



# Development Contribution Reform Implementation

Submission to the Director General  
NSW Department of Planning

**January 2009**

## **UDIA NSW Submission to the Department of Planning Development Levy Reform Implementation**

### **Introduction**

The NSW Government has recently committed to the introduction of a range of reforms to the development levy framework in NSW, including changes to the quantum and timing of contribution payments made by industry stakeholders. Some of the emerging considerations for Government include the structure supporting the payment of levies at settlement and how to deal with credits for works in kind. UDIA NSW understands that the NSW Department of Planning is selectively seeking input into the development of a simple and efficient structure that will deliver process efficiencies without adding to what may be perceived as additional risk from the deferred payment of levies.

UDIA NSW has consulted with some of its leading members in its development of a response to the Department's request and has provided a two part submission for the consideration of Government. Part A of the submission recommends a framework for the implementation of the deferred payment of both SIC and local levies that maintains much of the existing levy process architecture but introduces a mechanism that provides for the deferred payment of levies without compromising the security of contribution payments to the relevant consent authority. A process map of the proposed framework has been included to illustrate the operation of the deferred payment system. Part B of the submission articulates a number of UDIA NSW's emerging concerns with some the structural and operational aspects of the reforms and provides recommendations to Government that UDIA NSW believes should be implemented to maximise the benefit of the reforms for all stakeholders.

### **PART A**

The deferred payment of both state and local 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.

UDIA NSW understands that the principle issues to be addressed prior to the implementation of a deferred-payment system for levies are:

- the appropriate mechanism for securing the consent authority's revenue from levy payments;
- an efficient process for levy revenue collection and re-distribution; and
- the appropriate framework for managing the works-in-kind credit process.

### **Deferred Payment of Levies**

In summary, UDIA NSW proposes the following framework for implementation:

- the use of a positive or restrictive covenant/mortgage which is prepared at subdivision/strata plan sign-off which includes a schedule of outstanding contributions owing on every newly created title in a particular development. ;
- outstanding contributions are paid prior to transfer of title from the developer to the first purchaser of property or in the case of strata title, the issue of the occupation certificate- whichever is the first of the two;
- transfer of title from the developer to the first purchaser cannot occur until outstanding contributions have been paid and the covenant has been released/mortgage has been discharged;

- contributions are collected by the Office of State Revenue and distributed immediately to relevant authority – either Council or to a Department of Planning nominated Treasury account for each release area;
- The Department of Planning will negotiate with Treasury for any supplementary Treasury funds to be added to the particular account and authorise the distribution by Treasury to the particular agency involved in undertaking the infrastructure works required in any release area.

UDIA NSW has proposed three alternative legal mechanisms for securing the Government's interest in the development. These are:

- the preparation of a positive covenant which imposes an obligation on the title for the payment of outstanding development contributions; or
- the preparation of a restrictive covenant that would restrict the transfer of the title until the payment of outstanding levies is settled; or
- the creation of a mortgage on the title that will only be discharged once the outstanding levies on the title have been settled.

The following provides some more explanation on the specific implementation of the above recommendations.

### **Security for Levy Revenue**

UDIA NSW understands that there are some concerns in regard to the perceived risks associated with the consent authority's capacity to guarantee payment of levies under a deferred payment scheme. In consultation with a number of its leading developer and legal members, UDIA NSW has proposed a framework that links the payment of outstanding levies to the transfer of title from the developer to the first purchaser with a simple and efficient legal instrument that has the effect of imposing either an obligation, a restriction or a mortgage on each individual title created at the subdivision or strata plan stage of the development process.

UDIA NSW proposes that a covenant or a mortgage be created by the developer in consultation with the consent authority, and the Department of Planning representing other state government agencies, which identifies any outstanding contributions and the claimant to that contribution (Council or State Agency). The preparation of the covenant or mortgage will be required as a condition of consent which is discussed in more detail below.

The covenant/mortgage will be prepared by the developer following consultation with the consent authority and the DOP representing other relevant agencies to correctly identify the outstanding contributions balance for the development once works in kind and other agreements have been accounted for. The developer must present the covenant/mortgage to Council when it lodges its linen or strata plan for sign-off. A covenant/ created for the development would impose an obligation for the payment of contributions that is noted on the title of each individual lot created by the NSW Department of Lands (LPI). A restrictive covenant or a mortgage would create a restriction on the transfer of the individual titles.

The covenant/mortgage will remain on the title until all outstanding contributions have been settled with the Office of State Revenue (OSR). The OSR must release the positive covenant once all payments have been settled and must distribute the contribution payments to the claimants identified in the covenant/mortgage being the relevant council or a DOP nominated account within Treasury. The OSR will issue a Contribution Clearance Certificate to the party that has settled the contribution balance. The Contribution Clearance Certificate will be a precondition to the transfer of title with the LPI or in the case of a strata development, to the issue of an occupation certificate.

## Alternative Mechanisms for Security

### **Public Positive Covenant**

A positive covenant could be prepared and easily incorporated into title documentation to create an obligation for the payment of development contributions. Creation of a positive covenant does not require a separate instrument. It is included into the 88B instrument and therefore must be approved by Council. The positive covenant may refer to a specific payment contribution due in respect of each nominated lot or it might simply refer to payments due under a nominated development approval. There are a number of drafting methodologies for such a positive covenant which UDIA NSW would be happy to expand on if requested.

The section 88B instrument would specify the particular public authority which has the benefit of the covenant. Administrative arrangements would need to be considered in identifying the public authority benefited. This could be the local Council, which may have the benefit of other covenants and easements in the instrument, or it might be the Department of Planning on behalf of other government agencies. That authority would also be given the power to release, vary or modify. A release of positive covenant given by or on behalf of that public authority is therefore sufficient to release it when payment is made. No other consents are required.

The positive covenant could require the payment sum for levies by made prior to registration of a transfer. While that in itself does not prevent a transfer being registered (in the way a caveat would prevent registration) commercially no purchaser or its lender would accept title subject to that covenant without requiring evidence that the payment is made.

If a positive covenant was to be used, the Department should be aware that Section 87A of the *Conveyancing Act 1919* defines a “public positive covenant” in the following manner:

*“public positive covenant, in relation to land, includes a covenant which imposes obligations requiring:*

- (a) the carrying out of a development on or with respect to the land, within the meaning of the Environmental Planning and Assessment Act 1979;*
- (b) the provision of services on or to the land or other land in its vicinity; or*
- (c) the maintenance, repair or insurance of any structure or work on the land;*

*or imposes an term or condition with respect to the performance of or failure to perform any such obligation.”*

The definition does not specifically provide for an obligation that is limited to the payment of money (development contributions). UDIA NSW suggests that this issue may be overcome by the use of a development consent condition that explicitly links the payment of development contributions to “(a) the carrying out of a development on or with respect to the land...”.

### **Restrictive Covenant**

The use of a restrictive covenant would operate in a similar fashion to the positive covenant in that it would be imposed through a Section 88B instrument. The covenant would be cast in the form of a restriction on transfer of the land until payment of the levy is made.

Administrative arrangements need to be determined to identify the public authority benefited by the 88B Instrument. This could be the local Council as usual consent authority, and which may have the benefit of other covenants and easements in the 88B instrument, or it could be the Department of Planning on behalf of other public authorities. That authority would be given the power to release, vary of modify. A release of covenant given by or on behalf of

that public authority is therefore sufficient to release it from the lot title when payment is made. No other consents are required.

Commercially it would be expected that purchasers (and their lenders) would not want to settle on the purchase of the land without this restriction being removed. The restriction could be removed by handing over a release in a similar manner as a release of the positive covenant as referred to above.

A restrictive covenant has the benefit that no separate instrument will need to be created to implement it. Further, the 8B Instrument once prepared must be approved by Council as part of the subdivision approval process.

### ***Mortgage***

Another alternative for securing the Government/Council's interest in the development is by the creation of a charge on the title through a mortgage. Usually an obligation to pay money is secured over land by the creation of a mortgage. It would be feasible for a development consent condition in specifying the outstanding contributions, to provide that the registered proprietor must grant a mortgage over the property to secure the due payment of the assessed levies at the time specified in the in the development consent. In the case of consent for subdivision, the time of payment would be by instalments upon completion of the sale of a subdivided lot, or payment in full on completion of the sale of the whole development site.

Once a mortgage is registered, the mortgagee (the consent authority) would need to consent to, and endorse its consent on, any plan of subdivision. Upon registration of the plan of subdivision the mortgage would be shown on each of the separate titles generated for each lot in the subdivision. As with any mortgage the mortgage securing levies payment can be partially discharged upon the completion of the sale of each lot. The terms of the development consent would specify what sum was to be paid upon completion of the sale in respect of each lot. This could also be specified in the mortgage.

Administrative considerations would determine how the mortgage is implemented and discharged. UDIA NSW suggests that the OSR could be authorised to receive outstanding levies. Upon receipt of the amount owing for outstanding development contributions for each lot, the OSR would provide for the partial discharge of mortgage to the developer/purchaser to permit the removal of the charge from the title by the LPI. This would occur on the transfer documents for the sale being registered.

UDIA NSW suggests that it will be important to establish the priority of mortgages on the title. It would be general practice for finance companies to expect a first ranking mortgage over the property to secure their interest. The scale of this charge in comparison to the scale of principal funds borrowed would be a factor. However this negotiation would occur between the developer and the banks and the Government needs to satisfy itself that adequate security is available to it.

### **Method of Payment**

If the concept of a covenant or mortgage is accepted as an appropriate vehicle then UDIA NSW would be happy to assist in preparing specimen documents that would assist the Department in developing such a framework. UDIA NSW would need to understand how the Department expects the process to operate and how payment arrangements will occur.

One possibility would be for designated officers in the OSR to be authorised to sign releases of covenants and for such a release to be handed over in respect of an individual lot on receipt of a bank cheque (from the proceeds of settlements if a sale) to pay the levy. The process would be similar to the existing procedure of obtaining a clear land tax certificate

upon settlement by paying out a charge for land tax. This would require settlement at the OSR unless the OSR could be persuaded to designate an officer who would be able to attend outside settlements for this purpose. In the case of a mortgage, the OSR would be authorised to discharge the mortgage on receipt of the outstanding contributions.

Alternatively, a developer could pay out the amount just prior to completion and so obtain the release of the covenant or discharge of the mortgage which it could then handover at a settlement held anywhere, or in the case of a strata subdivision, to lodge an occupation certificate.

There are prescribed forms for discharge of mortgage or release of a covenant. It is a simple one page form in each case. Attached are examples of forms for:

- discharge of mortgage
- release of restriction on the use of land
- release of positive covenant

An authorised officer of the relevant prescribed authority (perhaps someone at the Office of State Revenue) could be authorised to sign and hand over the form upon payment. That form would then be lodged for registration with the transfer, discharge of any existing mortgage and the registration of any new mortgage. There would be a registration fee, currently \$92. Like a discharge of mortgage the vendor would allow that fee to the purchaser in the settlement adjustments so that the purchaser does not bear the cost of that fee.

### **The Need for New Policy Framework for Deferred Payment**

The current provisions of the *Environmental Planning and Assessment Act 1979* do not explicitly provide for the deferred payment of levies. Once a suitable mechanism has been developed to secure the Government/Council's interest in the development, UDIA NSW recommends that this process be appropriately reflected in the policy/legislative framework.

UDIA NSW understands that the Department's reforms to the levy framework announced in December 2008 will require some policy amendments to facilitate their implementation. UDIA NSW therefore recommends that it would be prudent for any policy implementation to contain provisions that will allow for the deferred payment of development contributions. UDIA NSW would be willing to provide specific recommendations in this regard if requested.

### **Development Consent Conditions**

Pursuant to the implementation of a policy framework to create for the deferred payment of development contributions, UDIA NSW recommends that a standard development consent condition be prepared that applies to that applies to any development consent requiring the payment of development contributions and prescribes that the payment of all development contributions be completed prior to the transfer of the created titles from the developer to the first purchaser or the issue of an occupation certificate to the first purchaser – whichever of the two events occurs first. UDIA NSW has proposed a standard condition that would be suitable for this purpose:

*“Pursuant to Part 5B Section XX of the Environmental Planning and Assessment Act 1979, a Contributions Clearance Certificate must be obtained from the NSW Office of State Revenue prior to the transfer of title or issue of occupancy certificate to reflect full payment of any outstanding development contributions.”*

UDIA NSW proposes that any development consent requiring the payment of development contributions will also require the preparation of a /mortgage covenant which will provide the legal security to ensure that all outstanding contribution revenue is received. The consent condition must require the covenant/mortgage to include the following items:

- reference to the relevant Contribution Plan or SIC Offsets Agreement;
- claimants to the contributions – either Council or the nominated DoP account within Treasury and held on behalf of the relevant State Agency that will be required to construct each item of infrastructure in each release area;
- a schedule of infrastructure items under each relevant contributions plan or SIC agreement;
- the quantum of the charge outstanding against each infrastructure item;
- the index to be applied to outstanding contributions and when the indexing begins;
- terms that provide for the release of the Section 88B (settlement of outstanding contribution).

UDIA NSW would be willing to recommend a standard development consent condition that would be used to mandate the preparation of a covenant/mortgage that is consistent with the above specifications if required by the Department.

### **Indexing of Contributions**

Many existing contributions plans include their own index to account for inflation in the cost of delivering the infrastructure identified in the plan over time. This index is prescribed under S25I of the EP&A Regulation 2000. Given that the under the framework proposed by UDIA NSW there will be some lag between development consent and the initial determination of outstanding contributions, and the payment of contributions prior to transfer of title or issue of occupation certificate, it is appropriate that contributions be indexed from the date of the development consent.

### **SIC Works in Kind Credits**

The Government has committed to the introduction of a trading system for credits accumulated by a developer who undertakes works in kind on behalf of the Government beyond what is required for the project under the SIC framework. UDIA NSW proposes that the process of negotiating the works in kind agreement will be conducted with the Department of Planning and must recognise that sign-off on the agreement implies the sharing of risk between the developer and Government for any credits accumulated. The Department will keep a register of the credits that a developer accumulates at the attributable cost of the credit at the time of register. The credits will then be indexed in the same manner as the SIC contributions.

Once the credits have been registered with the Department by the developer, it is the developer's responsibility to negotiate a settlement with another party for the purchase of the credits at rate determined by the market. The settlement of the credit transaction must be registered with the Department and the value of the transaction is determined according to the attributable cost of the credit when it was first registered plus CPI.

UDIA NSW proposes that after a three year period, a developer can apply to have credits refunded by the Government which will be paid in cash for the attributable cost of the credit when it was originally registered plus CPI over the three year period. UDIA NSW also proposes that a five year sunset period be prescribed where all existing credits that have not been traded must be refunded to the developer. This framework is flexible for both the Government and the developer if it decides it would prefer to retain credits for longer than three years. It also ensures the prevention of an unsustainable accumulation of credits over a period of time which may constrain the Government's capacity to refund them.

## **Centralised Levy Collection**

The UDIA NSW proposal for deferred payment will install a single centralised collection point for both local and state development contributions. It is proposed that the NSW Office of State Revenue collect and directly distribute all development contributions to the relevant authority, either Council or Treasury. UDIA NSW does not propose that any local development contributions be held by the NSW Treasury.

The centralised collection and distribution of contributions when undertaken by an agency whose charter is to collect money on behalf of government, will provide the most efficient method of implementing the deferred payment framework. The distribution of contributions will be undertaken pursuant to the Section 88B instrument that has been signed off on by Council and the Department of Planning.

## **Implementation Process Chart**

UDIA NSW has prepared a process chart which illustrates how the proposed deferred payment will operate and articulates specific roles for each stakeholder involved in the process.

## New Levy Framework – UDIA NSW Recommendations

	DA Lodgement	DA Approval	Plan Release - Subdivision or Strata	Lodgement of Plan at LPI	Settlement with first purchaser/ Occupation Certificate	Transfer of Title and Post settlement with first purchaser outcomes
<b>Developer – Land Subdivision</b>	<ul style="list-style-type: none"> <li>▪ Negotiate consent conditions</li> <li>▪ Negotiates WIK where req.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Negotiates WIK where req.</li> <li>▪ Receives approval from consent authority</li> </ul>	<ul style="list-style-type: none"> <li>▪ Obtains clearance from DOP that all SIC payments outstanding have been included in Section 88B Instrument for payment prior to transfer of title from developer to first purchaser.</li> <li>▪ Lodges subdivision plan with consent authority</li> <li>▪ Lodges covenant/mortgage for schedule of outstanding contributions with Council</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lodges subdivision plan, covenant/mortgage and Contributions Statement with LPI.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Has the option of paying the outstanding contribution for that particular title to OSR and obtains Contributions Clearance Certificate</li> <li>▪ Presents title and certificate at settlement proceedings</li> <li>▪ Settlement with or without Contribution Clearance Certificate occurs with the first purchaser</li> </ul>	<ul style="list-style-type: none"> <li>▪ Developer obligations discharged</li> </ul>
<b>Developer – Built Form</b>	<ul style="list-style-type: none"> <li>▪ Negotiate consent conditions</li> <li>▪ Negotiates WIK where req.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Negotiates WIK where req.</li> <li>▪ Receives approval from consent authority</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lodges strata plan with consent authority</li> <li>▪ Lodges covenant/mortgage for schedule of outstanding contributions with Council</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lodges strata plan, covenant/mortgage and Contributions Statement with LPI.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Payment of Contributions Statement for relevant titles to release covenant/mortgage and receive Contributions Clearance Certificate.</li> <li>▪ Submits Contributions Clearance Certificate with consent authority for Occupation Certificate.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Developer obligations discharged</li> </ul>
<b>Consent Authority</b>	<ul style="list-style-type: none"> <li>▪ Assessment of DA</li> <li>▪ Negotiates WIK where req.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Negotiates WIK where req.</li> <li>▪ Consents to DA</li> <li>▪ Consent condition requiring the preparation of a Section 88B instrument which includes a schedule of all outstanding contributions and requires payment of contributions prior to transfer of title to first purchaser or prior to issue of Occupation. Certificate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sign and issues subdivision/strata plan</li> <li>▪ Reviews and signs covenant/mortgage for schedule of outstanding contributions and issues Contribution Statement</li> </ul>		<ul style="list-style-type: none"> <li>▪ (Strata) Issues Occupation Certificate in receipt of Contributions Clearance Certificate from developer.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Receives outstanding contributions form OSR.</li> </ul>

<b>DoP</b>	<ul style="list-style-type: none"> <li>▪ Negotiates WIK where req.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Negotiates WIK where req.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provides SIC Clearance Certificate to Developer once satisfied that all outstanding contributions have been included in covenant/mortgage for payment on transfer of title.</li> </ul>			<ul style="list-style-type: none"> <li>▪ Instructs Treasury on the release of funds to agencies in order to deliver infrastructure targeted to support the metro/regional strategy and or the current urban development activity</li> </ul>
<b>LPI</b>				<ul style="list-style-type: none"> <li>▪ Receives subdivision or strata plan and Contributions Statement from developer</li> </ul>		<ul style="list-style-type: none"> <li>▪ Registers new and unencumbered title in the name of the first purchaser on receipt of transfer and Contribution Certificate.</li> </ul>
<b>OSR</b>				<ul style="list-style-type: none"> <li>▪ Receives Contributions Statement from LPI.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Grants Contribution Clearance Certificate for each title on receipt of outstanding contributions for each title.</li> <li>▪ Releases covenant/mortgage.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Distributes contributions to Council or DOP nominated account within Treasury</li> </ul>
<b>Treasury</b>						<ul style="list-style-type: none"> <li>▪ Receives any relevant outstanding contributions from OSR.</li> <li>▪ Distributes contributions to relevant agencies</li> </ul>
<b>First Purchaser</b>					<ul style="list-style-type: none"> <li>▪ Settlement with developer</li> <li>▪ If developer has not settled Contribution Statement with OSR, purchaser pays outstanding contributions and obtains a Contribution Clearance Certificate</li> </ul>	<ul style="list-style-type: none"> <li>▪ First Purchaser's solicitor lodges transfer of title with Contribution Clearance Certificate with LPI.</li> <li>▪ Receives transfer of title.</li> </ul>

**Notes overleaf**

## Notes

1. DA Condition will require the preparation of a covenant/mortgage which will include a schedule of all outstanding contributions. DA condition will prescribe that covenant/mortgage cannot be released/discharged until all outstanding contributions are paid prior to transfer of title or issue of occupancy certificate.
2. A Contribution Statement will be prepared by consent authority at linen plan/strata plan release for all outstanding contributions and will include a schedule of contribution claimants (agencies) and the amount of the claim for each agency.
3. Contributions Statement and covenant/mortgage is lodged with DP/SP by developer at LPI to create the initial titles with the encumbrance of the covenant/mortgage on every title.
4. Linen Plan/Strata Plan cannot be registered by LPI without a Contributions Statement (even if nil contributions owing).
5. Covenant/mortgage that is created on each title cannot be released until the outstanding contribution on each title has been paid and a Contributions Clearance Certificate Issued.
6. Contributions Statement must be settled with OSR and a Contribution Clearance Certificate issued prior to transfer of title by LPI from the developer to the first purchaser and the release/discharge of the covenant/mortgage from the title (or issue of occupation certificate by Principal Certifying Authority.)
7. OSR will distribute collected contributions directly to the council or the DOP nominated treasury account, consistent with the schedule on the covenant/mortgage.

## **UDIA NSW Submission to the Department of Planning Development Levy Reform Implementation**

### **PART B**

Part B of this submission discusses a range of emerging issues with the levy reforms that UDIA NSW has identified in consultation with its members. The discussion and recommendations provided are intended to offer strong support for the Government's levy policy initiatives and some constructive input into the implementation process.

#### **Transitional Provisions**

A number of UDIA NSW's major developer members have expressed some concern in regard to the timing of the implementation of the levy reforms. While UDIA NSW understands that the reforms are intended to have a timely impact on dwelling supply and the cost of housing, the immediate implication has resulted in a number of projects being stalled or postponed until further advice on the implementation of changes to the levy structure. UDIA NSW is concerned that the four month delay between the levy announcement and the introduction of the reforms to local contributions will result in a hiatus in development activity.

UDIA NSW strongly believes that the introduction of the levy reforms should be timed to maximise the opportunity new homebuyers have to take advantage of the range of stimuli currently available in the market. This includes the Commonwealth First Home Owners Boost, and the State Government's First Home Owner Grant, both of which are programmed to expire on 30 June 2009.

UDIA NSW recognises that the Government needs to establish a 'cut-off' date where it will move to the new levy framework but contends that this process should not compromise the intent of the reforms to increase dwelling supply and improve housing affordability. One of the most significant impacts the Government can have on housing affordability is to facilitate competition within the market. This is achieved by creating a level playing field for developers by avoiding unnecessary market distortions.

UDIA NSW is aware that a number of developers have proceeded through the development process, paid contributions and will soon begin marketing their product that will be at a substantially higher delivery cost than housing that is produced post reform implementation. In an open market, the delivered product will need to move to meet any re-based market at potential cost to developers who have underpinned development activity in a tough market.

UDIA NSW proposes that one way this issue could be addressed is the use of a credit system for those lots to be delivered by a developer under the existing levy framework and not yet settled. The developer would be granted a credit for the contributions attributed to those lots for future use in the LGA or to be onsold to another developer with an interest in the LGA.

It is important to recognise that the levy reforms have been introduced to maximise development activity, lower the development cost structure, and provide for greater competition in the market. UDIA NSW contends that the timing of the introduction of the changes should not be allowed to unduly compromise these objectives.

#### **Consistency of State Infrastructure Contribution**

The Government has indicated that temporary reduction of the SIC to \$11,000 per lot will apply until June 2011 and thereafter will be increased to \$17,000 per lot. UDIA NSW understands that this temporary reduction is intended to provide a temporary stimulus for development activity in the metropolitan Sydney market.

UDIA NSW is concerned that the temporary reduction does not provide a consistent message to the development industry on the cost structure for investment. While a form stimulus is welcome, the Government should use this opportunity to implement an economic and regulatory framework for investment certainty by sending a consistent and sustainable message on the cost structure of development in Sydney. A temporary reduction in the SIC will introduce undesirable market distortions and the timeframe prescribed by the Government fails to recognise that the impacts of consecutive years of record low dwelling production in NSW on housing affordability will be rectified in two and half years.

UDIA NSW recommends that the Government provide investment certainty for the development industry by mandating a permanent reduction in the SIC to \$11,000 per lot.

### **\$20,000 Contribution Threshold Review**

The levy reforms have prescribed a maximum local contribution threshold of \$20,000 per residential dwelling for all contributions plans from 30 April 2009 onwards. The Department has also advised that contributions in excess of this threshold may be accepted subject to a detailed evaluation of the contribution and council's broader infrastructure and asset management strategy.

UDIA NSW understands that many of the existing contributions plans, including some that have been prepared pursuant to the new provisions under S116D of the EP&A Act 1979, have levies well in excess of the newly prescribed threshold. In many cases a large proportion of the charge is allocated towards the acquisition of public open space and varies dramatically between different LGAs to account for disparities in land values.

UDIA NSW anticipates that the Department will be inundated with applications for exception to the \$20,000 threshold and recommends that a clear, consistent and transparent assessment process be established for the benefit of all industry stakeholders. The Planning Circular PS08-017 issued by the Department in December 2008 advised that the evaluation of council plans will have regard to the 'key considerations for contributions' as prescribed in S116D of the EP&A Act 1979. UDIA NSW suggests that this framework will be too broad and ambiguous to provide an objective basis for determining the validity of exemptions to the \$20,000 threshold and will prove very resource intensive in the review process.

In itself, this one area of uncertainty will act as a brake on investment. The NSW government must bring clarity to this matter if it is to maximise the stimulus effect that the levy announcement of late 2008 promises.

In its original submission to Government on the levy review, UDIA NSW contended that the most efficient, consistent, and equitable way to reduce the quantum of local development contributions is to limit the scope of the plans to include only the baseline infrastructure required to facilitate new development and allow councils to utilise alternative revenue sources to fund additional community facilities. UDIA NSW accepts that this recommendation was not a feature of the reforms but proposes that the concept be applied to the evaluation of applications to exceed to the \$20,000 threshold.

UDIA NSW proposes that any contribution plan that exceeds the \$20,000 threshold must include only the following baseline infrastructure for the entire plan and be subject to the key considerations prescribed under S116D of the EP&A Act 1979:

- local roads;
- local bus facilities;
- local parks;
- local car parking facilities; and
- drainage and stormwater management works.

UDIA NSW proposes that any contribution plan that does exceed the threshold would still be subject to an evaluation by the Contribution Review Panel of the validity of the application. This framework will provide for an appropriate degree of both consistency and a degree of merit assessment in evaluation the applications to exceed the \$20,000 threshold.

In regard to the composition of the local contribution charged per dwelling, UDIA NSW is concerned that some consent authorities may seek to use alternative mechanisms to acquire capital works or the dedication of land from a developer that will circumvent the prescribed \$20,000 threshold. For example such an action may take the form of a development consent condition requiring the developer to dedicate open space in order to be given sign off from the consent authority on the subdivision plan and this transaction is not recorded as a credit against the contribution required for the DA.

UDIA NSW recommends that the legislative or policy framework to support the introduction of the \$20,000 threshold per dwelling explicitly prohibit councils from extorting additional capital works or the dedication of land in exchange for a development consent.

### **Development Contribution Review Panel**

The Department's Planning Circular PS08-017 advised that a Review Panel will be established to evaluate whether the applications to exceed the \$20,000 threshold are reasonable and affordable. UDIA NSW recommends that the panel include at least one member with experience in the commercial aspects of development. UDIA NSW also recommends that the panel's determinations on each individual plan be transparent and published on the Department of Planning website.