UDIA NSW President's Taskforce on Infrastructure Contributions Reform

Policy Issue Paper

Land Value Contribution (LVC)

Preamble

The Urban Development Institute of Australia (UDIA) NSW initiated a President's Taskforce on Infrastructure Contributions Reform to lead the industry response to the 29 recommendations contained in the *Review of Infrastructure Contributions in New South Wales* by NSW Productivity Commissioner Peter Achterstraat AM.

This taskforce drew in cross sectional expertise from the membership, comprising developers, consultants and Local Government who were focused on infrastructure planning & delivery.

The Taskforce developed Working Groups, modelled in line with those of Department of Planning, Industry & Environment (DPIE) to advise on the technical aspects of the reform.

Introduction

This UDIA NSW Policy Paper considers the implementation of Recommendation 4.2 Introduce a direct land contribution mechanism to improve both efficiency and certainty for funding land acquisition, contained in the Productivity Commissioner's report, "Review of Infrastructure Contributions in NSW" (December 2020).

This Paper has been drafted based on the input of our President's Infrastructure Contribution Taskforce and key members from our committees. It includes input from planners, developers, local council officers and lawyers to provide a full and comprehensive review of the proposal.

Land Value Contribution

The recommendation of the Productivity Commissioner has now been taken forward in proposed legislation currently before the NSW Parliament (Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (**Amendment Bill**).

The Productivity Commissioner's recommendation to enable a direct land contribution also included a cash contribution option. Referring only to a direct land contribution in the legislation had the potential to exclude the cash contribution option. Therefore, the entire recommendation has been encapsulated in the term 'land value contribution' (LVC) within the legislation.

There is very limited detail in the Amendment Bill. This raises concerns about the implementation and successful delivery of the LVC and key issues are covered in our recommendations. We have also highlighted outstanding issues that will need to be addressed prior to the drafting of legislation.

The LVC is an amendment to Section 7.11 within the EP&A Act. Therefore, it continues with key concepts in Section 7.11 contributions including nexus (including a list of local infrastructure to be funded) and an Essential Works list (which the Productivity Commissioner has recommended significantly reducing).

Funding for local infrastructure in an LVC area would still rely on funding from Section 7.11/Section 7.12 contributions. The LVC process could provide early and adequate funding for land and/or infrastructure provision within a LVC area and therefore save significant time and cost at later stages and remove the need to use the Land Acquisition (Just Terms Compensation Act) 1991 ("the JTC Act"), significantly reducing the costs of local contributions. Any introduction of LVC, must have a corresponding NPV reduction on 7.11 / 7.12 developer contributions.

The constraints in the current process to fund and deliver local infrastructure are well known. It can take an inordinate amount of time for a council to accumulate funds and acquire the land to deliver infrastructure, particularly the land for infrastructure. This typically results in local infrastructure taking years to come to fruition, slowing development and undermining housing supply.

If the detailed regulations align with the Productivity Commissioner's recommendations, and are implemented well, the LVC reform has the potential to improve feasibility, speed up the delivery of infrastructure and improve housing supply, helping to tackle the NSW housing and affordability crisis. The reform is therefore supported by the UDIA.

Recommendations

Based on the investigations undertaken, this section presents the 17 recommendations, focussed on greenfield areas, to help LVC implementation.

Governance and Communication

Recommendation 1. DPIE should collaborate with the development industry during the bedding-in phase of the reform to resolve any unintended consequences.

The LVC reform is possibly the most complex of the Productivity Commissioner's recommendations for infrastructure contributions reform increasing the risks to implementation. To reduce these risks, collaboration with the development industry throughout the drawing up of the regulations and guidance and through the bedding-in stage of the reform is essential. UDIA is pleased with the collaboration that DPIE is currently undertaking with the development industry and would like to see this continue.

There are many potential challenges with the treatment of land to be used in a LVC scheme including:

- **Land classification**: Where there is a conflict between the most cost-efficient infrastructure solution against the most efficient use of the land for housing supply, such as the consideration of constrained land.
- **Fragmented ownership**: Where more than one landowner is involved, but one of the landowners does not wish to engage in an LVC process.
- **Land value rates**: Disputes over land valuations and the appeals process under the JTC Act.
- **Just Terms**: When it is appropriate to use compulsory acquisition powers.
- **Equity**: The rectification process whereby a developer / landowner needs to be compensated should their public purpose land contributions exceed the LVC.

Processes and Delivery Timeframes

Recommendation 2. In collaboration with stakeholders, develop a list of potential scenarios that could arise as part of developing an LVC and develop guidance on how to manage those scenarios.

Recommendation 3. A responsible party must develop the LVC rate as part of the rezoning process, which should be publicly exhibited with the planning proposal and integrated precinct plan.

Recommendation 4. A responsible party must identify the public land needed for a LVC area in an integrated precinct plan prior to rezoning.

Recommendation 5. Prior to rezoning, a responsible party must develop a properly costed contributions plan to manage cashflow from rezoning through to development.

Recommendation 6. Prior to rezoning, a responsible party must publicly publish the delivery timeline for local and regional infrastructure.

Recommendation 7. A responsible party must review the delivery timeline for local and regional infrastructure annually and publicly publish any amendments.

To provide certainty, support feasibility and housing supply the implementation of an LVC should be developed during the rezoning process, as recommended by the Productivity Commissioner. This will also reduce the time delays with the current process, where it can take 18 months to prepare an IPART approved local contributions plan following rezoning and delaying development.

The identification of public land for infrastructure in an LVC precinct, also needs to occur prior to rezoning and as part of the development of the integrated precinct plan and before subdivision. The requirements under the Conveyancing and Law of Property Act 1898 should be addressed to minimise impacts in relation to legal access to a lot.

As per existing section 7.11 contributions, the infrastructure that is being agreed to should be identified at rezoning in an integrated precinct plan. However, the timeline for the delivery of the infrastructure also needs to be agreed, published, and reviewed annually to enable accountability.

The concurrent public exhibition of the planning proposal, integrated precinct plan and LVC rate will provide an opportunity for public scrutiny and future rights of appeal under the JTC Act.

Most precincts also require regional infrastructure funded by State government to deliver housing supply. The provision of this infrastructure needs to be integrated into the plan for the precinct.

In the case where a landowner only needs to contribute cash to a LVC scheme, this money may not be handed over to the council for many years. This creates a cashflow risk for a council and could significantly impact on the delivery of infrastructure.

This issue should be mitigated prior to rezoning, with preparation of a properly costed contributions plan with proposed infrastructure delivery timeframes which tie together the cash inputs with the land acquisitions and the land dedications needed to deliver local infrastructure in a LVC area. This will allow a responsible party to better manage a cashflow risk, which will also be reviewed annually, and account for change as a precinct transforms over a certain duration.

The proposed LVC requires the actual contribution (Land and/or money) to be:

- on or before completion of the first sale of land within a proposed LVC area that has been up-zoned; or
- before the first sale, as a part of a development consent condition for a proposed residential, mixed commercial and industrial development on that land.

<u>Calculations and Contributions</u>

Recommendation 8. Government needs to undertake an individual lot assessment under the JTC Act to determine a LVC for a precinct.

Recommendation 9. A responsible party must not include land cost for infrastructure as a contribution item in any local contributions plan prepared under the LVC process.

Recommendation 10. DPIE releases a LVC calculation methodology and land cost index for review by the development industry prior to drafting legislation on the LVC process.

Charging a percentage of a sale price (i.e., the englobo value) based upon the proportion of all public land to the total is fraught. The requirement of dedicating land at pre-development stage fails to recognise that land has different values and that all land will eventually require roads, drainage and utility services abutting them to be developed. They then become semi-developed, and their value can be multiples of the englobo value suggested by the Productivity Commissioner. Conversely the lands may be drainage land or asset protection land where the reverse may be so.

In all situations, a responsible party must address the requirements of the JTC Act and seek an individual lot assessment valuation, perhaps by the Valuer General, when preparing the LVC for a precinct to address issues related to compensation and legal fairness.

The amount of LVC will be heavily dependent on the "Essential Works list" and UDIA will be putting in a separate submission to IPART, who have been tasked with reviewing this. It will also depend on whether the LVC fully offsets the cost of land acquisition in a section 7.11 for the required infrastructure. Otherwise, in effect, a developer could be asked to provide land for infrastructure and pay for the same bit of land to be acquired. This 'double dipping' would clearly be unfair and run contrary to the principles outlined by the Productivity Commissioner.

Two of the recommendations of the Productivity Commissioner are supported to achieve a well-functioning LVC system – land valuation (4.3: Issue advice for land valuation to improve consistency and accuracy) and indexation (4.4: Index land contribution amounts to changing land values).

Any successful LVC system will need to undertake estimates of land value so that decisions can be made over whether to contribute land or make the equivalent financial contributions. The current system allows dedication of land or cash via VPA where the land cost is agreed based on independent valuation assessments from the developer and council. Because most of the land acquisition occurs at later stages, councils are forced to buy land at rezoned rates based on recent market sales.

Decisions on when a financial land value contribution needs to be made will vary. It could be several years after land has been rezoned. Therefore, the choice of how to index the value of that land to enable the calculation of the financial contribution is essential.

The Review Report recommended that the Valuer General should develop a land cost index and improved guidance for land valuations. This will ensure valuations are appropriate and land contributions better align with costs.

<u>The Role of DPIE</u>

Recommendation 11. Develop procedures and guidance to handle the outcomes of a review of an LVC scheme where changes to land and/or financial contributions need to be made.

Recommendation 12. Set up a co-ordinating body before re-zoning to manage the delivery of an LVC area covering both local and regional infrastructure and ensure that the co-ordinating body has access to the information it needs to be properly informed and make decisions.

Recommendation 13. Create a clear and effective path of escalation for managing LVC co-ordination issues including at cabinet sub-committee level.

Recommendation 14. DPIE and local councils to develop a communication program to explain LVC to landowners and developers.

Upon review, changes to the LVC scheme could be made and this could result in the need for land or financial contributions and a pay-back scheme. This may require negotiations on valuations and timing. Therefore, some sort of arbitration process may be required perhaps involving the Valuer General to provide input. Procedures and guidance need to be developed in each of these scenarios so that it can be handled appropriately.

The successful delivery of an LVC area usually requires co-ordination between multiple state agencies, local government, landowners and developers to ensure timely approvals, infrastructure is provided as and when agreed and housing supply is delivered. This includes both local and regional infrastructure. To achieve this, a co-ordinating body should be set up before re-zoning with appropriate escalation measures that have the necessary clout to resolve issues.

To do its job properly, the co-ordinating body will need to have information on accumulated funds, spending plans, updates on infrastructure projects and the use of land for providing infrastructure.

LVC represents a departure from current processes, with some developers wanting to hold-out until the market rises, allowing them to capitalise further from the rezoning and shrinking land supply. A communication program may be required here to educate landowners and developers about the benefits and constraints of the new LVC charge.

<u>Currently applied planning processes</u>

Recommendation 15. DPIE to retain the ability for voluntary planning agreements to support greenfield and brownfield development as an alternative planning process to fund local infrastructure.

Voluntary Planning Agreements have been an essential part of helping to deliver housing supply and infrastructure. Removing this option could cause major issues with the delivery of housing and therefore needs to be retained as an option including where an LVC is being considered.

<u>Scenario Testing</u>

Recommendation 16. A responsible party must develop an equitable LVC rate based on DPIE guidelines and a process for compensation for those landowners that have a higher-than-average LVC contribution.

To gain a full appreciation of potential impacts on the LVC method, a scenario test was undertaken by UDIA. The test applied a generic 5-hectare land parcel (160 dwelling lots) within the Northwest Growth Area to test feasibility and scenarios. The scenario concluded that the LVC is a workable outcome to provide for the upfront funding of local infrastructure without a significant disadvantage from the various scenarios which were assessed (See Appendix 1).

Within a precinct, the amount of land required for local public infrastructure will be assessed as a percentage of the total area. For example, if a 1,000-ha greenfield area is rezoned from residential and the amount of public infrastructure land needed is 150 ha (15%), then the LVC becomes 15%. The LVC may be either as land, cash or a combination of land and cash.

To assess how the LVC may work in practice, UDIA applied current sales revenues, residual land values and development costs and profit / risk to test the impact on different landowner scenarios and feasibility.

UDIA tested two general scenarios, whether the LVC is paid early (englobo land) or later in the development life cycle (saleable lots).

For each of the two general scenarios, three sub-scenarios were tested reflecting a situation where landowners have either a deficit or surplus of land available to satisfy the LVC (based on a Productivity Commissioners example).

In each scenario, UDIA assumed that the LVC of each of the three landowners is at the same dollar rate per square metre. In practice, transactions will be based upon "market value".

The findings indicated that, in principle, a landowner with a surplus of public purpose land is no "worse off" than a landowner with a deficit (or a fully developable site) if the LVC process is based on residual land valuations.

Conclusion

The LVC proposal provides an opportunity to shorten the timeframe to deliver local infrastructure and provide greater industry certainty to support development feasibilities in some existing priority precincts and newly identified LVC areas. A shorter development timeframe is also possible by ensuring that an integrated precinct plan and a local contributions plan are completed prior to rezoning.

Provided that the recommendations here are addressed, and there is an integrated rollout of supporting regional infrastructure administered under the RIC Grant funding program, the LVC scheme could allow for the coordinated delivery of infrastructure to support development and minimise delays to housing supply once land is rezoned.

UDIA is keen to work with DPIE in the proposed working groups and encourage resolution of the issues presented in this Policy Paper and importantly, to gain a further understanding of the detail embedded in this major policy initiative.

Outstanding Issues

UDIA will be undertaking further work to examine the following issues:

- How will the LVC concept be applied to brownfield areas and urban renewal precincts?
- How will a responsible party manage a landowner who does not participate in the LVC concept and seeks to delay planning and infrastructure roll-out for a precinct?
- Whether the LVC can and should be applied to land already re-zoned?
- Implications for existing Project Delivery Agreements (PDA) currently in preparation.

Attachments

Land Value Contribution "LVC"

How it will work ?

The LVC will be set by assessing within a precinct, the percentage (e.g. 15%) of the total land needed for public infrastructure.

The LVC may be either:

1. Land (free of cost).
2. Monetary payment.
3. Or, both the above.

Different types of landowners

1. Landholder A: has no public purpose land to contribute. They are subject to a 15% monetary contribution.
2. Landholder B : has insufficient land to fulfil LVC obligation. They are subject to land and monetary contributions.
3. Landholder B : has excess land to fulfil LVC obligations. They are subject to land contribution and receives a monetary payment.

Review of Infrastructure Contributions in New South Wales – Final Report

Box 4.2: Operation of direct land contribution in lieu of payment: example

A 1,000 hectare greenfield precinct is rezoned from rural to residential. The precinct requires 150 hectares (15 per cent of total land) for public infrastructure. The necessary land has been identified and publicly exhibited in the contributions plan. A 15 per cent direct land contribution is applied to the entire precinct at rezoning.

Landholder A owns 5 hectares, none of which is required for public purposes. No direct dedication is possible. On sale of the land 15 per cent of the total sale price is paid to satisfy the obligation.

Landholder B owns 100 hectares, of which only 10 hectares is required for public purposes. Landholder B opts to dedicate 10 hectares to council as part of the subdivision development application. A partial clearance certificate is provided for the 10 per cent dedicated. A further 5 per cent of the market value of the land would be required to be paid at sale to fully satisfy the obligation.

Landholder C owns 50 hectares, of which 10 hectares (20 per cent) is required for public purposes. On subdivision development application, Landholder C opts to dedicate 7.5 hectares of land to council and a full clearance certificate is provided for the landholder's 15 per cent share. The remaining 2.5 hectares required is purchased by council using cash collected from other landholders such as B. Alternatively, the landowner may be able to dedicate the remaining 2.5 hectares as an offset against their total payable contribution.

Item/ Scenario	Precinct	Landholder A	Landholder B	Landholder C
Site area	1,000 ha	5 ha	100 ha	50 ha
Public purpose	150 ha	0 ha	10 ha	10 ha
Sale price		30.9m	556.9m	247.5m
Direct land contribution	15%	15%	15%	15%
Adjustment to sale price		-4.6m	-28.3m	12.9m
Landowner cash in hand		26.3m	538.6m	270.4m
Shows $/ pr sqm site area		526	539	541

Item/ Scenario	Precinct	Landholder A	Landholder B	Landholder C
Site area	1,000 ha	5 ha	100 ha	50 ha
Public purpose	150 ha	0 ha	10 ha	10 ha
Sale price		55.6m	1000.0m	444.4m
Direct land contribution	15%	15%	15%	15%
Adjustment to sale price		-8.3m	-50.5m	22.7m
Landowner cash in hand		47.2m	959.5m	477.2m
Shows $/ pr sqm site area		944	960	954