



Draft Development Contribution Guidelines

Submission of the
Urban Development Institute
of Australia

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INTRODUCTION

UDIA NSW is a proud advocate of the urban development industry and its customers, the people of NSW. We represent over 500 organisations and our members include developers, regulators, and affiliated professionals. Our advocacy efforts are directed towards three major issues:

- housing affordability;
- investment certainty; and
- sustainability.

The widespread expansion of development levies to fund local and state infrastructure has played a significant role in constraining dwelling production in New South Wales (NSW) and in Sydney in particular. The application of charges at local, state, and federal level have combined with inefficient regulatory and approval processes and a lack of commitment to long term strategic priorities to compromise development feasibilities and constrain the industry's capacity to deliver new housing at prices within the market's capacity to pay. This has been evidenced by sustained record low levels of dwelling production and massive reductions stamp duty revenue for the NSW Government.

The local contribution framework has played an important role in the delivery of baseline infrastructure facilities to support new development – particularly where developers have been able to deliver infrastructure as in-kind agreements to credit against payment of levies or in fragmented areas where no single developer can afford to provide such infrastructure. The expansion of contributions plans to fund more advanced facilities has been reflected in a significant increase in the quantum of charges and significant disparities between contributions plans in different LGAs.

The recent reforms to the local levy contribution framework through the Government's planning reforms, which these Guidelines seek to implement, will result in a relatively minor rationalisation of the scope of facilities that can be included in plans and may lead to lower levies for new development. There is however, much more reform to be done to make the levy structure in NSW competitive with other jurisdictions and to prevent a further decline in housing affordability, to which development levies have undeniably contributed. UDIA NSW is committed to working constructively with the Government on this objective and will be detailing a range of alternative financing options for urban infrastructure in the coming months.

In preparing its submission to the NSW Government on the draft development Contribution Guidelines, UDIA NSW has consulted extensively with its members and in particular its planning and taxation specialists. UDIA NSW has provided a suite of comments and recommendations it believes, if adopted, will deliver improvements to the Guidelines. UDIA NSW would welcome the opportunity to expand on any of the issues raised in this submission.

General

UDIA NSW strongly supports the principle of the Guidelines in providing greater consistency in contributions plans across NSW, and in seeking to introduce a greater degree of accountability for authorities to manage the contributions process. If implemented correctly, these reforms will assist in bringing more balance to the funding arrangements for community infrastructure in local government areas.

UDIA NSW is concerned by the terminology used in Section 1.1 where the Guidelines content that, "*levies are drawn from the 'value uplift' that occurs where a planning decision or the provision of infrastructure increases the value of the land*". The concept of value uplift is often ill-defined and is dependent on a property transaction taking place, where a notional change in value of the land is formally prescribed.

Land may be rezoned but may not increase in value. The land may be fragmented and uneconomic to develop, and hence no real additional value is created. The same could be said if infrastructure was provided yet yielded little or no impact on land values. UDIA NSW is concerned

that the theoretical basis for levies espoused by the guidelines is based on a notional concept that does not apply in all circumstances. UDIA NSW recommends that the language within the Guidelines should focus on the concept of nexus – i.e. if a development creates new demand for infrastructure, then that infrastructure will be funded through development contributions. While UDIA NSW believes that alternative sources would be better placed to fund infrastructure, it believes the Guidelines should at least reference a defensible theoretical basis for the existence of levies.

Affordability

UDIA NSW welcomes the inclusion of affordability as a key consideration for councils in preparing contributions plans. It is critical that this fundamental issue is addressed appropriately in the development of contributions plans. In this regard, UDIA NSW believes more information is required in the Guidelines.

The Guidelines confer the responsibility on councils to make an assessment as to whether the proposed level of contributions will not unreasonably impact on affordability and whether the contribution will make the development uneconomic. UDIA NSW supports these provisions in principle, yet the Guidelines provide no advice to the council on how to undertake such assessments. This shortfall must be addressed if this 'Key Consideration' is to be pursued in a meaningful way.

UDIA NSW would be pleased to work with the Department to formalise the concept of affordability with the Guidelines as it relates to the impact of development contributions on the supply of housing. Given the complexity of the issue and the relationship to development costs, the expertise of the development sector will be fundamental to understanding in a comprehensive way, the impact of contributions on affordability.

RECOMMENDATION 1

UDIA NSW recommends that the Guidelines provide further advice on how councils are to assess the impact of contributions plans on housing affordability. UDIA NSW also recommends that the development industry be involved in this process.

State Infrastructure Contributions

UDIA NSW acknowledges that the Guidelines deal specifically with local development contributions, however there is considerable overlap between the operation of local and state contributions. For example, the Guidelines state that a local Council must consider a State infrastructure contribution when determining its local infrastructure contributions. Part 5B of the EP&A Act states that each one must have consideration of the other and not be unreasonable. Further clarification is sought about how this will be determined. It needs to be made clear which level of government should reduce their levies to ensure the development is economically viable.

The Guidelines also place the onus on councils to undertake significant analysis in the development of their plans to demonstrate concepts of nexus, apportionment, and in measuring the impact of contributions on affordability. UDIA NSW is strongly supportive of this, however contends that in developing its Special Infrastructure Contributions, the NSW Government must also demonstrate the same level of accountability and transparency.

RECOMMENDATION 2

UDIA NSW recommends that the NSW Department of Planning explicitly articulate how conflicts between state and local contributions plans, particularly with regard to the quantum of levies, will be resolved.

RECOMMENDATION 3

UDIA NSW recommends that the preparation of Special Infrastructure Contributions plans be subject to the same level of accountability and transparency as local contributions plans with respect to nexus, apportionment, affordability etc.

Contribution Plan Preparation and Administration

The nature of the Guidelines is such that the preparation of contributions plans and the management of the whole process have the potential to blow-out timing and costs. Given that such costs are recoverable through the contribution plans, it is in the collective interest to ensure that the administrative burden is minimised and the process of preparing plans made as efficient as possible.

UDIA NSW contends that one way of limiting administration costs is through the development of templates and procedures for councils to use when preparing their plans. There is little need for every council to reinvent the wheel when preparing their plan and in the interests of efficiency in this process and for consistency across jurisdictions, the use of templates will be of significant benefit.

RECOMMENDATION 4

UDIA NSW recommends that standard templates and procedures be developed for use by councils in preparing their contributions plans.

Unspent Development Contributions

While the Guidelines introduce some positive measures with regard to the accountability of authorities in actually being able to deliver the infrastructure that is levied for, there remains no formal compulsion for councils to deploy unspent levies. A lack of direction in this regard has perpetuated a situation where hundreds of millions of dollars in unspent levies exist across council jurisdictions in NSW.

There have been structural and procedural inefficiencies that prevent councils from making best use of development contributions and this has resulted in the accumulation of unspent levies. These include:

1. the spatial and temporal base for development contributions is often too narrow to allow for efficient revenue collection and can result in delayed and fragmented capital expenditure;
2. the scope of facilities included in contributions plans can be too broad, with only a proportion of the cost of each capital item apportioned to the revenue from development contributions. This means that councils are required to fund the remaining capital cost from existing consolidated holdings or other revenue streams; and
3. there are no third party review mechanisms to confirm that councils are making prudent assessments of infrastructure demands and ensuring efficient procedures and structures for delivering the infrastructure in a timely fashion.

The 2008 reforms to the Act seek to address some of these structural constraints. However, there remain no mechanisms to compel councils to spend accumulated funds. UDIA NSW contends that this must be addressed by the NSW Government.

RECOMMENDATION 5

UDIA NSW recommends that the Department develop regulatory controls which seek to compel councils to deploy unspent development levies after a period of no longer than five years has

lapsed since the levies were collected unless a prior formal arrangement has been signed-off by the Minister for Planning.

Direct Contributions Levied for 25 Years

Under Section 2.3.2, the Guidelines provide that

Direct contributions for (b)(a reasonable contribution towards recoupment of the cost of providing existing community infrastructure within the area) can only be required if the consent authority is satisfied that... the existing public infrastructure was provided less than 25 years before the development occurred.

UDIA NSW contends that this statement requires clarification. To suggest that costs incurred for infrastructure provided up to 25 years ago can be recouped through current development processes runs completely contrary to attempts to rationalise levy imposts and improve transparency on the apportionment of costs for infrastructure to the development which generates the demand.

RECOMMENDATION 6

UDIA NSW recommends that the Guidelines provide greater clarification or remove reference to the capacity for an authority to levy contributions for infrastructure provided up to 25 years prior.

Riparian Corridors

The Guidelines perpetuate the current impasse with regard to the identification, ownership and management of riparian corridors in an urban context. The decision by the Government to remove riparian corridors from section 94 while failing to provide an alternative funding mechanism, and failing to provide proper oversight of the corridor identification remains a distinct policy failure that remains unresolved despite consistent and sustained advocacy from the development industry and local government stakeholders.

While it is acknowledged that the issues with riparian corridors cannot be explicitly addressed via the Guidelines, UDIA NSW strongly reiterates its recommendation that reform to the current regulatory and financial frameworks must be a high priority within the Department. UDIA NSW awaits formal advice from the Department on the outcome of the stakeholder workshop on this issue in 2009.

RECOMMENDATION 7

UDIA NSW recommends that the NSW Department of Planning finalise reform options for the identification, ownership and management of riparian corridors as a matter of high priority

Ministerial Approval for Additional Community Infrastructure

The Guidelines detail the process councils must pursue to request Ministerial approval for additional community infrastructure but is silent on the obligations that should be conferred on the NSW Government to assess the application. UDIA NSW contends that the timing associated with this process should be detailed within the Guidelines to assist in avoiding significant blow-outs in delays in determination.

RECOMMENDATION 8

UDIA NSW recommends that the Guidelines detail the obligation of the NSW Government to assess applications for Ministerial approval for additional community infrastructure within a prescribed timeframe. A period of no longer than 21 days would be appropriate.

Deferred Payment of Contributions

UDIA NSW strongly supports the introduction of deferred payment mechanisms for development levies. The deferred payment of development levies provides greater investment certainty for developers by reducing their exposure to significant financial pressure from holding costs and in turn lowers the retail price of housing to the homebuyer by limiting the projects exposure to unnecessary interest payments while the marketing and sales process is undertaken. The deferred payment of levies also has a significant impact on a developer's cash flow and need for debt financing.

Given the potential benefit to housing affordability and the demonstrable mitigation of risks for the deferral process, given the extensive work undertaken by the Department on this issue, UDIA NSW advocates the expansion of deferred payment of levies for local contributions. UDIA NSW recommends that the deferred payment approach to development levies be included as a 'Key Consideration' for councils in preparing their plans. UDIA NSW recommends that councils must demonstrate why a deferred payment scheme can or should not be implemented for a contributions plan.

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UDIA NSW recommends that the deferred payment approach to development levies be included as a 'Key Consideration' for councils in preparing their plans. UDIA NSW recommends that councils must demonstrate why a deferred payment scheme can or should not be implemented for a contributions plan.

Conclusion and Recommendations

UDIA NSW appreciates the opportunity to comment on the draft Local Development Contributions Guidelines. UDIA NSW strongly believes the changes to the levy framework that these Guidelines will implement are an important step in what must be a broader process of reform to the process of financing infrastructure in urban communities.

UDIA NSW provides the following recommendations it believes should be implemented by the NSW Department of Planning in finalising the preparation of the Guidelines:

1. UDIA NSW recommends that the Guidelines provide further advice on how councils are to assess the impact of contributions plans on housing affordability. UDIA NSW also recommends that the development industry be involved in this process.
2. UDIA NSW recommends that the NSW Department of Planning explicitly articulate how conflicts between state and local contributions plans, particularly with regard to the quantum of levies, will be resolved.
3. UDIA NSW recommends that the preparation of Special Infrastructure Contributions plans be subject to the same level of accountability and transparency as local contributions plans with respect to nexus, apportionment, affordability etc.
4. UDIA NSW recommends that standard templates and procedures be developed for use by councils in preparing their contributions plans.
5. UDIA NSW recommends that the Department develop regulatory controls which seek to compel councils to deploy unspent development levies after a period of no longer than five years has lapsed since the levies were collected unless a prior formal arrangement has been signed-off by the Minister for Planning.
6. UDIA NSW recommends that the Guidelines provide greater clarification or remove reference to the capacity for an authority to levy contributions for infrastructure provided up to 25 years prior.
7. UDIA NSW recommends that the NSW Department of Planning finalise reform options for the identification, ownership and management of riparian corridors as a matter of high priority
8. UDIA NSW recommends that the Guidelines detail the obligation of the NSW Government to assess applications for Ministerial approval for additional community infrastructure within a prescribed timeframe. A period of no longer than 21 days would be appropriate.
9. UDIA NSW recommends that the deferred payment approach to development levies be included as a 'Key Consideration' for councils in preparing their plans. UDIA NSW recommends that councils must demonstrate why a deferred payment scheme can or should not be implemented for a contributions plan.