



Independent Pricing and Regulatory Tribunal

# **Shoalhaven City Council's application for a special variation for 2015-16**

under section 508(2) of *Local Government Act 1993*

**Local Government — Determination**  
May 2015





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Ms Catherine Jones

Mr Ed Willett

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# 1 Determination

The Independent Pricing and Regulatory Tribunal of NSW (IPART) is responsible for setting the amount by which councils may increase their general income, which mainly comprises rates income. Each year, we determine a standard increase that applies to all NSW councils, based on our assessment of the annual change in their costs and other factors. This increase is known as the rate peg.

Under the *Local Government Act 1993* (the Act) councils may apply to us for a special variation that allows them to increase their general income by more than the rate peg. These increases may be for either an increase in a single year (section 508(2)) or successive increases for up to seven years (section 508A).

IPART assesses these applications against criteria in the Guidelines set by the Office of Local Government (OLG).<sup>1</sup> Box 1.1 explains the Guidelines for 2015-16.

Shoalhaven City Council (Shoalhaven Council) applied for a special variation in 2015-16 of 3.89%, to remain in the rate base for 10 years.<sup>2</sup>

After assessing the council's application, we decided to allow the special variation as requested. We have made this decision under section 508(2) of the Act.

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## Box 1.1 Special Variation Guidelines for 2015-16

IPART assesses applications for special variations using criteria in the *Guidelines for the preparation of an application for a special variation to general income for 2015-2016*, issued by the Office of Local Government.

The Guidelines emphasise the importance of the council's Integrated Planning and Reporting (IP&R) processes and documents to the special variation process. Councils are expected to engage with the community about service levels and funding when preparing their strategic planning documents. The IP&R documents (eg, Delivery Program and Long Term Financial Plan) must contain evidence that supports a council's application for a special variation.

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<sup>1</sup> Office of Local Government, *Guidelines for the preparation of an application for a special variation to general income for 2015/2016*, October 2014 (the Guidelines).

<sup>2</sup> Shoalhaven City Council, *Special Variation Application – Part B, 2015/16* (Shoalhaven Council, *Application Part B*), p 6.

## 1.1 Our decision

We determined that Shoalhaven Council may increase its general income in 2015-16 by 3.89%, including the rate peg of 2.4% that is available to all councils (see Table 1.1). The special variation can be retained in the council's general income base for 10 years and is to be removed from the council's rate base after 2024-25.

We have attached conditions to this decision, including that the council uses the income raised from the special variation for purposes consistent with those set out in its application.

Table 1.1 sets out our decision and Box 1.2 summarises these conditions.

**Table 1.1 IPART's decision on Shoalhaven City Council's application for a special variation in 2015-16**

<b>Component</b>	<b>%</b>
Increase to service a loan for infrastructure works to enable development of the Jerberra Estate	1.49
Rate peg	2.40
<b>Total increase</b>	<b>3.89</b>

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### **Box 1.2 Conditions attached to Shoalhaven City Council's approved special variation**

IPART's approval of Shoalhaven City Council's application for a special variation in 2015-16 is subject to the following conditions:

- ▼ The council uses the additional income from the special variation to service a loan to fund infrastructure works in the Jerberra Estate as listed in Appendix A.
  - ▼ The council reports in its annual report for each year from 2015-16 to 2024-25 on:
    - expenditure consistent with the council's application, and the reasons for any significant differences from the proposed expenditure, and
    - the outcomes achieved as a result of the actual program of expenditure.
  - ▼ On 1 July 2025, the council is to reduce its general income to what it would have been without the special variation.
  - ▼ The council reports in its financial statements (currently in Special Schedule 9) each year from 2015-16 to 2024-25 on its compliance with the special variation and these conditions.
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## 2 What did the council request and why?

Shoalhaven Council requested a special variation of 3.89% in 2015-16, consisting of a 1.49% increase to service a loan to fund infrastructure works in the Jerberra Estate, and the rate peg of 2.4%.<sup>3</sup>

Under the proposed special variation, the council's permissible general income would increase from \$56.7 million in 2014-15 to \$59.0 million in 2015-16. The council applied to retain the increase in the rate base for 10 years.

The council estimates that its requested increase of 1.49% above the rate peg would generate \$0.84 million in additional revenue in 2015-16 and \$9.68 million over 10 years.

The purpose of the additional revenue is to service a loan to fund infrastructure works required to enable development in the Jerberra Estate. The council is intending to introduce a special rate to levy only the landowners in the Estate. This special rate will replace the existing special rate for road construction, used to construct the gravel 'spinal route' through the Estate.<sup>4</sup> These works are usually provided by a developer, however in this case that land has previously been sub-divided and there is no developer.

During the 10-year special variation period, the additional revenue generated from the special levy will service the principal and interest repayments on a loan of \$7.2 million. Any residual funds at the end of the project will be used to adjust the special rates being charged to landowners.<sup>5</sup>

More detail on the council's proposed program of expenditure to 2024-25 is provided in Appendix A.

## 3 How did we reach our decision?

We assessed Shoalhaven Council's application against the criteria in the Guidelines. In making our assessment we also considered the council's most recent IP&R documents.

Shoalhaven Council has applied on the basis of its adopted IP&R documents, in particular the *Community Strategic Plan, Delivery Program 2014-2017* and *Long Term Financial Plan 2013/14-2022/23* (LTFP).

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<sup>3</sup> Shoalhaven City Council, *Special Variation Application - Part A*, 2015/16, (Shoalhaven Council, *Application Part A*) Worksheet 4 and Shoalhaven Council, *Application Part B*, p 6.

<sup>4</sup> Shoalhaven Council, *Application Part B*, pp 6 and 17.

<sup>5</sup> Shoalhaven Council, *Application Part B*, p 9.

The special variation increase for which the council has applied is modest, and we carefully considered, among other things, the council's need for the increase, its consideration of the community's priorities and capacity and willingness to pay, and the impact of the rate increase on ratepayers in the Estate. We note that the council's current application requests a lower percentage increase than that it consulted the affected community about and originally notified us it would require.

Shoalhaven Council's application met the criteria. In particular, we found that:

1. The need for the proposed revenue reflects Jerberra Estate landowners' priorities as is demonstrated in the IP&R documents.
2. The council provided evidence that the landowners are aware of the need for, and extent of, the special rate and that it has considered the landowners' capacity and willingness to pay.
3. The impact is significant but limited to the landowners of the Jerberra Estate (a total of 138 landowners). The special rate levied on the landowners will recover costs spent on infrastructure works to develop the Estate. Ultimately, the cost should be capitalised into the value of their property.
4. The council provided evidence that the relevant IP&R documents have been exhibited and adopted.

Table 3.1 summarises our assessment against the criteria.

**Table 3.1 Summary of IPART’s assessment of Shoalhaven City Council’s application for a special variation against the criteria in the Guidelines**

Criterion	IPART findings
<p>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&amp;R documents, including its Delivery Program, Long Term Financial Plan and Asset Management Plan where appropriate. In establishing need for the special variation, the relevant IP&amp;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 by including scenarios both with and without the special variation.</p>	<p>The council’s IP&amp;R documents clearly explain the need for and purpose of the special variation.</p> <p>The special variation revenue is to service interest and principal loan repayments. The \$7.2m loan will fund infrastructure works for the Jerberra Estate, including the electricity network to allow development of the Estate.</p> <p>The council is proposing to introduce a special rate to recover the infrastructure costs. The special rate would be levied solely on the landowners of the Estate (138 landowners) to recover the costs. The special rate would be levied for a period of 10 years and cease after 2024-25. The council can introduce special rates under s 495 of the <i>Local Government Act 1993</i>.</p> <p>The council’s LTFP shows that over the period of 10 years the infrastructure costs will be fully recovered through the special rate. Over the period, the cash balance will not be affected by the special variation revenue.</p> <p>The council considered alternatives to recover costs such as:</p> <ul style="list-style-type: none"> <li>▼ s94 <i>Environmental Planning and Assessment Act 1979</i> (EPA Act) contributions, and</li> <li>▼ fees and charges.</li> </ul> <p>The council concluded that cost recovery via s 94 EPA Act contribution was not financially sustainable for the council, and via fees and charges could result in potential losses for the council.</p>
<p>2. Evidence that the community is aware of the need for and extent of a rate rise. The IP&amp;R documentation should clearly set out the extent of the General Fund rate rise under the special variation. The council’s community engagement strategy for the special variation must demonstrate an appropriate variety of engagement methods to ensure an opportunity for community awareness and input to occur.</p>	<p>We found that the council:</p> <ul style="list-style-type: none"> <li>▼ demonstrated that it made the landowners aware of the need for and the extent of the special variation</li> <li>▼ clearly articulated to the landowners that it would introduce a special rate to recover the infrastructure costs spent on the development of the Estate</li> <li>▼ had attempted to resolve the planning status of the Estate since 1992 (the landowners are fully aware that without the infrastructure the Estate cannot be developed), and</li> <li>▼ consulted on the term of the loan.</li> </ul> <p>The council used a variety of tools to communicate with landowners on the special rate and the need for the special variation, including:</p> <ul style="list-style-type: none"> <li>▼ letters, specific to each lot landowner, indicating the level of the special rate for their lot, and the need for and purpose of the special variation</li> <li>▼ information days</li> <li>▼ a dedicated Jerberra Estate website, and</li> <li>▼ FAQ distributed to all landowners.</li> </ul>

Criterion	IPART findings
	<p>The feedback the councils received from the community over the last 20 years shows landowners' frustration with the planning and rezoning processes. We received four submissions all stating that the special rate is too high and that the council should fund the infrastructure and not seek to recover costs only from the landowners in the Estate.</p>
<p>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 IP&amp;R processes should:</p> <ul style="list-style-type: none"> <li>▼ clearly show the impact of any rises upon the community</li> <li>▼ include the council's consideration of the community's capacity and willingness to pay rates, and</li> <li>▼ establish that the proposed rate increases are affordable having regard to the local community's capacity to pay.</li> </ul>	<p>The impact on ordinary rates across all rate categories will only be the rate peg. The impact of the special rate on the landowners of the Estate will be significant. The council has always maintained the position that any cost of infrastructure works to develop the Estate is going to be recovered from the landowners. The council considered that, on balance, a 10-year loan was its preferred option. A few landowners indicated a preference to make a lump sum payment to save on interest however majority was opposed to any payments. Most landowners have held the land for the last 20 years and purchased it as an investment. Legally they cannot build a dwelling on the land. The council's hardship policy does not apply to investment properties or land, so currently the policy does not apply to the majority of the Estate.</p>
<p>4. The relevant IP&amp;R documents must be exhibited (where required), approved and adopted by the council before the council applies to IPART for a special variation to its general revenue.</p>	<p>The council's Delivery Program and Operating Plan 2014-17 was:</p> <ul style="list-style-type: none"> <li>▼ placed on exhibition on 28 April 2014, and adopted June 2014, and</li> <li>▼ revised, exhibited and formally adopted on 27 January 2015.</li> </ul> <p>The revised LTFP was adopted on 27 January 2015.</p>
<p>5. The IP&amp;R documents or the council's application must explain the productivity improvements and cost containment strategies the council has realised in past years, and plans to realise over the proposed special variation period.</p>	<p>Over the next 10 years, the council will recover all infrastructure costs spent on the development of the Estate through the special rate, levied only on the landowners of the Estate.</p>

**Sources:** Shoalhaven Council, *Application Part A* and *Application Part B*; Shoalhaven Council, *Delivery Program 2014-2017*, pp 54-55, 77 and 89; *Long Term Financial Plan*, p 54 replacement.

## 4 What does our decision mean for the council?

Our decision means that Shoalhaven Council may increase its general income in 2015-16 by an estimated \$2.2 million as indicated in Table 4.1.<sup>6</sup> This increase is to be removed from the council's rate base after 2024-25. After 2015-16, the council's general income will increase by the annual rate peg unless we approve further special variations.<sup>7</sup>

**Table 4.1 Permissible general income of Shoalhaven City Council in 2015-16 arising from the special variation approved by IPART**

Notional general income 2014-15 (\$)	Increase approved (%)	Annual increase in general income (\$)	Adjustment: Catch-ups, valuations <sup>a</sup> (\$)	Permissible general income (\$)
56,720,697	3.89	2,205,585	100,718	59,027,000

<sup>a</sup> A prior catch-up of \$100,718 is to be recouped in 2015-16 that had not been recouped by the time of the application was submitted to IPART.

**Source:** Shoalhaven Council, *Application Part A*, Worksheets 1 and 4 and IPART calculations.

The council estimates that over the period 2015-16 to 2024-26, the additional rate revenue will accumulate to \$9.7 million above the rate peg. This extra income is the amount the council requested to enable it to service and repay the loan of \$7.2 million to fund the infrastructure works in the Jerberra Estate to allow development of the estate.

## 5 What does our decision mean for ratepayers?

We set the allowable increase in general income, but it is a matter for each individual council to determine how it allocates any increase across different categories of ratepayer, consistent with our determination.

In its application, Shoalhaven Council indicated that it intended to introduce a special rate for the landowners of the Estate for the term of the loan.

The council has indicated that it will split the proposed special rate into three components across two groups (A and B) of landowners. The council identified the groups as:

- ▼ Group A - properties that can be developed, and
- ▼ Group B - properties that are not developable.

<sup>6</sup> Shoalhaven Council, *Application Part A*, Worksheets 1 and 4.

<sup>7</sup> General income in future years cannot be determined with precision, as it will be influenced by several factors apart from the rate peg. These factors include changes in the number of rateable properties and adjustments for previous under- or over-collection of rates. The Office of Local Government is responsible for monitoring and ensuring compliance.

The special rate will be split into Road Infrastructure Group A and Road Infrastructure Group B, and Electricity Infrastructure Group A. The council's rationale behind the distinction is that the electricity infrastructure will only benefit those properties that can be developed, whereas road infrastructure will benefit all properties in the Estate, however to a lesser extent the non-developable properties.<sup>8</sup>

Table 5.1 sets out the proposed average impact of special rates on the two groups of landowners in the Estate.

**Table 5.1 Average special rates for Jerberra Estate under Shoalhaven City Council's approved special variation for 2015-16**

Category	Special rate 2015-16 (\$)
Road Infrastructure – Group A	5,119
Electricity Infrastructure – Group A	1,754
Road Infrastructure – Group B	1,283

**Note** Group A landowners have been paying an annual Construction special rate of \$156, which will now be replaced by the Road Infrastructure special rate.

**Source:** Shoalhaven Council, *Application Part B*, p 24.

<sup>8</sup> Shoalhaven Council, *Application Part B*, p 24.



## **Appendices**





## **A Expenditure to be funded from the special variation**

Table A.1 and Table A.2 show Shoalhaven City Council's proposed expenditure of the special variation funds over the next 10 years.

The council will use the additional special variation revenue, above the rate peg, of \$9.7 million over 10 years to 2024-25 to service and repay a loan of \$7.2 million to fund the infrastructure works in the Jerberra Estate to enable development.

As a condition of IPART's approval, the council is to indicate in its Annual Reports how its actual expenditure compares with this proposed program of expenditure.

**Table A.1 Shoalhaven City Council – Income and proposed expenditure over 10 years related to the special variation (\$000)**

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total
Special variation income above rate peg	844	870	896	923	950	979	1,008	1,038	1,070	1,102	9,679
Transfers from reserves	124	98	72	45	18	0	0	0	0	0	357
<b>Total funding</b>	<b>968</b>	<b>968</b>	<b>968</b>	<b>968</b>	<b>968</b>	<b>979</b>	<b>1,008</b>	<b>1,038</b>	<b>1,070</b>	<b>1,102</b>	<b>10,036</b>
Funding for interest on loan repayments	424	391	356	318	279	237	192	145	95	42	2,479
Funding for repayments of loan principal	544	577	612	649	689	731	776	823	873	926	7,200
Transfers to reserves						11	40	70	102	134	357
<b>Total expenditure</b>	<b>968</b>	<b>968</b>	<b>968</b>	<b>968</b>	<b>968</b>	<b>979</b>	<b>1,008</b>	<b>1,038</b>	<b>1,070</b>	<b>1,102</b>	<b>10,036</b>

**Note:** Numbers may not add due to rounding.

**Source:** Shoalhaven Council, *Application Part A, Worksheet 6*,

**Table A.2 Shoalhaven City Council– Proposed 10-year capital expenditure program related to the special variation (\$000)**

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	Total
Funding for repayments of loan principal	544	577	612	650	689	731	776	823	873	926	7,200
<b>Total Capital Expenditure</b>	<b>544</b>	<b>577</b>	<b>612</b>	<b>650</b>	<b>689</b>	<b>731</b>	<b>776</b>	<b>823</b>	<b>873</b>	<b>926</b>	<b>7,200</b>

**Note:** Numbers may not add due to rounding.

**Source:** Shoalhaven Council, *Application Part A, Worksheet 6*.