



Office of
Local Government

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



2019

ACCESS TO SERVICES

The Office of Local Government is located at:

Levels 1 & 2

5 O'Keefe Avenue
NOWRA NSW 2541

Locked Bag 3015
NOWRA NSW 2541

Phone 02 4428 4100

Fax 02 4428 4199

TTY 02 4428 4209

Email olg@olg.nsw.gov.au

Website www.olg.nsw.gov.au

OFFICE HOURS

Monday to Friday

8.30am to 5.00pm

(Special arrangements may be made if these hours are unsuitable)

All offices are wheelchair accessible.

ALTERNATIVE MEDIA PUBLICATIONS

Special arrangements can be made for our publications to be provided in large print or an alternative media format. If you need this service, please contact us on telephone 02 9289 4000.

DISCLAIMER

While every effort has been made to ensure the accuracy of the information in this publication, the Office of Local Government expressly disclaims any liability to any person in respect of anything done or not done as a result of the contents of the publication or the data provided.

© NSW Office of Local Government 2019

978-1-922001-82-5 Produced by the Office of Local Government



www.olg.nsw.gov.au

Table of Contents

1. Introduction	4
1.2 <i>Minimum rates and the principles of rating</i>	5
1.3 <i>Minimum ordinary rate increases where a council is also making a special variation application</i>	5
1.4 <i>Minimum special rates</i>	5
2. Process for increasing minimum rates above the statutory limit	6
2.1 <i>Application forms</i>	6
2.2 <i>Assessment criteria</i>	7
2.3 <i>Tribunal decision-making</i>	8
Attachment 1 - Minimum rate framework	9
<i>What are minimum rates?</i>	9
<i>Ordinary rate minimums</i>	9
<i>Special rate minimums</i>	10
<i>Minimum rates and the principles of rating</i>	11
Attachment 2 - Minimum rate increase application checklist	13

1. Introduction

Section 548 of the *Local Government Act 1993* (the Act) 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 the Independent Pricing and Regulatory Tribunal (IPART) or the Minister has approved a higher amount by issuing an instrument under section 548(3), or the council is entitled to increase its minimum ordinary rate under section 548(4) and (5) of the Act.

Any council considering applying to increase its minimum rates above the statutory limit should review these guidelines in the first instance. IPART will assess and determine applications by councils to set minimum rates above the statutory limit under powers delegated to it by the Minister for Local Government.¹

A council making a special variation application and proposing increases to its minimum rate in the same rating year/s must submit two separate applications to IPART: one for the special variation and one for the proposed minimum rate increase (Application forms can be accessed on IPART's website [here](#)).

Where a council is currently charging minimum rates at or below the statutory limit, and proposes an increase in minimum rates at the same percentage rate as a special variation application which results in the minimum rate exceeding the statutory limit, the council will need to make an application to IPART for a minimum rate increase.

However, a council currently charging minimum rates above the statutory limit (having previously been granted approval to increase its minimum rate above the statutory limit), may rely on section 548(4) and (5) to increase its minimum amounts by the rate peg percentage or special variation percentage in subsequent years, without the need to make an application to IPART. A council currently charging above the statutory limit

¹ 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.

will still need to make an application to IPART where it intends to increase its minimum rates by *more* than the rate peg percentage or a special variation percentage.

Additional information regarding minimum rates can be found in Attachment 1.



If a council is considering applying for a minimum rate variation it is strongly recommended to contact IPART to confirm whether or not an application is necessary.

1.2 Minimum rates and the principles of rating

While it is a matter for each council to determine its rating structure, including the level of any minimum rates, councils are encouraged to consider the size of the minimum rate and the proportion of ratepayers paying the minimum rate to ensure that rates are fair and equitable. However, IPART will consider each application for a minimum amount increase on its merits.

1.3 Minimum ordinary rate increases where a council is also making a special variation application

Generally, where a council applies for a special variation and also applies to increase the minimum ordinary rate by the same percentage, IPART will issue an instrument under section 548(3) to permit the council to apply that same increase to its minimum rates. An instrument under section 548(3) is only required if the council is proposing to increase its minimum rates above the statutory threshold.

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. In that case, the council will only need to apply for a minimum rate instrument where the increase would result in the minimum rate exceeding the statutory threshold.

If a council is seeking to apply a **higher** rate of increase to an existing minimum rate than to its other rates, and the higher minimum rate will exceed the statutory threshold, it must apply to IPART for an increase to minimum rates..

1.4 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 **for the first time** with or without increasing its general income above the rate peg limit;
- it is **already** imposing an ordinary minimum rate above the statutory limit and it seeks to increase that rate by **more than the rate peg** or the percentage allowed by a **special variation**; or
- it is seeking to increase the minimum amount of its **special rates** above the statutory limit.

It is **not** necessary for a council to apply to IPART for an increase in minimum rates when:

- it is seeking to increase its **ordinary minimum rates** to any level at or below the statutory limit (even if the increase is by more than the rate peg); or
- it already has an ordinary minimum rate above the statutory limit, and it is seeking to increase its **ordinary minimum rate** by the rate peg or the percentage allowed by a special variation.



*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 at the following 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 publications.



Any inquiries relating to the application process should be directed to IPART via phone 02 9290 8400 or email localgovernment@ipart.nsw.gov.au



Councils seeking to apply for a 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. It is expected that council will hold an extraordinary meeting if necessary to meet the deadline for applications. IPART encourages councils to submit applications as early as possible.

2.2 Assessment criteria

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 sufficient 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 (IP&R) 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.

2.3 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 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 not approve 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 approved, partially approved or not approved. 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, or where the council is entitled to increase its minimum rate under section 548(4) and (5) of the Act. The Minister has delegated authority to approve minimum rate increases to IPART.

Clause 126 is typically 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 typically advised, at the time the annual rate peg is announced, what the expected minimum amount will be for the forthcoming year.

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.

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, the Act and Regulations specify a dollar value limit on the size of the minimum amount.

Councils may impose minimum rates beyond the statutory dollar value limit by obtaining a written instrument from the Minister (or IPART under delegation).

One factor that IPART will consider when deciding whether or not to approve an application for a minimum rate increase is 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).

This consideration reflects the decision in *Sutton v Blue Mountains City Council (1977)* 40 LGRA 51. In that case, the Court found that, under the legislation then in force, councils were impliedly required to set rates primarily and predominantly based on an ad valorem system. The Court held that a council which tried to circumvent that ad valorem system by levying minimum rates on between 76.1% and 100% of ratepayers had exceeded the implied limits on its discretionary rate-setting power.

The Act was amended following *Sutton* to undo the effect of the case by setting a dollar value limit (this system remains today) and by making it clear that a minimum amount or a rate is not invalid because of:

- the size of the minimum amount; or
- the fact that many or all ratepayers are levied at the minimum amount.

IPART will still consider the impact on ratepayers when deciding whether or not to approve an application for a minimum rate increase; however, this is only one of a number of relevant factors and does not necessarily determine the outcome.

Attachment 2 - Minimum rate increase application checklist

- Council has contacted IPART to confirm the need to complete an application and if so, to discuss the information requirements for its particular circumstance.
- Council resolution has been passed to apply for an increase in the minimum rate above the statutory limit.
- Where a minimum rate increase above the statutory limit will result in an increase to general income, Council must pass a resolution and make applications for both the special variation and minimum rate increase (refer to Special Variation Guidelines).
- Council has notified IPART of their intention to apply for a minimum rate increase on or before the due date as specified by IPART.
- Council's application includes:
 - the rationale for increasing minimum rates above the statutory amount,
 - evidence of the impact on ratepayers, and
 - evidence of community consultation.
- Council has completed minimum rate increase application forms Part A (excel workbook) & Part B (word document) (available on IPART's website).
 - Part B certification page has been signed by the council's General Manager and Responsible Accounting Officer.
- Council's application includes a copy of the council's resolution(s) to apply for a minimum rate increase.
- Application which includes Part A and B, certification and council resolution and other supporting documentation, is lodged on or before the due date as specified on the OLG Council Circular and on the OLG and IPART websites.