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.

11th July 2021

The Director
Portfolio Committee No. 7 - Planning and Environment
Parliament House
Macquarie Street
Sydney NSW 2000

Email: PortfolioCommittee7@parliament.nsw.gov.au

Portfolio Committee No. 7 – Inquiry into the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021*

Dear Committee Members

I write in relation to Portfolio Committee No. 7's Inquiry into the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021(The Bill).

The Urban Taskforce and its membership welcomed the involvement of the NSW Productivity Commission is examining the efficacy of the NSW system of fees and charges for the delivery of State and Local infrastructure. Our submission to the Productivity Commission's review of Infrastructure Contributions can be found at *Attachment 3*.

The Urban Taskforce has consistently noted the comparably high cumulative impact of fees, taxes and charges at local, state and federal level applied to developments in this State compared to others on the eastern seaboard.

These matters now need to be considered in the context of the unprecedented COVID-19 pandemic and the current reality of a housing supply and affordability crisis in Greater Sydney and across regional NSW. There is a real risk that the cumulative impact of the various cost imposts will simply add to the already high cost of new homes in NSW.

The current under supply has combined with the high taxation regime and low interest rates to result in the cost of new housing prices escalating to such an extent that maintaining the feasibility of new development has been at the expense of the new home buyer.

The under supply is noted in the NSW Productivity Commission White Paper (2020) which references the higher household occupancy rates in Greater Sydney. Parents and grandparents are increasingly concerned about the prospects for their children and grandchildren living close to them, or in many cases, in the same city. Further, we risk Sydney and NSW losing its competitive edge by losing our best and brightest young people because they can't afford to live here.

At some point the economic conditions will change and additional fees, taxes and charges will be exposed as a critical component of the unreasonable housing prices in both Greater Sydney and NSW.

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Urban Taskforce has been strongly supported in its assertion that greater supply will reduce housing prices. A reduction in fees, taxes, state and local infrastructure charges will also directly reduce housing prices.

To the extent that increased infrastructure fees actually result in increased delivery of infrastructure and then result is a substantial shift in planning approvals and housing supply; the broad proposals, as outlined in the Bill, have the qualified support of the Urban Taskforce.

The qualifications are:

- the NSW Government's commitment to delivering infrastructure in a timely manner;
- their commitment to delivering increased housing supply; and
- the Government's commitment to set meaningful targets and holding councils to account with a view to completing the 40,000+ new dwellings per annum in Greater Sydney (as detailed in the Housing Strategy 2021 and the NSW Inter-generational Report) just to meet forecast housing demand.

To have an impact on housing affordability, council housing targets need to be significantly higher than those proposed by the GSC through the lamentable Local Strategic Planning Statement (LSPS) assurance process. Further, a solid commitment needs to be made from those across the planning system to deliver a significant increase in approvals in development areas right across Greater Sydney.

Urban Taskforce recommends *the Committee seek advice from Government as to the future setting, monitoring and enforcing of council housing targets, with a view to housing supply actually meeting demand many more new homes being built to drive down housing prices.*

The NSW Productivity Commission, under the leadership of Peter Achterstraat AM, has forensically identified the systematic under-supply of housing over the last decade and identified this in their first Report in 2019. The more recent NSW Productivity Commission White Paper (2021) bluntly stated as its first "key finding" (page 26) that"

> "*Housing supply has failed to keep up with demand. That has led to an undersupply of housing, increasing the cost of living for households and making New South Wales a less attractive place to live and work*".

Not only does NSW have the slowest and most complicated planning system in the nation, it also has the highest fees and charges in the country. In Greater Sydney, the total cost of fees, charges and taxes (Local, State and Federal) for a $1 million apartment (sale price to the buyer) is circa $300,000 – significantly more than in Melbourne (circa $220,000) or Brisbane (circa $180,000).

The Government is quite rightly boasting a much-needed record infrastructure spend – but this must not be at the expense of young families who are already priced out of the suburban Sydney marketplace, Government needs to do more, not just tax more.

Any additional infrastructure spend must deliver more opportunities for new housing. Without an increase in housing supply, an increase to infrastructure contributions will see

already unaffordable housing prices rise further. To increase supply and push down prices, additional areas for new housing must accompany infrastructure investment and delivery.

Accordingly, ***Urban Taskforce recommends*** *that the Committee seek advice from the Government as to their plans for up- zoning for additional housing to accompany the infrastructure investment funded by these new fees and charges, with a view to delivering much needed new homes and improving housing affordability.*

The Bill gives effect to the Government decision to ignore the Productivity Commission's finding that affordable housing levies are not consistent with a "principled based approach to infrastructure contributions". The NSW Productivity Commissioner recognised this in the recent Infrastructure Contributions Review Report where he questioned the principle of using fees and charges on developers to pay for affordable housing. The NSW Productivity Commission Review of Infrastructure Contributions Final Report (2020) stated:

> "*It is not clear that housing is being made more affordable as a result of these [affordable housing] schemes, as … the creation of a small quantity of 'affordable housing', may be at the cost of making other housing more expensive*."

Urban Taskforce supports more Government expenditure on social and affordable housing. However, this should be funded through consolidated revenue.

Urban Taskforce recommends *the Committee call on the Government to support the Productivity Commission by funding affordable housing from consolidated revenue and not inflicting a tax on new home buyers who, themselves, can least afford to pay it.*

There are aspects of the Bill that the Urban Taskforce supports

Urban Taskforce supports the postponement of the timing of payment of local infrastructure charges till the building is complete and ready for occupation (OC). This will assist get projects moving when cashflow is often tight. The Bill gives the Minister for Planning the power to issue a Direction to this effect and Urban Taskforce members look forward to him doing so. This change was made in the context of COVID-19 and it is a welcome permanent change which will improve the productivity of the housing supply industry.

Further, Urban Taskforce supports the review timeframes *for* LSPSs to be changed from seven to five years to better align with review requirements for State infrastructure strategies and regional plans, and to allow for the next iteration of documents to reflect and provide a plan for mandated, long term housing targets to meet demand.

Aspects of the Bill requiring further inquiry from the Committee

Urban Taskforce feedback and recommendations to the Committee are on the basis of the Bill and the accompanying "Bill Guide" as prepared by the Department of Planning and Industry. Urban Taskforce has been involved in a number of consultation sessions with DPIE and Treasury staff. This consultative approach is welcome.

Nonetheless, we note the absence of the accompanying Regulation, Ministerial Direction and SEPP and the opportunity for many of our issues to be addressed in the drafting of

these documents. The Urban Taskforce, in response to the Bill, provides the following comments and recommendations for the Committee's consideration:

The Land Value Contribution

The Bill introduces a new category of infrastructure contribution called a land value contribution (LVC) to be tied to rezoning proposals. Under the Bill, local councils will adopt a LVC plan for a precinct when there is a change to the land's planning controls that will enable more intensive development of the land and, as a result, increase the value of the land.

The LVC will be payable when the land is sold for the first time or developed. Advice from DPIE is that is only payable once and is to be a flat rate applied across the precinct for all land holders. If the land is being sold, the vendor must satisfy the requirement for the LVC on or before completion of the sale.

If development consent is granted for the mad prior to sale, then the consent authority can impose a condition of consent requiring the payment of the LVC. However, Urban Taskforce understands that this can only be completed if the development is likely to require the provision of, or result in an increase in the demand for, public amenities and services in the area. The use of this provision will need to be codified and closely monitored.

The Urban Taskforce is concerned about the ability for the Minister to extend the application of the LVC to existing development consents in certain circumstances.

Such retrospectivity means that a landowner/developer may having made investment decisions based on a development feasibility analysis which relied on costs that were in place at the time of preparing the Development Application, only to be exposed to additional costs after the consent has already been granted.

The Bill currently proposes that the LVC will be set by Councils, will not be appealable and may be required in addition to local infrastructure contributions under section 7.11. It is not unreasonable to conclude that over time there will be a rise in contribution quantum which will impact affordability.

The proposed legislation as drafted lacks robust safeguards protecting the rights of landowners who wish to sell their land (without first carrying out a development). The Bill does not contain a requirement for the LVC to be commensurate with the alleged increase in value coming out of more intensive development being permitted. Urban Taskforce is advised that a likely outcome is that the courts will consider that the required 'increase in value' is a reference to a notional 'increase in value' that would occur in the absence of a LVC. The ensuing result being that a LVC could be so onerous for a particular landowner that it more than wipes out any notional increase in land value, rendering the land sterile.

Accordingly, ***Urban Taskforce recommends*** *that an explicit legislative requirement be developed that allows for the LVC rate for a given parcel of land to be reasonable, proportionate to the predetermined, notified increase in value and able to be appealed in the Land and Environment Court.*

The intent of the LVC is to capture a portion of the increase in land value as a consequence of an up-zoning or increase in yield. However, the way the LVC mechanism is drafted, the cost - being an amount to be set by councils for "land required for public purposes"- will in many cases be passed onto the new homeowners. With this in mind, there are a number of matters that Government will need to address in finalising the accompanying Regulation and Directions.

Urban Taskforce recommends *that caps be established for LVCs to ensure that Councils do not effectively destroy the viability of the development of a precinct.*

Further it is critical that any new tax is for new areas identified for development and NOT those that have (languished for many years) in the planning system. A number of Councils have not yet completed their mandated reviews of their comprehensive LEP. Where this is the case, those Councils should not be allowed to establish a LVC scheme and it should not be applied retrospectively unless agreed by the applicant.

Urban Taskforce Recommends that *the LVC should not be applied to existing applications and planning proposals or to any land within an LGA that has not completed the mandated review of their Comprehensive LEP.*

Urban Taskforce recommends *the LVC only applies to <u>new</u> precincts identified for development, and:*

- *the mechanism is a flat rate applied across the precinct*
- *there should NOT be scope for the Minister to extend the LVC to existing development consents unless agreed by the applicant*
- *there is monitoring and reporting of councils' LVC rates (particularly in the early years of its operation)*
- *there is independent oversight by IPART of to ensure rates proposed are justified and there is no double-dipping for infrastructure under the 7.11 and LVC charge*
- *the amount is capped and only adjusted in accordance with the CPI, and*
- *the amount is only charged once.*

The LVC should not be used as a mechanism to discourage expeditious planning proposals that have the potential to (relatively quickly) deliver greatly needed new homes. As the LVC is clearly discretionary on the part of Councils it should not come at the expense of an existing owner/developer who may which to negotiate a Planning Agreement to achieve the same public benefit outcomes (at potentially a much quicker timeframe) than would be achieved under the LVC.

Urban Taskforce Recommends *that a number of drafting changes be made to the LVC provisions in the Bill as detailed in Attachment 2 to improve the operation of the Bill and avoid unintended consequences.*

Urban Taskforce recommends *that the capacity for local Planning Agreements be retained and that supporting documentation is clear in that the LVC is not to be used as a mechanism to discourage spot rezonings.*

Regional Infrastructure Contributions

The Bill proposes to introduce new regional infrastructure contributions (RICs) which will replace the existing special infrastructure contributions (SICs). A person cannot appeal to the Land and Environment Court in relation to a condition of consent requiring payment of the RIC. The RIC will be in lieu of any State Planning Agreements but the capacity for local Planning Agreements with a Council will remain. A council may, with the approval of the Minister, exclude an area/site from being subject RIC payments when entering into a Planning Agreement.

Senior Treasury and DPIE officials have advised Urban Taskforce that of the benefits from this Bill is a lower reliance on local **Planning Agreements** will only be allowed for the purpose of supporting the infrastructure needed to bring the release of greenfield development precincts forward (out of sequence) and even then, we are told, they will be limited to land contributions and must not have any value capture component. It will be imperative that these limitations on the scope of local planning agreements are clear and robust, so as to minimise any double-dipping that results in new homeowners paying twice for the same service or infrastructure.

The Bill identifies regional infrastructure as:

- *Public amenities or public services, including infrastructure that enhances public open space or the public domain.*
- *Affordable housing.*
- *Transport infrastructure.*
- *Regional and or State roads.*
- *Measures to conserve or enhance the natural environment (such as measures relating to biodiversity certified land).*

The actual RIC charge will be set and implemented through a new State environmental planning policy (SEPP), which will specify the regions and classes of development to which the RIC will apply, when it must be paid, and the terms of any conditions that must be imposed on development consents.

Urban Taskforce understands from both DPIE and Treasury staff, that the RIC rates in the SEPP will likely reflect the amounts proposed in the Productivity Commission's Review of Infrastructure Contribution Final Report recommendations. As such, we draw the Committee's attention to the qualification in the Productivity Commission's recommendation that **the proposed rates are "*subject to no substantial impacts on feasibility*"**.

DPIE's consultation with industry in setting a final rate will be critical in ensuring that new development is feasible, and that housing supply is not further constrained.

In theory, three separate RIC rates could apply to an area or site: the regional set rate as well as potential Transport and/or biodiversity charges.

Investment in new significant transport infrastructure allows for connections between communities and people and their places of employment, education and other services.

The Urban Taskforce has always supported investment in major infrastructure investment as a means to service the much-needed new jobs and homes for Sydney. To that end, the

Urban Taskforce supports the transport component of the RIC as long as it is for significant State infrastructure and is not a duplication of charges paid as part of the LVC and other local levies; and there a commensurate uplift/ increase in yield where this contribution is paid.
Urban Taskforce understands from the Productivity Commission Report into Infrastructure Contributions that a site or precinct that has been bio-diversity certified will still be subjected to the biodiversity charge applying to the portion of the site that has been certified (that is, is developable).

The potential cost impost of the three components of the RIC, if implemented in accordance with the Productivity Commissions' recommendations, for each new dwelling in Greater Sydney, could be as follows:

Regional charge: $12,000
Transport charge: $5,000 + (this is a minimum and will only be applied where applicable)
Biodiversity charge: $ unknown

In the interests of the development industry being able to continue delivering much needed new homes to drive down the cost of housing,

Urban Taskforce recommends *the Committee seeks clarification from Government on how they intend in the finalisation of the SEPP and Regulations to ensure that:*

- *RIC rates together with other fees and charges are consistent with the recommendation of the Productivity Commission of "no substantial impacts on feasibility"*
- *the regional charge is fixed*
- *the transport component of the RIC is limited to significant, regional infrastructure projects (eg a new Metro rail line) and is not a duplication of charges paid as part of the LVM and other local levies*
- *there is a commensurate uplift/ increase in yield where the RIC is paid, particularly for areas where the transport component is paid*
- *a RIC and SIC cannot be charged for the same land, and*
- *if a current SIC or state planning agreement amount is a lower amount than the RIC, the SIC or planning agreement is 'grandfathered'.*

Local Levies

Urban Taskforce is concerned about the Bill increasing local 7.12 fixed development consent levies. We understand the detail will be revealed in the future Regulations and that the revised 7.12 charges may or may not be percentage-based and may have a broader application than the current levies.

Currently under s.7.12 only the Minister has discretion to agree to impose or agree to a Council request to impose a s.7.12 above 1% threshold. There is no guidance on how the Minister exercises such discretion. Guidelines would be useful to both the industry and councils to set the parameters as to the scope and basis of acceptable variations to the threshold.

Urban Taskforce recommends *the accompanying Regulation includes a reference to the preparation of guidelines on Ministerial consideration of s7.12 variations.*

A broader geographical application of the use of 7.12 levies is problematic. The issue of nexus applies if a 7.12 levy is charged for a site or precinct but is used to contribute to the cost of infrastructure or services across the broader LGA. This change has the potential to result in an unfair addition to the cost of some new homes, but not necessarily the benefits.

Further, Urban Taskforce understands that LVCs may be required in addition to local infrastructure contributions under section 7.11 and the new local levy under section 7.12.

The new contribution framework further opens up the potential for double-dipping.

This is particularly the case when there are different levy 'setters' and decision makers for the various charges. Both councils and DPIE having acknowledged they have a limited resources and capacity to undertake timely, strategic and sensible assessments of infrastructure plans.

Further, different councils setting their own s7.11and LVCs can result in inequitable charging for new infrastructure.

Independent oversight of the setting of local levies and charges is needed to manage the quantum, ensure a nexus and remove double-dipping.

In the interests of keeping infrastructure charges equitable and as low as possible to maximise affordable entry into the housing market,

Urban Taskforce recommends *that the role of* ***IPART*** *is extended, and appropriately resourced, to review the setting of local infrastructure charges, including the LVC, with a view to:*

- *Ensuring s 7.11and 7.12 fees are used for infrastructure that has a direct nexus with the impact of the development, and not be used to support unrelated infrastructure in the LGA*
- *Ensuring no duplication of charging for the same infrastructure or service across the different levies, and*
- *Delivering consistency of local infrastructure charges across the regions.*

General improvements to the Drafting of the Bill

Additional to the matters of policy and corresponding recommendations raised in the foregoing, Urban Taskforce members have also advised of a number of suggested improvements to the legal drafting of the Bill.

The drafting suggestions are listed in Attachment 2.

The Urban Taskforce looks forward to appearing before Committee to elaborate on this submission and to assist Members in finalising the Inquiry report.

Yours sincerely

Yours sincerely

Tom Forrest
Chief Executive Officer
Attachments

Attachment 1 – Summary of Urban Taskforce Recommendations

Attachment 2 – Drafting amendments to improve the Bill

Attachment 3 – Urban Taskforce final submission to the NSW Productivity Commission Review into Infrastructure Contributions

Attachment 1 – Summary of all Urban Taskforce recommendations

	Urban Taskforce recommendations
1.	*The Committee seek advice from Government as to the future setting, monitoring and enforcing of council housing targets, with a view to housing supply actually meeting demand and many more new homes being built to drive down housing prices.*
2.	Any additional infrastructure spend must deliver more opportunities for new housing. Without an increase in housing supply, an increase to infrastructure contributions will see already unaffordable housing prices rise further. To increase supply and push down prices, additional areas for new housing must accompany infrastructure investment and delivery. Accordingly, ***Urban Taskforce recommends*** *that the Committee seek advice from the Government as to their plans for up- zoning for additional housing to accompany the infrastructure investment funded by these new fees and charges, with a view to delivering much needed new homes and improving housing affordability.*
3.	The Bill gives effect to the Government decision to ignore the Productivity Commission's finding that affordable housing levies are not consistent with a "principled based approach to infrastructure contributions". ***Urban Taskforce recommends*** *the Committee call on the Government to support the Productivity Commission by funding affordable housing from consolidated revenue and not inflicting a tax on new home buyers who, themselves, can least afford to pay it.*
4.	*That an explicit legislative requirement be developed that allows for the LVC rate for a given parcel of land to be reasonable, proportionate to the predetermined, notified increase in value and able to be appealed in the Land and Environment Court.*
5.	*That caps be established for LVCs to ensure that Councils do not effectively destroy the viability of the development of a precinct.*
6.	*The LVC should not be applied to existing applications and planning proposals or to any land within an LGA that has not completed the mandated review of their Comprehensive LEP.*
7.	*The LVC only applies to <u>new</u> precincts identified for development, and:* • *the mechanism is a flat rate applied across the precinct* • *there should NOT be scope for the Minister to extend the LVC to existing development consents unless agreed by the applicant* • *there is monitoring and reporting of councils' LVC rates (particularly in the early years of its operation)*

	• *there is independent oversight by IPART of to ensure rates proposed are justified and there is no double-dipping for infrastructure under the 7.11 and LVC charge* • *the amount is capped and only adjusted in accordance with the CPI, and* • *the amount is only charged once.*
8.	**Urban Taskforce Recommends** *that a number of drafting changes be made to the LVC provisions in the Bill as detailed in Attachment 2 to improve the operation of the Bill and avoid unintended consequences.*
9.	*That the capacity for local Planning Agreements be retained and that supporting documentation is clear in that the LVC is not to be used as a mechanism to discourage spot rezonings.*
10.	*In terms of the Regional Infrastructure Charge (RIC)* ***Urban Taskforce recommends*** *the Committee seeks clarification from Government on how they intend in the finalisation of the SEPP and Regulations to ensure that:* • *RIC rates together with other fees and charges are consistent with the recommendation of the Productivity Commission of "no substantial impacts on feasibility"* • *the regional charge is fixed* • *the transport component of the RIC is limited to significant, regional infrastructure projects (eg a new Metro rail line) and is not a duplication of charges paid as part of the LVM and other local levies* • *there is a commensurate uplift/ increase in yield where the RIC is paid, particularly for areas where the transport component is paid* • *a RIC and SIC cannot be charged for the same land, and* • *if a current SIC or state planning agreement amount is a lower amount than the RIC, the SIC or planning agreement is 'grandfathered'.*
11.	***Urban Taskforce recommends*** *the accompanying Regulation includes a reference to the preparation of guidelines on Ministerial consideration of s7.12 variations.*
12.	*That the role of* ***IPART*** *is extended, and appropriately resourced, to review the setting of local infrastructure charges, including the LVC, with a view to:* • *Ensuring s 7.11and 7.12 fees are used for infrastructure that has a direct nexus with the impact of the development, and not be used to support unrelated infrastructure in the LGA* • *Ensuring no duplication of charging for the same infrastructure or service across the different levies, and* • *Delivering consistency of local infrastructure charges across the regions.*

Attachment 2

Urban Taskforce suggested improvements to the legal drafting of the Land Value Capture Provisions of the Bill

Issues that may have arisen as a consequence of drafting:

- The removal of the existing requirement for any land value contribution to be 'reasonable'.

- The absence of an explicit legislative requirement that any land value contribution requirement for a given parcel of land is to be proportionate to an increase in value.

- The absence of an express requirement that there must still be — as a precondition to the imposition of the land value contribution — an 'increase in value' **after** any reduction in land value that results flowing from that imposition.

- The absence of a right for property owners (or the intending purchasers of property) — who must satisfy a land value contribution prior to (or on) a sale — to pursue a Land and Environment Court appeal on reasonableness. Such a right is currently — and will continue to be — available for 'section 7.11' contributions imposed as a condition of development consent.

- Allowing a requirement to **dedicate land free-of-cost** to be included in a land value contribution that must be satisfied **prior to the sale of land**. Such a requirement could only be reasonably imposed as a condition of development consent to be implemented in the course of developing the land (as is the status quo).

Suggested drafting improvements to address above

- A land value contribution must be required to be 'reasonable'. This is an existing requirement, but the bill only proposes to retain it for section 7.11 contributions that are not land value contributions (contrast the proposed section 7.11(a)(i) with section 7.11(a)(ii)). The proposed section 7.11(a)(ii) should only authorise a reasonable land value contribution.

- Following on from the point above, a determination by a local council of the land value contribution amount — when issuing a land value contribution certificate— must be reasonable. This requires an amendment to the proposed section 7.16D(3).

- It should be explicit that the endorsement of the transfer as to whether the land value contribution has or will be made (under the proposed section 7.16E) must be determined in accordance with the most recent land value contribution certificate issued.

- A property owner or an intending purchaser of land (subject to a land value contribution) should be entitled to appeal to the Land and Environment Court within (say) 28 days of the issue of a land value contribution certificate in relation to the amount set out that certificate. An appeal right should also arise if a certificate is not issued within, say, 14 days of application.

- The appeal could be dealt with in the 'class 3' jurisdiction of the Land and Environment Court as a conventional merit appeal. (The appeal is analogous to other appeals that the Court deals within this class.) The Court should be given a power that mirrors the proposed section 7.13(3) —a re- enactment of an existing provision. That is, in an appeal from the issue/non-issue of a land contribution certificate the Court should have the additional power to determine a land value contribution differently from what is required by the contributions plan, because it is unreasonable in the particular circumstances of the case. It should be explicitly that 'unreasonableness' may arise because of an inconsistency between the terms of a contributions plan and the EP&A Act, the regulations or ministerial directions, as well as in other circumstances.

- The precondition for the imposition of a land value contribution (in the proposed section 7.18(5(a)) should be adjusted so that it may only be imposed:

    - when there is a change to the planning controls that apply to each affected parcel of land that will enable more intensive development of the parcel (and that change in planning controls has been made concurrently with or in anticipation of the contributions plan);

    - as a result of that change in planning controls, there is an increase in the value of each affected parcel of land (and that there would still be an increase in value even after any likely reduction in the value of the parcel that may occur as a result of the imposition of the land value contribution); and

    - the land value contribution for each parcel of land is not disproportionate to the increase in land value for each parcel of land (both in consideration of that parcel alone, as well as in comparison to other equivalent parcels subject to the contributions plan).

- A 'parcel of land' could be defined with reference to the relevant parcel the subject of land valuation under the Valuation of Land Act 1916 (this legislation provides for appeal rights to the Land and Environment Court when there is a dispute about the proper boundaries of a parcel of land for land valuation purposes).

- The proposed subdivision 3A (in schedule 1 of the bill), be amended such that the only the cash contribution part of the land valuation contribution must made prior to the sale of any land.

Attachment 3

Urban Taskforce Submission to the NSW Productivity Commission's Review of Infrastructure Contributions

Urban Taskforce
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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.

13th August 2020

Mr Peter Achterstraat AM
Productivity Commissioner
NSW Productivity Commissioner
ICReview@productivity.nsw.gov.au

Dear Mr Achterstraat

Review of Infrastructure Contributions in NSW – Issues Paper

I write regarding the NSW Productivity Commission's Issues Paper – *Review of Infrastructure Contributions in NSW* (July 2020). On behalf of the members of the Urban Taskforce, I thank you for the opportunity to provide feedback on this important paper.

The cumulative impact of fees, taxes and charges at local, state and federal level needs to be examined in the context of the unprecedented COVID-19 pandemic and the subsequent impact on the New South Wales economy and the market conditions relating to property finance. It is now essential that the cumulative impact of fees, taxes and charges at local, state and federal level be examined in this economic 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.

The Urban Taskforce is disappointed that the question of the cumulative impact of all fees, taxes and charges was not given greater attention in the Discussion Paper. It is not possible to determine a framework for infrastructure contributions without considering the cumulative impact of all the fees and charges levied on the production of new property.

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. Further, they drive up the cost of housing and are a significant contributor to the difference between new house and apartment prices in Sydney viz-a-viz Melbourne or Brisbane.

Fees, contributions, taxes, charges and levies imposed on developers as part of the property development process in NSW include:

- 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
- 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 these 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
- Council Compliance Charges which have been unregulated by the Government and have crept into to the Council fees regime, yet often bare no relationship to the actual costs incurred by Council staff (for example, the Inner West Council has recently imposed a "Compliance & Enforcement Levy". This fee alone was almost twice the total lodgment fees for a Stage 1 & Stage 2 DA fees charged by the City of Sydney Council)
- 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.

The cumulative impact of these fees, taxes, charges and levies has made NSW the State with the highest levies on property development in the country. This matter deserves more attention in the Productivity Commission's review.

Further, these levies and charges increase the cost to the end consumer, thus making housing affordability less and less attainable, particularly in Sydney. Keaton Jenner and Peter Tulip of the RBA have published an independent assessment of development costs across eastern seaboard cities. The RBA found that the excessive planning restrictions associated with delivering apartments in inner Sydney were disproportionately high.

The RBA's *Apartment Shortage Report* (August 2020) found home buyers will pay an average of $873,000 for a new apartment in Sydney, even though it only costs $519,000 to supply, a gap of $355,000 (68 per cent of costs). This compares with smaller gaps of $97,000 (20 per cent of costs) in Melbourne and only $10,000 (2 per cent of costs) in Brisbane.

Significantly, the report concluded that the gap between the *supply cost* and the *delivery to market cost* was sustained by planning restrictions and planning risk. The additional costs are due to the excessive time taken to obtain approvals in the NSW planning system and the high degree of risk associated with approvals, despite the strong demand for new apartments.

Given the economic shock created by COVID-19, the RBA's independent confirmation of the excessive costs associated with the NSW planning system presents an opportunity for the NSW Government to cut housing prices by approving more supply and allowing for more height and cutting the burden on development created by infrastructure fees and charges.

In this context, please see below a full set of recommendations arising from this submission.

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 (Note: this requires SIC fees to be determined early – and certainly prior to any rezoning of the land).

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).

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

4. Once the system of fees and charges is set, it should not change (except for adjustments determined by pre-published formal review against fixed and transparent criteria). New levies should not be introduced at a whim as this undermines investment decision making and effectively creates sovereign risk.

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. This is has occurred along Parramatta Road and the Sydenham to Bankstown Corridor, and this has driven up the prices following clear signals from government that increased density would follow from investment in WestConnex and the Metro Rail (respectively), only for those published plans to be subsequently abandoned by Government.

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.

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

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.

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.

10. Rate pegging should be abolished. While the Minister for Local Government has recently announced a mechanism for allowing for a greater nexus between population growth and the rate base for each LGA, Councils should be pro-actively encouraged to take on density and provide housing for the growing population of Sydney. The rating system should 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.

11. The role of IPART should be changed to ensure their work considers the impact of fees and charges of the feasibility of development. The current role of IPART is nothing more than an expensive Quantity Surveyor review of infrastructure costs.

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.

13. The State Government should progress discussions with other 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.

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).

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 and ensure housing choice is available to consumers.

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.

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.

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 above.

19. All levies - State Infrastructure Contributions, s7.11 and s7.12 contributions, affordable housing levies and payments associated with planning agreements should not be made payable until Occupation Certificate stage on a permanent basis. This measure has been adopted in the context of COVID-19 but will expire at the end of the designated COVID-19 pandemic emergency period (currently due to expire on 25 September 2020).

The Urban Taskforce welcomes a Productivity Commission investigation of the current restrictions within the NSW planning system. The Urban Taskforce commends the recommendations made in this submission and looks forward to the opportunity to further discuss the contents of this submission, with a view to implementation with the NSW government.

Yours sincerely

Tom Forrest
Chief Executive Officer
Urban Taskforce Australia

Attachment A
Summary of Urban Taskforce members' feedback

Q1: Is a 'one size fits all' approach appropriate or do parts of the state require a bespoke solution?

The vast majority of UTA members advised that a 'bespoke solution for some parts or regions or development types' is appropriate.

Some however, advised that they believed that a one size fits all solution could work, but only if it is a tax on all forms and types of development, much like GST.

Q2. What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?

Site Specific Calculations

Advantages

- Flexible and allows for dynamic and timely responses appropriate for the target market
- Provides a fit for purpose solution for varying localities
- Allows for the identification of areas and locations where infrastructure costs are higher and results in a 'user pays' system
- Local demand and infrastructure can be better calculated for a specific area, for example, Green Square Town Centre v Mulgoa Valley
- Contributions can be directly aligned with infrastructure requirements in immediate vicinity of the site

Disadvantages

- Site specific calculations can be complex and time-consuming to produce (inefficient)
- Uncertainty about the value of contributions
- This system would require authorities to constantly review and add more and more requirements
- Councils or developers can hire consultants who skew calculations to their advantage, to implement high infrastructure charges as another means of discouraging development in their municipality. This could become yet another "battle of consultants' reports" and be expensive to administer.

Broad average rate

Advantages

- A broad-based general land tax would automatically adjust the levy amount proportionate to the change in value of the land.
- Simple
- Provides certainty for developers and councils
- Is easier to apply to complex infrastructure such as transport, which disperses benefits across a wide area which can be difficult to calculate site specific values for.
- Fairer and more equitable form of tax which allows all beneficiaries to contribute to the cost without unfairly targeting one group over another.

Disadvantages

- A broad average rate doesn't consider site specific factors, which can lead to a windfall for some and an unfeasible outcome for others.
- May not ensure that areas with greater demand for infrastructure will get their infrastructure funded

Comment: The benefit of Land Tax is it automatically adjusts for any improved amenity associated with any infrastructure investment. The market determines the value of new infrastructure and this would stop planners drawing arbitrary lines on maps which immediately creates bias in the market (it creates winners and losers depending on which side of the line a dwelling falls).

Q3. Do other jurisdictions have a better approach to infrastructure funding we should explore?

Infrastructure funding which targets housing developers (to the exclusion of all other industries) are considered predatory and unjust. No other industry is subject to the levying of taxes, fees, contributions, levies and charges from all levels of government to fund services, infrastructure and facilities which are for the benefit of all in the community - not just the additional population added by the development.

Comment: intergeneration reports have consistently highlighted the general benefits of population growth and economic growth. The burden of growth should not be borne, to the extent it is, by new home purchasers. The relative burden on development in Melbourne and Brisbane is considerably lower than it is on Sydney new home purchasers.

Q4. How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?

- Infrastructure Contributions should be fixed and capped.
- Different contribution rates should be used in rural, greenfield and infill areas.
- Infrastructure contributions should apply to all land-use types – but should be different between those land use types.
- Contribution rates should be calculated and published early on in the development process (rezoning), not years later.
- Infrastructure plans and costs need to form part of the LEP.
- Economic circumstances change all the time and at different rates across different regions and the contribution system must reflect this.
- Councils do have the right to vary, waive or defer contributions, to encourage development. This needs to be maintained and even encouraged as being a prudent commercial arrangement. State government should incentivise this practice.
- It needs to be a flat rate tax based on the cost of construction that applies across the whole state. Any other system is open to abuse.
- More government infrastructure funds, like the Housing Acceleration Fund, are needed to provide upfront finance for essential startup infrastructure.

Comment:

Certainty is critical - we cannot keep waiting on decisions of Government which are taking a long time to be made. (e.g. SICs being unmade and no ability to conduct feasibility analysis or determine final costs).

Enable a broader revenue source for the funding of infrastructure

Q5: Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?

- Every economic review in the last four decades has supported the abolition of Stamp duty. It should be replaced with an expanded GST or a broad-based land tax.
- Infrastructure bonds to underpin delivery.
- General Revenue should provide a greater proportion of infrastructure funding. The intergenerational reports all make clear the need for economic growth to support the baby-boomer generation with retirement and health care costs. Economic growth comes from increases in productivity (there has been little over the past decade), increasing participation in the workforce and lastly population growth. Population growth has underpinned economic growth for the last 25 years. If economic growth requires population growth, and we accept that economic growth is necessary, then the infrastructure which supports that growth should be funded by the community as a whole and not levied on first home buyers through developer fees and charges.
- Consumer deferral of contributions to be paid over a period of years following completion as part of the rates notices. This would reduce capital cost and borrowings for the homeowner. It would need to be transferable at the point of sale, so noted within the 88b for that property.

Integrating land use and infrastructure planning

Q6. How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?

Strategic and statutory plans such as Local Strategic Planning Statements, Local Environmental Plans and District Plans should be 'ground-truthed' similar to the Metropolitan Development Plan program previously used by the Department of Planning.

The State Government must ensure that Councils actually spend their s7.11 and s.7.12 local infrastructure contributions in real time and not years down the track. If they have a shortfall because they are waiting for other developments to be manifest, they can borrow from T-Corp at the lowest interest rates ever experienced. Developers should not be the de-facto bank for Council (local) infrastructure.

State government capital works' budgets must flexible to align with works required to meet catalytic demands resultant from development demanded contributions. If developers have made the payments, the capital works must be delivered. Too often the State Government waits for the final developer payment before delivering infrastructure. As per the point above regarding Councils, if an income stream is assured by future developer payments (through a SIC) then the agency should borrow from T-Corp at low interest rates and deliver the infrastructure. Flexibility is paramount.

The removal of unreasonable design and contingency allowances would drive greater efficiency. To date, IPART has contributed little to preventing state government infrastructure delivery agencies from gold plating their estimates of infrastructure delivery.

More work needs to be done up front to determine where the infrastructure needs to go. Once this is known, Councils, DPIE and developers can work on how best to fund it. This should be undertaken in greenfield locations on a precinct by precinct basis. By improving the implementation of contribution plans to ensure that all infrastructure for a precinct can be delivered and the relevant cost can then be shared between all of the landowners (or State Government).

Principles for Planning Agreements are Non-Binding

Q7 What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?

Both. They do add value and can provide great outcomes, however they have a significant impact on confidence in the planning system. On balance, our members leaned towards the latter.

Planning Agreements can provide value to councils, developers and the community, provided they are entered into voluntarily. Currently, the balance of power in negotiations is heavily weighted in the council's favour, leaving developers in no position but to negotiate on very unfavourable terms. Some councils, such as the City of Sydney, have made entering into these agreements effectively compulsory.

Each council has its own policy and approach to planning agreements and this inconsistency and uncertainty also undermines the entire planning system.

The VPA has become a weapon whereby councils can extract cash or kind in return for agreeing to what should have been approved in the first place on a merit basis. Development controls are often set at levels that are not viable and below what is merit based – then when the developer agrees to pay a “VPA” the merit based FSR/Height etc. are adjusted.

On the one hand, VPA’s encourage Councils to be reasonable and approve worthwhile projects. However, as noted above, more often, they create an incentive for councils to deliberately manipulate the planning system so as to make it a profit centre or a community infrastructure funding pool.

This practice makes the general public feel that there is something 'dodgy' going on because the LEP as published is supposed to set the controls on a merit basis, and yet that changes when a VPA has been paid. Further, the costs associated with a VPA are very high.

One possible positive would be if the VPA ensured that infrastructure is delivered on-time. Sadly, this is rarely the case. The timely provision of infrastructure enables more housing to be developed thus alleviating housing price pressure.

Q8- Is ‘value capture’ an appropriate use of planning agreements?

No. Value Capture is not an appropriate way to fund infrastructure. Value Capture, if done properly, requires detailed evaluation of land prices at the point of purchase and also at the point of sale. They are administratively inefficient and risk killing feasibility altogether.

Q9: Should planning agreements require a nexus within the development, as for other types of contributions?

Urban Taskforce agrees that planning agreements should require a nexus within the development, as is required for other types of contributions.

Q10. Should state planning agreements be subject to guidelines for their use?

Yes

Transparency and accountability for planning agreements are low

Q11 What could be done to improve the transparency and accountability of planning agreements, without placing an undue burden on councils or the State?

These agreements are a huge and costly burden on property developers and add substantially to the cost of production of new housing supply. To improve transparency and accountability, all of these agreements should be accessible in a centralised database and regularly updated to reflect the status and compilation of infrastructure that is funded through the agreement.

Some Urban Taskforce members advised that DPIE has a far superior pool of knowledge than any LGA. DPIE should take responsibility for coordinating planning agreements for developments of a certain size or value. This solution would generate a streamlined, more transparent and coordinated approach which could potentially resolve a great many of the uncertainties, inequities and lack of accountability.

Other members of the Urban Taskforce asked: transparency and accountability of what and by whom?

By their very nature, VPAs are commercially sensitive and involve negotiation between a developer and a council. There are many people interested in looking at the outcome from competing developers through to the general public. Commercial sensitivity must be respected.

Either there should be full and open access to the agreement or commercial in confidence negotiations. Total transparency would achieve very little other than to satisfy curiosity. Perhaps if planning zonings and controls were commercially realistic in the first place and infrastructure plans were published at the time of zoning, then VPAs would be a thing of the past. However, this outcome seems utopian given the current experience of developers with councils.

It is critical, if they are to exist at all, that they are entered into on a voluntary basis. It is also important to ensure that contribution plans are equitable to all of the land holders participating in the contribution plan. Any overspend should be able to be converted to trade credits.

There need to be clear parameters on the limit of the value of planning agreements which recognises there is a point at which the agreement is not financially viable.

Q12. Should councils and the State Government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?

Any agency which enters into a planning agreement with developers should be required to maintain online planning agreement registers in a centralised system. Given the current trends towards 'e-planning' and online accessibility, this register should be relatively simple to establish, administer and maintain. The register and system should be carefully designed to be user friendly and transparent.

Any kind of online planning agreement register should be developed with commercial sensitivity in mind.

Q13: How could the complexity of s.7.11 contributions planning be reduced?

Per dwelling caps are important in growth areas where land values are not high enough to support excessive contribution rates.

Section 7.11 contributions should be made clearly available online on one centralised website. This should be geographically mapped where possible to indicate which contribution amounts apply to which areas, regions and sites. If this could be expanded to include other contributions, including state infrastructure contributions, affordable housing levies and others, this would hugely increase transparency and certainty around the contributions liable for development.

The promulgation of a s7.11 plan is painstaking and intricate. It is essentially a wish-list of infrastructure required by council to improve its city, whether there is development or not. There should be a strong imperative to show a clear nexus between the new development and the proposed infrastructure.

Thinking regionally, it should be possible for councils to identify its list of projects, be it road upgrade, open space provision, public art etc. and establish a base of works that need to be undertaken even if there is no new development.

There is a backlog of infrastructure that is being funded by new 7.11 plans. This should be stopped. Establish the backlog, then the 7.11 plan should only consider the impact of the new development and the necessary funding of those works. Having assessed the future works, then a simple per lot rate can be established that would be applicable either as a universal or precinct rate. It must however be set at the time of zoning, so it is transparent. How does the backlog get funded? Council needs to look to the broader community through rates levies and the usual state and federal grants. s.7.11 contributions too often appear the Urban Taskforce members to be a "gift tax" paid by new homeowners to be allowed to come to a town or city, even though no such costs were imposed on the existing owners.

Q14: What are the trade-offs for, and potential consequences of, reducing complexity?

There are substantial benefits to reducing the complexity of the current infrastructure contributions system. These include:

- Transparency and building of trust with the community regarding infrastructure contributions and infrastructure which council will deliver using those funds
- Less ability for councils to abuse the system
- More visibility around the council's role in accepting contributions and providing infrastructure
- Easier for developers to understand applicable contributions and factors these into their feasibility analysis prior to land acquisition

Q15: How can certainty be increased for the development industry and for the community?

Cap infrastructure contributions for certainty and consistency. These should be established early on in the process so that developers can factor this cost into the feasibility analysis for site acquisition and development.

Development assessment must be undertaken and finalised within strict time frames to ensure more certainty in development outcomes. Guidelines must state items that must be included and define their limitations e.g. drainage facilities of a size and utility must be included and not deleted and imposed as DA conditions to keep below a cap.

Additional regulation of contribution rates and reform of rate pegging to aid funding of essential infrastructure that will benefit the broader community.

Timing of payment contributions and delivery of infrastructure does not align

Q16 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?

The benefit is to the developer's cash flow and this can make the difference between a project starting and not starting.

Councils can use the NSW Treasury (T-Corp) to borrow money at low interest rates. Councils rarely deliver the infrastructure before construction development is complete - so it would make no difference to council’s operations and planned delivery if they received the funding at a later point in time.

Often developers will be required to deliver the infrastructure before it is even able to be used by the community, for example, Little Bay where a playground with operational BBQs and road network were provided before any kind of community had moved into the area. Councils have a lot of power in relation to the delivery of contributions and works-in-kind and in many instances, council could be more generous regarding timeframes for delivery and payment.

In relation to the payment of contributions prior to CC, there is significant evidence to date that Councils are not committed to delivering the desired infrastructure even when contributions have been made. There is certainly a lack of accountability in this regard. Benefits include greater cashflow to be used for the initial stages of the project.

If infrastructure contributions are delayed until Occupation Certificate, then more projects will be economically viable and will go ahead. As the current changes show (applied during COVID-19

period) Councils still have certainty because the occupants cannot lawfully occupy the building or premises until payment of the infrastructure contribution is made.

Q17 Are there options for deferring payment for subdivision?

The developer undertaking a subdivision could provide a contributions bond, to be paid at the time the Subdivision Certificate was issued, allowing the payment of the contributions to be made at a later point of time after the registration of the lots agreed between the council and the developer Council is protected with the bond and this would assist the developer as the contribution is often equal to or more than the cost of the civil works.

Councils and the State Government should be given borrowing rights and be compelled to use those rights with contributions adjusted to repayment of (the lower) borrowing costs. For housing estates payment on occupation will not apply. Some Urban Taskforce members advised that payments should relate to payment out of settlement funds as per stamp duty or occupation certificate which ever first.

Members were highly critical of Councils requiring payment of infrastructure fees when it has not been delivered.

Q18: Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment viable?

This is not necessary. Under the legislation (applied during COVID-19), contributions are required to be paid prior to the issue of an occupation certificate. No developer will construct a building then not obtain an OC.

Q19: 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?

Providing local councils with access to low cost loans is critical to addressing the huge infrastructure backlog in NSW.

Councils and Government agencies must be given borrowing rights and be compelled to use those rights with contributions adjusted to repayment of borrowing costs. T-Corp already funds some council activities and should consider funding infrastructure so as to speed up infrastructure and therefore housing production.

Q20: What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?

Councils must be held accountable for the management and expenditure of the millions of dollars of infrastructure contributions they collect from developers. Often Councils do not provide this infrastructure for many years after the housing has been delivered, leading to increased growth and density without the provision of support infrastructure.

Councils need to prepare an annual infrastructure report and strategy that details its cash balances and its expenditure plans. Some already do this and it helps the community to understand council priorities.

Oversight should be undertaken by Treasury or DPIE with resources dedicated to this oversight role.

Q21: Currently IPART reviews contributions plans based on 'reasonable costs', while some assert the review should be on 'efficient' costs. What are the risks or benefits of reframing the review in this way?

The IPART reviews are time consuming, laborious and produce little value. With their current and very limited scope, they are essentially an expensive quantity surveyor for infrastructure projects. Their role should be expanded to examine feasibility with a clear and direct mandate to support greater housing supply to put downward pressure on housing prices.

IPART (or another body altogether) should also actively question the necessity of infrastructure and examine infrastructure contributions from an 'equity' perspective.

Q22: 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 should be maintained, but infrastructure contributions must be capped. The NSW Government should fund any costs beyond the capped amount, similar to the 'Local Infrastructure Growth Scheme' the NSW Government previously used to subsidise infrastructure contributions and ensure a more equitable and fair contributions systems. This program should be re-introduced, along with the associated infrastructure caps. It is not fair that new homeowners incur the cost for the burden of provision of infrastructure which is also for the benefit and use of existing residents and others from outside the area.

A fixed percentage of the construction cost of a new development could be a fairer and more equitable way of managing infrastructure contributions and cost.

There is a need to ensure that items cannot be left off the list and included as consent conditions to avoid cap restrictions.

In all cases it is essential that definitions are precisely written to avoid Council manipulation. e.g. when is a road a leviable item, when must it be?

The origins of council infrastructure contributions were about equitable sharing of broader infrastructure items such as trunk drainage, access denied roads and open space across all landowners. This should remain the focus in the future. The question should be what things should be paid for by general taxation versus industry specific taxes and to what standard for increases in population. Local infrastructure contributions should be capped.

Any increase to contributions needs to be subject to feasibility testing to ensure development is still viable, otherwise there is a risk of stifling the production of housing and driving up household prices.

Q23: 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?

A role could be established, but this should only be with the active involvement of industry representatives, such as the Urban Taskforce and key developers. This kind of consultation was used to inform the Metropolitan Development Program previously implemented by the Department of Planning.

A confidential independent view is generally considered a good idea (provided it does not further delay the planning process – which many members were fearful of). Once an initial view on the VPA is reached there will need to be public consultation regarding the infrastructure plans prior to their adoption

The maximum s.7.12 rate is low but balanced with low need for nexus

Q24: 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?

Any increase to infrastructure contribution becomes an additional cost for the new home buyer. This is a lazy, inefficient and inequitable approach that unfairly burdens new home buyers.

The benefit is obviously the certainty afforded, which is a compelling proposition for the developer. The issue is that it may not have a nexus for the development but so long as effort is made to provide a nexus (where a nexus is possible) then it may be acceptable.

Councils have the right to use a s7.11 plan. If they cannot justify the levy, then Councils express concern regarding the low percentage applicable to s.7.12. Members questioned the need for any increase in s.7.12 fees while they can do a s.7.11 plan.

If they are to be increased, this must happen before land is re-zoned or up-zoned so there are no surprises for developers after they buy land/development sites.

Q25: What would be a reasonable rate for s.7.12 development consent levies?

1% would be a reasonable cost. This could be adjusted up or down according to market conditions and in special circumstances.

Further, this answer will depend on the cumulative impact of all developer costs, including delay. If a Council were able to meet the timelines for approvals, they could potentially receive a bonus rate on the s.7.12 fee.

Limited effectiveness of special infrastructure contributions

Q26: Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?

While not universal, most Urban Taskforce members agree that it is appropriate that special infrastructure contributions are used to permit out of sequence rezoning, but only if the sequence has been determined in consultation with industry. The PIC process used by the GSC for

sequencing of land release with PIC areas is not yet supported by UTA members, though the process for Western Sydney is better than that used for Greater Parramatta and Olympic Park.

Q27: Should special infrastructure contributions be applied more broadly to fund infrastructure?

Yes. A broad-based land tax which applies to all households in a certain geographic area, for example, metropolitan Sydney, is an efficient and equitable way to fund infrastructure. New infrastructure can provide benefits directly and indirectly and as such it is fair that the cost of this is dispersed broadly throughout the population.

Q28: Should they be aligned to District Plans or other land use planning strategies?

District plans and other land use planning strategies were only ever intended to provide a broad 'guide' to development. They were often poorly researched and not ground-truthed and attaching infrastructure contributions to these documents will only further perpetuate the flaws and mistakes. Unfortunately, the same is true for the vast majority of LSPS's. This leaves us with a strategic planning deficit which will need to be filled through the use of planning proposals for the rezoning of land.

It should be noted that Sydney is not the only locations they are used. They broadly align with declared growth-centres or similar broad development areas in urban and regional centres.

Q29: Should the administration of special infrastructure contributions be coordinated by a central Government agency i.e. NSW Treasury?

Yes

Affordable housing

Q30: 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 percent of new residential floorspace appropriate?

The general consensus of members is "No" - this is a problem caused by Government abandonment of social housing investment and also by constraints on housing supply. The best way to make housing more affordable is not to slap a tax on new home buyers. Free up the planning system, rezone and approve more housing and increase investment in social housing.

Providing affordable housing is not a solution in any part. The cost imposition in a burden on other purchasers. Housing affordability was an idea that came from the UK where bonuses of greater heights or densities were approved for the supply of affordable housing. If Councils collectively resolved to work with developers in the timely delivery of new apartments that would go a long way to resolving the affordability issues of Greater Sydney.

Some members suggested that affordable housing has a role, however increased general supply is most important. In most cases, no more than 5% if feasible – subject to bonuses. 10% has a significant impost on feasibility and should not be permitted. We as a society do not expect the

farmers to be responsible for the hungry. Why then, is there the expectation that the development industry be responsible for the homeless.

Q31: Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?

Affordable housing contributions impact the ability of the planning system to increase housing supply in general. Any additional contribution affects project feasibility which leads to an impact on supply when projects do not go ahead. Affordable housing contributions actually push up the price of new homes as the price of 'market' homes is increased to off-set the cost of the affordable housing.

Any additional cost for new housing, inherently limits the supply.

Q32: Should implementation of special infrastructure contributions for biodiversity offsets be subject to a higher level of independent oversight?

Saving biodiversity is a whole of community goal so it should not be a burden on those seeking housing. In extreme cases, Council officers have identified degraded and farmed areas as requiring offsetting by developers. Further, Council staff regularly discount pristine areas when provided by developers. A higher level of oversight should be applied to ensure reasonableness and consistency.

Q33: Are special infrastructure contributions the appropriate mechanisms to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?

Generally, Urban Taskforce members advised that Special Infrastructure Contributions are not an appropriate mechanism to collect funds for biodiversity offsetting. Biodiversity offsets have always been managed through a separate framework because they are not infrastructure.

That said, some members advised that if biodiversity offsets need to be secured with funding then it ought to be undertaken in a consistent and established framework. They are better in the hands of the SIC where their reasonableness can be challenged in the total impact on affordability. Careful oversight is needed.

Q34: 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?

No – not through value capture mechanisms as have been developed by Councils.

However, Urban Taskforce supports the implementation of a broad-based land tax on the unimproved value of land and by unpegging Council rates. Infrastructure investment should be paid for separately with a betterment levy also paid by all. This reflects the fact that everyone benefits from economic growth (and thus population growth).

Further, Members noted that substantial sum of taxes are already linked to value uplift including through GST, stamp duty, and company tax etc. The higher the land value, the greater these taxes derived by government.

Land values that consider a future infrastructure charge

Q35 Should an 'infrastructure development charge' be attached to the land title?

While UTA members' responses were mixed on this topic, this simply allows for a delay in the determination of a SIC. It would be bureaucratic and cumbersome. On balance, this thought-bubble is not considered practical.

Land acquisition for public infrastructure purposes

Q36: If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented ownership?

Land with fragmented ownership should not be rezoned. It is a nightmare for developers, especially now that Landcom has abandoned this previously useful role. To work, it would require new powers to forcibly acquire property, which would seriously undermine the Torrens title system and pose a systemic risk to land and asset values.

Some UTA members supported this as "works in kind" - based upon a requirement as per previous s.94 levy calculations (where land dedication based on square metres per dwelling was used). This was the intention of s.94 when it referred to demand for land being met by "dedication". This has been conveniently simplified to a dollar equivalent.

It may be possible through special zonings and fair compensation. When amalgamation of land takes place a fairer spread of infrastructure can be master-planned and land paid for on a common rate per sqm. Zoning value to down-value the cost is unfair.

The base line is re-zoning should focus on consolidated land holdings. Where ownership is fragmented, any SIC should be determined prior to rezoning.

Q37: Could earlier land acquisition be funded by pooling of contributions, or borrowings?

Yes – but noting that this does not allow for road and other infrastructure adjoining the land. Nonetheless, it may work if there was a contribution for roads abutting the land (as was used in early days by some councils).

Q38: Are there are other options that would address this challenge such as higher indexation of the land component?

Higher indexation of land should not be considered as an option. Land components should be indexed as per a land index. In any case, landowners who have "excess" land can challenge values.

Keeping up with property escalation

Q39: What approaches would most effectively account for property acquisition costs?

Government needs to establish the SIC amount before it makes public announcements on infrastructure upgrades. It may be possible to have levels of infrastructure charges - depending on the size of the difference it makes to land value. A better approach would be to collect it through a land tax. That would be a market-based solution. Public funding of public open space and green space is supported.

Corridor Protection

Q40: What options would assist to strike a balance in strategic corridor planning and infrastructure delivery?

It is important to make clear the responsibilities of DPIE, GSC, Infrastructure NSW, the Western Sydney Aerotropolis Authority, the Western Parkland City Authority, the key infrastructure delivery agencies etc. At present, there are too many bodies duplicating each other's work.

If the State takes the risk and acquire the land before identification is made public then they achieve lower acquisition costs but greater holding costs. The later the acquisition, the higher the purchase, but lower holding costs. Urban Taskforce does not support a manipulation to this risk reward quandary.

Some members advised that corridor protection has been problematic with the corridor being compromised by vegetation regeneration and public outcry when attempting to implement. Corridors should be closely considered in terms of how long they are to be held versus the likelihood they will never proceed due to changed environmental attitudes. Historical corridors should be reviewed, and the cost of reservation measured against their eventual use.

Other members said that forward planning of corridors and just terms compensation for those affected would seem to be the fairest and best alternative. It may be appropriate for acquisition funds to be borrowed to enable early acquisition and minimise speculative increases to land values.

Open Space

Q41: How can performance criteria assist to contain the costs of open space?

Government (both local and state) should fund public open space as they have historically always done. New home buyers should not be required to bear the burden of funding open space, when existing residents have not been required to contribute at all.

Members fear that they will not contain costs as suggested.

One greenfield developer member advised that they have never seen a case where sports departments have demanded less than 7 acres in green fields. Yet apparently a different standard exists for higher density developments where, often, no contribution is required.

Prior to S94 developers were required to pay the monetary equivalent to 7 acres where land was not available for use to improve existing open space within the development area. This occurred within the existing urban framework and this was later reduced to 1.6ha per 1000 in these areas.

Open space needs to be a cost of development at the predetermined rates for the population. In an increasingly dense environment, the approach will have the potential to improve the ability to deliver open space while managing delivery costs.

Q42: Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?

State government should dictate the upper limit- but Councils should set the actual (provided it is below the limit) and a merit-based appeal process (which includes an analysis of feasibility) should be included.

Q43: Are infrastructure contributions an appropriate way to fund public open space?

Infrastructure contributions are not generally considered an appropriate way to fund public open space. Open space is for the benefit of the entire locality and everyone should contribute.
The NSW Government's Public Open Space legacy fund is recognition of the paramount role for government in this area.

Some infill sites could make contributions to the improvement of public open space or community benefits.

One issue that has been ignored in this discussion to date is where land that is suitable for open space is ignored and classified as drainage, asset protection zone, treed lands etc. Often this land has eminent utility for open space. Land that can be used for housing is often incorrectly identified for open space.

Metropolitan Water Charges

Q44: How important is it to examine this approach?

Development in areas where "out of sequence development "occurs should incur upfront funding of the works in green fields areas. There is no known "in sequence program" and it is false to assume that any developer led rezoning is "out of sequence", particularly where the government led program has failed to meet population growth demand.

Even when government sought developers' aid in identifying supply opportunities in 2011, the sites given the go-ahead were then classified as being "out of sequence" by DPI.

Q45: What is the best way to provide for the funding of potable and recycled water provision?

The cost of delivery of potable water should be spread across the population as this is fundamental to economic growth (which benefits the entire community - not just the most recent arrivals).

Sydney Water funding from its rate base seems the most logical solution. New growth costs are a minor part of Sydney Water's annual budget. Developers should continue to meet internal reticulation costs; however, the sizing of infrastructure should be based upon water being available from both sources and not on the assumption that recycled water supply may fail.

Sydney Water should provide water to the site and where recycled water is implemented, Sydney Water needs to provide the supply and the developer do the distribution

Improving transparency and accountability

Q46: What would an improved reporting framework look like? Should each council report to a central electronic repository?

An improved reporting framework would be centralised, electronic, real-time and online. The reporting framework should also clearly identify councils which do not provide infrastructure in an efficient and timely manner or are hoarding infrastructure contributions unnecessarily.

The system should be very transparent and available to all interested parties

A central database enabling comparison across LGAs would be useful and improve accountability.

Q47: What elements should be included? How much has been collected by contributions plans and other mechanisms? How much council has spent, and on what infrastructure items?

Elements that should be included are:

- How much has each council collected
- How the contribution was collected
- Date of collection
- What is the program for which the funds were collected
- How much of the funding for each program has been spent to date
- What pieces of infrastructure have been provided through each fund.

It should also account for grants/loans from the Commonwealth and State governments. The same system should apply to SICs.

Q48: Should an improved reporting framework consider scale of infrastructure contributions collected?

The reporting framework should consider the scale of infrastructure contributions collected.

Shortage of expertise and insufficient scale

Q49: What can be done to address this issue?

The NSW Government should continue a steady program of council amalgamations (on a voluntary basis and supported by government grants) to drive efficiency and share resources across different council areas.

Most delivery infrastructure in green fields locations is delivered through works in kind This should continue and be freely available to developers at their choice.

Q50: Should the contributions system be simplified to reduce the resourcing requirement? IF so, how would that system be designed?

The contributions system should be simplified to reduce the resourcing requirement. The system should also provide certainty. If negotiations are required, there should be a centralised system where skilled individuals are available to mediate or arbitrate.

A fixed percentage for contributions (with a cap) that can be spent on any capital works (Council to determine) would enormously simplify the system. If “simplified” results in speeding up the process, then yes.

Standardized CP formats and NSW government oversight and support would facilitate this process.

Current issues with exemptions

Q51: Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?

Yes – but the balance should be funded by Government and not become a burden for other land use types.

Q52: Is it reasonable to share the cost of ‘exemptions’ across all of the new development rather than requiring a taxpayer subsidy?

No – see answer to Q.51 above.

Q53: Are there any competitive neutrality issues in providing exemptions for one type of development, or owner type, over another?

Yes – the answer is as per answers to questions 51 and 52 above.

Works-in-kind-agreements and special infrastructure contributions

Q54. Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions?

Yes – UTA members strongly hold the view that it is essential that this be the case as otherwise development in most cases would be unable to proceed

Q55: 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?

Works-in-kind credits should not expire and should be tradable with anyone in NSW - not just other local developers. The developer should be allowed to transfer credits between projects. There are serious problems with the current tradable credits system – in particular, that they are time limited.

Q56: What are the implications of credits being traded to, and from, other contributions areas?

It is possible some councils will benefit if they moved faster to finalise the infrastructure provided by the contributions. This could lead to a loss or a delay in the provision of infrastructure in some areas. This process would be greatly beneficial but would need to be carefully managed so as not to undermine contribution plans and funding of other important infrastructure items. Credits should be tradeable across the State – and not be geographically limited in any way.