Urban Taskforce
AUSTRALIA

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environments to engage in constructive dialogue with government and the community.

5 June, 2020

Peter Achterstraat AM
NSW Productivity Commissioner
Office of the Productivity Commissioner
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Dear Commissioner Achterstraat

I write firstly to welcome your appointment for this review and thank you for the opportunity to meet with you (via Zoom) on the 18th May 2020. This letter arises further to our conversation insofar as you advised that you would welcome early written advice of matters of concern to Urban Taskforce Members such that the Productivity Commission's Discussion Paper could be informed by our early thinking.

Timing of the Review

It is understood that the Productivity Commission's Discussion Paper will be publicly exhibited mid-year and Urban Taskforce will have an opportunity for further comment at that time. We understand that the timeframe has been brought forward for the completion of the Review and that recommendations to Government are anticipated at the end of October 2020. We are pleased to note that this will allow the Commission's Review to dovetail into the review of infrastructure contributions currently underway by the Department of Planning, Industry and Environment.

It is critical that neither Councils nor DPIE do not use the fact that this review is being undertaken to further delay decision on VPAs, DAs, Re-zoning of land and the "making" of SICs.

At the outset, it is critical that the dual processes being undertaken by DPIE through the public exhibition of the following documents (Table 1) does not confuse or frustrate the work of the Commission.

Guidelines – "Special Infrastructure Contributions" – Draft, April 2020
Planning Agreement Practice Note – Exhibition Draft, April 2020
Policy Paper – "Environmental Planning and Assessment Regulation 2000 proposed amendments", April 2020
Discussion Paper – "Improving the review of local infrastructure contribution plans", - Draft, April 2020
Discussion Paper – "Criteria to request a higher s7.12 percentage", April 2020

Table 1 – DPIE documents on public exhibition – feedback due 12 June, 2020

Folding the feedback on these DPIE documents into the comprehensive work of the Productivity Commission will ensure that there is a single and wholistic reform package.

An indicative Urban Taskforce response to each of the issues raised in the DPIE documents can be found at *Appendix 2* of this document.

Prior to the current COVID-19 recession, a series of confused and ad-hoc policies had conspired to drive up housing prices in the Greater Sydney region. While demand remained strong, this situation was tolerated – unless you were a young person looking for a first home, in which case this was a major problem and has resulted in many of Sydney's best and brightest university graduates, trades and essential workers simply emigrating to other states.

Economic growth depends on population growth and this in turn depends upon immigration. If new homes are not built in sufficient quantity to meet demand, this will force housing prices further upward – perhaps not in the short term where you will simply see increasing average household occupancy rates, but eventually this will happen. Given the immediacy and importance of these reforms, particularly in the post COVID-19 period, Urban Taskforce would appreciate a formal update on the timing of the Productivity Commission's work and the timeframe for expected delivery of recommendations to Government. This could/should be provided along with the promulgation of the Discussion Paper.

It is critical to recognise that the primary driver of housing prices in Sydney is lack of supply in locations where people want to live. While DPIE and the planning community have been pleased to highlight strong growth in supply in recent years, the fact is that only in 2 years since 2005 has the supply of housing met population growth. Now, approvals have plummeted since 2017 and completions, while lagging, are also declining:

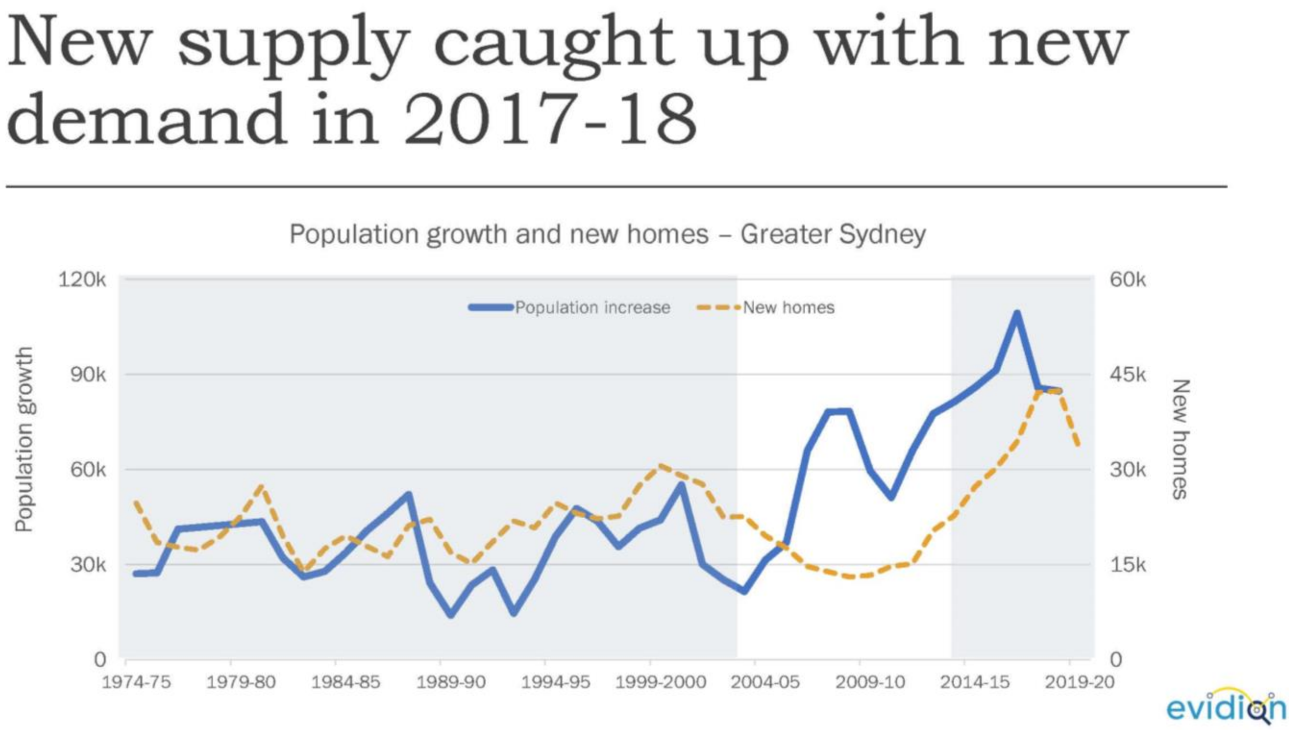

Figure 1 – Population growth viz new home completions, Source Evidion

Economic conditions post COVID-19

The unprecedented COVID-19 pandemic and subsequent 'lockdown' have completely changed the New South Wales economy and the market conditions relating to property finance. What was tolerable before due to ongoing strong demand is now intolerable.

The economic impact of COVID-19 will have massive consequences for the lives of Sydneysiders. It is not just an economic problem – it flows on to what services the NSW government can afford to provide, the affordability of homes, the quality of amenity provided by government infrastructure and developer contributions, the social wellbeing of our society and the quality of our lives.

Recessions change people's lives. They change priorities of governments. Without a strong economy, there is no development. Without development, there are no new homes, shopping centres, employment zones, commercial centres. Without this development, there will be no contributions to improved public open space, bike paths, local swimming pools or Council libraries.

When the economy tanks, there is a need for re-assessment. There is no doubt that some of the housing growth will continue to come from greenfield development – but governments also need to re-consider leveraging the investments they have already made and increasing densities where infrastructure already exists. This is particularly the case where governments are investing in new infrastructure.

The cumulative impact of fees, taxes and charges at local, state and federal level needs to be examined in this new context. There is a real risk that the cumulative impact of the various taxation imposts will render the feasibility of the development of land unsupportable.

- GST
- Land Tax
- Stamp Duty
- Council Re-zoning and Development Application Fees
- Special Infrastructure Contributions
- Local Infrastructure Contributions
- Voluntary Planning Agreements
- Affordable Housing Levies
- RMS Works Authorisation Deeds ("WADs")

The property development and construction sector represents almost 10% of all employment in New South Wales. It is a labour-intensive industry and accordingly money spent in this sector has a high multiplier effect, stimulating economic activities and associated revenue streams for government.

That is not to say that the Urban Taskforce would support approving the development of land without appropriate hard and soft infrastructure, we do not. But we ask the questions posed in Table 2.

Question	Short Answer
Who should bear the burden of funding infrastructure?	A combination of Local Government, State Government, developers and landowners.
Is all the infrastructure essential?	Often not and increasingly, developers are used to top-up Council infrastructure programs due to rate pegging.
Has the burden of funding infrastructure shifted towards developers and new buyers over time?	Yes
Does this place upward pressure on prices in the Sydney market?	Yes
Is this a fair burden to place on new home buyers who are typically young families & first home buyers?	No – the entire economy benefits from growth. Paying for the infrastructure which supports growth should be shared.

Certainty and transparency for communities, local government, and developers

The Urban Taskforce strongly supports the need for 'certainty and transparency for communities, local government and developers.'

There is very little transparency or certainty regarding the nature, cost and impact of developer contributions in their current form. Our concerns regarding this are outlined below:

Cumulative Impacts of Fees and Charges on the Development Industry

The property industry has been subject to inconsistent, unregulated and rapidly increasing accumulation of taxes and charges related to the provision of state and local infrastructure. Currently, these are applied in an ad-hoc manner, by different authorities, without any oversight of the cumulative impacts of these contributions, fees and levies on the development of land.

Urban Taskforce has significant concerns over the cumulative impacts of these levies and charges and their role in deterring investment in the property development industry. As a result, this has a negative impact on jobs, investment, employment, growth and, of course, taxation revenue.

See following a list (not comprehensive) which outlines some of the various fees, contributions, taxes, charges and levies imposed on developers as part of the property development process:

- GST
- Payroll tax
- Land Tax
- Stamp Duty
- Local development contributions levied under section 7.11 (formerly known as Section 94 contributions) of the *Environmental Planning and Assessment Act 1979,* which were recently 'uncapped' and can now exceed the $20,000 and $30,000 caps that were previously imposed (IPART recently approved S.7.11 charges for local infrastructure at Blacktown Council rising to a maximum of $106,000 per lot)
- Introduction of the 'strata building bond', a mandatory bond of 2% of the construction investment value of any strata-titled residential or mixed-use building over four storeys in height

- Introduction of 'Special Infrastructure Contributions' for various areas
- The costs associated with RMS Works Authorisation Deeds (which are often many times the value of any infrastructure charge – and if Developers do not agree to pay often inflated cost estimates, RMS simply refuses to give consent and DPIE have been impotent in dealing with this for years).
- Introduction of affordable housing schemes by local council which introduce contributions and levies on development
- Other, unconfirmed levies such as a $20,000 per dwelling contribution for the Parramatta Light Rail suggested by Transport Minister Andrew Constance
- Adoption of various 'value capture' tax policies imposed by local councils
- Payments associated with voluntary planning agreements
- Land taxes and rates during the development process, which can often stretch out into years due to the lengthy and uncertain rezoning and approval process

There are also a myriad of additional 'hidden' fees and costs in the planning system.

These include the costs associated with satisfying Council requirements for the lodgement of planning proposals and development applications. The level of detail, the number of studies and the plethora of consultant reports that is mandated is by far and away the most excessive in the nation and significantly adds to the burden of development and undermines its feasibility.

For example, the cost associated with running design competitions, public art levies, heritage floor space contributions, 'compliance levies' for development applications (which often bear no resemblance to the actual cost of compliance review – they are simply up-front fees applied by Council), biodiversity charges, authority costs, costs associated with 'complying' with the Apartment Design Guidelines (they are supposed to be guidelines by many Councils make them mandatory in practice), unaffordable sustainability cost impositions and excessive contributions to public domain costs.

These fees and charges are administered, largely, by councils and vary greatly between jurisdictions.

The cumulative impact of these measures has made NSW, by far, the State with the highest levies on property development in the country. Further, in NSW, these levies and charges increase the cost to the end consumer, thus making housing affordability less and less attainable, particularly in Sydney.

There is no certainty or transparency for developers regarding these fees and charges. Home buyers and consumer are also largely unaware of how much of the cost of their home is made up of taxes, infrastructure contributions and other fees and charges.

Recommendation 1: Introduce an indicative developer contributions calculator to the DPIE's e-planning system, which outlines the total local and state development contributions applicable on any development site.

Recommendation 2: Require councils to provide an online, easily accessible register of development contributions, including how much has been collected, from whom; for what; and when this money is spent. This information should be updated regularly (at least quarterly).

Recommendation 3: Councils should be prohibited from charging up-front "compliance" charges when they can not be reconciled against actual costs associated with the Planning Proposal or Development Application.

Worse, new contributions are often introduced late in the process, well after the Government has made public announcements regarding their intent to rezone for increased housing density. The changes are applied after developers have completed financial feasibility analyses and sought funding from banks or non-bank financial institutions.

In some greenfield areas of Sydney, Special Infrastructure Contribution schemes have been announced, by then left for years with out being "made". This creates enormous risk and unnecessary delay.

Recommendation 4: Once the system of fees and charges is set, it should be set (adjustable only by pre-published formal review). New levies should not be introduced at a whim as this undermines investment decision making and creates sovereign risk.

Recommendation 5: Governments should not "fly kites" or articulate "thought bubbles" regarding corridor or precinct growth without having the underlying confidence that they will follow through.

Recommendation 6: Infrastructure charges must be established before any announcement is made, otherwise it is impossible to consolidate land parcels fairly and this results in a simple windfall for the existing landowner. SICs must be made and not left undetermined. Any SICs that have not been "made" should be established fairly and immediately.

Local Government and State Government infrastructure contributions are not collected and spent in a timely and transparent manner. They are collected by councils or by DPIE, with no indication on when the infrastructure which these fees and contributions will fund is to be spent.

Homebuyers and the community should also be made aware of how much developers contribute and when council will be providing infrastructure upgrades in real time.

The principle underpinning VPAs should be based on equal treatment of applicants. VPA must be genuinely voluntary and never made under the threat of delay from Council (often implied – but there in practice nonetheless).

While DPIE's draft Planning Agreements Practice Note is welcome, particularly insofar as it seeks to limit or deter Council's from pursuing "value capture", there is more to be done in this area to comprehensively stamp out poor practice. Changes to the operation and governance of VPAs is urgent.

While they should be flexible and open to driving innovative solutions, they should not be a de-facto mechanism for extracting additional and unjustified contributions to unrelated council infrastructure wish lists.

There are a number of further anomalies associated with the application of a SIC. When an applicant delivers works in kind associated with a SIC which is of a higher value than the calculated obligation of that applicant/developer, this creates a "tradeable credit". These credits can be traded to those who want to proceed with a development, but do not have enough works in kind associated with their property to meet the value of the calculated SIC.
These tradeable credits should be not be time limited. An applicant should be encouraged to deliver infrastructure under a SIC, not punished by being forced into a time limited infrastructure credit trading scheme which necessarily reduces the value of the credit as the expiry date approaches.

> **Recommendation 7: DPIE or Treasury should collect and publish all data associated with Section 7.11, 7.12, 7.24 contributions and contributions under VPAs and these be reconciled against the delivery of infrastructure.**
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> **Recommendation 8: VPAs must be genuinely voluntary. A stronger legislation base is required to prohibit Councils from forcing applicants into "in-voluntary" VPAs. VPAs should be under-pinned by the principle that all applicants should be treated equally.**
>
> **Recommendation 9: SIC based Tradeable Credits should not be time-limited and should be able to be used more directly to develop SIC identified infrastructure directly associated with the property of the credit holder.**

Local Government Funding and Service Provision

The current system of local government funding does not support population growth.

This is particularly the case in areas that are already suffering from a hard infrastructure (local roads, stormwater drainage and capacity, provision for school land etc) deficit. This is often even more the case with soft infrastructure (community infrastructure like playgrounds, libraries, parks, childcare centres, community open space and facilities) deficits; all due to rate pegging.

The system of rate pegging locked in the high rate base of those Councils that had historically set high rates. But it also locked in the low rate base of underfunded Councils and the bridge between the two, notwithstanding provisions in the legislation, has never been built.

The current system of making submissions to IPART is inefficient and rarely produces results which resolve infrastructure deficits. This is even more the case now that the LIGS scheme has been abolished.

If IPART is to continue to play any role, it must do more than a QS analysis on proposed infrastructure costs. A system needs to be established which considers the impact of local government infrastructure charges on the feasibility of development given the removal of the Local Government Infrastructure Grants scheme which, until this year, funded the difference between the capped levies and the actual cost of infrastructure in the nominated growth Centre Council areas.

Rate pegging is an old NSW State Government imposed "political fix" that hung around despite the consistent objections from Councils across the State.

The NSW Independent Local Government Review Panel analysed unpegged rates revenue in other states and found no evidence that councils would subject ratepayers to unreasonable increases were pegging relaxed[1].

The 2009 Commonwealth review of Australia's tax system found it tends to reduce overall responsiveness to ratepayers:

> *"If local governments are to be accountable to rate payers for their expenditures, it follows that they should have full (or at least greater) autonomy over the setting of the tax rate applied to properties in their jurisdiction."*[2]

Democratic accountability imposed by local council elections every four years provide an effective check against unjustified council rate increases in other states where rate pegging does not exist.

As a result of rate pegging, councils are now pursuing funding mechanisms outside of council rates. This, in part, explains the proliferation of "Voluntary" Planning Agreements which in many Council areas are more mandatory than voluntary. Other more reckless funding methods that have been applied by councils include value capture policies which are a dream for valuers, economists, lawyers and optimistic economists, but are a nightmare for investors and developers due to the shifting nature of the inputs, valuations, project funding uncertainty and methodologies. Further, where land and property values decline, are councils going to start writing cheques for developers?

There are also additional costs to development added by other levels of government.

These include:

The random nature of government-imposed levies has created considerable uncertainty. The 2009 Federal report on tax, *Australia's future tax system: Final Report* notes that:

> "*Where developer charges are set in an ad hoc fashion or are subject to unexpected changes, they can create uncertainty around new developments.*

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[1] Revitalising Local Government - Final Report of the NSW Independent Local Government Review Panel (October 2013) Independent Local Government Review Panel

[2] Commonwealth of Australia (2010), *Australia's Future Tax System: Final Report*

If charges are increased after a developer has bought land from its original owner, they cannot be factored into the prices previously paid for the raw land.

In that case, the charge would lower the expected return from the development. In return, general uncertainty about charging is likely to discourage investment activity, which would reduce the overall supply of housing[3]."

The Report concluded that development levies were only justifiable when they reflected the unavoidable costs of development. The report explained that:

"… where infrastructure charges are poorly administered, particularly where they are complex or set too high, they can discourage investment in housing, which can lower the overall supply of housing and raise its prices[4]."

The removal of rate pegging would create less reliance on planning agreements and local development contributions for funding. These contributions result in higher house prices and unfairly burden first home buyers at a time when housing is particularly unaffordable.

Recommendation 10: Rate pegging should be abolished. Councils' rate base must be able to be automatically adjusted upward to take into account or reward population growth and increased density. This will incentivise councils to accept additional growth and density and allow local government the ability to respond to increasing expectations for its role as a community service provider.

Recommendation 11: The role of IPART should be changed to ensure their work considers the impact of fees and charges of the feasibility of development.

A principles-based system that delivers the infrastructure required to accompany growth

Urban Taskforce notes that there has been a progressive shift away from the planning principles which have historically underpinned levies for local infrastructure. In particular, the concept of "nexus" as been progressively lost in the planning system as it applies to infrastructure fees and charges.

The planning system has shifted to favour an approach now prevalent in many Councils and even within DPIE: one of "let's get what-ever we can get", rather than any logical or reasonable rationale for decision making. The rules must be clear, the rationale explained, and the application consistent. The concept of nexus must be re-enforced while the impact on feasibility noted. Where feasibility is threatened, the first review should be on the list of infrastructure projects proposed by Council.

[3] Commonwealth of Australia (2010), *Australia's Future Tax System: Final Report*
[4] Commonwealth of Australia (2010), *Australia's Future Tax System: Final Report.*

As the Productivity Commission reviews the suite of fees and charges in this space, Urban Taskforce urges you to consider the following a set of principles to facilitate a fair and successful developer contributions scheme that delivers the infrastructure required to accompany growth:

- **"Don't kill the goose …"** – Fees and charges need to be considered cumulatively. The current regime of multiple taxes and charges threatens to undermine the feasibility of residential development further. It threatens the affordability of residential development by pushing house prices ever increasingly upward.
- **Nexus** - councils should demonstrate a link between the development being levied and the need for the infrastructure being funded.
- **Intergenerational equity** - councils should seek to ensure that the costs of infrastructure are not disproportionately placed on one particular generation or group of people, bearing in mind that many older generations benefited from low or non-existing infrastructure contributions, and that generally infrastructure is accessible and provides benefits to everyone in the community, not just new home buyers.
- **Equity** - the cost should be proportional to the projected use of the infrastructure by the development, reasonably estimated and restricted to essential works only.
- **Certainty** - developers should have certainty regarding the levies payable, infrastructure items to be funded, indexation method and works in kind credits.
- **Financial Accountability** - contributions should be allocated to the infrastructure for which they were collected.
- **Timeliness** - infrastructure should be planned for delivery as it is needed, either based on specific dates or thresholds of developments (i.e. completed dwellings).
- **Existing permitted uses should be credited**: A clear principle should be established to mandate that fees and charges must have a direct nexus with the additional use that arises from the change in zoning or controls. The fee should be based on the marginal impact of the new use and this should be clear. Guidelines should be updated to acknowledge that existing uses may be evident on sites, and that existing uses should be credited against proposed new uses so that contributions are only applicable for the increase as a result of the development, as outlined under the Act.
- **Transparency** - the methods for calculating levies should not be excessively complex to follow or for developers and the general public to understand. Local councils must report regularly on the amount of contributions collected and how and when these contributions are spent[5].

The package of DPIE documents detailed in Table 1 go some way to supporting an improved suite of processes applicable to Councils when developing levies. The big concern with them is, however, they have been developed in the pre COVID-19 context and they are weak in their mandate.

[5] Robinson J and DeGruyter. C (2018) Financing infrastructure through user-pays development contributions: an assessment of Australian practice, *Australian Planner*, volume 54, no.3, pp165-176

Recommendation 12: There is a clear need for legislative guidance to inform the development of all fees, taxes and charges associated with property development. A principles-based framework should be established and used when considering any guidelines, policies or practice notes. DPIE needs to take a strong approach with Councils, give clear guidelines, be transparent and fully accountable. Having a clear legislative framework to inform all Guidelines and Practice notes would remove significant degrees of confusion and prevent Councils making up their own rules.

Stamp Duty (or Transfer Duty) should be phased out

Every report on Tax Reform published in the last two decades has called for the abolition of Stamp Duty. Stamp duty is highly inefficient as it changes people's behaviour by providing an incentive not to down-size and it punishes those least able to afford to pay – first home buyers. The Henry Tax Review established that the "welfare loss" (inefficiency) associated with stamp duty (or transfer tax) is between 30-40% because of the distortionary impact on behaviour which reduces productive activity).[6]

Replacing Stamp Duty with a broad-based land tax (or another form of broad-based tax levied on the population more generally) has been considered by policy makers over a long period, but it has always been frustrated by scare campaigns. This would have the result of increasing transactions and improving the utilisation of the greatest single contributor to housing prices – that of land.

Stamp duty results in intergenerational inequity as it places a disproportionate burden of state revenue raising on new home purchasers as well as limits the supply of existing housing stock where the property is larger than the needs of the occupier. Urban Taskforce welcomes the push by NSW Treasurer Hon Dominic Perrottet MP to work with the Commonwealth and other States on phasing out Stamp Duty.

Competition between LGAs to drive down the costs of development should be encouraged. Any changes which encourage Councils to support additional density is supported. Understanding the drivers for differences in infrastructure fees and charges improves market decision making and consumer choice.

Recommendation 13: The State Government should progress discussions with States and the Commonwealth to abolish Stamp Duty and replace the revenue with a broad-based tax which has a less distortionary impact on behaviour and stimulates sales.

Cumulative impact of fees and charges is greater in NSW than in any other State

An indicative analysis of the cumulative burden of fees and charges was undertaken by Urban Taskforce in a typical Brownfield (Macquarie Park) development location. This was based on a sale price of circa $1 million for an apartment in a high-rise high density setting.

[6] Henry K, Australia's future tax system – Final Report, May 2010 (Henry Tax Review), p 13, undated and published by IPART, Review of the Local Government Rating System, December 2016, p15.

Tax/Levy		Cost per apartment
Stamp Duty	NSW State Government	$46,000
GST	Distributed to States	$91,000
Company Tax	Commonwealth	$75,000
s 7.11	Council	$20,000
Land Tax	State	$3,930
Affordable Housing	1 per 37 apts	$27,000
Cash (local green space contribution)	Council	$14,500
Total		**$277,430**

This does not include the value of income tax or payroll tax generated by the employment of the construction of the buildings or the life cycle of maintenance of the buildings.

Further, the taxes imposed on foreign buyers are 3 times higher for Stamp duty (an extra 8%) and there is an additional 2% surcharge per annum applied to land tax.

Now that there is a critical lack of activity and a shortage of supply, the NSW Government should revisit these additional foreign investor charges which act to reduce investment in property construction. Foreign investment in residential and commercial construction activity was critical in limiting the impact of the GFC on the New South Wales Economy.

Property and development taxes and charges comprise almost 28% of the sale price. Roughly calculated, this compares 22% in Melbourne and 15% in Brisbane.

In many cases, the local government infrastructure charges are significantly higher. In greenfield development locations one of the highest cost imposts arises from the need to purchase property for green open space and environmental offsets. Then there is the need for funding supporting hard and soft infrastructure.

Infrastructure contributions paid by developers are not used in an efficient and timely manner. There is often a significant lag between collection of contributions and provision of the facilities.

For example, there were significant contributions associated with the Macquarie Park Precinct that had been collected from developers in advance and not spent on the infrastructure for which they were collected. Further, in Parramatta LGA, Council reported in their Annual Report an aggregate of unspent contributions from developers of $118 million in 2018 and this had grown to $134 million in 2019[7].

Over the last year, Parramatta Council has collected $28.3 million and spent only $16.4 million, thus increasing its accumulated unspent developer funding to a total of $134 million. This does not include payments associated with Voluntary Planning Agreements (VPAs). This underspend on developer funded infrastructure is indicative of councils across the state and needs to be rigorously policed and penalties actively enforced.

[7] General Purpose Financial Statements for the Year Ending 30 June 2019, City of Parramatta Council, p 22.

There is no easily reconcilable ready-reckoner for collections of section 7.11, 7.12 and VPA payments with the delivery of the relevant infrastructure or community facilities. As a result, there is a tendency for councils to use these funds, provided by developers, as a general slush fund often unrelated to the development.

It is the case that councils are required to publish, in aggregate, the amount they have collected and how much is unspent. However, greater transparency relating to each and every commitment from council to infrastructure delivery associated with s.7.11 and s.7.12 contributions and contributions under VPAs should be made available.

The cumulative level of developer contributions is not clear, particularly given the introduction of new SICs across the State and the removal of the cap on local contributions in all Council areas by end June 2020.

Recommendation 14: NSW Treasury or the NSW Productivity Commissioner or IPART should be required to publish a comparison chart of infrastructure fees and other charges applied to the new households (free standing, town house or multi storey apartment development) between different Council areas in Greater Sydney and also publish a comparison table with other major capital cities (Melbourne and Brisbane).

Local Infrastructure Growth Scheme and Caps on s.7.11 fees

The NSW Government's Local Infrastructure Growth Scheme, which has been withdrawn in a staged process, will be abolished in June 2020. The LIGS provided invaluable financial support to local councils by funding the shortfall between local development contributions collected from developers and the actual cost of providing local infrastructure in the Growth Centre Councils.

This LIGS scheme complemented the capping of local development contributions. These caps helped to keep the cost of housing production low, improved the feasibility of development, and ensured certainty, consistency and transparency.

The state government's discontinuation of the LIGS means that councils must now raise their local development contributions rates significantly. For example, in August 2019, IPART supported Council's assertion that a levy of $106,000 per dwelling was justified given the shortfall in infrastructure in the Schofields precinct[8]. This is as a direct result of the removal of the caps.

This threatens the feasibility of development across Sydney and NSW. These contributions add to the cost of housing production and are passed on to the home buyer, increasing the cost of housing significantly and even making development of certain sites financially unfeasible.

[8] Independent Pricing and Regulatory Tribunal, Review of Blacktown City Council's Contributions Plan No.24 – Schofields Precinct, August 2019

The Urban Taskforce believes that it is critical that the LIGS is restored or funding replaced to prevent further dramatic increases to house prices, and that a cap on contributions is restored.

If this does not occur, the logical economic consequence will be a shift towards brownfield development and a significant increase in density in areas with under-utilised infrastructure.

Should this not be supported by Government, this will place enormous upward pressure on housing prices as a result of the manifest under supply of housing viz-a-viz demand.

With the removal of the cap along with the abolition of the LIGS scheme, the Urban Taskforce has significant concerns that these contributions will increase substantially, thus increasing the cost of housing and lowering housing affordability.

The caps were critical to underpinning the recent period of strong housing supply. The caps should be re-established in for the sake of certainty and transparency. Urban Taskforce supports new caps which equates to the original caps, adjusted for inflation.

Urban Taskforce contends that the current position of no caps and no LIGS seriously threatens economic activity and housing supply in NSW. In the Post COVID-19 context, such an outcome would be disastrous for the economy of NSW.

Ongoing consolidated revenue support for economic investment like population growth in the greenfield locations is critical to housing choice in Sydney.

In the meantime, DPIE and GSC should be directed by Government to actively support re-zonings which accommodate high density growth in brownfields locations where existing infrastructure has available capacity or can be relatively cheaply augmented.

Currently DPIE has a Discussion Paper on exhibition (see Table 1) entitled "Improving the Review of Local Infrastructure Contributions Plans (April 2020)". The paper analyses various options in relation to the capping of s. 7.11 contributions.

Urban Taskforce supports Option 1 in the Discussion Paper which proposes that the current cap of $20K per dwelling in an infill development and $30K per dwelling in a greenfield development be increased in line with CPI since the caps were first applied.

A cap ensures a degree of certainty for all parties involved in the delivery of housing, including Government Authorities. Further the caps could be CPI indexed in future years. This will allow developers, landowners and councils to properly account for, and plan for, future development contributions.

> **Recommendation 15: The Local Infrastructure Growth Scheme should be restored or replaced to cover additional costs above the pegged rate to prevent further dramatic increases to house prices.**

Recommendation 16: Consistent with Option 1 in the DPIE Discussion Paper, Local Infrastructure contributions should re-applied based on a CPI compound adjustment of the initial rates. Thus, they should now be capped at a fixed rate of $24,250 per dwelling in an in-fill development location and $36,370 per dwelling in greenfield development locations by the NSW Government to enable housing choice and bring downward pressure on housing prices.

Affordable Housing Levies

The provision of Social Housing has historically been a role fulfilled by the State Government and funded through consolidated revenue. Government has, over the past three decades, progressively vacated the space of keeping up with demand for social and affordable housing.

The Communities Plus scheme was the start of a partnership approach which was a welcome though protracted shift in thinking.
However, there is no economic logic at all behind the recent trend towards new housing developments bearing the burden of the provision of social and affordable housing. The key driver in terms of housing affordability is the lack of supply in Greater Sydney.

This is due, primarily, to over regulation by the Department of Planning and Councils, the slowness of the system which adds to costs and economically inefficient levies and overall taxation structures. In short, Government intervention has caused the problem. Why should new home buyers bear the burden and be required to fund the solution?

The biggest contribution to affordable housing is an over-supply of housing. Figure 1 demonstrates that in Greater Sydney, there has been no chance of achieving this since 2005. If Affordable Housing levies are to be applied, it is critical that they be levied entirely separately to any other infrastructure charge.

If the planning system is top contribute to the social imperative of affordable housing, it should do so by establishing an incentive-based affordable housing scheme where developers are encouraged via faster approval pathways, additional floor space (FSR bonus) and height bonuses etc.

An incentive-based scheme is the only way to deliver significant numbers of affordable homes without deterring investment and driving up the cost of housing for free-market buyers. The pursuit of mandatory affordable housing contributions by councils and other authorities only drives up the cost of market housing and penalises homebuyers.

If levies are applied, all contributions to any affordable housing scheme must be centrally registered and made publicly available. Similarly, affordable housing which is constructed should be made available for each Council on a centralised web page or "tracker". Developer contributions should not be confused with Commonwealth or State government grants or social housing.

Recommendation 17: Affordable Housing is best addressed by more approvals and faster re-zonings of land. An incentive-based approach involving FSR and height bonuses should be applied. The NSW government should not rely on new home buyers to rectify their own failure to ensure sufficient housing supply numbers.

No right of Appeal on s7.12 Levies

The application of fixed infrastructure levies **should be contestable** in the Land and Environment Court. Too many Councils simply threaten proponents with extended delay if they do not sign up to exorbitant fees, taxes, charges and levies. The structure of Land Tax (which is levied on the highest and best use even while a DA for that use is being processed through the planning system) makes holding land very expensive. Further, the cost of finance is a major threat to the c of development.

Where holding costs are so great, there must be a fast mechanism to break any deadlock over fees and charges being "requested" (or required) by Councils.

Recommendation 18: An appeals mechanism should be established to allow independent review of s7.12 levies to ensure they are justified by the principles-based framework referred to in Recommendation 12.

The cumulative impact of all the issues raised in this submission has made NSW by far the State with the highest levies on property development in the country. The random nature of Government announcements regarding re-zonings and changes in density, without pre-determined SIC and local contributions and levies and no regard for feasibility, must be addressed.

The NSW Parliament has recently passed an amendment to the EP&A Act to allow the Minister for Planning to change the timing of payments for local infrastructure fees. This will also apply to State Infrastructure fees. In the post COVID-19 financial environment, this will act to stimulate investment in the construction sector.

Any tax or fee or charge that is required to be paid before the value is created is necessarily an impediment to financial feasibility, investment, economic activity and employment. The change recently foreshadowed by the NSW Parliament through the new power granted to the Minister for Planning should be made permanent.

Recommendation 19: All levies - State Infrastructure Contributions, Section 7.11 and Section 7.12 contributions, affordable housing levies and payments associated with planning agreements should not be made payable until Occupation Certificate stage.

Finally, all levies and charges increase the cost to the end consumer, thus making housing affordability less and less attainable.

Over regulation in the Sydney planning system creates under-supply. An over-reliance on new development levies for the funding of infrastructure well beyond the immediate servicing of the proposed development further exacerbates the cost impact.

The Urban Taskforce and its members thank you for considering our submission.

Yours sincerely

Tom Forrest
Chief Executive Officer

Appendix 1 – Urban Taskforce Recommendations

Recommendation 1: Introduce an indicative developer contributions calculator to the DPIE's e-planning system, which outlines the total local and state development contributions applicable on any development site.

Recommendation 2: Require councils to provide an online, easily accessible register of development contributions, including how much has been collected, from whom; for what; and when this money is spent. This information should be updated regularly (at least quarterly).

Recommendation 3: Councils should be prohibited from charging up-front "compliance" charges when they can not be reconciled against actual costs associated with the Planning Proposal or Development Application.

Recommendation 4: Once the system of fees and charges is set, it should be set (adjustable only by pre-published formal review). New levies should not be introduced at a whim as this undermines investment decision making and creates sovereign risk.

Recommendation 5: Governments should not "fly kites" or articulate "thought bubbles" regarding corridor or precinct growth without having the underlying confidence that they will follow through.

Recommendation 6: Infrastructure charges must be established before any announcement is made, otherwise it is impossible to consolidate land parcels fairly and this results in a simple windfall for the existing landowner. SICs must be made and not left undetermined. Any SICs that have not been "made" should be established fairly and immediately.

Recommendation 7: DPIE or Treasury should collect and publish all data associated with Section 7.11, 7.12, 7.24 contributions and contributions under VPAs and these be reconciled against the delivery of infrastructure.

Recommendation 8: VPAs must be genuinely voluntary. A stronger legislation base is required to prohibit Councils from forcing applicants into "in-voluntary" VPAs. VPAs should be under-pinned by the principle that all applicants should be treated equally.

Recommendation 9: SIC based Tradeable Credits should not be time-limited and should be able to be used more directly to develop SIC identified infrastructure directly associated with the property of the credit holder.

Recommendation 10: Rate pegging should be abolished. Councils' rate base must be able to be automatically adjusted upward to take into account or reward population growth and increased density. This will incentivise councils to accept additional growth and density and allow local government the ability to respond to increasing expectations for its role as a community service provider.

Recommendation 11: The role of IPART should be changed to ensure their work considers the impact of fees and charges of the feasibility of development.

Recommendation 12: There is a clear need for legislative guidance to inform the development of all fees, taxes and charges associated with property development. A principles-based framework should be established and used when considering any guidelines, policies or practice notes. DPIE needs to take a strong approach with Councils, give clear guidelines, be transparent and fully accountable. Having a clear legislative framework to inform all Guidelines and Practice notes would remove significant degrees of confusion and prevent Councils making up their own rules.

Recommendation 13: The State Government should progress discussions with States and the Commonwealth to abolish Stamp Duty and replace the revenue with a broad-based tax which has a less distortionary impact on behaviour and stimulates sales.

Recommendation 14: NSW Treasury or the NSW Productivity Commissioner or IPART should be required to publish a comparison chart of infrastructure fees and other charges applied to the new households (free standing, town house or multi storey apartment development) between different Council areas in Greater Sydney and also publish a comparison table with other major capital cities (Melbourne and Brisbane).

Recommendation 15: The Local Infrastructure Growth Scheme should be restored or replaced to cover additional costs above the pegged rate to prevent further dramatic increases to house prices.

Recommendation 16: Consistent with Option 1 in the DPIE Discussion Paper, Local Infrastructure contributions should re-applied based on a CPI compound adjustment of the initial rates. Thus, they should now be capped at a fixed rate of $24,250 per dwelling in an in-fill development location and $36,370 per dwelling in greenfield development locations by the NSW Government to enable housing choice and bring downward pressure on housing prices.

Recommendation 17: Affordable Housing is best addressed by more approvals and faster re-zonings of land. An incentive-based approach involving FSR and height bonuses should be applied. The NSW government should not rely on new home buyers to rectify their own failure to ensure sufficient housing supply numbers.

Recommendation 18: An appeals mechanism should be established to allow independent review of s7.12 levies to ensure they are justified by the principles-based framework referred to in Recommendation 12.

Recommendation 19: All levies - State Infrastructure Contributions, Section 7.11 and Section 7.12 contributions, affordable housing levies and payments associated with planning agreements should not be made payable until Occupation Certificate stage.

Appendix 2 – Urban Taskforce indicative response to DPIE Draft Papers on Infrastructure Contributions and the regulatory regime

DPIE Issues Paper	UTA response
Criteria to Request a Higher s.7.12 percentage – discussion paper	The Urban Taskforce supports the suggested criteria for a s.7.12 to be considered for a higher percentage levy. However, additional criteria should be added to this list to give consideration to feasibility and economic impacts of the levy. Suggested criteria include: • Can development in this area sustain an increase in the levy. A study should be prepared demonstrating that the increased levy will not deter development or investment, taking into consideration aspects such as -fragmented land ownership, development constraints, potential market fluctuations. • Have landholders and developers in the area been sought out and consulted with? All landholders and developers should receive notification that changes to development levies are proposed which could affect their current plans or proposed future plans for their land. A report should be prepared outlining landowner and developer concerns and how these are considered and addressed. • Implications for the increase should be explained to affected property owners (particularly 'layman' who may not have a sophisticated understanding of movement of property prices), to ensure that their expectations for property prices – should they be looking to sell – are scaled back to include this increased cost.
Draft Planning Agreement Policy Framework	The Urban Taskforce provides in-principle support for the Draft Planning Agreement Policy Framework and believes this is a positive step in the right direction to ensure Planning Agreements are used appropriately, transparently and fairly. Additional comments are provided below: • Outlaw 'value capture': The Practice Note addresses the concept and practice of value capture and states that 'in general' the use of VPAs for the 'primary purpose' of value capture is not supported. This statement is strongly supported by UTA as for many years councils have been using VPAs as a legalised form of extortion for the express purpose of value capture. The Practice Note should specifically state that VPAs cannot be used for value capture. • Councils must 'have regard' to the Draft Practice Note: The Practice Note is a positive document and sets out fair and appropriate practice for the use of planning agreements. The Ministerial Direction states that Councils must 'have regard' to the Practice Note. 'Having regard' to the Practice Note does not assist in explicitly preventing councils from pursuing value capture. We would like to see this reworded to stated that Authorities are directed to comply with the with the provisions of the Practice Note regarding value capture, and 'have regard' to the remaining provisions of the Practice Note. Simple stating that councils must 'have regard' will ultimately give councils enough much flexibility to choose to set aside or disregard the provisions relating to value capture Practice Note. The wording of the Ministerial Direction should be strengthened.

	- Framework should apply to all consent authorities (not just councils): Although Councils are by far the 'worst offenders' with regards to misusing voluntary planning agreements, the framework should be extended to all consent authorities. - Negotiation timeframes should be introduced: The Practice Note should also introduce mandatory negotiation timeframes for planning agreements, as outlined in the State Government's Planning Reform Green Paper (2012) - Security for works-in-kind is unnecessary and creates financial difficulty for developers: Often councils will demand developers provide security bonds for 'works in kind' outlined in a planning agreement. This is unnecessary as there is no evidence to suggest there is an inherent problem with developers failing to providing works in kind as outlined in a planning agreement without a security bond, and this substantial financial burden on development. The Practice Note and Direction should include provisions to outlaw this practice. - Planning Agreements should not be used for compliant DAs or DA's with minor adjustments to controls under SEPP 1: The wording of the Practice Note infers that Planning Agreements are common practice on development that requires a development application. Planning Agreements have and should only be required where applications are being made which seek to increase or change development outcomes on a site (excluding SEPP 1 amendments and minor increases permissible of course). The wording of the current draft document infers that planning agreements are commonplace for development applications, regarding of whether the application seeks to changes or exceed the relevant planning controls. This is extremely dangerous as Council's will start to seek to use them more if they believe it is acceptable to do so. The wording of the Practice Note should be amended to make be abundantly clear that planning agreements are more common or acceptable practice where planning proposals or development applications are seeking to increase density beyond existing controls. They are not commonplace for compliant development applications, should not be used during a normal assessment process and can only be used in exceptional circumstances where the developer and Council agree and DPIE approve. **Planning Agreements should be considered 'supplementary' contributions for infrastructure – NOT a consistent and established source of revenue for contributions:** Page 8 states that 'local strategic planning statements will identify upfront the strategic planning priorities and infrastructure for an area, which should be reflected in planning agreements that demonstrate a comprehensive approach to infrastructure funding and planning'. This statement implies that planning agreements are 'standard practice' and council is already factoring in and planning for revenue obtained through planning agreements. This goes against the premise that planning agreements are to be used in exceptional circumstances and are therefore not to be relied upon as a predictable source of income. Factoring in revenue obtained through planning agreements just encourages and entrenches council's use of these documents.

	• Renotification of planning agreements should only be required where there has been a material change: Page 9 discusses the notification process for planning agreements. Having to renotify planning agreements can add significant time to the processing of these documents, and this is often used by councils to suggest that renotification will be required if developers press for changes, forcing the developer to back down as they wish to avoid more delay. Planning Agreements should only be re-notified if the agreement is materially different to what was original exhibited. The current practice of renotifying for even minor changes adds little to no value to the outcome and causes the developer to lose additional time and add to costs and delays. • Registration on title: A Planning Agreement should only have to be registered on a title once a rezoning plan is finalised. It is unfair to encumber a piece of land with a title if the rezoning plan has not been finalised. Councils and the Department may be concerned that that planning agreement may never get registered on the title and be missed, however it would be more practical if the requirement to register a VPA on title occur once the revised plan is made, not before.
Improving the review of local infrastructure contributions plans – discussion paper	The Urban Taskforce supports the following options identified in the Discussion Paper: • Increase the thresholds by CPI (since they were first applied) to $24,250 per lot / dwelling in infill areas and $37,370 per lot/ dwelling in greenfield areas. • IPART Review Terms of Reference should have a revised mandate to review the impacts of changes to local contributions plans upon the cost of housing, taking into consideration current economic and market conditions. • The Terms of Reference should also include a requirement to proactively consult with active developers and affected landowners (not just notification but reaching out with phone calls and seek meetings). • Terms of reference must also include an examination of the council's capacity to and history of, delivering infrastructure in a timely and efficient way. There is no point allowing increases to infrastructure contributions where council has failed to expend this quickly and efficiently. • The proposed removal of exhibition requirements for IPART implies this process has become 'tick a box' and meaningless. The real issue is whether the review by IPART is thorough and rigorous. It is crucial that all submissions to council on the proposed contributions plan are sent to IPART for their independent analysis – not just a council report summarising the submissions. Additional recommendations: • The timing of payment of local infrastructure contributions should be set back to Occupation Certificate (not Construction Certificate) stage. Recent legislative amendments have granted the Minister for Planning the power to determine when contributions should be paid, we urge the Government to use this power effectively.

	- Councils should not be permitted to ‘hedge their bets’ and nominate they will apply a section 7.11 plan or section 7.12 plan, whichever is the highest. Willoughby Council has been known to do this. The Paper should make clear that Councils can only have one plan apply. - Councils have also been known to rush through plans to increase contributions once they become aware of a new proposal. They also substantial increasing 1- and 2-bedroom contributions and keeping 3-bedroom contributions below $20,000 cap to avoid delay by an IPART review. This practice should be stopped. The only contributions that should apply should be the contributions that are applicable at the time the planning proposal or development application is lodged.
Proposed Amendments to the EP&A Regulation	The Urban Taskforce supports these proposed changes. However, we believe that there are additional opportunities and actions the government could take to monitor the collection and use of infrastructure contributions. - <u>Additional ‘cumulative oversight’</u> role required. As well as monitoring the collection and expenditure of infrastructure contributions, an independent authority should monitor the cumulative build-up of the fees, levies, contributions and charges from all local, state and federal government agencies and actively monitor how these are affecting housing supply. - <u>Monitoring Program should be expanded to include Special Infrastructure Contributions and Affordable Housing Levies</u> - <u>Wider public education program:</u> There is widespread confusion over the role of developers and infrastructure contributions in relation to growth and development. Developers are often unfairly targeted as introducing growth to an area without appropriately mitigating the impacts of growth through contributing to infrastructure provision. This is untrue and inaccurate. The findings of this monitoring program should be used to widely communicate the role that local councils play in delivering infrastructure to accommodate growth, so residents are informed about the roles and responsibilities of infrastructure provision.
Special Infrastructure Contributions Guidelines	The Urban Taskforce provides in principle support for these changes and makes the following suggested changes: - Infrastructure charges must be established before any announcement is made, otherwise it is impossible to consolidate land parcels fairly and this results in a simple windfall for the existing landowner. SICs must be made and not left undetermined. Any SICs that have not been “made” should be established fairly and immediately. - The timing for the payment of Special Infrastructure Contributions should be permanently delayed till Occupation Certificate stage, as thus improve the financial feasibility for development. - SIC based Tradeable Credits should not be time-limited and should be able to be used more directly to develop SIC identified

infrastructure directly associated with the property of the credit holder.

- SICs should be subject to a reporting and monitoring program similar to the process outlined in the EPA Regulation for Local Infrastructure Contributions. We note that the Guideline proposes to provide SIC reporting information on an annual basis – this should be provided on a ‘real time’, monthly, or at least quarterly basis.

- Landowners and development industry have critical ‘on-the-ground’ information and should be consulted as part of the process of identifying what infrastructure is require to be funded through a SIC. Private sector input is critical to developing an informed SIC.

- Costing information to be used in the development of SICs appears to be sourced from local councils or delivery agencies, and thus could be unreliable and at times inflated. An independent review of costings should be undertaken. The SIC Guidelines also include set benchmarks for contingencies which seem excessive – as high as 40% for road and active transport infrastructure.

- Current ‘satisfactory arrangements’ clauses leave the door open for potential SICs to be levied upon developers. Page 7 states that a SIC will only apply to land rezoned after a SIC takes effect. The paper should be reworded to clarify the use of ‘satisfactory arrangements’ clauses in the interim should cease.

- ‘Grandfathering’ should apply: A ‘grandfathering’ provision should be included. If a SIC did not apply at the time the application for a rezoning was made, then as a result of a rezoning taking a lengthy period of time (for example, up to five years) a SIC is introduced and applicable for the development of the land, the landowner or developer is unfairly burdened through not fault of their own with a substantial unanticipated tax. IF the SIC is not in place at the time of lodgement of a rezoning application, then a SIC cannot be applied.