Issues Paper – Infrastructure Contributions Review

UDIA NSW Response

August 2020

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ABOUT THE UDIA

Established in 1963, the Urban Development Institute of Australia (UDIA) is the leading industry group representing the property development sector. Our 500 member companies include developers, engineers, consultants, local government, and utilities. Our advocacy is focussed on developing liveable, affordable, and connected cities.

EXECUTIVE SUMMARY

The Urban Development Institute of Australia – NSW (UDIA) welcomes the opportunity to make a submission to the Review of Infrastructure Contributions – Issues Paper by the NSW Productivity Commission (Commission).

The production of new homes and urban growth to accommodate our growing population base requires a range of supporting infrastructure. This growth enabling infrastructure comes at a cost and the development industry is not opposed to paying its fair share. UDIA recognises that the development industry receives benefits from the growth that occurs across the State, which reflects compensation for the substantial risk that comes alongside undertaking property development projects.

The NSW Housing Strategy Discussion Paper (July 2020) estimates a further 1 million homes will be needed by 2041. The Commission recognises that we need to also fill the backlog 100,000 dwelling backlog that emerged between 2006 to 2016.

This new urban growth to be delivered across the State comes at the cost of delivering new and upgraded infrastructure. Given the government has chosen to embrace and progress growth across the metropolitan region, , it must also adequately support the infrastructure costs that come with growth alongside the development industry and new homebuyers who are already facing huge challenges in Sydney, which has the third least affordable housing prices in the world (Demographia 2020).

UDIA brings a high-level of industry knowledge and experience of infrastructure contributions in NSW. UDIA welcomes the Review because we believe that the infrastructure contributions system in NSW needs fundamental reform. Broad changes are needed to deliver a more efficient, accountable, predictable, transparent and affordable system. UDIA NSW recommends a cocktail of solutions that includes:

- Broader-based levies to support early land acquisition;
- Permitting local council rates to grow beyond the rate peg to support population growth; and
- Allowing special rate variations for local infrastructure.

The full list for the submission is below, the remainder of the submission addresses each of the questions highlighted in the Issues Paper. Attached to the submission are the following key pieces of research work UDIA has completed over the last few years to advocate for contributions reform:

- PwC, UDIA Proposed Changes to NSW Infrastructure Contributions, Financial Impact to Government, 2018
- SMEC, Greenfield Urban Development, Capital City Cost Review, 2018

UDIA is pleased to discuss any element of this submission, the recommendations, or the attachments in more detail.

THE WAY FORWARD

RECOMMENDATION 1: THE CONTRIBUTIONS SYSTEM SHOULD HAVE CONSISTENT PRINCIPLES ACROSS THE STATE

RECOMMENDATION 2: THE CONTRIBUTIONS SYSTEM SHOULD BE SUPPORTED BY TAXPAYER FUNDS TO ACHIEVE ADDITIONAL KEY OBJECTIVES SUCH AS HOUSING SUPPLY AND AFFORDABILITY

RECOMMENDATION 3: CONSIDER INTRODUCING A BROADBASED LEVY TO SUPPORT LAND ACQUISITION

RECOMMENDATION 4: CONSIDER PERMITTING COUNCIL RATES TO GROWTH BEYOND THE RATE PEG

RECOMMENDATION 5: CONSIDER ALLOWING SPECIAL RATE VARIATIONS FOR LOCAL INFRASTRUCTURE

RECOMMENDATION 6: IMPLEMENT AN URBAN DEVELOPMENT PROGRAM IN GREATER SYDNEY

RECOMMENDATION 7: CONTINUE TO SUPPORT VPA'S AS ESSENTIAL TO THE PLANNING SYSTEM

RECOMMENDATION 8: SUPPORT TRANSPARENT PRINCIPLES FOR VPA'S

RECOMMENDATION 9: ENSURE THAT 'EFFICIENT COSTS' ARE CONSIDERED IN THE REVIEW OF CONTRIBUTION PLANS

RECOMMENDATION 10: MAINTAIN THE SECTION 7.12 RATE AT 1% WITH THE POTENTIAL FOR IPART REVIEW FOR PLANS THAT EXCEED THIS RATE.

RECOMMENDATION 11: AFFORDABLE HOUSING CONTRIBUTIONS SHOULD NOT FORM PART OF THE CONTRIBUTIONS SYSTEM

RECOMMENDATION 12: VALUE CAPTURE SHOULD ONLY OCCUR UNDER LIMITED CIRCUMSTANCES WHERE THE STATE GOVERNMENT IS MAKING SIGNIFICANT INFRASTRUCTURE INVESTMENT

RECOMMENDATION 13: CONSIDER WAYS TO BRING FORWARD LAND ACQUISITION

RECOMMENDATION 14: DO NOT REMOVE THE CAP ON METROPOLITAN WATER CHARGES

RECOMMENDATION 15: DEVELOP A TRADEABLE CREDIT SCHEME UNDERPINNED BY THE ABILITY TO 'CASH-IN' CREDITS

INTRODUCTION

Issue 1.1: Striking the right balance

Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?

UDIA believes the affordability of contributions is paramount to help support housing supply. The principles that guide contributions should be consistent as much as possible across the State. However, the specific mechanisms used may have some regional variations.

This reflects differing priories in different areas, and the need to have flexibility within the planning system.

RECOMMENDATION 1: THE CONTRIBUTIONS SYSTEM SHOULD HAVE CONSISTENT PRINCIPLES ACROSS THE STATE

How do developers consider development contributions?

The Federal Productivity Commission and Henry Review into Taxation have suggested that where the supply of land for housing is restricted, developer charges are most likely to reduce economic rent captured by owners of undeveloped land.

In an ordinary economic model based on rational agents, it might be considered that uplift from rezoning would be sufficient. Across the State, Land vendors do not have incentives to sell and have been accustomed to increasing prices due to restrictions in developable areas creating supply shortages.

Vendors in the market are acting as partial monopolists restricting supply to secure prices and returns that are above what would be achieved in a competitive market. This is enabled by planning and zoning restrictions and the government's approach to 'out of sequence development'. The full cost recovery for 'out of sequence development' provides even more power for the incumbent landowner in identified growth areas to extract unearned value from a rezoning, because of the prohibitive cost government has created of going outside of pre-determined growth areas.

UDIA has modelled the impact of an increase in contributions, for a standard land subdivision of approximately 150 lots in western Sydney, assuming constant take-up rates.

Project Returns Impact - higher 7.11 and SIC Charges							
Increases in Govt Charges	RLV ($M)	Margin (%)	Margin ($)	IRR (%)	RLV Impact (%)	AVE Lot Price ($) change*	AVE Lot Price (%) change*
Base line ($30,000)	$24.9	19.3%	$10.1	20.0%	0.0%	$436,500	0.0%
Plus $25,000 ($55,000)	$21.0	8.7%	$5.0	10.8%	-15.5%	$475,800	9.0%
Plus $35,000 ($65,000)	$19.5	4.9%	$2.9	7.0%	-21.7%	$491,500	12.6%
Plus $45,000 ($75,000)	$17.9	1.4%	$0.9	3.2%	-27.9%	$507,200	16.2%
Plus $55,000 ($85,000)	$16.4	-1.8%	-$1.2	-0.7%	-34.1%	$522,900	19.8%

If contributions were to increase to $85,000 per lot, then the developer would be required to accept a margin of -1.8%, which makes it unfeasible to develop. In order to retain the margin necessary to develop, lot sale prices would need to increase by 19.8% or wholesale land would need to

reduce by 34.1%. This modelling is on the conservative side, with some contribution plans exceeding $100,000 per lot, which would require further lot sale price increases.

We believe it is unlikely that the wholesale land price will reduce significantly, as if a seller is not motivated to sell at the current price, it is unlikely they will sell for a reduced price in the future. With limited land supply and few pressures to sell, a wholesale land vendor can wait until the market meets the price that they desire.

This has been coupled with a shift in the levying of the Special Infrastructure Contribution (SIC), from per hectare to per dwelling charges, which provides a disincentive for density. UDIA understands the industry is responding to these changes by moving from an industry standard of 300 square metre lots to 375 square metre lots, which compromises housing supply and land-use efficiency. In a 5-hectare subdivision, this could mean up to 30 fewer dwellings will be delivered.

In the immediate term, the industry requires certainty to deliver infrastructure, as decisions are made over a 7-10-year timeframe (the attached Residential Development Process illustrates this).

What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?

UDIA supports calculations based on demand, where there is a clear nexus between the development and demand generate. However, we acknowledge that where the catchment is broader, there is merit in going with a broader average rate. In both, however, there needs to be consideration that there is a limited portion of a development costs that can reasonably be taken up with development contributions, taking into account the final price, land price, cost to develop, and developer's risk.

Do other jurisdictions have a better approach to infrastructure funding we should explore?

UDIA NSW believes that the infrastructure reform agenda outlined within the 2013 White Paper – A New Planning System for NSW was sensible and fair, and the principles should guide the direction of the current reform process:

- **Simple and Predictable** – the contribution system should be as easy to understand and administer as possible. Everyone should have a reasonable expectation of the future amount and timing of payment of infrastructure contributions.
- **Transparency and accountability** – everyone should be able to track the need for infrastructure, revenue collected from contributions and expenditure on infrastructure. Responsible parties should be accountable for the timely provision of infrastructure.
- **Beneficiary pays** – parties should only pay for infrastructure that they will benefit from. When benefits are shared between groups, the distribution of costs should reflect this.
- **Avoidable costs** – developers should not be charged for infrastructure that is not required for new development. There must be a nexus and proportionality between development and infrastructure needed.
- **Cost reflectivity** – contributions should reflect the efficient cost of providing infrastructure. It should demonstrate that the provision of infrastructure in some areas is

more expensive than others, and the developer's contribution should reflect at least some of that cost.

- **Affordability** – the contribution system should not inhibit the supply of housing.
- **Contestability** – the private sector should be invited to compete for delivery of works where it is likely to add value. Developers should be allowed to contribute to the cost of infrastructure through flexible means including 'works in kind' in lieu of a direct contribution payment.

UDIA believes that there are two elements required to ensure an efficient infrastructure contributions system:

A. **Clear allocation of funding responsibilities –** This will provide simplicity and predictability and should help ensure an affordable beneficiary pays regime.

B. **Infrastructure provision prioritisation determined by an integrated Urban Development Program (UDP) (details below)–** This will provide the certainty and the transparency for infrastructure to be delivered while informing nexus, proportionality and maintaining accountability.

How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?

UDIA NSW supports taxpayer subsidies to achieve outcomes that the Government considers a priority. This may include help to stimulate the economy and housing growth, which was the objective for:

1. Section 7.11 capping, and
2. Discounts to the SIC

These measures help drive affordability, however when implemented or unwound there needs to be a clear end date and transitional arrangements to ensure that the industry can adopt them in time and make decisions.

RECOMMENDATION 2: **THE CONTRIBUTIONS SYSTEM SHOULD BE SUPPORTED BY TAXPAYER FUNDS TO ACHIEVE ADDITIONAL KEY OBJECTIVES SUCH AS HOUSING SUPPLY AND AFFORDABILITY**

INFRASTRUCTURE FUNDING IN NSW

Issue 2.1: Enable a broader revenue source for the funding of infrastructure

Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?

Regional Growth Fund

RECOMMENDATION 3: CONSIDER INTRODUCING A BROADBASED LEVY TO SUPPORT LAND ACQUISITION

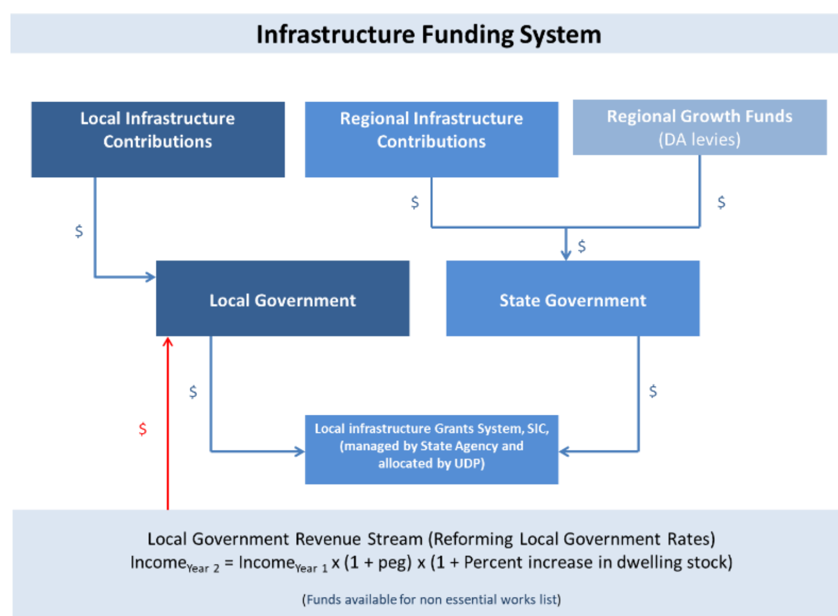
In our submission to the Productivity Commission's Discussion Paper in November 2019, UDIA NSW recommended reforming infrastructure funding using the principles from the 2013 White Paper, in addition to establishing a Regional Growth Fund (RGF) involving a broad low base levy on all development applications.

UDIA NSW has developed a Regional Growth Fund Model, which has been a long-standing infrastructure funding recommendation since 2012. This approach would see land taken out of infrastructure contributions and instead spread across a broader cohort.

We believe that the NSW Government should establish Regional Growth Funds (RGF) that fund strategic land acquisition for councils and the state government, as recommended in the 2013 White Paper.

This would be funded through a new RGF contribution, which would be a levy on all DAs valued above $100,000. Recent PwC analysis estimates the rate would be between 0.64%-3.63% of the DA value depending on the Greater Sydney Commission district. Land is a community benefit as it appreciates in value and is the primary cost driver; this would allow land to be delivered early and contributions to focus on works.

An overview of the model is below:



Council Rates

RECOMMENDATION 4: CONSIDER PERMITTING COUNCIL RATES TO GROWTH BEYOND THE RATE PEG

The NSW rate pegging has resulted in costs being shifted to the developer as councils are unable to generate sufficient rate revenues to adequately service new growth. The rate peg should be amended to allow council's total revenue to grow as the community grows to ensure that there are not penalties to accommodate growth.

Local Infrastructure Bond

RECOMMENDATION 5: CONSIDER ALLOWING SPECIAL RATE VARIATIONS FOR LOCAL INFRASTRUCTURE

Until recently, councils had the option to either apply for LIGS funding or to apply a special rate variation over an area that exceeded the cap on section 7.11 contributions. While LIGS funding was in place all councils chose to accept government funding instead of increasing a noticeable charge on their constituents.

Councils should be given the option of applying a special rate variation over areas to spread the cost of infrastructure over several years. This could be particularly applicable in regional areas where nexus is more difficult to isolate, and the cost of infrastructure has tended to be a higher proportion of the lot price.

Issue 2.2: Integrating land use and infrastructure planning

How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?

RECOMMENDATION 6: IMPLEMENT AN URBAN DEVELOPMENT PROGRAM IN GREATER SYDNEY

The infrastructure contribution system must be integrated with land use and infrastructure planning. The key benefits of this approach will be to better understand the cost of land use planning decisions and impact on the cost of infrastructure and requirements.

Currently, the process for rezoning in NSW is:

This leads to a preference for a Voluntary Planning Agreement (VPA) to accelerate the planning process, particularly with the introduction of clause 270A of the EP&A Regulation and Planning Circular PS 19-002.

An Urban Development Program and integrated land use and infrastructure plan would help understand the impact of cost and better maximise land-use efficiency. For example, the Marsden Park Precinct Plan Post Exhibition Planning Report estimated section 7.11 contributions at $29,000 in 2013, which was significantly less than the IPART assessed the amount of $90,000 per lot.

Instead, we recommend that there is an integration of Land Use Planning, Infrastructure Planning, Infrastructure Costing where these are completed alongside each other, so that land is rezoned with all elements in place.

UDIA is currently undertaking a UDP Pilot in South West Sydney in collaborating with servicing agencies and the NSW Department of Planning Industry and Environment, and is an active contributor to and supporter of the Hunter UDP and Illawarra UDP. We also see value in initiating a UDP for the Central Coast.

INFRASTRUCTURE CONTRIBUTIONS MECHANISMS AND ISSUES

Issue 3.1: Principles for planning agreements are non-binding

RECOMMENDATION 7: CONTINUE TO SUPPORT VPA'S AS ESSENTIAL TO THE PLANNING SYSTEM

RECOMMENDATION 8: SUPPORT TRANSPARENT PRINCIPLES FOR VPA'S

What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?

UDIA supports the use of VPAs in the assessment and approval of large development proposals and the ability for developers, at their discretion, to voluntarily offer to enter a VPA with a Planning Authority. We also support the use of VPAs concurrent with (but not prior to) adopted Contributions Plans.

Currently, VPAs provide a flexible mechanism to secure public benefits in the planning system. Creating a robust framework for agreements to operate within is essential to building trust and confidence within the NSW Planning System.

Is 'value capture' an appropriate use of planning agreements?

UDIA notes that the NSW Department of Planning, Industry and Environment (DPIE) is proposing to release a revised Secretary's Practice Note on Planning Agreements to replace the current Practice Note issued in July 2005. UDIA strongly agrees with the new "Fundamental Principles" in this Note, which include that value capture should not be the primary purpose of a planning agreement.

In recent years we have seen a growing trend for Agreements (VPAs and supporting policies) being pursued by Planning Authorities (Councils) to secure additional sources of funding for new infrastructure unrelated to subject development projects and most significantly an incorporation of 'value capture' or 'betterment levy' mechanisms or terms that go well beyond the intent and objectives for the legislative change that enabled the introduction of such agreements.

These policies and positions on Agreements in effect monetise the planning system. Not only is it fundamentally inappropriate to co-opt the planning process into a convenient revenue generating mechanism by Councils, it questions the very basis upon which the role of planning in NSW is founded. This undermines public confidence that the rigorous planning processes in place are focussed on the appropriate use of land and not any other unconnected surreptitious agenda.

UDIA has a long-held position that value capture has a place and should occur in the following circumstances:

• When Government is creating significant value through regional infrastructure investment.

• It is collected via a mechanism that is not connected to the planning process; and

• It is charged to the primary beneficiary of the value windfall – the passive landowner - and not a party that:

(i). Has capitalised on that decision to add wealth to the community and income to Government via the application of risk, endeavour or entrepreneurial skill and has subsequently added to Government income through construction employment, payment of taxes/charges/duties and realisation of economic multiplier benefits; or

(ii). A party such as a home purchaser or business who, by virtue of being simply at the end of the development process is subject to the charge in lieu of the passive landowner.

Should planning agreements require a nexus with the development, as for other types of contributions?

UDIA believes that planning agreements must not include public benefits wholly unrelated to the particular development. Agreements should also not be used as a means of general revenue raising or to overcome revenue shortfalls.

Should State planning agreement be subject to guidelines for their use?

There is a need to expand DPIE's guidance to include Agreements negotiated with State Planning Authorities and associated agencies. Alternatively, a separate, bespoke practice note should be prepared for State planning agreements. This will provide the same measures of fairness, certainty, transparency, and guidance for parties involved in the negotiation of local planning agreements. Our members find there is negligible guidance on the actions of State Authorities. The demands some agencies impose on proponents of a Planning Agreement could be considered unreasonable and improperly take advantage of their unique negotiating position.

In many instances such as complex development applications for large sites / projects or greenfield and brownfield rezoning the making of offers for, and negotiating, State and local agreements run concurrently and the elements of each offer may have a strong relationship (albeit they are ultimately independent). In these circumstances both agreements and offers must be read together for a true measure of their value and cost to the proponent to be measured. This in turn enables a genuine understanding of the impact of the costs imposed upon the project, on housing affordability and development feasibility.

Issue 3.2: Transparency and accountability for planning agreements are low

What could be done to improve the transparency and accountability of planning agreements, without placing an undue burden on councils or the State?

UDIA believes that transparency and accountability for planning agreements can be improved by ensuring they are used concurrently with (but not prior to) adopted Contributions Plans.

In most cases, a planning agreement should be informed by a contributions plan or similar level of detailed work to properly quantify the infrastructure need. Without, this the agreement would ultimately be flawed.

However, the significance of the presence of a contributions plan goes further than this. A contributions plan provides the transparency and certainty that the offer being made has a logical

and transparent basis, free from potential claims of coercion, overcharging, unfairness and uncertainty.

Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?

UDIA supports this transparency, noting the NSW Government already maintains a Minister's VPA register online. It is especially important in the absence of finalised SICs in many growth areas that these VPAs are transparent and consistent between developments. Local council VPAs should also be publicly accessible to ensure transparency and allow everyone to understand the costs and delivery timeframes for local infrastructure. Potential barriers such as commercial confidentiality can be (and have been) overcome.

Issue 3.3: Planning agreements are resource intensive

Should the practice note make clear when planning agreements are (and are not) an appropriate mechanism?

UDIA believes planning agreements should be used concurrent with (but not prior to) adopted Contributions Plans. Any agreement entered into by parties without the guidance of a contributions plan must be ultimately flawed.

Issue 3.4: Contributions plans are complex and costly to administer

How could the complexity of s7.11 contributions planning be reduced?

The land component adds significant complexity to s7.11 contributions planning. The valuation and acquisition processes are complex and delay the delivery of works. These costs and delays often lead to a shortfall in s7.11 revenue, meaning some works cannot be delivered. The UDIA's Regional Growth Fund model detailed above would reduce this complexity.

In general, UDIA supports the current thresholds for complexity – being the contribution rate thresholds that trigger IPART review and the essential works list. Below these thresholds, s7.11 contributions planning is not complex.

In our recent submissions to the NSW Government on the infrastructure contributions reform package we made some recommendations to reduce the complexity of this threshold system. However, we would not support raising the contribution rate threshold above the relevant threshold ($20,000 or $30,000 for greenfield) beyond indexation from 2010 as we believe this is an appropriate limit beyond which affordability and development feasibility decline and IPART review is warranted.

What are the trade-offs for, and potential consequences of, reducing complexity?

The s7.12 approach provides a good example of the trade-off for reducing complexity, being a loss of clear nexus between growth demand and the infrastructure delivered.

How can certainty be increased for the development industry and for the community?

Two key measures to improve certainty would be frequent review of each contributions plan to reflect works delivered and actual costs, and transfer of the land component of the plan to a Regional Growth Fund.

Issue 3.5: Timing of payment of contributions and delivery of infrastructure does not align

What are the risks or benefits of deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate, compared the issuing of a construction certificate? Are there options for deferring payment for subdivision?

UDIA notes that the NSW Government has temporarily deferred payment in this way for some development in response to the economic impacts of COVID-19 (see Planning Circular 20-003). This will serve as a useful test of this approach. UDIA believes that requiring the certifying authority to confirm payment prior to the issue of the OC addresses many of the risks. There are significant benefits to cashflow and debt levels for applicants, which will likely avoid many deferrals and abandonments in the current economic climate.

Deferring payment for subdivision is more complex due to the potential loss of sight as land progresses from subdivision to building. However, it is important that this be explored because there could be up to 4 years' lag between these stages (i.e., between when infrastructure contributions are paid and infrastructure demand is generated).

Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable?

UDIA members have suggested that conditions on title may be an option, but they would need to be tied to the subdivision rather than the homebuilder.

Would support to access borrowing assist councils with delivering infrastructure? What could be done to facilitate this? Are there barriers to councils to accessing the Low-Cost Loans Initiative?

UDIA supports the Low-Cost Loans Initiative and many of our member councils have used this facility to strategically acquire land and deliver infrastructure at a lower cost, providing savings in local contributions plans. One example is Shoalhaven City Council's early acquisition of public land in the Moss Vale Road Urban Release Areas.

What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?

UDIA believes greater transparency will help ensure balances are spent. Reporting requirements should highlight where councils need to add skills, either internally or by tender to the market, for experienced project managers to deliver the projects. We are keen to see the outcomes of the

recent Ministerial Direction requiring councils to prepare plans for expenditure, which we believe will reduce contribution balances.

Issue 3.6: Infrastructure costs and contributions rates are rising

Currently IPART reviews contributions plans based on 'reasonable costs', while some assert the review should be based on 'efficient costs'. What are the risks or benefits of reframing the review in this way?

RECOMMENDATION 9: ENSURE THAT 'EFFICIENT COSTS' ARE CONSIDERED IN THE REVIEW OF CONTRIBUTION PLANS

UDIA would strongly support the expansion of IPART's Terms of Reference to require a consideration of efficiency and alternatives in the design of infrastructure works. In many of our submissions to IPART we have identified significant potential savings of up to 20% of the cost of a plan through more efficient alternative road alignments and intersection treatments. However, currently IPART has been limited in its ability to address these issues in their review.

Should the essential works list be maintained? If it were to be expanded to include more items, what might be done to ensure that infrastructure contributions do not increase unreasonably?

The Essential Works List has helped manage costs and limit the scope of what is reasonable for contribution plans to include. However, where it has been too narrow, items that are not permissible as essential works in a contribution plan are made requirements as a condition of consent.

UDIA considers the nature of built form community facilities are changing, potentially becoming more regional in their nature. UDIA considers that council rates are the appropriate mechanism to fund the built form, which may require special rate variations. We support the current restriction to land acquisition only.

What role is there for an independent review of infrastructure plans at an earlier point in the process to consider options for infrastructure design and selection?

UDIA would support independent reviews early to consider options for design and selection, which would help support the shift to 'efficient costs'. For example, our review of the draft West Dapto Contributions Plan 2020 identified up to $200 million in potential savings that could be achieved through more efficient road alignments (reducing crossings), deletion of certain local roads with no broader nexus, and more efficient bridge lengths and bridge design standards.

UDIA believes IPART is not currently empowered or resourced to complete this review, and we would also encourage engagement with local civil contractors and consulting engineers during the review process, as many of these local companies will have experience delivering local infrastructure.

Issue 3.7: The maximum s7.12 rate is low but balanced with low need for nexus

RECOMMENDATION 10: MAINTAIN THE SECTION 7.12 RATE AT 1% WITH THE POTENTIAL FOR IPART REVIEW FOR PLANS THAT EXCEED THIS RATE.

Given that the rationale for these low rates reflects the lower nexus to infrastructure requirements, what issues might arise if the maximum percentages were to be increased?

A Section 7.12 levy at 1% of development cost provides balance between flexibility for councils and certainty/affordability for developers.

The flexibility for councils is derived from not being required to identify the nexus between development and the infrastructure that will be funded by the Levy. It is often difficult to measure demand arising from non-residential development, and as such it can be more efficient and effective to collect contributions through a s7.12 fixed levy.

The certainty for developers derives from being able to account for infrastructure contributions as a fixed proportion of their costs, allowing them better visibility of future contributions to assess feasibility.

However, UDIA believes that this balance begins to be lost at rates above 1%, in that these higher levies raise costs and begin to make development unfeasible. We believe, therefore, that s7.12 levies above 1% warrant additional scrutiny. UDIA supports maintaining the standard 1% flat levy on development costs and applying greater rigour/additional requirements to strengthen the conditions for requests for a higher Levy rate.

We propose that s7.12 levies above 1% be subject to the same IPART review process as s7.11 plans that exceed the threshold for IPART review. In other words, s7.12 levies above 1% should be an additional trigger for the IPART review process that already exists for s7.11 plans.

While not perfect, the IPART review process does provide independent scrutiny where costs are high. The benefits of the review process include: the requirement to comply with an essential works list; the tests of reasonable costs, nexus and apportionment; and an additional opportunity for the industry and community to comment on the proposed Levy.

What would be a reasonable rate for s7.12 development consent levies?

As noted above, UDIA supports a 1% rate for s7.12 development consent levies. Levies above 1% may be reasonable in some limited circumstances but should be subject to the IPART review process that already exists for s7.11 plans.

Issue 3.8: Limited effectiveness of special infrastructure contributions

Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?

UDIA notes that there is currently little guidance from the NSW Government on the official sequence for rezoning. Since the end of the Metropolitan Development Program in Sydney, it has become unclear what sequence for rezoning the NSW Government is following. Therefore, regional infrastructure needs to be funded in whichever precincts are ready to proceed, so that the

demand for housing and employment land can continue to be met. UDIA makes no distinction between precincts with regard to whether they are in or out of sequence.

Should special infrastructure contributions be applied more broadly to fund infrastructure?

In its current state, the SIC program methodology has been applied inconsistently across NSW. Based on this track record, UDIA would not support the expansion of the SIC program more broadly, unless significant reforms are made to the program itself in line with the UDIA's infrastructure reform agenda.

Should they be aligned to District Plans or other land use planning strategies?

Similar to water and wastewater servicing programs, SICs should be aligned to the service and demand catchments for growth, regardless of land use planning boundaries.

Should the administration of special infrastructure contributions be coordinated by a central Government agency i.e. NSW Treasury?

The administration of funds should be dictated by a consolidated Urban Development Program. The management should sit with whichever agency is responsible for coordinating, planning and funding for urban growth and infrastructure.

Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions

Should implementation of special infrastructure contributions for biodiversity offsets be subject to a higher level of independent oversight?

Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?

UDIA does not support the funding of biodiversity offsets through special infrastructure contributions. Nevertheless, we would support additional transparency, oversight and scrutiny being applied to the spending of SIC funds, including funds for biodiversity offsets. Biodiversity conservation is a priority across NSW and the benefits of offsets are enjoyed by the wider community. Biodiversity conservation should be funded by a broad base, not just new growth.

<u>Issue 3.10: Affordable housing</u>

Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floorspace appropriate?

Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?

RECOMMENDATION 11: AFFORDABLE HOUSING CONTRIBUTIONS SHOULD NOT FORM PART OF THE CONTRIBUTIONS SYSTEM

UDIA does not support the provision of affordable housing through the contributions system. ‘affordable housing’ is subsidised housing. UDIA disagrees with the notion that affordable housing is infrastructure. Just because the development sector is in the business of providing houses, it does not follow it has an obligation to provide subsidised housing.

The impact of affordable housing mandates is that the cost of new market housing increases. Why should new home buyers bear a heavier burden of funding for affordable housing, compared with broader society? US research showed that where inclusionary zoning policies were adopted house prices increased approximately 2-3% faster than in cities that did not implement such policies.

The current incentives provided through the Affordable Rental Housing SEPP do not offer an incentive; instead, they lead to significant IRR reductions. Therefore, we think there needs to be a broad reconsideration of the approach. If implemented, inclusionary zoning will limit the ability to increase housing supply in general.

This includes a moratorium on subsidised housing contributions, until such a time an appropriate incentive scheme is developed.

In addition, we believe that there could be potential in a privately traded ‘affordable housing’ asset class once the asset is built. Where the rent for affordable housing is between 20-30% below that of market housing, the yield can be maintained if the capital value is similarly lower. Additionally, the Federal Government provides an additional ten percentage point capital gains tax (CGT) discount for resident individuals who invest in affordable housing. These concessions help support the possibility of privately owned affordable housing as a commercial investment product. There might also be an option for mixed-tenure build-to-rent, which could support affordable housing.

FURTHER ISSUES IN INFRASTRUCTURE CONTRIBUTIONS

Issue 4.1: Sharing land value uplift

Where land values are lifted as a result of public investment, should taxpayers share in the benefits by broadening value capture mechanisms? What would be the best way to do this?

RECOMMENDATION 12: VALUE CAPTURE SHOULD ONLY OCCUR UNDER LIMITED CIRCUMSTANCES WHERE THE STATE GOVERNMENT IS MAKING SIGNIFICANT INFRASTRUCTURE INVESTMENT

UDIA supports the concept of 'value capture' where:

- it accelerates government investment for major infrastructure that increases capacity;
- only captures value when or where it is generated;
- allows value to be realised; and
- captures value prior to the time it is realised.

We understand the Productivity Commission has identified that linking infrastructure projects to value will help prioritise projects that can unlock greater value. We agree with that position and believe a Tax Increment Financing (TIF) type structure would be effective in supporting the delivery of major infrastructure projects.

UDIA does not support an explicit "betterment model", which risks community perception about 'planning for sale' and 'pay to play schemes'. In addition, these schemes will fail to capture initial landowner profits.

Issue 4.2: Land values that consider a future infrastructure charge

Should an "infrastructure development charge" be attached to the land title?

UDIA considers this is an area worthy of further consideration. While it might help absorb costs, it may be challenging when an area is not yet rezoned. However, it might be beneficial to attach the likelihood of a charge to a planning certificate, so that it acts as a warning and indicative future charges as part of the transaction process.

Issue 4.3: Land acquisition for public infrastructure purposes

RECOMMENDATION 13: CONSIDER WAYS TO BRING FORWARD LAND ACQUISITION

If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership?

UDIA NSW understands this proposal would be a general expectation that a portion of land would be dedicated for public purposes. This currently occurs for a range of infrastructure within a development site, such as local roads which are delivered through conditions of consent and necessary to develop a site.

The current contribution framework seeks to convert land into cash, and then back into land, using cash as the equalisation between sites with land and without land. Unfortunately, due to the slow process to acquire sites by infrastructure agencies the cost of land escalates significantly.

Using a Victorian-style land equalisation payment with dedications is a mechanism to achieve this; however, it does not change the total cost impost of contributions to the developer who would then account a portion of land for contributions.

Land dedication tends to be easier in large consolidated sites. In fragmented areas, UDIA urges earlier land acquisition by borrowing, pooling, and considering compulsory acquisition.

Could earlier land acquisition be funded by pooling of contributions, or borrowings?

The early acquisition could be funded by pooling contributions or borrowings. In many cases the key criteria for the industry is a clear delivery program that delivers the infrastructure on time. In large consolidated sites, the developer will often dedicate the sites where possible and enter into works-in-kind agreements to deliver the infrastructure.

Are there other options that would address this challenge such as higher indexation of the land component?

The early acquisition of land most effectively accounts for managing the escalations in land value, because the acquisition authority owns the land. In nearly all time periods we expect that the price of land will escalate. As the authority could index their contributions by their cost of capital, we believe this could be a reasonable approach to manage acquisition costs.

Issue 4.4: Keeping up with property escalation

What approaches would most effectively account for property acquisition costs?

See response at 4.3 above.

Issue 4.5: Corridor protection

What options would assist to strike a balance in strategic corridor planning and infrastructure delivery?

The Government has supported corridor reservation because it can provide an indicative route and prevent development in that area. However, for the industry it can create significant uncertainty.

The ability to develop land is limited, the corridor is often significantly wider than what is required in the final project, and there is no requirement for agencies to acquire the land until they commence the project (unless there is financial hardship). It is extremely difficult for a company to prove hardship and this often leaves the land underdeveloped.

This has become more challenging with recent planning policy changes to automatically rezone sites within corridors, instead of requiring concurrence and referral.

UDIA recommends there is an ability to trade out of strategic corridors earlier, or the potential to create 'meanwhile' uses, which may create a revenue stream. In that instance, the risk of earlier than expected delivery should be borne by the Government. These uses could include relocatable affordable housing, or build-to-rent.

Issue 4.6: Open space

How can performance criteria assist to contain the costs of open space?

Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?

Are infrastructure contributions an appropriate way to fund open public space?

UDIA recognises the existing standard of 2.83 hectares per 1,000 people is becoming increasingly less relevant as we move to denser living environments; instead, the focus is on quality and amenity.

In a greenfield context, the standard can be useful in creating a maximum amount of open space that a council could be able to charge to the development, with other space to be funded from other means.

We consider that the current essential works list for open space is overly prescriptive, and instead recommend that a maximum per person charge to cover open space embellishment is used, which can allow for higher quality open space in higher density areas, instead of requiring unnecessary additional land dedication.

Issue 4.7: Metropolitan water charges

RECOMMENDATION 14: DO NOT REMOVE THE CAP ON METROPOLITAN WATER CHARGES

How important is it to examine this approach?

UDIA strongly opposes any proposal to reintroduce DSP charges in the Sydney Water and Hunter Water service areas. The setting of these charges to zero was done concurrent with an increase in the general water price to both offset the loss in revenue and recognise the broad customer base who can contribute to the overall cost of water supply.

It would not be appropriate to reverse this approach, as it would both stymy new development and send a price signal to consumers to increase consumption at a time when water conservation is an ongoing critical issue in Australia.

Sydney Water and Hunter Water have a broad revenue base, which can manage the cost of water provision. Across NSW infrastructure contributions are higher than in other jurisdictions, with a broader scope of infrastructure funded. This is detailed in the attached SMEC report.

Related, we note that development in NSW also bears a higher cost for electricity works, compared to other jurisdictions.

What it the best way to provide for the funding of potable and recycled water provision?

UDIA believes the current Sydney Water model, and the related model at Hunter Water, are appropriate, whereby the cost of delivering lead infrastructure is borne by the water authority, enabling new customer connections and increased income for that water authority. This model appropriately spreads the cost across the broader customer base and removes a financial constraint on new housing supply.

We offer a cautionary note from the experience with Hunter Water: While DPSs were in place, Hunter Water did not have an adequate capital works program, and lead infrastructure was not delivered in a timely way to priority housing release areas. The lack of delivery of this critical enabling infrastructure was a blockage to housing supply during the DSP period. After DSPs were removed and before the adoption of the current funding policy, developers had to fully fund lead works and dedicate the infrastructure to Hunter Water at no cost. Again, the problem of delivering lead water and sewer infrastructure was a direct constraint on new housing supply, as developers could not bear the significant upfront risk and cost. The adoption of Hunter Water's new Funding of Growth policy in 2018 has been a dramatic positive enabler of overall housing supply in the Hunter by allowing developers to bring sites to the market earlier. This in turn reduces price pressure in the market for established homes and brings forward Stamp Duty revenues to the NSW Government, along with a general increase in economic activity.

The Sydney Water and Hunter Water experiences show that their current models are the most effective in supporting housing supply.

However, it is critical the government identifies the policy need for recycled water, so that the regulator can approve spending to implement recycled water.

Issue 4.8: Improving transparency and accountability

What would an improved reporting framework look like? Should each council report to a central electronic repository?

What elements should be included? How much has been collected by contributions plan and other mechanisms? How much council has spent, and on what infrastructure items?

Should an improved reporting framework consider the scale of infrastructure contributions collected?

UDIA NSW supports the proposed improvements to the transparency and accountability recently exhibited by the NSW Department of Planning.

UDIA supports measures that improve transparency and accountability so everyone can track the need for infrastructure, revenue collected from infrastructure and expenditure on infrastructure.

The current regulatory regime only requires reporting on monetary contributions, and we support extending this reporting to contributions more generally, with the amount of unspent contributions growing 33% to $1.7 billion in the Sydney mega region – Illawarra to the Hunter, in in the four years to FY19. The additional information required (in the table below) will add transparency to allow the community to hold councils to account.

We recommend contributions tracked include the information in the table below:

Contributions Received	Contribution Expenditure
• Contribution Plan Name • DA reference, consent authority, consent date, and mechanism • Purpose of contributions • Details of land and works-in-kind	• Project identification and description • Amount expended • Use of or development of the land or works-in-kind • Internal borrowings • Percentage of project funded.

With significant concerns in relation to the delivery of infrastructure we recommend the EP&A Regulation is further amended to require councils to publish infrastructure delivery plans. These plans should be reviewed by DPIE. These documents will help to inform an integrated Urban Development Program for all NSW major growth regions and help ensure that councils spend infrastructure contributions in a timely manner. An Urban Development Program coordinates infrastructure delivery to ensure that infrastructure and growth are aligned by monitoring growth and infrastructure delivery.

We support the requirements for council to publish contributions plans, indexed s7.11 rates, annual statements, and contributions on their websites or the NSW Planning Portal. We believe the Planning Portal should be the single point of truth for planning documents.

Issue 4.9: Shortage of expertise and insufficient scale

What can be done to address this issue?

Should the contributions system be simplified to reduce the resourcing requirement? If so, how would that system be designed?

UDIA recognises that there are challenges with securing the expertise for program management and preparing contribution plans. While simplifying the requirement for planning preparation may make that element more straightforward, it would not reduce the critical need to have proper integrated infrastructure planning and delivery to support development.

It would be prudent to look at what level of planning and delivery needs to take place to properly plan infrastructure for an area. We envisage that there may need to be greater consideration of private resources to complete infrastructure planning and management. In addition, there is promising technology which could be implemented to resolve some of these barriers.

Issue 4.10: Current issues with exemptions

Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?

Is it reasonable to share the cost of 'exemptions' across all of the new development rather than requiring a taxpayer subsidy?

Are there any comparative neutrality issues in the providing exemptions for one type of development, or owner type, over another?

Exemptions act as a cross subsidy with the other developments subsidising the exemptions. Where exemptions can make sense, is where development is otherwise contributing to the cost of the facility or providing a substantial portion of the cost. In those instances, the 'exemption' is potentially simplifying the system.

Exemptions are an inappropriate method of subsidising other government objectives, which should be subsidised through a taxpayer subsidy. This includes exemptions relating to affordable and social housing.

There may be perceived competitive neutrality issues that arise from government developments receiving benefits over non-government developments for the same use. This is something that needs to be considered closely by the Commission, noting that objectives beyond infrastructure funding and housing supply should be delivered outside the infrastructure funding system.

Issue 4.11: Works-in-kind agreements and special infrastructure contributions

RECOMMENDATION 15: DEVELOP A TRADEABLE CREDIT SCHEME UNDERPINNED BY THE ABILITY TO 'CASH-IN' CREDITS

Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions?

Works-in-kind and land dedication provides a guarantee of delivery of infrastructure directly related to the development. UDIA strongly supports works-in-kind arrangements and believe they should be strongly encouraged. Works-in-kind can provide an opportunity to negotiate a better outcome for the community with the cost and scope of infrastructure provision to be negotiated.

These arrangements can be more challenging when sites are in fragmented ownership, in those instances there may need to either be tradeable credits or another mechanism to encourage works-in-kind, particularly where the size of works may be greater for an individual scheme.

Developers may accrue works-in-kind credits that exceed their monetary contribution. Should works-in-kind credits be tradeable? What would be pros and cons of credits trading scheme?

Credits must be tradeable, to prevent developers from ending up with an 'excess of credits' once they complete a works-in-kind project. However, to create a market for credits they must be able to be 'cashed-in' with the relevant authority to ensure that they have value and given the fund already has the assets built. Recognising that this might require funds to be extended, we recommend the State Government develop a central fund to reimburse credits.

What are implications of credits being traded to, and from, other contributions areas?

Enabling credits to be traded between contribution areas is a matter of creating an accounting and banking system to ensure that the total contributions are balanced, similar to the pooling of contributions.

The alternative would be that the credit is ‘cashed-in’ at one plan and then the cash is used to pay a part of contributions in another plan.

CONCLUSION

UDIA welcomes the opportunity to make a submission into the Issues Paper – Infrastructure Contributions Review, and we look forward to continuing to engage in the reform process to ensure that we can deliver an efficient, transparent, accountable, predictable and equitable contributions regime that will support liveable, affordable, and connected cities in NSW.

UDIA