

1 The Office of Local Government's Special Variations Guidelines – 2021-22 and other recent changes

The Office of Local Government (OLG) publishes guidelines for councils for preparing an application to increase general income by means of a special variation (SV) or minimum rate (MR) increase (the SV Guidelines and the MR Guidelines). An SV allows a council to increase its general income above the rate peg.¹ SVs can be either for a single year or over multiple years, and can be permanent or temporary. IPART applies the criteria in these guidelines to assess councils' applications for an SV or MR increase. The most recent guidelines were published in November 2020, and are available on OLG's website here: <https://www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/directory-of-policy-advice/rating-and-special-variations>

Key changes to the OLG Guidelines for 2021-22:

- ▼ Impact of the ongoing (COVID-19) pandemic on community consultation and ratepayers' capacity to pay.
- ▼ Consideration of catch-up provisions under section 511 of the *Local Government Act 1993* (LG Act), and how this may impact a council's need for a proposed SV and affordability for ratepayers.
- ▼ Increased focus on council productivity and efficiency measures.

Impact of COVID-19

The SV 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 with meeting the criteria has been or is anticipated to be affected by COVID-19, councils should explain this impact in their application. IPART will take this 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 it has pursued alternative arrangements such as virtual meetings.
- ▼ Councils should be mindful of the impact of COVID-19 when assessing the ratepayer impact of a proposed SV. This may include consideration of hardship measures the council has implemented.

Councils' intentions on catching up a shortfall in general income

In assessing the need for the SV, 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, in line with section 511 of the LG 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 its need for the SV.

¹ For most councils, general income consists of rates income. For a small number of councils, general income also includes some annual charges such as drainage levies.

Councils should also have regard to the combined impact of the catch-up amounts and the proposed SV when considering their community's capacity to pay for a proposed SV.

Council's productivity improvements

Councils should present their productivity improvements and cost containment strategies in the context of an ongoing efficiency measures, and indicate if the estimated financial impact of the ongoing efficiency measures has been incorporated in the council's Long Term Financial Plan (LTFP). Councils are also required to include an overview and a progress report on their efficiency measures, and how that impacts on the need for an SV. This overview should be communicated to ratepayers during the community consultation for the SV.

Other recent changes to the SV Guidelines include:

- ▼ New councils (formed by merger in 2016) may apply for an SV for 2021-22 (see the SV Guidelines section 4)
- ▼ Change to our approach where a council applying for an SV has an ongoing s 508A SV (see the SV Guidelines section 5.2)
- ▼ A focus on compliance with conditions of any SVs approved in the past 5 years (see the SV Guidelines section 6)
- ▼ The need for a separate application if the council is increasing minimum rates within a proposed SV (see SV Guidelines Attachment 3; see also the MR Guidelines).

New councils (formed by merger in 2016) may apply for an SV for 2021-22 (section 4)

The LG Act was amended in June 2019 to extend the rate path protection period to apply in 2020-21 to new councils (i.e. those formed by merger in 2016). New councils can now apply for SVs for 2021-22. A council must submit an SV application to IPART if the council wishes to harmonise rates in a way that increases its general income by more than the rate peg.

New SV application when the council has an existing s 508A SV (section 5.2)

Section 5.2 of the SV Guidelines introduces changes to how a council seeks an SV during the term of an existing s 508A SV. A s 508A SV approves increases in general income for multiple years (between 2 and 7 years). This means that, for example, where:

- ▼ a council has a s 508A SV with an approved increase in general income in 2021-22, and
- ▼ is seeking *additional* changes to its general income in 2021-22 (i.e. by means of another s 508A or a s 508(2) SV),

it must apply to IPART for a **variation** to the existing Instrument approving the original s 508A SV.

In this case, the SV Guidelines provide that:

- ▼ IPART will assess the new application using the OLG criteria (see section 3.1). Typically, IPART will focus on the additional percentage increase sought, but it may also consider whether it is appropriate to maintain the existing s 508A SV.
- ▼ To demonstrate financial need, the council must use three scenarios in its LTFP to show the financial impact of the additional rate revenue – Baseline (rate peg only, and excluding previously approved SV percentage), Status quo (only the previously approved SV

percentage) and Varied SV (both the previously approved SV percentage and requested SV percentage).

- ▼ The council must clearly communicate the full cumulative increase when consulting with the community (i.e. the impact of existing plus additional SVs), but may focus on the difference between the Status quo and Varied SV scenarios.

Compliance with conditions attached to previously approved SVs (section 6)

Section 6 of the SV Guidelines provides that IPART may consider other factors in addition to assessing a council's application against the five main criteria. Factors specified include the council's resources, size of increase requested and its purpose, current rate levels and previous rate rises. Two factors have been added to section 6, introducing a greater level of accountability for councils, as IPART may now consider:

- ▼ compliance with the SV Guidelines, or any other applicable guideline
- ▼ compliance with the conditions of previously approved SVs.

Typically, the conditions in an instrument require the council to:

- ▼ use the additional SV income for the purposes set out in its application
- ▼ report to its community (via its annual report) on the outcomes achieved from the actual program of expenditure, how actual expenditure compared with that proposed in its application and how actual revenues and expenditure compared with projections in its LTFP, explaining the reason for any significant differences.

IPART will take into account how well the council complied with the conditions of any SVs approved in the past 5 years when making its overall assessment of the council's new application.

Increasing minimum rates in conjunction with an SV (Attachment 3)

Attachment 3 to the SV Guidelines has been amended to reflect changes to the MR Guidelines, which set out new provisions for councils seeking to increase a MR above the statutory limit in conjunction with an SV.

In this case, the council must submit:

- ▼ *Both* an SV application *and* an MR increase application where it proposes to increase a MR above the statutory limit for the first time as part of an SV application. (Previously, a council could include an application to raise MR(s) as part of its SV application.)
- ▼ An MR increase application if it intends to increase an ordinary MR which is already above the statutory minimum (i.e. approved by the Minister or IPART) by more than the rate peg percentage or the proposed SV percentage that would apply to the council for 2021-22.

Councils should refer to the MR Guidelines and contact IPART as soon as possible to discuss.

2 Our approach to assessment – what to note for 2021-22 applications

This section highlights some areas of our approach that we have refined in recent years' assessments, and it also directs councils to examples of SV reports that provide further information. Refinements include:

- ▼ Retention of qualitative ratings based on how well applications meet each of the criteria
- ▼ Further guidance on the interaction of financial need and ratepayer willingness to pay
- ▼ Consideration of whether the approval of an SV beyond 5 years is appropriate
- ▼ Focus on productivity improvements.

Qualitative assessment ratings

In our assessment of 2019-20 SV applications, we introduced a qualitative rating system which provides councils and ratepayers with an indication of how well the council's application has satisfied each of the five main criterion in the SV Guidelines. Against each, we determine if the criterion is:

- ▼ Demonstrated
- ▼ Largely demonstrated
- ▼ Partly demonstrated
- ▼ Not demonstrated.

We then make an overall assessment of the application, taking into consideration other relevant factors as provided for in the SV Guidelines. Factors include the size and resources of a council, and whether the council has complied with conditions attached to SVs approved by IPART in the past 5 years.

For examples of how we have applied this rating system, please refer to any of the SV reports from 2019-20, which are available on our [website](#). We encourage councils to review our assessment of past applications when they are updating their Integrated Planning and Reporting (IP&R) documents, undertaking their consultation and preparing their applications. The assessment ratings system is designed, in part, to guide councils on the adequacy of past applications against each of the criteria.

Interaction of financial need and willingness to pay

Demonstrating financial need remains a key component of the SV application process. However, we recognise there are circumstances where a council may propose an SV to fund expenditure to meet the particular needs or preferences of its community, rather than needing the SV to fund core infrastructure or services.

It is important that any process carried out to demonstrate willingness to pay clearly informs ratepayers of the context, including the financial position of the council, appropriately describes the proposed project, and is representative of the ratepayers who will fund the SV.

From the 2019-20 applications, examples included environmental programs, community sporting developments and town beautification projects. In such cases, we encourage

councils to demonstrate ratepayer support through a willingness to pay study. We will examine the alignment of the council's proposed projects with the characteristics and conditions the council described to ratepayers when consulting with them on their willingness to pay for these types of projects.

For examples of past applications which included willingness to pay studies, please see the 2019-20 SV assessment reports for Ku-ring-gai, Randwick and Port Stephens councils. Note that each SV will face different challenges in demonstrating willingness to pay.

SVs longer than 5 years

The LG Act allows for s 508A SVs for up to 7 years. OLG's SV Guidelines indicate a general expectation that SVs should be for up to 4 years (to align with a council's Delivery Program and avoid committing future councils to rate rises), but recognise in some circumstances a longer period may be appropriate.

IPART assesses each application on its merits, and determines the period over which a multi-year increase will apply (up to the statutory maximum of 7 years). Where the council seeks an s 508A SV applying for more than 5 years, we will take into account circumstances such as the magnitude of the impact on rate levels and how affordable the cumulative increase would be for the council's ratepayers. We also consider that longer term forecasts for expenditure and operating performance can be uncertain. If appropriate, we may limit approval of multi-year SV applications to 5 years. In this case, the council can then consider whether to apply for a further SV to take effect after the 5-year period. For an example of this, please refer to the 2019-20 Dungog Shire Council SV assessment report.

Productivity improvements

Drawing on our experience in past years, we will be placing an emphasis on councils' applications demonstrating how they satisfy Criterion 5: Productivity improvements and cost containment strategies. To demonstrate that a council has met this criteria, it is not sufficient to list a series of cost-saving or revenue-raising initiatives.

IPART is looking for evidence of strategies and activities the council has adopted in the past, and robust data quantifying the efficiency gains achieved. When considering future productivity improvements and cost containment activities, we expect councils would be able explain their strategy, estimate the financial impact of planned initiatives, and indicate whether the impact has been incorporated in the council's LTFP.

3 Process for SV applications for 2021-22

Next Steps

This section provides information about the application process for councils seeking an increase to general income under sections 508(2) or 508A of the LG Act for 2021-22.

All councils considering whether to apply for an SV for 2021-22 **should contact IPART as early as possible** to discuss their proposal, and what they need to do to be able to demonstrate they have satisfied the criteria in the SV Guidelines.

Councils intending to submit an application under either s 508(2) or s 508A are urged to notify us of their intention to apply, by Friday 27 November 2020. In the interests of transparency and good governance, it is preferable that the council has resolved to notify IPART that it intends to apply for an SV, but this is not a formal requirement.

Councils should use the [Council Portal](#) on IPART's website to notify IPART that they intend to apply for an SV, and to submit their application.

If your council is preparing to submit an application for an SV for 2021-22 but did not notify IPART of the intention to apply in November 2020, you should contact IPART as soon as possible.

Please phone Sheridan Rapmund, Director, on (02) 9290 8430, or Albert Jean, Principal Analyst, on (02) 9290 8413.

Councils must submit their application by 8 February 2021

IPART encourages councils to submit their applications as early as possible.

IPART will generally not accept late applications unless the council has applied for an extension for reasons that are beyond the council's control, and IPART has granted it.

Requirements

Councils should adopt all relevant IP&R documents before applying

OLG's SV Guidelines provide that councils must adopt the relevant IP&R documents before applying for an SV (section 2). It is expected that a council will hold an extraordinary general meeting if necessary to meet this requirement.

They also provide that IPART may consider and approve an SV if there are **exceptional circumstances** (SV Guidelines, section 3.2). Councils that have not adopted the relevant IP&R documents, but nevertheless consider exceptional circumstances exist which warrant applying for an SV, should contact IPART as soon as possible to discuss their options.

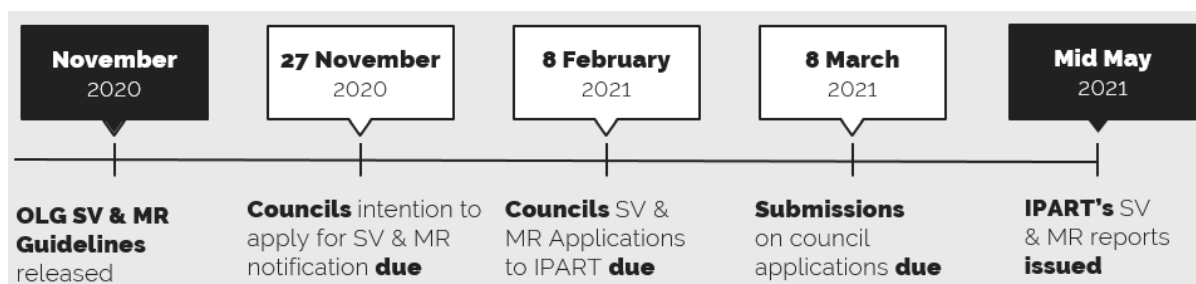
Councils must resolve to submit an application before applying

OLG's SV Guidelines require the council to have resolved to apply for an SV. A copy of the council's resolution must be submitted with the Application Form. IPART will not commence an assessment of the application unless a copy of the resolution is provided.

It is expected that a council will hold an extraordinary general meeting if necessary to meet this requirement.

Timetable for SVs for 2021-22

The timetable applying to applications for SV and MR increases for 2021-22 is:



Revised SV Application Form Part B and new SV Application Guide

We have revised the SV Application Form Part B by streamlining the process for councils. The Application Form Part B consists of questions for each criterion, tailored to the approach IPART will take to make an evidence-based assessment. To accompany the SV Application Form Part B, we have prepared an SV Application Guide for 2021-22, which contains detailed information about the criteria, how IPART will assess applications against the criteria, the information councils should include in their applications, and the attachments to provide. This guide is designed to help the council officers responsible for completing the SV Application Form Part B.

The SV Application Guide will also be a useful reference for councils when preparing the IP&R documents for exhibition, and their consultation strategy for engaging with the community about the proposed SV.

The documents will be on IPART's website:

- ▼ SV Application Form Part A for 2021-22 (instructions in spreadsheet)
- ▼ SV Application Form Part B for 2021-22
- ▼ SV Application Guide for 2021-22

IPART may request further information

It may be necessary for IPART to ask the council to provide additional information in order to make our assessment. If this is necessary, we will contact the council officer(s) nominated in the Application Form Part A and Part B.

Submissions

Ratepayers may make submissions on councils' applications

IPART considers the main avenue for community consultation on proposed SVs is through the council's consultation on its proposed SV and the council's IP&R process.

IPART does not hold public hearings as part of our assessment of council applications, nor do we solicit public submissions. However, IPART will accept submissions from interested groups or individual ratepayers regarding SVs after the application deadline.

Councils should make this information available to ratepayers as part of the communications around the proposed SV.

For further information on making a submission see:

- ▼ IPART's Information Paper on Community Awareness and Engagement for Special Variations in 2021-22.
- ▼ Council's SV and MR applications – Have your say page on IPART's website.

Appendix 1: Assessment criteria for special variation applications

The *Guidelines for the preparation of an application for a special variation to general income* published by OLG in November 2020 sets out the criteria IPART will use to assess each application for an SV. The criteria are in Box 1.

Box 1 Assessment criteria in OLG's SV Guidelines

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 :
 - ▼ **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.

Evidence to establish this criterion could include evidence of community need/desire for service levels or projects and limited council resourcing alternatives. Evidence could 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. The council should include an overview of its ongoing efficiency measures, and briefly discuss its progress against this program, in its explanation of the need for the proposed SV.
3. **The impact on affected ratepayers must be reasonable**, having regard to the current rate levels and 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:

- ▼ 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 must be publicly exhibited (where required), approved and adopted by the council** before the council applies to IPART for a special variation to its general income.
 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 an ongoing efficiency measures, and indicate if the estimated financial impact of the ongoing efficiency measures has been incorporated in the council's Long Term Financial Plan.

6. **Other matters** IPART considers relevant.