UDIA NSW President's Taskforce on Infrastructure Contributions Reform

Policy Issue Paper

Transitions

Background

The proposed 29 recommendations contained in the NSW Productivity Commissioner's review will require a major policy shift from how current contributions are managed now and into the future. UDIA NSW welcomes the review which has been a long-term focus for our advocacy to provide greater certainty and reduced impact on feasibility for the development industry.

We are keen to inform the process, with the President's Taskforce Working Group brought together to assess the steps that should be undertaken to ensure a smooth transition of the 29 recommendations with minimal impact to the development industry, which continues to face uncertainty.

Like the principles contained in the Productivity Commissioners review, UDIA supports a transition process that is equitable, transparent and provides certainty. It should also minimise direct impacts to existing and proposed development pathways.

DPIE should always seek to implement change in an environment of cost neutrality. We want to see Government acting swiftly on these changes as the implementation of the reform can lead to a more sustained delivery of housing and jobs while at the same time recognising that a DPIE led communication and implementation program is essential to gain strong industry support.

A smooth transition of the 29 recommendations will allow industry and Government to respond to ongoing major socio-economic change brought on by the COVID pandemic, which has seen a high demand for greenfield housing, increased movement of Sydney residents to regional areas and a further slowdown in apartment construction that had been occurring since 2016.

Key Recommendations

Based on the assessment undertaken, UDIA makes the following six recommendations to ensure a successful realisation of the Productivity Commissioner's Review:

1. Formation of a DPIE Implementation Committee that oversees recommendations with a medium and high impact during transition. The Committee would include representatives from DPIE, local councils and the development industry.

2. The establishment of a program (by the Committee) to map out pathways to the successful transition of key recommendations with a high and medium impact, which includes interconnection with other DPIE reforms currently being implemented.

3. DPIE to review all State Voluntary Planning Agreements, Transport Works in Kind or Works Authorisation Deeds to ensure developers are not paying for those works plus a regional infrastructure contribution and/or land value contribution charge.

4. That DPIE phases in the recommendations in accordance with our program as presented in Attachment No.1.

5. That new contributions are set for a five-year period to support industry confidence and provide certainty.

6. That DPIE engages with industry on a strategy to bring some high and medium impact recommendations forward to provide short-term productivity outcomes.

Why a successful transition is important?

Due to the breadth of the 29 recommendations proposed it will be important for government to sustain developer confidence without a dramatic impact to current and future development feasibilities and proposals. For a sustained period of time the development industry will operate under a range of contribution plan processes across Sydney and broader NSW, that will be gradually phased in and out.

These include existing SIC and Special Conservation Areas (Draft SIC & SCAs), Section 7.12, Section 7.11 local contribution areas, new RIC contribution zones and Land Value Contribution precincts. There are also a range of state and local based voluntary planning agreements which apply to different areas and cover requirements and commitments for infrastructure and development.

Further, it is apparent that some of the recommendations may require amendments to legislation beyond the NSW Environmental Planning and Assessment Act 1979, including the Local Government Act 1993 and Biodiversity Conservation Act 2016. There will also be the introduction of new State Planning Policies (Housing SEPP and Design and Place SEPP) that will need to be managed. In accordance with Recommendation No.2, we support a comprehensive approach to highlight other proposed changes to provisions that are not visible at this stage.

Whilst we understand that some recommendations are principles based and require a long-term cultural rethink, which we support overall, it is the recommendations that require new developer contributions balanced against current contributions which the development industry is most concerned about. The cumulative cost of all contributions, within all the different contribution plan types (SIC SCAs and local contribution plans), needs to be weighed against infrastructure delivery and certainty and confirmed within this next phase of transition.

With this Policy Paper, UDIA has identified those recommendations that require closer attention on their implementation as compared to others that are unlikely to result in dramatic impact to an existing and future feasibilities and proposals.

UDIA contends that DPIE should map out an implementation program for each recommendation that is monitored by a committee, especially those with a medium to high impact.

What recommendations are critical to industry and how should these be implemented?

This Policy Paper has assessed the 29 recommendations (including WIK Credits) to provide further insight into how the proposed changes should be implemented within a realistic timeframe which we have provided in Attachment No.1.

UDIA contends that the transitional assessment for some recommendations will require a lot more effort compared to others to ensure a smooth policy implementation with good stakeholder support and with little negative impact to development.

The transitional assessment is based on a high, medium, and low impact scenario. The LVC concept is the only high impact recommendation, as it will result in new charges and contributions and a major change to current processes. The LVC concept also requires several ancillary recommendations to be delivered upon.

Medium impact recommendations cover those that require less of a transition but still need a program of delivery. They require some element of transition and could be managed through various mitigation measures and techniques. Low impact recommendations include those that are largely principle and/or culture change based.

In this regard, we proposed that some low impact recommendations could commence from 1 July 2022 or earlier, or when the new legislation is introduced; one-to-two-year timeframe for medium impact recommendations and up to three years for the LVC concept. This represents a change from our previous position (late 2020), where we speculated that the whole program would take 18 months to implement.

UDIA also assessed the transition program for each recommendation contained in the Productivity Commissioner's review to determine policy alignment between Government and industry. There is good alignment with most of our low and medium impact recommendations; however, there was misalignment with the LVC concept, where industry seeks a longer timeframe of implementation.

We propose a three-year implementation timeframe for the LVC concept, which requires further testing to achieve best practice.

Implementation of the recommendations should be supported by a policy education program to properly communicate to stakeholders the "change process" and highlight the benefits and potential risk areas.

This is especially relevant to contentious recommendations (4.5 and 4.6), which we regard as low impact but have major concerns from a council's perspective.

What recommendations are critical to industry and how should these be implemented?

UDIA has also undertaken a further assessment of the high and medium impact recommendations that could be brought forward to achieve better development outcomes to support growth. We essentially adopted a "reverse engineering approach" to further assess the possibility for earlier transition of each recommendation and its overall benefits to industry and the community.

Under this scenario, we propose a three-year phasing-in of the LVC concept. Essentially a test scenario could be developed in Year 1, followed by a period of refinement in Year 2, along with further amendments to the Regulations. The LVC concept would then apply to new precincts from Year 3. Noting that the LVC concept also requires Recommendation 4.1, 4.3 and 4.4 to be phased-in within a similar time construct.

For the RIC, we could apply it to draft SIC areas as they are phased-out in 2022, which is DPIE's intention, and then apply it to all other areas in 2023. This will allow time to build stakeholder support of the RIC model to realise its' benefits.

UDIA does see benefit with the early introduction of the low impact recommendations by 2022 and medium impact recommendations by 2023. For those recommendations that propose new contribution plans and new rates, any new contribution rate should be set for five-years to provide certainty for industry. This timeframe also aligns with the Productivity Commissioner's report, which proposes that all contribution plans should be reviewed after five years.

For the WiK proposal, which has an element of starting from day 1, there would need to be a strategic approach that achieves stakeholder support in Year 1, which is developed based on a model prepared possibly by a consultant. It then could be applied to State and Local VPAs in Year 2.

For Recommendation 6.5, 6.6 and 7.1, UDIA supports a gradual phase in which involves engagement and testing of models in Year 1 followed by drafting of legislation (if required) and policy implementation by 2023.

Whereas for Section 7.12 Contributions (Recommendation 4.11), provided guidelines and templates are developed and there is council buy-in, this could apply from 1 July 2023 or earlier with new contribution plans only. For local infrastructure contributions (Recommendations 4.5, 4.6 and 4.7), industry supports an earlier phase-in by 2022.

UDIA is willing to engage with DPIE on the option to bring some high impact recommendations forward based on the transition process we propose in Attachment No.1.

Conclusion

This Policy Paper has provided an assessment of the 29 Productivity Commissioner recommendations that UDIA has determined will have a high, medium, and a low impact to industry going forward.

Whilst we support a gradual transition of the LVC concept based on a three-year timeframe, low impact recommendations could be implemented by mid-2022 and medium impact recommendations by mid-2023, or earlier under certain circumstances.

This implementation is based on DPIE driving an effective communications program during 2021-22 that achieves widespread stakeholder support, especially from local government.

UDIA will continue to advocate for a successful transition of the recommendations, which is heavily reliant on good governance and ongoing oversight by a DPIE led transition committee to further tests scenarios and to achieve best practice.

UDIA will further engage with Government, especially on the opportunity to bring forward those high and medium impact recommendations to benefit industry and support growth.

Attachment No.1 – Summary assessment of key recommendations

	Key
	High impact recommendations
	Medium impact recommendations
	Low impact recommendations

No.	Recommendation	Assessment Justification	Policy Finalised	Transition Timing
1.	**Principles** 2.1: Enhance efficiency of the infrastructure contributions system	Principles based	1-Jul-22	
2.	**Local government rate reform** 3.1: Allow councils' general income to increase with population	Generally supported to provide another funding stream for existing local infrastructure	1-Jul-22	
3.	**Early identification of infrastructure needs** 4.1: Develop infrastructure contribution plans upfront as part of the zoning process	Major change to current process Change in timing of contributions Additional costs for some landowners and developers	1-July-23 and then 1 July 2024	Year 1 – Apply to LVC Precinct (Test Pilot) Year 2 – Refine and finalise Regulations Year 3 – Apply across Sydney based on amended Regulations
4.	**High and rising land values** 4.2: Introduce a direct land contribution mechanism to improve both efficiency and certainty for funding land acquisition		1-July-23 and then 1 July 2024	
5.	4.3: Issue advice for land valuation to improve consistency and accuracy		1-July-23 and then 1 July 2024	
6.	4.4: Index land contribution amounts to changing land values		1-July-23 and then 1 July 2024	
7.	**Section 7.11 contributions** 4.5: Section 7.11 contributions plans use benchmark costs	Provides savings for industry with less local contributions	1-Jul-22	
8.	4.6: Contributions plans reflect development-contingent costs only			
9.	4.7: Independent Pricing and Regulatory Tribunal review of contributions plans be 'by exception' and based on efficient costs			
10.	4.8: Contributions plans are prepared using standard online templates and digital tools			
11.	4.9: Encourage councils to forward fund infrastructure, through borrowing and pooling of funds	Can support quicker delivery of infrastructure to support growth	1-Jul-22	
12.	4.10: Defer payment of contributions to the occupation certificate stage	Currently entrenched and should remain for a longer timeframe	1-Jul-22	

No.	Recommendation	Assessment Justification	Policy Finalised	Transition Timing
13.	**Section 7.12 contributions** 4.11: Increase the maximum rate for section 7.12 fixed development consent levies	Could apply to new contributions only but time needed for testing and engagement	1-Jul-23	Year 1 - Draft templates and engage with stakeholders Year 2 - Apply to new contributions plans from 1 July 2023
14.	**Local Planning Agreements** 4.12: Planning agreements consistent with the principles-based approach	Principles based and mostly an administrative change	1-Jul-22	
15.	~~**4.13: Publish guidelines for planning agreements for mining and energy related projects consistent with the principles-based approach**~~	No relevance to UDIA	1-Jul-22	
16.	Recommendation 4.14: Improve accountability for affordable housing contributions	UDIA concerned with inclusion as RIC item but mostly an administrative change	1-Jul-22	
17.	5.1: Adopt regional infrastructure contributions	Cost impact and management of various contribution plans and areas required	Draft SICs gone by mid-2022 replaced by the RIC. Apply RIC to all zones by mid-2023 and remove existing SICs.	Year 1 – Apply to draft SIC areas and remove draft SICs Year 2 – Apply to all zones (Residential and Employment)
18.	5.2: Improve guidance for state planning agreements	Principles based and mostly an administrative change	1-Jul-22	
19.	5.3: Adopt transport contributions for major projects	Provided that it applies to new projects announced in Transport 2056 (once complete)	1-Jul-22	
20.	**Biodiversity** 5.4: Create a new category of contributions specific to biodiversity	Major concern area and cost impact	Object	
21.	**Metropolitan Water** 5.5: Phase in metropolitan water contributions for more efficient delivery of water infrastructure	Previous attempts were not well received, and further testing required	1-Jul-23	Year 1 – Test models and engage with industry Year 2 – Develop legislation and implement policy
22.	6.1: Develop and implement a centralised contributions digital tool	Requires testing before implementation	1-Jul-23	Year 1 – Policy Development Year 2 – Implementation
23.	6.2: Promote consistency and transparency in works-in-kind agreements	Principles based and mostly an administrative change	1-Jul-22	
24.	6.3: Build the capability and expertise of the planning sector	Principles based and cultural change which should be embraced early	1-Jul-22	

No.	Recommendation	Assessment Justification	Policy Finalised	Transition Timing
25	6.4: Introduce a simple, clear, standardised exemptions policy	Principles based and mostly an administrative change	1-Jul-22	
26.	6.5: Better synchronise state and local strategic planning frameworks	Long term cultural change and buy-in from local government is needed	1-Jul-23	Year 1 – Testing of models and engagement Year 2 – Draft legislation (if required) and implement
27.	6.6: Incorporate the local infrastructure contributions system into the Integrated and Performance Reporting framework	Local government buy-in needed and testing of scenarios	1-Jul-23	Year1 – Develop model and engage Year 2 – Implement
28	6.7: Strategic planning to maximise the efficient use of land	Principles based which should be standard practice for planning in NSW	1-Jul-22	
29.	**Governance** 7.1: Strong governance to guide implementation	Recommended in Transitions Policy Paper and should occur immediately	Immediately	
	WIK Credits	Difficult concept for DPIE to embrace as well as Treasury and local government issues as well	1-Jul-23	Year 1 – Agree on terms for centralised register, rules, governance, and administration Year 2 – Apply to State and Local VPAs