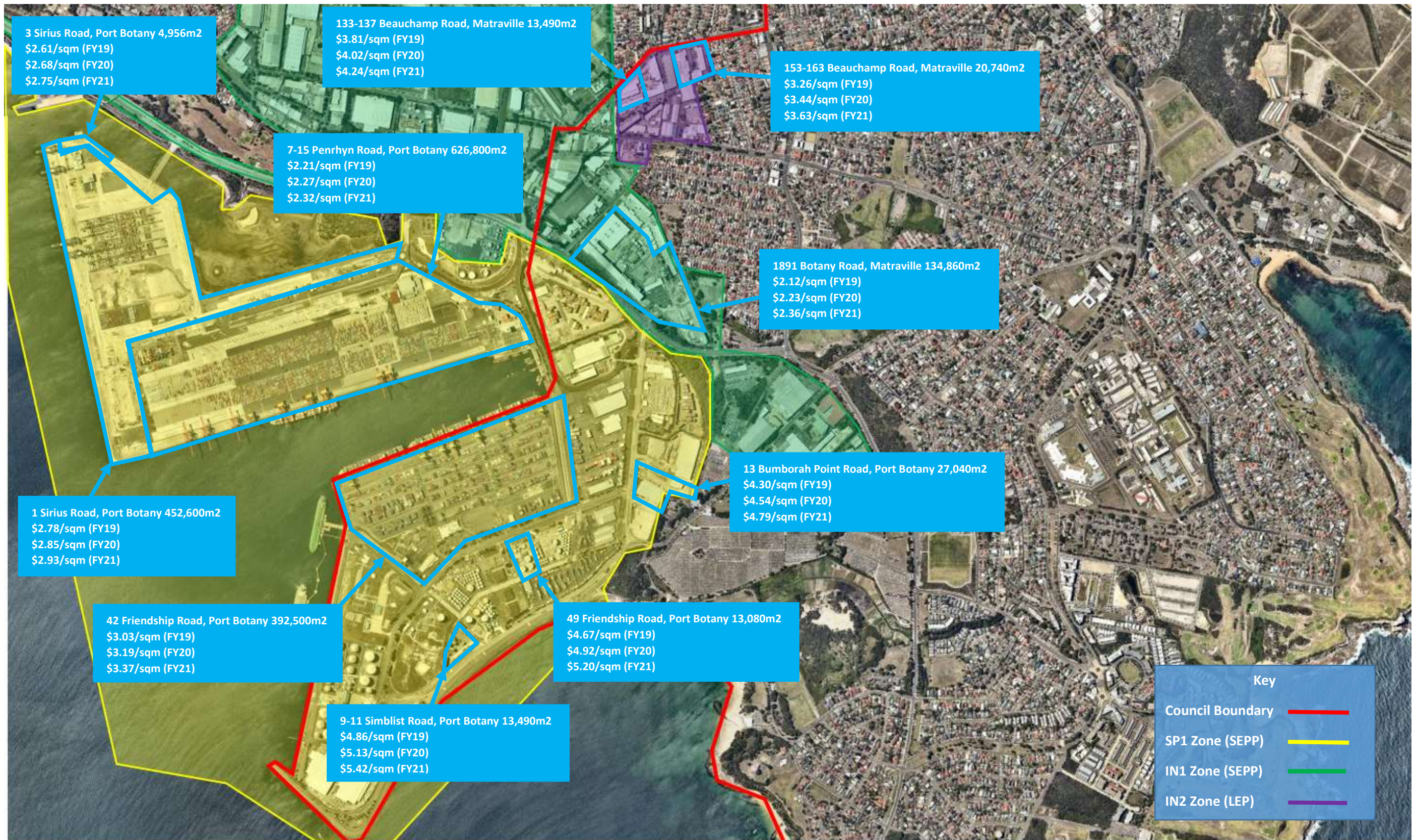
Annexure A – Attachment 1



Annexure A – Attachment 2



Annexure A – Attachment 3



Annexure A – Attachment 4

