UDIA NSW President's Taskforce on Infrastructure Contributions Reform

Policy Issue Paper

Works-in-Kind (WiK)

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

UDIA NSW believes that Works-in-Kind Agreements (WiK) are crucial for an efficient planning system for local and regional state infrastructure. The following principals, drawn from our 2013 White Paper, including beneficiary pays, avoidable cost and contestability should guide the direction of the current reform process.

We believe there is significant precedent over a long period supporting a beneficiary pays infrastructure contributions model and where a developer has to step-in as the impactor and deliver WiK which is over and above the benefits for a development, we believe the Final Productivity Commission Review supports tradeable WiK Credits across all the stakeholders, if a simple system can be developed!

UDIA NSW gave the following feedback in our submission in August 2020 to the questions in the Review of Infrastructure Contributions – Issues Paper by the NSW Productivity Commission (The content below has been expanded upon since our original submission).

Issue 4.11 Works-in-kind agreements and special infrastructure contributions

Recommendation 1: Develop a tradeable credit scheme underpinned by the ability to 'cash-in' credits.

Should developers be able to provide Works in Kind, or land, in lieu of infrastructure contributions?

WiK and land dedication provides a guarantee of delivery of infrastructure directly related to the development. It may also present opportunities for a developer to forward fund and accelerate the delivery of a particular item of infrastructure in advance of Government's procedural business planning and budgetary activities. This has added public interest benefits and may achieve broader social, economic, and other objectives. Therefore, UDIA strongly supports WiK arrangements and believe they should be strongly encouraged.

These arrangements can be more challenging when sites are in fragmented ownership. In those instances, there may need to be either tradeable credits or another mechanism to support WiK, particularly where the size of works may be greater for an individual scheme.

Developers may accrue WiK credits that exceed their monetary contribution. Should WiK credits be tradeable? What would be the pros and cons of a credits trading scheme?

Recognition of SIC offset credits and credits for excess value of WiK by a proponent (i.e. ***"Infrastructure Credits")*** has already happened in several projects and this now needs a policy framework.

There are two components of this, established by two types of developers:

1. Developers of larger projects that may have the capacity and the immediate need or opportunity to deliver infrastructure items.
2. Developers of smaller projects that may, by virtue of the capitalisation of the company, the scale of the project or the lack of opportunities to deliver infrastructure, have no choice but to make the contribution as a cash payment.

The use of tradable infrastructure credits can bring these two component parties together for Government in the form of:

- Willing and able forward funders and builders of infrastructure (the large project developer); and
- Willing and able financiers of infrastructure (the smaller project developer).

To achieve this scenario Infrastructure Credits must be tradeable. This has four purposes:

1. To maintain certainty for developers, and equity (parity) and fairness between development projects and / or Infrastructure Precincts.

2. To prevent developers from ending up with an unrealisable and unviable 'excess of credits' once they complete a WiK project.

3. Incentivise a developer to forward fund infrastructure if there is a strategic or marketing benefit for the developer to do so; and

4. To incentivise smaller fragmented landowners to enter private collective agreements to fund WiK, secure in the confidence they can distribute credits proportionally and fairly for the works funded.

However, to create a market for WiK credits they must be able to be 'cashed-in' and purchased by a Government authority or a third-party purchaser to ensure that their value is realised and there is confidence in the credit market.

UDIA suggests a centralised government register for infrastructure credits is developed and operating rules are determined to ensure credits are purchased and extinguished at the next available opportunity in all appropriate circumstances. The book and final sale value of the credits should be managed to ensure that the Infrastructure Credits do not become monetised. This may require the individual value of each credit to be capped at its original price plus CPI (or some other mechanism) to avoid price escalation in an elastic market, and the erosion of the value of contributions to Government as a result.

A centralised Credit Register of Infrastructure Credits would provide confidence (certainty) for the developer that the additional investment in WiK could be realised. However, to be effective we envisage that it would require four additional characteristics:

1. When cash contributions are collected in an infrastructure plan, they should be used to purchase and retire any credits on the register (with a proviso that the oldest credits are given priority).

2. Any private purchase of credits would prioritise the oldest credits in the system.

3. Credits can be traded directly between parties; and

4. A sunset date be included in the process that would require credits of a certain age to be purchased by Government. On first reading this may appear to be an onerous obligation upon Government, however there are several benefits:

    - It is necessary to give confidence to the development industry that its investment in infrastructure will be recouped within a reasonable period (and not remain as an unrealisable accounting asset); and

    - Importantly for Government it would not need to be treated as an onerous obligation if the register is viewed as part of Government's Infrastructure budgeting processes and an allowance to fund the purchase of credits forms part of the budget identified annually for infrastructure.

The prioritisation of credits would not be expected to pose any issues as all credits would be the same (unlike biodiversity offset credits which are different, depending on species and subject to different levels of supply and demand).

<u>What are implications of credits being traded to, and from, other contributions areas?</u>

Enabling credits to be traded between contribution areas is a matter of creating an accounting and banking system to ensure that the total contributions are balanced, similar to the pooling of contributions. It also enables the benefits of private sector investment in infrastructure to be achieved across a broader area of NSW, rather than credits being "locked up" in a particular Growth Centre, where their value may not be realised for some time or capitalised upon until there was a willing purchaser. This will provide opportunities to forward fund infrastructure that do not exist under the current system.

Ideally, credits would be traded across Council areas. UDIA is looking into how this could be done efficiently.

In the Final Review into Infrastructure Contributions in NSW – November 2020, we are concerned that despite broad support for a WiK trading system, the scope of reforms will overlook this crucial element of a productive planning system and remain an impactor pays model.

We quote as follows from the Final Review – November 2020 - 6.2 Works in Kind agreements:

> *As works are completed, the equivalent value is offset against the developer's infrastructure contributions obligations. Where a developer completes work of a higher value than their contributions obligation, a 'credit' is recognised. This may be used to offset future contributions. Some developers have sought a tradeable credits scheme to allow for the sale of credits to a third party. This would build on arrangements currently in place in the Western Sydney Growth Areas, where developers are able to use credits anywhere within the Growth Areas, but not to sell them to a third party.*
>
> *Stakeholder views:*
> *Both councils and industry generally support the option to use Works in Kind agreements. They provide flexibility and allow for infrastructure to be delivered earlier than councils would otherwise achieve… Councils suggest that development of a template and practice note to establish a standard approach to valuation, offsetting and liability periods would be beneficial. Councils do not support tradeable Works in Kind credits, suggesting it would be difficult to administer and add complexity. Industry, however, supports tradeable credits on the basis they would help encourage Works in Kind agreements by ensuring that any excess credits would have value.*

Recommendations

1. Any parties delivering planned infrastructure should be paid for works above a development contribution obligation, as per the costing in the Plan.

2. A WiK credit system should be developed that covers the following two scenarios:
    a. where a developer is delivering under or equal to their obligation; and
    b. where they are delivering over their obligation.

3. A planning agreement should be used to enable works beyond a proponent's site.

4. DPIE to provide a centralised system of recording WiK credits.

5. DPIE to prepare a register of credits owing, that allows a developer to cash in their credits or goes to repaying credits for infrastructure already built.

6. DPIE to develop a WiK credit system that works with a council or NSW Government forward planning of infrastructure and looks to buy back credits as soon as possible.

7. INSW to create a process to consider proposals for out of sequence state infrastructure to be built via a WiK agreement as part of their prioritisation of infrastructure.

Conclusion

We believe there is significant precedent over a long period supporting a beneficiary pays infrastructure contributions model. Where a developer has to step-in as the impactor and deliver WiK which is over and above the contribution for a development, we believe the Final Productivity Commission Review supports tradeable WiK Credits across all the stakeholders, if a simple system can be developed!

WiK provides the opportunity to shorten the timeframe to deliver planned infrastructure and provide greater industry certainty to support development. It is crucial that we find these productivity gains in the challenging NSW Planning system to support housing supply.

The recommendations in this paper serve to highlight solutions for a simple and transparent WiK system for local infrastructure and regional infrastructure. UDIA is keen to work with DPIE in the working groups to encourage resolution of the issues surrounding WiK and tradeable credits presented in this Policy Paper and its role as part of the broader infrastructure contributions reform.

Outstanding Matters

UDIA is continuing to examine key parts of a WiK credits system to add more detail to our proposals:

- The workings of a sunset period for WiK credits to support infrastructure delivery.

- The application of a WiK credit system across council borders.

- The role of prudent debt funding parameters for Local Contributions (LIC) and the approach to interest accruing in a plan for credits owing.

- The potential to include Section 7.12 for WiK.