



7 August 2020

Mr Peter Achterstraat AM
Commissioner for Productivity
NSW Treasury
GPO Box 5469
SYDNEY NSW 2001

email: ICReview@productivity.nsw.gov.au

Dear Mr Achterstraat,

Review of Infrastructure Contributions in New South Wales

Introduction

The Housing Industry Association (HIA) is Australia's national association representing the interests of the residential building industry. HIA represents a membership of 60,000 across Australia and this includes a diverse mix of companies, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products. HIA members construct over 85 per cent of the nation's new building stock.

HIA's Policy Positions on Infrastructure Contributions

HIA has policy positions on infrastructure funding and these are available as attachments to this letter, as follows:

- Attachment 1 is HIA's policy on Government Infrastructure Investment
- Attachment 2 is HIA's policy on Infrastructure Charges and Levies on Residential Development

HIA's overall position is that governments have a responsibility to implement infrastructure programs to support growth in a manner that ensures the investment cost is shared equitably across the whole community. However, this is not what the housing industry is experiencing, with levies for residential development now so high that they impact the rate of development and affordability of new homes for buyers. We are aware of cases in Sydney's growth areas of combined state and local infrastructure contributions being upwards of \$90,000 per lot. This amount impacts both housing affordability for buyers and the feasibility of projects for builders.

In 2018 HIA commissioned the Centre for International Economics (CIE) to investigate the magnitude of statutory taxes and regulatory costs in building new houses and apartments across Australian cities. The research found that in Sydney, nearly 50 percent of the cost of a new house and land package is incurred through red tape, taxes and charges.

In comparison, the CIE research found that the comparable cost in Melbourne was 37 percent and Brisbane 32 percent.

For new apartments in Sydney, the CIE research found that in Sydney 37 percent of the apartment cost is incurred through red tape, taxes and charges.

None of these costs improve the quality or value of the home delivered to the new home buyer but instead they have a significant impact on housing affordability. The impact on housing affordability was addressed in our recent submission to the NSW Productivity Commission, dated 29 November 2019, on the *Kickstarting the Productivity Conversation* report.

Review of Infrastructure Contributions Issues Paper (Issues Paper)

It is understood from the terms of reference issued by the Minister for Planning, and also from the Productivity Commission's webpage that stakeholder roundtables will be conducted on the infrastructure contributions review processes. HIA would like to participate in the roundtables and has a particular interest in the following topics identified in the issues paper:

- Issue 2.1: Enable a broader revenue source for the funding of infrastructure
- Issue 3.1: Principles for planning agreements are non-binding
- Issue 3.4: Contributions plans are complex and costly to administer
- Issue 3.5: Timing of payment of contributions and delivery of infrastructure does not align
- Issue 3.10: Affordable housing
- Issue 4.1: Sharing land value uplift, and
- Issue 4.8: Improving transparency and accountability

At this stage, HIA has been able to undertake a broad review of the issues paper and can offer the following comments:

1. The issues paper focusses on fixes to the existing infrastructure contributions system. This however, is at odds with the Minister's terms of appointment for the review, which was for a bold, holistic review of the State's infrastructure contributions system and to provide recommendations for a new system.

When announcing the appointment earlier this year, the Minister said that "*contributions reform has been stuck in the too-hard basket for too long, but we are committed to working with industry to deliver true change*".

However, reference to page 57 of the Issues Paper confirms the way forward for the review will be the further exploration of existing components of the system, rather than the delivery of "*true change*".

2. The issues paper fails to adequately factor in the downturn in the economy from the COVID-19 crisis. Reference is made to the 2008-2009 Global Financial Crisis (page 52) and the recovery of the housing market in 2012, but there is limited assessment of the impact of COVID-19 on the industry. HIA Economics has graphed ABS data on dwelling starts for New South Wales between March 2009 and March 2020 and this shows the already steep downturn in the industry heading into COVID (refer graph over-page).

Total Dwelling Starts – New South Wales

Source: ABS 8752



Source: HIA Economics

3. In June of this year HIA made a submission to the Department of Planning, Industry and Environment on immediate fixes to the NSW Infrastructure System, as exhibited by the Department earlier this year (15 April to 12 June 2020). A copy of the HIA submission is provided as Attachment 3.

Thank you for your consideration of the matters raised in this letter.

Please contact [REDACTED]
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Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

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Government Infrastructure Investment

Policy Background

- The timely delivery of infrastructure drives regional growth, employment and housing development opportunities. Productivity enhancing infrastructure is good policy.
- Governments have a responsibility to implement infrastructure programs to sustainably support anticipated growth in a manner that ensures the investment cost is shared equitably across the whole community.
- Since the early 1990s various state governments have pursued a policy to eliminate debt and in doing so have effectively transferred the cost for the delivery of public infrastructure, particularly local, onto new home buyers resulting in an artificial increase in the price of a new dwelling.
- In doing so, many state governments have recorded substantial budget surpluses – significantly funded by relatively high rising property taxes and infrastructure expenditure cutbacks.

Policy Issues

- Governments at all levels have taken a position to reduce borrowing funds for public infrastructure.
- This position has seen a slowdown in the delivery of large infrastructure projects while at the local level there has been a shift of costs to place the burden of funding community infrastructure directly on new home buyers.
- Local governments are increasingly being challenged to deliver community infrastructure on a limited funding base, against increasing land prices.
- Charges on new home construction to directly fund the delivery of local, regional and state infrastructure have increased in cost and scope over the last decade.

HIA's Policy Position on Government Infrastructure Investment

1. HIA advocates the provision of infrastructure to meet community needs and expectations.
2. Infrastructure provision should be planned, developed, and implemented in a coordinated manner by all levels of government, state, regional and local in consultation with the residential building and development industry.
3. Government infrastructure investment should incorporate strategies that take account of the benefits in delivery and costs that can result from integrating land use and transport planning.
4. Infrastructure provision and funding must have a minimal impact on the affordability of new housing. The funding of infrastructure should be calculated over the full life of the asset and recognise future user pay charges that may apply.
5. As beneficiaries of the provision of new infrastructure the whole community should share the cost of that benefit, by funding the delivery through any of the following mechanisms:
 - a. Government direct funding;
 - b. Government borrowings;
 - c. Tax effective infrastructure bonds (including those raised by public subscription);

- d. Public private partnerships that demonstrate clear public interest;
 - e. General rate levies across the whole community; or
 - f. User pay charges.
6. Value capture funding mechanisms are not supported as they represent a tax on development which distorts the property market and impacts on housing affordability.
7. Governments should:
- a. Invest in new technology driven infrastructure; and
 - b. Lead the way by removing institutional barriers to infrastructure funding and development.



Infrastructure Charges and Levies on Residential Development

Policy Background

- Levies and charges applied to development to cover physical and social infrastructure significantly affect new housing affordability. They are in effect a tax on new homebuyers.
- Most states and territories, through the planning system, can apply a charge on new residential developments via an infrastructure development contribution scheme of some type.
- Over the last decade, the charges being applied through these infrastructure development levy schemes have become increasingly significant. This is partially due the large range and high quality of facilities being requested by authorities and in many cases a conscious decision to shift the majority of the upfront costs onto new developments.
- The levies are now so significant they are impeding orderly and affordable residential development from occurring and significantly adding to the upfront costs of new homes.
- State governments have recognised the negative impact levies have on residential development and introduced ways to slow increases through either standard development levies or capped development levies. However, there is no clear evidence this approach has lowered the charges payable and improved the final cost of a new home.
- Some councils are attempting their own approach to the levies which can result in more levies and varied amounts being charged.

Policy Issues

- Development charges and levies can encompass two types of infrastructure provision:
 1. *Development specific infrastructure* – being items which are directly attributable to new development, defined as those items that are necessary to create the allotment without which the development could not proceed, for example:
 - local roads;
 - drainage;
 - stormwater;
 - utilities provision;
 - land for local open space; and
 - direct costs of connecting to local water, sewerage and power supplies.
 2. *Community, Social and Regional Infrastructure* – being items of broader physical, community and social infrastructure which are ancillary to the direct provision of housing in a new development and support residents outside that development, for example:
 - headworks for water, sewerage and power supplies which may be part of a specific contributions plan;
 - community facilities such as schools, libraries, child care facilities, medical centres and retail facilities;
 - district and regional improvements such as parks, open space and capital repairs;

- social improvements such as library books;
 - public transport capital improvements;
 - district and regional road improvements;
 - employment services;
 - subsidised housing; and
 - conservation of natural resources.
- Levies for community, social and regional infrastructure are typically applied by either local and/or state governments through the planning system.
 - In many cases the levies are charged without the establishment of a nexus between the infrastructure item and the community who will benefit and use it, without transparency in the collection and without any consideration of the impact on housing affordability.
 - Levies of this kind are being viewed as a primary funding source for community, social and regional infrastructure, despite the benefits from that infrastructure being enjoyed by the whole community.
 - Whilst development specific infrastructure has a nexus with the allotment or building and directly benefit future home owners community social and regional infrastructure may have limited or no nexus with the population who will occupy the homes in a new development.
 - Many items of community, social and regional infrastructure end up in private ownership and are operated on a commercial basis once delivered, such as child care and medical centres. This represents a double charge for new home buyers.
 - Every dollar charged in infrastructure contributions adds multiple dollars to the end price of a home as a result of multiple factors including delays in the calculation and setting of the levies, the uncertainty of this process and associated risks, the delays in developments commencing and increased mortgage repayments by the developer and the homebuyer required over time.

HIA's Policy Position on Infrastructure Charges and Levies on Residential Development

1. *Development specific infrastructure* which provides essential access and service provision and without which the development could not proceed are considered to be core requirements for housing development and should be provided in a timely manner to facilitate affordable development. These infrastructure items within the boundaries of the development should be provided by the developer as part of the cost of development.
2. An up-front charge against a new development is the least efficient manner in which infrastructure costs may be recovered.
3. The costs of broader *community, social and regional infrastructure* should be borne by the whole community and funded from general rate revenue, borrowings or alternative funding mechanisms.
4. The imposition of up-front levies on new homebuyers for *community, social and regional infrastructure* is inequitable, discriminatory, inflationary and erodes housing affordability.
5. Where up-front infrastructure levies currently exist for *community, social and regional infrastructure* and until such time as these levies are eradicated in line with dot points 1-4 above:
 - The establishment and calculation should be identified by the authority and be embedded within a statutory planning instrument prepared at the time of approval of land for urban development;

- Governments should be required to prepare a full cost benefit analysis of the impact of any proposed infrastructure levy on housing affordability prior to any implementation;
 - The manner in which the up-front levies are costed should be transparent and cover capital and implementation costs only. All ongoing and maintenance costs should be recovered by means of an annual rate or charge and not permitted to be part of the levy calculation;
 - Any levies implemented should provide certainty and consistency for future development and home owners about the infrastructure to be delivered, costs to be funded and timing of delivery;
 - Levies should be collected at the latest stage of the development process, just prior to the creation of legal title or prior to occupation;
 - Once adopted levies should not be subject to any change or variation apart from defined cost of living increases or similar indexation to allow for inflation;
 - The amounts collected should be fully disclosed and reported to State Parliament annually and also reported by local councils to their own communities via annual reports.
6. Levies which are applied by Governments for state based items of infrastructure should be:
- Established and collected in the same manner as those collected by local government as established above; and
 - Expended in the same area from which they were collected.
7. Any funds which have been collected for infrastructure which is not subsequently provided within the planned timeframes should be refunded to the property owner of the development either as soon as the decision is made to eliminate the proposal or at the expiry of the specified time frame.



HOUSING INDUSTRY ASSOCIATION



Submission to NSW Department of Planning, Industry and Environment

**Improving the Infrastructure Contributions System
April 2020**

Submission made 12 June 2020



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Housing Industry Association contacts:

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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 150,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise a diverse mix of companies, including volume builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over \$100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 400,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

“promote policies and provide services which enhance our members’ business practices, products and profitability, consistent with the highest standards of professional and commercial conduct.”

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

1.0 INTRODUCTION

HIA welcomed the NSW Government's announcement on 15 April 2020 for an extensive review of the State's infrastructure contributions system.

The purpose of the review being *to unlock new housing supply, deliver vital community infrastructure and boost investment in NSW.*

There are examples in Sydney's growth areas where various State and local infrastructure contributions combine to cost new homebuyers upwards of \$90,000 per lot, which erodes housing affordability and potentially impacts the feasibility of projects.

In addition, the importance of providing certainty for developers and builders to undertake feasibility assessments and invest in new residential development projects as we emerge from the COVID-19 period cannot be overstated. Home building will become critical to the State's economic recovery.

HIA acknowledges that a two-tiered approach is being undertaken by the Government to conduct the infrastructure contributions system review. This comprises a longer-term holistic review of infrastructure funding by the NSW Productivity Commissioner as well as a series of more immediate system improvements by the Department of Planning, Industry and Environment (DPIE).

In terms of the Productivity Commissioner's holistic review, HIA is concerned by the lengthy timeframe proposed. A report due by the end of the year seems an excessively long time in view of the extensive consultation and reviews that have already been conducted on this topic over the past few years.

HIA stands ready to assist in any way it can to facilitate a faster outcome for the Productivity Commissioner's review.

This submission focusses on the second tier of the Government's review process and relates to the five documents released for public consultation in April 2020. These documents propose more immediate systematic fixes to the infrastructure contributions system, as follows:

1. Improving the review of local infrastructure contributions plans - discussion paper
2. Criteria to request a higher section 7.12 percentage - discussion paper
3. Draft planning agreements policy framework
4. Draft special infrastructure contributions (SIC) guidelines
5. Proposed amendments to the Environmental Planning & Assessment Regulation

These documents are addressed in turn below, following a section clarifying HIA's over-arching policy position on *infrastructure charges and levies on residential development.*

This submission does not comment on the recent changes to the infrastructure contributions system announced by the Minister for Planning and Public Spaces (Planning Minister) in response to the State's COVID-19 economic recovery process. However, it is HIA's opinion that the Productivity Commissioner's terms of reference should now be extended to consider the changes to the infrastructure contributions system brought about by the Minister's COVID-19 response.



2.0 HIA'S POLICY POSITION ON INFRASTRUCTURE CHARGES AND LEVIES

The comments made in this submission reflect HIA's policy position on *infrastructure charges and levies on residential development*. Details of this policy position follow:

1. Development specific infrastructure which provides essential access and service provision and without which the development could not proceed are considered to be core requirements for housing development and should be provided in a timely manner to facilitate affordable development. These infrastructure items within the boundaries of the development should be provided by the developer as part of the cost of development.
2. An up-front charge against a new development is the least efficient manner in which infrastructure costs may be recovered.
3. The costs of broader community, social and regional infrastructure should be borne by the whole community and funded from general rate revenue, borrowings or alternative funding mechanisms.
4. The imposition of up-front levies on new homebuyers for community, social and regional infrastructure is inequitable, discriminatory and erodes housing affordability.
5. Where up-front infrastructure levies currently exist for community, social and regional infrastructure, and until such time as these levies are eradicated in line with dot points 1-4 above, the following criteria should apply:
 - The establishment and calculation should be identified by the authority and be embedded within a statutory planning instrument prepared at the time of approval of land for urban development;
 - Governments should be required to prepare a full cost benefit analysis of the impact of any proposed infrastructure levy on housing affordability prior to any implementation;
 - The manner in which the up-front levies are costed should be transparent and cover capital and implementation costs only. All ongoing and maintenance costs should be recovered by means of an annual rate or charge and not permitted to be part of the levy calculation;
 - Any levies implemented should provide certainty and consistency for future development and home owners about the infrastructure to be delivered, costs to be funded and timing of delivery;
 - Levies should be collected at the latest stage of the development process, just prior to the creation of legal title or prior to occupation;
 - Once adopted levies should not be subject to any change or variation apart from defined cost of living increases or similar indexation to allow for inflation; and
 - The amounts collected should be fully disclosed and reported to State Parliament annually and also reported by local councils to their own communities via annual reports.
6. Levies which are applied by Governments for State and regional based items of infrastructure should be:
 - Established and collected in the same manner as those collected by local government as established above; and
 - Expended in the same area from which they were collected.
7. Any funds which have been collected for infrastructure which is not subsequently provided within the planned timeframes should be refunded to the property owner of the development either as soon as the decision is made to eliminate the proposal or at the expiry of the specified time frame.



3.0 IMPROVING THE REVIEW OF LOCAL INFRASTRUCTURE CONTRIBUTIONS PLANS DISCUSSION PAPER

The *Improving the review of local infrastructure contributions plans discussion paper* (discussion paper) seeks to improve the review process of s7.11 local infrastructure contributions plans. The Environmental Planning & Assessment Act 1979 (EP&A Act), under s7.11, allows councils to collect a contribution towards the provision or improvement of amenities, or services, required as a result of development. The amenities or services include local roads, footpaths, stormwater drainage, parks and community facilities. The s7.11 contributions are charged where there is a demonstrated link between the development and the infrastructure to be funded.

The longevity of the NSW residential building industry is based upon certainty in the supply of land and the associated development costs. New housing needs to be built in locations where there is consumer demand, but the projects must also be commercially viable. Whilst the requirement to pay an infrastructure contribution is often part of the development cost, the developer needs certainty about all of the taxes, charges and costs associated with a project, including the levy amount as well as when the land will be available for development.

Councils prepare local infrastructure contribution plans to specify what infrastructure is required for a defined number of new homes and approximately how much it will cost. This is used to calculate a contribution rate, usually charged per lot/dwelling. Councils that want to charge a s7.11 contributions rate above a threshold set by the Planning Minister must submit their plans to the Independent Pricing and Regulatory Tribunal (IPART) for independent review. The review process is triggered when the s7.11 infrastructure contributions plan threshold exceeds \$20,000 per lot/dwelling or a higher \$30,000 per lot/dwelling in urban release/greenfield areas.

HIA understands that the thresholds for review are not the same as the maximum caps on s7.11 contributions that currently exist. Instead the thresholds are a trigger for when the s7.11 contributions plan is to go through the review process.

The discussion paper addresses some very specific issues relating to the review process for s.7.11 contribution plans and invites feedback on the following proposals:

1. Increasing the value thresholds that trigger the review process.
2. Introducing an annual indexation mechanism for the thresholds that trigger the review process, based on the Consumer Price Index (CPI).
3. Reviewing IPART's terms of reference.
4. Removing existing exemptions to review process, known as grandfathered contributions plans.
5. Removing existing requirements for councils to re-exhibit an IPART reviewed contributions plan following the receipt of advice from the Planning Minister's nominee.

HIA notes that DPIE is considering three options to increase the value thresholds that trigger the requirement for a draft contributions plan to be reviewed by IPART, as follows:

- Index the existing thresholds using the CPI (All Groups Sydney) from June 2010 to latest available quarter – giving a new threshold of \$24,247 for non-greenfield sites and \$36,370 for greenfield sites (based on CPI for June 2019 quarter).
- Increase thresholds to \$35,000 per lot/dwelling and \$45,000 per lot/dwelling in greenfield areas – based on increasing infrastructure delivery costs and land costs associated with building local infrastructure since 2010.
- Introduce a single threshold of \$45,000 for all areas.



Based on the information presented in the discussion paper - an increase in the trigger value for IPART reviews to reflect CPI increases is preferred. This is because the other options would lead to a reduction in the numbers of contributions plans reviewed by IPART, impacting on transparency and accountability for the contributions plans assessment process.

HIA notes that DPIE is also proposing an indexing mechanism for the IPART review thresholds based on the CPI which will be a new measure for the thresholds *to keep pace with cost increases*.

HIA also notes that DPIE propose to introduce measures to reduce the time it takes for the local contributions plans to be approved by removing the requirement for contributions plans to be re-exhibited by councils, following any amendments made to incorporate IPART’s recommendations. Whilst HIA is supportive of measures to streamline and ‘speed-up’ the review process, we object to this change as it will remove a key stage in the process where stakeholder’s can make comments.

Caps on Infrastructure Contributions

HIA notes that there is currently no proposal to reintroduce caps on contributions under s7.11 of the EP&A Act. HIA does not support the uncapping of local infrastructure contributions from 1 July 2020. The removal of the caps, will provide uncertainty for the industry and lead to councils levying higher contributions on new housing lots which will be passed on to home buyers, impacting housing affordability. DPIE’s review of the infrastructure contributions system should be extended to address the retention of the caps beyond 1 July 2020.

4.0 CRITERIA TO REQUEST A HIGHER SECTION 7.12 PERCENTAGE DISCUSSION PAPER

Section 94A (now s7.12) levies were introduced into the EP&A Act in 2005 as an alternative to the s94 (now s7.11) development contributions. The s7.12 levies are typically used in rural, infill and mixed-use areas where development rates can be difficult to predict.

These are fixed levies are charged as a percentage of the estimated cost of the development. The intent of the fixed percentage levy is to provide a charge on development where the nexus and the apportionment may be difficult to establish. This approach suits existing areas where rather than providing new infrastructure, the works required are for upgrading, replacement or amplification of existing infrastructure. The nexus being the connection between the proposed development and the demand created, and the apportionment being the share of the total demand that the developer must pay.

The maximum percentages that a council can levy in a s7.12 development contributions plan is defined in the Environmental Planning & Assessment Regulation (EP&A Regulation) 2000 (clause 25K), as follows:

Estimated cost of development	s7.12 percentage levy
Up to and including \$100,000	nil
More than \$100,000 to \$200,000	0.5%
Above \$200,000	1%

The EP&A Regulation also identifies specific areas subject to higher maximum percentage levies if listed in clause 25K(1)(b). These locations have been identified as important economic and job priority areas. In order to achieve a higher maximum levy percentage, the council makes a request to DPIE and a recommendation is then made to the Planning Minister on whether to list the area in clause 25K(1)(b) of the Regulation.



HIA acknowledges that the discussion paper seeks to ensure the process for assessing and determining requests to increase the maximum percentage levy for s7.12 contributions is efficient and transparent, and that for this purpose DPIE is proposing to adopt new criteria and evidence for assessment.

The proposed criteria to increase the maximum percentage is based on three key principles, as follows:

1. The area being proposed for a higher maximum percentage levy must be identified in a strategic plan as a strategic centre, local centre or economic corridor.
2. The area must have existing or identified potential for significant employment growth.
3. Local planning controls will need to reflect and support the planned increase in population and employment capacity of the identified area.

HIA is supportive of the review of the process for assessing and determining requests to increase the maximum percentage levy and strongly maintains that part of any assessment must be the requirement to identify a clear nexus identified between new development and the levy charged for additional public amenities and services. Without being able to identify a clear nexus any increase of the maximum percentage levy should not proceed.

5.0 DRAFT PLANNING AGREEMENTS POLICY FRAMEWORK

DPIE is seeking feedback on an updated planning agreements policy framework, comprising a draft Planning Agreements Practice Note (draft practice note) and the draft Planning Agreement Direction.

The draft planning agreements policy framework was originally exhibited in 2017 and HIA made a submission to the Department of Planning and Environment (DPE) at that time. HIA's overall policy position on planning agreements has not changed since 2017 and this is reflected in our comments below.

HIA's policy position is that any charges for social and regional infrastructure should be borne by the whole community and funded from general rate revenue, borrowings or alternative funding mechanisms. Funding for this infrastructure should not be charged to the development industry through planning agreements and the like. The imposition of up-front levies on development is passed on to the new homebuyer, is inequitable and erodes housing affordability and potentially impacts the feasibility of projects.

Should developers enter into planning agreements with consent authorities, access to a practice note providing clear guidance on their purpose and use is needed. HIA therefore agrees with the statement on page 2 of the draft Practice Note *that planning agreements must be governed by a set of policy principles that ensure transparency, fairness and flexibility of planning decisions.*

HIA is also supportive of the fundamental policy principles for planning agreements, set out on page 2 of the draft practice note, as follows:

Planning authorities and developers that are parties to planning agreements should adhere to the following fundamental principles:

- *Planning authorities should always consider a proposal on its merits, not on the basis of a planning agreement.*
- *Planning agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand.*
- *Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population.*



- *The progression of a planning proposal or the approval of a development application should never be contingent on entering into a planning agreement.*
- *Planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls.*
- *Planning agreements must not include public benefits wholly unrelated to the particular development.*
- *Value capture should not be the primary purpose of a planning agreement.*

HIA has long been opposed to the use of planning agreements, and development contributions, for any works unrelated to the development they are linked to. It is important for a council to establish a clear nexus between development in the planning agreement and the community infrastructure needs associated with it. This is supported in the draft practice note (page 4) where it is clarified that *planning agreements should provide for public benefits that are not wholly unrelated to development*. Planning agreements should not be used by councils as a means of cross subsidising other infrastructure projects.

HIA also endorses the principle that a planning agreement process must remain voluntary and apply at the request of the proponent and not the consent authority. It would be preferable if reference to their voluntary application be included in the principles.

Specific comments on the draft practice note are set out below:

Value Capture (page 4)

In regard to value capture, HIA believes that planning agreements should not be used by consent authorities for value capture – such as to capture land value uplift resulting from rezonings or variations to planning controls. HIA supports the following statement in the draft practice note (page 4) about value capture:

In general, the use of planning agreements for the primary purpose of value capture is not supported as it leads to the perception that planning decisions can be bought and sold and that planning authorities may leverage their bargaining position based on their statutory powers.

Refunds (page 12)

HIA notes and supports, with an amendment, the intent of the following statement within the draft practice note relating to refunds:

Planning agreements may provide that refunds of monetary development contributions made under the agreement are available if public benefits are not provided in accordance with the agreement.

The amendment is that the word ‘may’ is replaced by the word ‘shall’.

Discharge of Developer’s Obligations (page 14)

HIA notes and supports the intent of the following statement within the draft practice note relating to discharge of developer’s obligations:

Planning agreements should not impose obligations on developers indefinitely. Planning agreements should set out the circumstances in which the parties agree to discharge the developer’s obligations under the agreement.

The discussion in the following section focusses on Special Infrastructure Contributions (SIC) guidelines.



6.0 DRAFT SPECIAL INFRASTRUCTURE CONTRIBUTIONS (SIC) GUIDELINES

DPIE is seeking feedback on a draft Special Infrastructure Contributions (SIC) Guideline (draft SIC guideline). The Department acknowledge that SIC help fund key elements of State and regional infrastructure in Greater Sydney and regional NSW. The Department is seeking to improve the transparency of the application of the SIC by preparing the draft SIC guidelines.

HIA's policy position is clear in that it does not support the SIC mechanism for the collection of funds for State and regional infrastructure, because it represents an unfair tax on new home buyers, as the benefit of the infrastructure provided is shared across the wider community. Furthermore, as a result of a SIC, development costs will rise and housing affordability will be impacted.

SICs can often include a broad range of State and regional infrastructure items that do not have a direct nexus with the development proposals from where the funds are collected. These broader State and regional infrastructure items should be funded using measures other than development contributions. For example, on page 3 of the draft guideline it is noted that the *types of infrastructure typically funded by a SIC include (but are not limited to), road upgrades, school or education facilities, health infrastructure and emergency services facilities.*

Residential development is already subject to local development contributions under s7.11 and s.7.12 of the EP&A Act, as discussed above. Therefore, the SIC represents an additional contribution which in-turn forces up the cost of residential land for new homebuyers, further impacting housing affordability and making new housing unaffordable for some. Therefore, HIA's policy position regarding SIC levies is that they are a direct tax on new home construction which is passed onto homebuyers and impacts housing affordability and the feasibility of projects.

However, we have noted (on page 11 of the draft guidelines) that *the Department will seek to ensure a SIC does not unreasonably impact on development feasibility and will, prior to implementing a SIC, investigate the impact of the SIC charge on general development viability.* Whilst, HIA support this, our position is that it is the impact on the commercial feasibility of projects for developers that is the vital consideration in the viability assessment.

Also of importance is the Department's recognition within the draft guidelines (page 9), that some infrastructure items will service growth areas as well as existing communities, and that a mechanism for calculating apportionment can be considered relating to infrastructure type. Whilst a general outline on how apportionment and impact on development feasibility will be assessed is included, it is imperative that the residential development industry is consulted on these matters prior to implementation within any SIC plan. Factors to be taken into account and the approach for the assessment could be unique for each Special Contributions Area (SCA).

The SIC remains an inequitable tax on new home buyers, when millions of households did not incur this charge on their new home and those households benefit from the schools, health and emergency facilities to be funded.

Notwithstanding HIA's position on SIC, we are supportive of initiatives by DPIE to increase transparency and accountability within the NSW planning system, including processes to collect infrastructure contributions from the development industry. In this regard, we note the draft guidelines aim to provide greater clarity about the following:

- The purpose and objectives of the SIC framework applying to current SICs (particularly how to manage expenditure) and the development and implementation of prospective SICs.
- The key principles guiding the State Government in implementing and administering the SIC framework.
- The method for determining a new SIC.



- The process for allocating SIC revenue to infrastructure investment once a SIC has been determined.

Public Consultation

HIA believes that it is critical that public consultation (including industry engagement) occurs at a time when there is still scope to make changes to the proposed SIC, and before it is finalised. There is however, some ambiguity on page 6 of the draft guidelines as to when consultation could occur, as follows:

Stakeholders will be consulted before a SIC is made. Consultation could occur by publishing (and seeking feedback on) an initial proposed approach and/or a final Determination.

HIA concurs with the information provided in the draft guideline that the consultation should include feedback on the level of the contribution, the SCA, the infrastructure list and the types of development that will be required to make a contribution.

HIA is concerned with a statement in the *Expending SIC revenue* section (page 13) which says that that the collection of a SIC is not a commitment to the delivery of an infrastructure item. HIA's position on this is that any funds collected for infrastructure which is not subsequently provided within the planned timeframe should be refunded to the SIC payee, either as soon as the decision is made to eliminate the proposal or at the expiry of the specified time frame. Again going to the equity of this tax, these funds should not be permitted to be diverted onto other actions.

Our final comment at this stage, is that we are supportive of the proposal to publish information about SIC revenue and fund allocations on DPIE's website. A commitment to reporting should serve to increase transparency in the SIC program for industry.

7.0 PROPOSED AMENDMENTS TO EP&A REGULATION

The EP&A Act and the EP&A Regulation set out the statutory requirements for infrastructure funding contribution collection and use in NSW.

HIA's comments on DPIE's proposed 'more immediate' improvements to the NSW infrastructure Contribution System on public exhibition have been made in sections 3.0 to 6.0 above. These improvements cover:

- Improving the review of local infrastructure contributions plan – discussion paper
- Criteria to request a higher section 7.12 percentage discussion paper
- Draft planning agreements framework
- Draft Special Infrastructure Contributions (SIC) guidelines

Whilst we understand that amendments will need to be made to the EP&A Regulation to incorporate changes to infrastructure contribution collection in NSW, HIA has no further comments to add to those already made about the proposed changes. Clearly, HIA would not support any changes to the EP&A Regulation that do not align with the comments that we have already made in this submission.



8.0 SUMMARY & CONCLUSIONS

The comprehensive review of the NSW infrastructure contributions system by the Productivity Commissioner is welcomed by HIA and should be accelerated in its delivery to dovetail with decisions made about the more immediate DPIE reforms which have been the focus of this submission. In addition to this, there have also been recent changes to infrastructure contributions announced by the Planning Minister in response to the State's COVID-19 economic recovery process, the longevity of which should also be addressed within the Productivity Commissioner's report. It is HIA's recommendation that the Productivity Commissioner's work is now fast-tracked to better reflect the timeline of the immediate DPIE reforms and the current COVID-19 response initiatives.

The comments made in this submission only address DPIE's proposed 'immediate' changes to the NSW infrastructure contributions system, and these are based on HIA's over-arching *Policy Position on Infrastructure Charges and Levies on Residential Development*, as set out in Section 2.0 above.

Specific comments on the five documents currently on public exhibition have been made and these are presented in Sections 3.0 to 7.0 above, as follows:

- **Section 3.0** - Improving the review of local infrastructure contributions plan – discussion paper
- **Section 4.0** - Criteria to request a higher section 7.12 percentage discussion paper
- **Section 5.0** - Draft planning agreements framework
- **Section 6.0** - Draft Special Infrastructure Contributions (SIC) guidelines
- **Section 7.0** - Proposed amendments to Environmental Planning & Assessment Regulation

Over the last decade, the charges applied to industry through infrastructure contributions schemes have become increasingly significant. The increase is partially due to the large range and high quality of facilities being requested by authorities and in some cases a conscious decision to shift the majority of upfront infrastructure costs onto new development. The levies are now so significant they are impeding orderly and affordable residential development from occurring and significantly adding to the upfront costs of new homes and potentially rendering some projects unviable.

As a general principle, it is HIA's position that the housing industry should only be required to pay for infrastructure which is project specific, or infrastructure that provides essential access and services provision. This is considered by HIA to be the core requirements for housing development and includes local roads, stormwater drainage, and land for neighbourhood open space.

In many cases the levies are charged without the establishment of a nexus between the infrastructure item being funded and the community who will benefit from its use. Levies of this kind are being raised as a primary funding source for community, social and regional infrastructure, despite the benefits from that infrastructure being enjoyed by the wider community.

It is against this policy backdrop that HIA has made its comments on the five documents currently on public exhibition.

HIA would be pleased to be contacted by DPIE to further discuss our comments on the review of the infrastructure contributions system in NSW. [REDACTED]