

10 December 2021

Kiersten Fishburn  
The Secretary  
NSW Department of Planning, Industry and Environment  
Locked Bag 5022  
Parramatta NSW 2124

Dear Kiersten,

**RE: NSW Infrastructure Contributions Reform Package**

The Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development in NSW. Our more than 500 member companies span all facets of the industry from developers, consultants, local government, and state agencies. UDIA advocates for the creation of Liveable, Affordable and Connected Smart Cities.

UDIA welcomes this opportunity to provide a submission to the NSW Department of Planning, Industry and Environment (DPIE) on the Infrastructure Contributions Reform Package. To help inform our position with the Reform Package we have established a UDIA Presidents Infrastructure Contributions Taskforce, comprising Sydney based and regional developers, engineers, planners, lawyers and local government officers. Our Taskforce has helped provide an all-round perspective on the key issues and lodged 10 policy papers over the last 12 months.

The timelier and more efficient delivery of infrastructure is critical to improving productivity in the planning system, increasing housing supply and tackling the housing affordability crisis. UDIA considers that DPIE has made reasonable progress with the Reform Package in taking forward the key recommendations in the NSW Productivity Commissioners (PC) report "*Review of Infrastructure Contributions in New South Wales – Dec 2020*," and we welcome the collaborative approach so far undertaken by DPIE in shaping these reforms. However, we believe that there is still a long way to go to provide a successful infrastructure contributions system that achieves the objectives of the government and works for all stakeholders and we are keen to continue to work with you to maximise the productivity impact, particularly over the next 6 months to commencement. In particular, we believe that DPIE should focus on the following issues:

- 1) **The timely provision of infrastructure to support growth.** The current proposals do not focus enough on ensuring the delivery of infrastructure in a timely way. Historically, funding has been only one of the barriers to providing infrastructure. It is essential that these other barriers, such as appropriate prioritisation on behalf of delivery agencies and co-ordination between state and local governments is built into these reforms. We have made several recommendations to support infrastructure delivery including getting NSW Cabinet approval for the spending of Regional Infrastructure Contributions (RIC) and streamlining the governance of low risk, low value infrastructure items.
- 2) **Further development of key proposals and reducing risks.** Several sections of the reforms are lacking in detail and appropriate checks and balances to prevent abuse. In particular, the Transport Project Component (TPC) and the Biodiversity Charge require more detail and legal protections need to be put in place to prevent the misuse of RIC funds and excessive rate increases. The TPC has gone further than the PC recommendations by including a rezoning element on top of the transport charge. Given that a

developer will already pay increased contributions from any rezoning as part of RIC and local contributions, this amounts to a triple dipping, crippling feasibility and the ability to deliver development near transport infrastructure, the exact opposite of what we should be doing.

In addition, the feasibility work undertaken by DPIE, highlights the significant risks to housing supply from a too hasty implementation of the RIC, especially as several the assumptions in the feasibility study are, in our view too optimistic. For example, excluding the impact of other reforms on feasibility, such as Design and Place SEPP. We have made several recommendations to reduce this risk and avoid damaging housing supply including, increasing the proposed transition period.

- 3) **A focus on land dedication over land valuation.** The current proposals for the Land Value Contribution are unworkable. The focus on land valuation as opposed to land dedication (as recommended by the PC) we believe would be a mistake, providing little incentive for landowners to participate in the process.

Our Taskforce has worked up a Land Contribution Method (LCM) as an alternative. The LCM applies to all precinct landowners with costs shared equally, providing a fairer system that will achieve early dedication of public purpose land to provide infrastructure with less reliance on the drawn-out processes under the *NSW Just Terms Compensation (Land Acquisition) Act 1991*. We have already discussed this alternative model with members of your department and we welcome the collaborative approach they are taking.

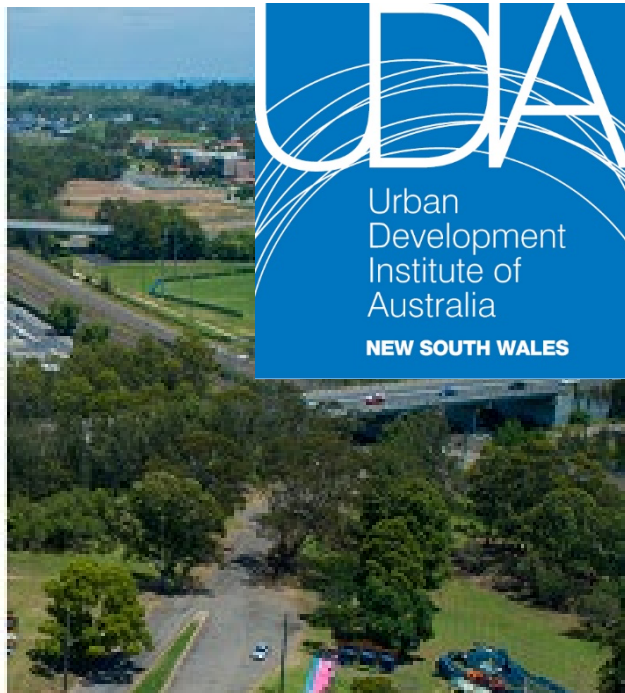
Although there is still some way to go, UDIA looks forward to continuing to work collaboratively with DPIE to deliver the best possible infrastructure contributions system for NSW in the months ahead.

Should you have any further questions or to arrange a meeting, please contact David White, GWS and South Regional Manager on 0415 914 612 or email [dwhite@udiansw.com.au](mailto:dwhite@udiansw.com.au)

Yours sincerely,



**Chief Executive  
UDIA NSW**



# **Infrastructure Contributions Reform**

**UDIA NSW Submission**

**December 2021**

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## CONTACT

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## ABOUT THE UDIA

The Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development in NSW. Our more than 500 member companies span all facets of the industry from developers, consultants, local government, and state agencies. UDIA advocates for the creation of Liveable, Affordable and Connected Smart Cities.

## INTRODUCTION

UDIA welcomes this opportunity to provide a submission to the NSW Department of Planning, Industry and Environment (DPIE) on the Infrastructure Contributions Reform Package (the Reform Package). The reforms are a key part of the UDIA policy reform agenda for 2021, *“To Recovery and Beyond”*, to provide an infrastructure contributions system that is fit for purpose.

Now, more than ever, there is a need to ensure the more timely and efficient delivery of infrastructure to improve productivity in the planning system and tackle the housing supply and affordability crisis.

Our submission responds to the Reform Package as presented on the NSW Planning Portal:

- 1) New framework for state infrastructure contributions
- 2) Local contributions
- 3) Land use planning

To help inform our position, we have established a UDIA Presidents’ Infrastructure Contributions Taskforce, comprising Sydney based and regional developers, engineers, planners, lawyers, and local government officers. Our Taskforce has helped provide an all-round perspective on the key issues presented in this submission and has lodged ten policy papers over the last 12 months covering a wide range of issues including the proposed Transport Project Component (TPC), Works-In-Kind and Land Value Contribution (LVC).

We have also undertaken a legal review with members of our Taskforce to highlight some of the potential regulatory challenges with the *draft Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021* (the Draft Regulation), and Ministerial Directions that DPIE should address prior to implementation.

## RECOMMENDATIONS SUMMARY

### **Focus Area #1: New framework for state infrastructure contributions**

**Recommendation 1.1.** The allocation of regional infrastructure projects into the capital planning process should be approved by a cabinet sub-committee to ensure a broad perspective is taken on infrastructure provision.

**Recommendation 1.2.** The nomination of projects for the RIC should be opened beyond councils to include the development industry.

**Recommendation 1.3.** DPIE should undertake an annual feasibility analysis to assess whether the assumptions have changed and that therefore the transition approach needs to change.

**Recommendation 1.4.** A grace period of 5 years where no RIC is applicable should be available to developers whose property transaction took place up to two years prior to the NSW Government to reduce risks to housing supply.

**Recommendation 1.5.** Amend the RIC levy calculation to be based on net new development.

**Recommendation 1.6.** Reduce the RIC rates to improve feasibility and reduce the impact on affordability.

**Recommendation 1.7.** DPIE to provide more information on how the proposed Strategic Biodiversity Component (SBC) charge will work with existing and potential biodiversity system changes and assess the need for a transition period.

**Recommendation 1.8.** The NSW Government should provide a detailed consultation paper on the workings of the TPC contribution.

**Recommendation 1.9.** The NSW Government should follow the intent of the Productivity Commissioner (PC's) recommendations and remove the proposed re-zoning value capture charge from the TPC proposals.

**Recommendation 1.10.** The NSW Government should undertake a comprehensive study of offsets for Infrastructure Delivery Agreements (IDAs), and State Planning Agreements (SPAs) as important tools to support housing supply.

**Recommendation 1.11.** The NSW Government undertakes a review of the governance (including the business case requirements) for low risk, low-cost projects.

**Recommendation 1.12.** NSW Government agencies should be properly resourced to support the expenditure of RIC funds.

**Recommendation 1.13.** RIC should only be spent on infrastructure that supports growth.

## **Focus Area #2: Local Contributions**

Our recommendations under Focus Area 2 include:

### **LCM dedication process**

**Recommendation 2.1** Removal of the 20% cap to focus on public purpose land with requirements to be determined on a precinct-by-precinct basis.

**Recommendation 2.2** All land contributions to be made either by land dedication or cash payment based on % of sale price or market value (whichever the higher) i.e., the dutiable value of the transaction as per the *Conveyancing Act 1919*.

**Recommendation 2.3** Define public purpose land contributions for each lot by reference to:

- Unconstrained public purpose land contribution; and
- Constrained public purpose land contribution.

**Recommendation 2.4** Contribution by dedication of identified public purpose land should be compulsory.

**Recommendation 2.5** Establish (through legislation and guidelines) a credit system for a release area precinct.

- The credit system will prioritise payments from the LCM administration fund on an annual basis, to the following landowners:
  - landowners who have developable land which is unconstrained but has been identified for a public purpose; and
  - Landowners who must be reimbursed due to their land having a large proportion of public purpose land, which is more than their dedication.
- The credit system will identify and track the following data:
  - The purchase price of a property;
  - The settlement date of transaction;
  - Unconstrained and Constrained Cash Contributions; and
  - Unconstrained and Constrained Credits.

**Recommendation 2.6** A council to place a notation on each of the Section 10.7 certificates following rezoning of a precinct which requires land contributions.

**Recommendation 2.7** DPIE to develop a data collection system based on the land contribution model to integrate into ePlanning.

### **Achieve the orderly development of a precinct**

**Recommendation 2.8** Council to prepare a new Local Infrastructure Implementation Plan (LIPP) to plan for future development post rezoning.

**Recommendation 2.9** Council to allow for temporary solutions to be developed to resolve potential development conflicts in a precinct.

**Recommendation 2.10** Council to focus on land dedications over land acquisitions to provide public purpose land in a precinct.

**Recommendation 2.11** Council to initiate developer working groups for a precinct.

**Recommendation 2.12** Allow for changes to an approved precinct plan without amending the rezoning plan.

### **The Involvement of the NSW Government in the Land Contribution Process**

**Recommendation 2.13** Early in the process, councils should engage with the NSW Government to determine the future requirements for regional infrastructure, to achieve the orderly development of a precinct.

**Recommendation 2.14** Further testing to properly account for changes in value of land over time and how this may affect funds needed to deliver future infrastructure.

**Recommendation 2.15** The draft Regulation, Ministerial Directions, and guidelines for the LVC must integrate with existing NSW legislation.

### **Need for mandated timeframes to ensure accountability**

**Recommendation 2.16** DPIE works to develop realistic timeframes for key steps in the planning process to ensure accountability on behalf of state and local government working on a land contribution model precinct.

**Recommendation 2.17** That DPIE endorses the following key PC recommendations to support LCM.

- *Recommendation 2.1 – Introduction of system objectives and refinement of existing principles to make the contributions system more efficient and cost reflective;*
- *Recommendation 4.1 – Infrastructure contribution plans to be developed upfront as part of the zoning process;*
- *Recommendations 4.8 and 6.1 – All infrastructure contributions plans required to be made through the new online digital tool on the NSW Planning Portal;*
- *Recommendation 4.9 – Pooling of contribution funds is permitted by default; and*
- *Recommendation 6.4 – A new exemptions policy that is simple, clear, and standardised.*

**Recommendation 2.18** DPIE to address the following recommendations in our LVC Policy Paper (August 2021) which have not been covered in the Exhibition Paper:

- *Recommendation 1. The LVC regulations should continue to be developed in collaboration with the development industry to increase the chances of a successful reform;*
- *Recommendation 2. The NSW Government should collaborate with the development industry during the bedding in phase of the reform so that any unintended consequences or unforeseen issues can be constructively resolved;*
- *Recommendation 13. DPIE to assess the option to allow a contingency fund within the LVC contributions to accommodate additional acquisitions in exceptional circumstances post rezoning;*
- *Recommendation 14. Set up a co-ordinating body before re-zoning to manage the delivery of a land contribution model covering both local and regional infrastructure;*
- *Recommendation 15. Create a clear and effective path of escalation for managing land contribution co-ordination issues including at cabinet sub-committee level;*
- *Recommendation 17. Develop a communication program to explain the land contribution system to landowners and developers; and*
- *Recommendation 18. Retain the ability for Voluntary Planning Agreements (VPAs).*



**Recommendation 2.19** DPIE addresses those other matters which we have identified as result of developing the LCM process, which include:

- The land holder who claims hardship as soon as the rezoning occurs;
- The land holder who holds out and will not dedicate – The timing of the dedication or sale of land;
- Fluctuations in market prices year to year and/or an unusually small number of transactions in any year;
- Distortion in sale price affects refund amounts – How will residue land be addressed?
- Potential land swap between state and local agencies to achieve efficient design outcomes; and
- *Developers’ rights of appeal.*

### **Focus Area #3: Land use planning**

**Recommendation 3.1** DPIE to confirm the role of the Independent Pricing and Regulatory Tribunal (IPART) “under exceptional circumstances” covering the review of local contribution plans, as well as the specified timeframe covering their involvement.

**Recommendation 3.2** DPIE to amend the *Contribution Plans and Planning Proposals Practice Note* be amended to encourage developer led planning proposals (and associated studies and plans) and the preparation of contribution plans.

**Recommendation 3.3** DPIE to amend the *Contribution Plans and Planning Proposals Practice Note* be amended to stipulate that a council should achieve state agency buy-in prior to the public exhibition of the planning proposal / draft contributions plan.

**Recommendation 3.4** DPIE to amend the *Contribution Plans and Planning Proposals Practice Note* be amended to contain provisions that allow for a seamless and efficient process that is clear and leads to shorter timeframes with precinct delivery.

**Recommendation 3.5** DPIE to amend the *Contribution Plans and Planning Proposals Practice Note* should include best practice guidelines that demonstrate:

- How a council should respond to change following the rezoning and approval of a contributions plan;
- Ongoing engagement with the development industry;
- The bi-annual review of the LIPP in response to change.

**Recommendation 3.6** Increase the public disclosure about a council’s infrastructure delivery thresholds for a future population to assist the development industry in drafting a contributions plan in accordance with Recommendation 3.2.

### **Legal Review**

**Recommendation 4.1** DPIE continues to engage collaboratively with the development industry throughout the reform development and implementation process including working with us on the legislation.

**Recommendation 4.2** That DPIE incorporates measures within the proposed legislation to achieve the accountability of key stakeholders on fairness in contribution requirements and the timely delivery of enabling infrastructure.

**Recommendation 4.3** DPIE responds to the key areas of legal concern we have identified in Table 5 of this submission.

## FOCUS #1 NEW FRAMEWORK FOR STATE INFRASTRUCTURE CONTRIBUTIONS

### 1.1. Introduction

This section contains our comments and recommendations for the Regional Infrastructure Contributions (RIC) component of the reforms and responds to:

- *Regional Infrastructure Contributions Discussion Paper;*
- *Regional Infrastructure Contributions Proposed State Environmental Planning Policy - Explanation of Intended Effect;*
- *Guidelines for Infrastructure Delivery Agreements;*
- *Guidelines for State Planning Agreements;*
- *RIC Fund Investment Prioritisation Framework Guidelines; and*
- *Regional Infrastructure Contributions, Contributions Reform – Feasibility Analysis.*

UDIA is supportive of the RIC concept providing it delivers infrastructure in a timelier and more cost-effective way. However, we consider that the current work on the RIC has focused heavily on revenue raising from the activities of the development industry but has failed to ensure that the *quid pro quo* of infrastructure delivery has been thoroughly thought through.

### 1.2. Proposed Recommendations

Table 1 provides more details of our concerns and our recommendations.

**Table 1**

Recommendation	Issue and explanation
<b>Recommendation 1.1.</b> The allocation of regional infrastructure projects into the capital planning process should be approved by a cabinet sub-committee to ensure a broad perspective is taken on infrastructure provision.	<p>The RIC fund investment prioritisation framework says that ‘State agencies will consider incorporating the regional infrastructure projects identified in Stage 1 into the Capital Planning Process’.</p> <p>Historically, state agencies have considered incorporating state infrastructure projects into their capital programs and the result has often been that key projects were not included. This has created lengthy delays in the provision of essential enabling infrastructure and delays to housing supply. This is a structural problem given that priorities of different agencies are not aligned. For example, Transport for NSW’s priorities are travel time savings not enabling urban development and housing supply. The Housing Acceleration Fund suffered from this issue and required cabinet-level decision making to get the money spent. It is not clear how the current RIC proposals provide the incentives for delivery agencies to provide infrastructure in a timelier way.</p> <p>The successful prioritisation of regional infrastructure projects requires a broad perspective to be taken, considering the need for housing supply and job creation as well as the priorities of the delivery agencies. This broad perspective can only be achieved by the ultimate decision makers (Ministers) with different perspectives coming to a joint agreement.</p>

Recommendation	Issue and explanation
<p><b>Recommendation 1.2.</b> The nomination of projects for the RIC should be opened beyond councils to include the development industry.</p>	<p>The proposal to only allow RIC projects to be nominated by councils could result in the exclusion of projects that are essential for growth.</p> <p>Although most councils take growth seriously and do their best to encourage it, this is not universal. Several councils are actively anti-growth, especially regarding housing supply, claiming their areas are full. By only allowing councils to put forward infrastructure for the RIC, there is a real danger that infrastructure essential for growth will not be put forward by anti-growth councils.</p> <p>To ensure this does not happen, the nomination of RIC projects should be expanded beyond councils to include developers.</p>
<p><b>Recommendation 1.3.</b> DPIE should undertake an annual feasibility analysis to assess whether the assumptions have changed and that therefore the transition approach needs to change.</p> <p><b>Recommendation 1.4.</b> A grace period of 5 years where no RIC is applicable should be available to developers whose property transaction took place up to two years prior to the NSW Government to reduce risks to housing supply.</p>	<p>There are several issues with the feasibility analysis. For example, it does not consider other reforms that are taking place that will also impact on feasibility such as the proposed Design and Place SEPP and reform to the Essential Works List. It also assumes that there will be significant increases in house prices in the transition period, something that runs counter to the projections of most of the major Australian banks. These issues increase the risk that the current proposed transition discount rates and period significantly impact on feasibility hitting housing supply.</p> <p>To minimise the risks to housing supply, the NSW Government could undertake an annual feasibility analysis, adjust the transition period, and discount rates accordingly.</p> <p>In addition, feasibility is most likely to be impacted where the property transaction took place in the two years before the NSW Government accepted the recommendations of the PC. Therefore, providing a longer grace period for these developments where no RIC applies of five years would also help to reduce risks to housing supply and would actively encourage these developers to deliver their housing as soon as possible.</p>
<p><b>Recommendation 1.5.</b> Amend the RIC levy calculation to be based on net new development.</p>	<p>Although there is no nexus with RIC charges, we believe that RIC levies should only apply where there is an increased burden on the infrastructure, albeit at a regional level. In the case of a knock-down re-build or a development that is partially replacing existing properties, the RIC calculation should exclude the element that is replacing the existing properties and only consider the net new development that will increase demand for infrastructure.</p>
<p><b>Recommendation 1.6.</b> Reduce the RIC rates to improve feasibility and reduce the impact on affordability.</p>	<p>The imposition of any charges on development reduces feasibility which in turn reduces affordability. Given that the NSW Government's own study shows that the current proposed RIC charges impact significantly on feasibility and the broadening of the infrastructure contributions base, there is a compelling case for reducing the current proposed RIC rates.</p>

Recommendation	Issue and explanation
<p><b>Recommendation 1.7.</b> DPIE to provide more information on how the proposed SBC charge will work with existing and potential biodiversity system changes and assess the need for a transition period.</p>	<p>The current biodiversity system is a complex, inefficient, and dysfunctional system. It is not clear how the proposed SBC charge will integrate with the existing system and any improvements that take place.</p> <p>In principle, UDIA supports strategic conservation planning and the application of a SBC charge to the RIC in areas covered by a strategic conservation plan. However, it is not clear how the transition to the SBC charge will occur. Given that englobo land prices have typically reflected the ability to develop a site, including its relative vegetation and assumed biodiversity constraints, it is unreasonable to expect landholders who paid more for cleared sites to pay more again to subsidise heavily vegetated sites. To avoid penalising earlier investment decisions, a transition period should be considered wherein individual landholders have the option to either pay the SBC charge or proceed under the <i>Biodiversity Conservation Act 2016</i> Biodiversity Offsets Scheme.</p>
<p><b>Recommendation 1.8.</b> The NSW Government should provide a detailed consultation paper on the workings of the TPC contribution.</p>	<p>There is a lack of detail on how the TPC will work including what transport infrastructure it will apply to (for example, only transport infrastructure where there is a significant benefit to land values), how much it will cost and the area to which it will apply. This makes it impossible to assess the proposal. Public exhibition on a detailed TPC paper would help to clarify the detail and enable stakeholders to comment.</p>
<p><b>Recommendation 1.9.</b> The NSW Government should follow the intent of the PC's recommendations and remove the proposed re-zoning value capture charge from the TPC proposals.</p>	<p>The TPC now has two elements – one for the land value uplift from the transport infrastructure and one for re-zoning to higher density. The second element goes beyond what was recommended by the PC and has several problems with it:</p> <ol style="list-style-type: none"> <li>1. It goes against the PC's principle of certainty. Given that the re-zoning may not take place at the time any charge is announced, it is likely to lead to speculation that could result in no development if the re-zoning is not delivered as intended.</li> <li>2. Developers will already pay higher contributions for areas re-zoned for higher density both through local infrastructure contributions and the general RIC. The additional transport charge on top amounts to a triple dipping.</li> <li>3. NSW already imposes the highest costs on development of any state or territory in Australia. This is already a significant contributing factor to the high cost of housing in NSW. Imposing an additional charge will just reduce affordability at a time when affordability to purchase a property is at record lows.</li> </ol>

Recommendation	Issue and explanation
<p><b>Recommendation 1.10.</b> The NSW Government should undertake a comprehensive study of offsets for Infrastructure Delivery Agreements (IDAs) and State Planning Agreements (SPAs) as important tools to support housing supply.</p>	<p>UDIA welcomes the inclusion of WIK style agreements. However, the arrangements for offsets will severely constrain their use and reduce the benefits that everyone obtains from them.</p> <p>By delivering WIKs quickly and cost effectively, benefits the NSW Government, Taxpayers, local communities, and developers as well as accelerating housing supply. An essential incentive to undertake a WIK is the availability of offset credits, i.e., the cost of providing the infrastructure is offset against other charges to developers.</p> <p>The proposals for offset credits within IDAs and SPAs are restricted compared even to the existing ad-hoc system. This will reduce the use of IDAs and SPAs to the detriment of everyone. <b>Appendix A</b> provides examples of where a WiK has demonstrably benefitted everyone but would no longer happen under the new regime.</p> <p>Rather than limiting offsets, NSW would benefit from providing a more expansive scheme which provides additional incentives for the efficient and beneficial delivery of infrastructure. These expansions should include consideration of offsets being used across the state (or at least within a region), not just within a development and covering different types of costs including biodiversity. More detailed comments on offset credits were included in our working paper (see <b>Appendix A</b>).</p>
<p><b>Recommendation 1.11.</b> The NSW Government undertakes a review of the governance (including the business case requirements) for low risk, low-cost projects.</p>	<p>The INSW <i>Infrastructure Investor Assurance Framework</i> (IIAF) makes it clear that there should be a different assurance regime for lower risk, tier 3, and tier 4 projects. Unfortunately, the NSW Government continues to impose inappropriate governance and business case requirements on these projects resulting in excessive costs and delays in delivery.</p> <p>Our detailed concerns are set out in our working paper on the issue (see <b>Appendix B</b>). Our paper makes 13 separate recommendations, a reflection on the many issues in the existing systems and processes. If the NSW Government is to deliver the productivity benefits that it is seeking from the reforms, then a comprehensive review and improvement plan is needed for the governance of tier 3 and tier 4 projects.</p>
<p><b>Recommendation 1.12.</b> NSW Government agencies should be properly resourced to support the expenditure of RIC funds.</p>	<p>As well as receiving money, to be successful the RIC money must be invested by the NSW Government. This requires proper resourcing in key departments. With previous growth funds this was not the case and the NSW Government struggled to spend the money allocated for infrastructure in a timely and efficient way.</p>
<p><b>Recommendation 1.13.</b> IC should only be spent on infrastructure that supports growth.</p>	<p>By spending RIC money on growth infrastructure, the RIC fund automatically gets replenished as development from the new infrastructure tops up the fund. This allows more growth infrastructure to be delivered. However, this virtuous cycle breaks down if the money is spent on non-growth infrastructure such as affordable housing. The RIC should only cover growth infrastructure.</p>

## FOCUS #2: LOCAL CONTRIBUTIONS

### 2.1. Introduction

This section provides a review of the proposed Land Valuation Contribution (LVC) as presented in the *Infrastructure Contributions Land Value Contribution Exhibition Paper, October 2021* (the Exhibition Paper).

As we understand it, the primary purpose of the LVC is to facilitate the early, efficient, and equitable delivery of the public land required for local infrastructure to support the development of a precinct. UDIA believes the LVC proposal in the Bill currently before Parliament and the draft Regulation will not achieve that, primarily because there is no land dedication component.

The LVC is a new and complex concept, and a workable mechanism is essential for its success, both in winning stakeholder and Parliamentary support, and in its implementation. Any mechanism must be incorporated into the *NSW Environmental Planning and Assessment Act 1979* (EP&A Act) or the *NSW Environmental Planning and Assessment Regulation 2000* (the Regulation) as far as possible, to ensure it is robust and is applied consistently across NSW over time.

UDIA is supportive of the LVC concept, but we contend it has not addressed several principal issues, nor does it go far enough to achieve the coordinated delivery of infrastructure to support the development of a precinct.

### 2.2. Our concerns with the LVC Concept and broader precinct planning issues

From our review of the Exhibition Paper, discussions with DPIE and work undertaken by our Developer Member Taskforce we have significant concerns with the LVC process, specifically:

- A focus on land valuation over land dedication, an unwelcome move away from the PC's original recommendation;
- The capping of 20% for all public purpose land within any precinct is too broad brush;
- A focus on relying on the Valuer General's index as the basis for determining land value within a development precinct, is again a move away from the PC's recommendations;
- The inability of the LVC to deal with large amounts of public purpose land on individual lots and how those affected landowners are compensated;
- The failure of the LVC to recognise constrained land and how to manage and respond to this.

We are also concerned that the LVC Exhibition Paper fails to address other key areas of concern including:

- The lack of accountability of key stakeholders to deliver infrastructure in a timely manner, recognising that it could take two or more years to approve a rezoning plan, a contributions plan, and a local infrastructure phasing plan for a precinct.
- The appropriate level of governance is missing to enable oversight of the process of developing a precinct, from beginning to end (potentially more than 10 years), especially the ability of a council to respond to changes in development patterns, design standards and changing demands for services and facilities;
- How to ensure the orderly development of a precinct that balances anticipated contributions and land dedications to support a future community with the timely provision of local infrastructure and services;

- The lack of direction to ensure that a council should act in the public interest and to spend money prudently whilst ensuring proper administration and resourcing to support the orderly development of a release precinct;
- The need for further testing especially on the locational attributes of urban areas but also on impacts of englobo lot sizes and their ability to immediately develop and how this may affect funds collected; and
- The failure to recognise key legislation including the *Local Government Act 1991* and the *Just Terms Compensation (Land Acquisition) Act 1991*, (the JTC Act) which are beyond the requirements of the EP&A Act, but which are integral to ensure a successful land dedication process.

UDIA believes that resolution of the above specific LVC issues and other concerns are critical to providing a land dedication concept that achieves industry confidence and the support from the community and key landowners.

In response to these issues, UDIA is proposing an alternative solution, the “Land Contribution Model” (LCM) which we believe will improve the land dedication process to facilitate the early delivery of infrastructure to support growth. We are also proposing new recommendations (**Table 2**) to address the concerns we have regarding accountability, governance, further testing of the LCM and the role of key legislation.

### 2.3. UDIA’s proposed Land Contribution Model

UDIA believes the most crucial factors in the delivery of the public land in a development precinct are:

- Early identification of the public land to provide future local infrastructure as a population moves in;
- Reasonable contributions that reflect the required proportion of public land;
- Incentives for early dedication or acquisition of the identified public land to reduce land acquisition costs;
- A funding mechanism to enable the acquisition of identified public land if it is not dedicated in a timely way; and
- An equitable cash contribution and reimbursement (or credit) system to provide a fair distribution of the cost of dedicating public land between the landowners in the precinct.

The key change proposed in the UDIA LCM approach is to move away from a focus on “valuation” to a focus on land delivery and dedication. To incentivise landowners to participate, this process should be supported by a market-based approach instead of using the existing proposals for separate, statutory valuations (i.e., the Valuer General) and index.

The LCM is built on two landowner obligations:

- i) Dedication of identified public purpose land within a landowner's landholding; and
- ii) Cash contributions to fund the landowner's proportionate contribution to the cost of the identified public purpose land in the precinct, where each landowner's cash contribution reflects the characteristics of the development precinct and the landowner's landholding within it, adjusted according to the extent (if any) of the landowner's public purpose land dedication. This allows for a sharing of costs across from landowners / developers within the precinct needed to acquire constrained and unconstrained public purpose land.

The triggers for these obligations are much the same as proposed in the current Bill - on first sale post-rezoning or as a condition of development consent, whichever comes first (although the Bill proposes only cash contributions).

We believe that the LCM provides a fairer system than compared to the LVC and beyond the initial concepts as contained in the PC recommendation. The LCM will achieve higher stakeholder support and less potential for disputes over valuation avoiding the longer timeframes and increased costs to acquire land for local infrastructure.

Key features of the LCM:

- The development land classifications and contribution percentages proposed in the model are derived from area calculations and land assessments relating to the entire release area and are fixed at the time of rezoning. This removes the need to rely on valuations, which introduce variability within the precinct and greater potential for valuation disputes;
- The model is area based, not valuation based. Land dedication obligations and contributions are tracked in terms of area (hectares) as opposed to dollars. This mechanism ensures that credits for those owners with a surplus of land, are subsequently compensated at market rates that are current at the time that the compensation is paid;
- Owners that have a deficit of public purpose land identified on their property are required to contribute a percentage of the next sale transaction (noting that this could be first developed in a Staged DA) into a fund that is then used to compensate owners that have a surplus. The cash contributions and credits are all based on actual transaction amounts;
- The model recognises that landowners with public purpose land which is 'unconstrained' should be compensated at a higher rate than those with public purpose land which is 'constrained.' This reflects the fact that 'constrained' and 'unconstrained' land has inherently different value prior to the time of rezoning.
- Unconstrained land is land that can be developed, whereas constrained land has physical or other attributes that mean it is not possible to develop it (e.g., flood prone or riparian land, environmental conservation areas or land affected by major electricity transmission easements). The relativity between these land values would be established at the time of rezoning and subsequently used, along with market value transaction data to determine the compensation to be paid to owners with a surplus of public purpose land;
- All public purpose land is dealt with under the model. Area such as riparian zones, water courses and half road dedications are addressed in the LCM. This means that the LCM is more holistic for precinct public land requirements and owners of all land in a precinct can receive fair compensation for their land; and
- The references in the model to "constrained" and "unconstrained" land simply reflect the different development classes of land which might be identified for public purposes. They do not predetermine what land will be identified for public purposes. That is a separate issue and should not interfere with the contribution concept.

The LCM model is also based on the premise that a contributions plan should be prepared at the same time as a planning proposal (Refer to Section 3 – Land use planning), which we also support.

### **How The LCM Works**

The LCM is based on three key steps that have been proposed to work with the new process recommended in the Reform Package (Refer to Figure 1), which aims to allow for the joint preparation and public exhibition of a precinct plan and local contributions plan prior to rezoning of a precinct.

**Step 1 – To establish the key components for the LCM** during the preparation of the precinct plan and the infrastructure plan for the proposed rezoning the following needs to take place:

- i) The public land required for the precinct is identified (i.e., roads, parkland, stormwater management land, riparian zone, etc).



- ii) All the land in the precinct is classified according to its level of development constraint, using various development classes as the planning authority considers appropriate, to assist in allocating contribution obligations for each landowner/developer (usually two development classes - "unconstrained" and "constrained" - should be sufficient).

Note: Depending on the physical and locational condition of a precinct, a council may add an additional land constrain class to better capture the underlying the physical nature of the land.

## **Step 2 – Determine the key components of the contribution calculation**

This will occur once the environmental constraints mapping is complete and a council is clear on what infrastructure they need to service a future precinct, including:

- The proportion of identified public land to the whole of the precinct land;
- The proportion of each development class of land within the identified public land (e.g., what proportion of constrained land and what proportion of unconstrained land); and
- The **relative** values of land in each development class, so that each landowner's contribution calculation will reflect the capacity of that landowner's land for development irrespective of the precinct master plan.

Only the last item involves a valuation exercise, and then it is only to determine relative land values across the precinct in different development classes. This is only relevant for calculating each landowner's cash contribution. This ensures that the building blocks for the mechanism are based on market values (albeit pre-rezoning values) and should minimise the risk of valuation disputes. UDIA supports an efficient design process being adopted (Refer to Section 3) to achieve best possible precinct planning outcomes.

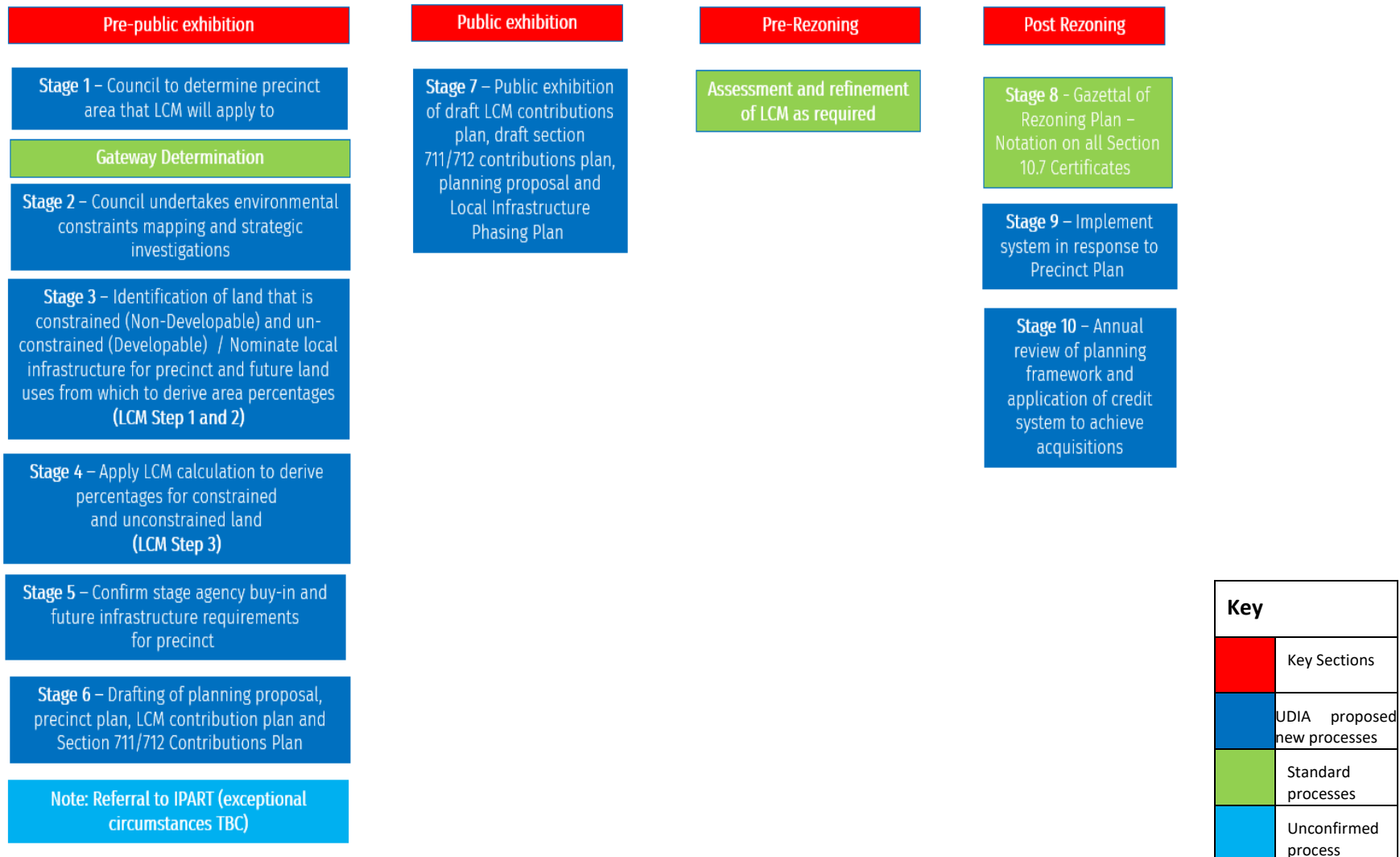
These components are then applied to a few simple, standard formulas, which derive appropriate contribution percentages for each landholding. Those formulas should be included in the Regulation for transparency and consistency.

**Step 3 – Determine each landowner's cash contribution**, derived from standard formulas which are applied to the landowners' land, as a proportion of the sale price (or market value whichever the higher) of that landowner's land on the first sale of that land post-rezoning.

- a) The required public purpose land dedication and the required cash contribution will offset each other, so that:
- i) if a landowner has less public purpose land within its landholding than the required contribution proportion, then, in addition to having to dedicate any public purpose land within its landholding, it must also make a cash contribution "top-up"; and
  - ii) if a landowner has more public purpose land within its landholding than its required contribution proportion, so that it is required to dedicate more than its required contribution proportion, it will receive a tradeable credit, which should provide no risk to that landowner as, reimbursement from the fund will occur via another landowners' required cash contributions.
- b) The timing of reimbursement should occur as funds become available. The amount of reimbursement should be based on the average of market sales that have contributed to the pool in the preceding period, recognising that there could be no sales if there is a flat market.
- c) The fund can also be used to reimburse councils who have had to acquire identified public land by agreement or by compulsory acquisition (if the land is not dedicated in a timely way), or "hardship" acquisition, under the JTC Act.

Provided on Page 15 in Figure 1 is how we think the LCM process could fit into a new updated planning process to achieve the efficient and orderly development of a precinct.

**Figure 1 – UDIA’ s proposed Land Contribution Model (LCM)**



## Analysis of Land Contribution Model

Based on the above, we believe the LCM is a significant advancement on what is presented in the LVC Exhibition Paper and is more closely aligned to the original PC recommendation covered in the “direct land contribution.”

Our emerging assessment is that a system that is market and land credit based, rather than valuation and ‘dollar’ based, will result in a fairer process, wherein the cost of the public purpose land for a precinct is more evenly shared across all landowners / developers. This type of approach is also more likely to incentivise landowners to participate in a land dedication process for a precinct proposed for more intensive uses.

Under our LCM process, land for local infrastructure will be dedicated or transferred to a council in a more reasonable timeframe rather than relying on current methods under the JTC Act or through the LVC process. Both are time constrained, fraught with complexity due to entrenched valuation positions and higher cost to reach an agreeable land purchase price.

A summary of the main differences between our LCM proposal and the LVC proposal are presented in the table below.

**Table 2**

Proposed LCM	Current LVC Option
The LCM focusses on a dual land dedication and cash contribution process, which is based on market transactions as opposed to statutory valuations done by the Valuer General.	The LVC is focussed on statutory land valuations prepared by the Valuer General.
The LCM provides an incentive for the early dedication of public purpose land, which is a key driver for the efficient development of a precinct.	Does not resolve the issue of land owners that contain a significant amount of land above their contribution, resulting in these landowners seeking a JTC Act land acquisition process; hence a much longer timeframe.
The LCM provides fair compensation for all landowners, whether they contribute public purpose land or cash.	This has not been addressed in the Exhibition Paper especially for those land owners that contain a significant amount of land over their contribution.
The LCM incentivises early acquisitions by a council for land which has not been dedicated and provides a more equitable contribution mechanism for their acquisitions (making it less likely that a council will be out-of-pocket).	Not clear how this will occur, resulting in a council having to typically provide a higher amount of funds to achieve land acquisition under the JTC Act.
The LCM requires more of the precinct planning work upfront as part of the rezoning process and therefore simplifies the contribution process for individual landowners (e.g., minimal statutory process and less need for appeals);	The LVC will require a high level of resourcing beyond the rezoning stage to resolve likely mismatch between funds generated and high expectations from landowners regarding the perceived value of their land over and above the VG index.

Proposed LCM	Current LVC Option
The LCM places a requirement that a notation is provided on all Section 10.7 property certificates to confirm that an LCM applies.	Not clear that if this will occur, despite the PC requiring this.
The LCM better deals with constrained land (riparian corridors etc.) which all landowners/developers must contribute to.	The PC recommended guidelines (Recommendation 4.3) to improve the consistency with management of constrained land have not been released with the Exhibition Paper.
The model facilitates the early, efficient, and equitable delivery of public land, which is the ultimate objective of the LVC.	In contrast, under the LVC, which provides only cash contributions, Councils will have the current problem of having to acquire that land, often by compulsory acquisition (with all its additional costs and inefficiencies).
Cash contributions and credits are based on a percentage of actual and current property sale values with the benefit of the rezoning. The proposed mechanism keeps pace with market values in the release area and ensures that councils receive adequate acquisition funding, and all owners receive similar compensation for their land. Recognising that in the early years a council may not have a deep pool of funds to draw upon and may need to borrow from other contribution schemes or seek a loan from the NSW Government.	In contrast, the existing proposal, which relies on artificial statutory valuations which are inevitably out of date for rezoned land, is likely to perpetuate the difficulties which the LVC is intended to resolve.

## 2.4. Recommendations

In the context of our view that the LCM approach presents greater opportunities to achieve the outcomes sought by the LVC approach, this section contains our 19 recommendations which have been based on the following steps:

- Our review of the Exhibition Paper;
- Our work on the LCM process;
- A draft program to redevelop a precinct; and
- Our concerns presented in Section 2.2.

In summary, there is a high possibility that the present constraints to the timely delivery of local infrastructure for a community will be overcome provided our current and previous recommendations (Refer to Recommendation 2.19) and other recommendations in Table 3, and the work with local councils and industry are continued.

Table 3

Recommendation	Justification
<b>LCM Dedication Process</b>	
<p><b>Recommendation 2.1</b> Removal of the 20% cap to focus on public purpose land with requirements to be determined on a precinct-by-precinct basis.</p>	<p>UDIA does not support the inclusion of a cap for public purpose land, as this should primarily be derived from the physical circumstances and efficient infrastructure design as part of the precinct planning stage.</p> <p>UDIA supports rigorous and sound planning of any release areas to ensure that appropriate proportions of public purpose land are identified by a council during the planning process. This will better reflect each precinct's advantages and limitations.</p> <p>The LCM approach avoids contribution caps that will artificially restrict the funding available for public land. The amount of public land required for a precinct should be determined by the characteristics of the precinct. This means that some precincts will have such high contribution requirements that they may not be viable for development. If the public land needs are identified reasonably (and not excessively), then that is a fair outcome.</p> <p>It is not possible to impose a cap that is appropriate for all future release areas. This will only continue the current risk of underfunding public purpose land.</p>
<p><b>Recommendation 2.2</b> All land contributions to be made either by land dedication or cash payment based on % of sale price or market value (whichever the higher) i.e., the dutiable value of the transaction as per the <i>Conveyancing Act 1919</i>.</p>	<p>The proposed rating method in the Exhibition Paper is reliant on the VG land value index, which does not accurately reflect land costs at any given time through a rezoning process. It also does not respond well to rising land prices and goes against the PC recommendation.</p> <p>This LVC premise will undermine landowner buy-in to the system based on the view they will get a lower price for land (developable) that is nominated for public purpose.</p> <p>Our LCM approach is closely tied to the market to provide a more accurate land cost especially for developable land nominated for public purposes.</p>
<p><b>Recommendation 2.3</b> Define public purpose land contributions for each lot by reference to:</p> <ul style="list-style-type: none"> <li>• Unconstrained public purpose land contribution; and</li> <li>• Constrained public purpose land contribution.</li> </ul>	<p>It is important to fully recognise the development potential of public purpose land (either constrained or unconstrained) in a precinct which must be managed and responded to in a precinct plan. This will determine the development potential of each landholding, when setting contributions for the cost of providing the public purpose land.</p> <p>Our LCM approach makes an upfront assessment of constrained and unconstrained public purpose land.</p>

Recommendation	Justification
<p><b>Recommendation 2.4</b> Contribution by dedication of identified public purpose land should be compulsory.</p> <p>Note: If no transaction occurs this implies a developer already owns the land and the land contribution is to be made via a condition of development consent for the subdivision of the land.</p>	<p>Land dedication for public purpose land must be compulsory to prevent long and arduous processes of land acquisition which is still possible under the JTC Act.</p> <p>The alternative LCM approach will work best through land dedication for a public purpose use as opposed to entirely cash contributions and land acquisition, which will track a longer timeframe (thus delaying development) and inevitably produce a mismatch of cash and acquisition costs. Compulsory dedication of land will quicken the process of infrastructure delivery under the LCM pathway.</p>
<p><b>Recommendation 2.5</b> Establish (through legislation and guidelines) a credit system for the release area precinct.</p> <p>The credit system will prioritise payments from the LCM administration fund on an annual basis, to the following landowners:</p> <ul style="list-style-type: none"> <li>– landowners who have developable land which is unconstrained but has been identified for a public purpose; and</li> <li>– Landowners who must be reimbursed due to their land having a large proportion of public purpose land, which is more than their required dedication.</li> </ul> <p>The credit system will identify and track the following data:</p> <ul style="list-style-type: none"> <li>– The purchase price of a property;</li> <li>– The settlement date of transaction;</li> <li>– Unconstrained and Constrained Cash Contributions; and</li> <li>– Unconstrained and Constrained Credits.</li> </ul>	<p>Under certain circumstances a council may not have sufficient funds to acquire land for public purpose, especially in the early years.</p> <p>A credit system will allow for the gradual acquisition of unconstrained public purpose land, or land that has development potential i.e., A town park.</p> <p>The credit system will also reduce potential conflicts and legal pathways under the JTC Act by providing a strong element of reasonableness to the land contribution process. Based on an annual review, it can allow for public scrutiny and increased accountability through on-line reporting of real time data.</p> <p>Note: At the end of each interval, LCM funds held by council should be fully distributed based on a “waterfall of payments” until the fund amount is exhausted for that interval.</p>
<p><b>Recommendation 2.6</b> A council to place a notation on each of the Section 10.7 certificates following rezoning of a precinct which requires land contributions.</p>	<p>To overcome potential misinformation and better inform key stakeholders, a notification should be placed on each Section 10.7 certificate to alert all landowners about the application of a land dedication requirement.</p>
<p><b>Recommendation 2.7</b> DPIE to develop a data collection system based on the land contribution model to integrate into ePlanning.</p>	<p>It is important to accurately account for the various land dedications, cash contributions and credits in a publicly accountable manner.</p> <p>The use of the ePlanning portal could help here to register all credits, aggregations of the values and the refunds paid as publicly available information to better inform land owners and land purchases.</p>

Recommendation	Justification
<b>Achieving the orderly development of a precinct</b>	
<p><b>Recommendation 2.8</b> Council to prepare a new Local Infrastructure Implementation Plan (LIPP) for future development post rezoning.</p>	<p>Without a delivery focus at the rezoning stage, it will place a council in a difficult position to respond to growth and plan for a precinct.</p> <p>Preparation of a LIPP by a council will help it prepare for the delivery of key local infrastructure (and state infrastructure) following rezoning, to support the orderly development of a precinct.</p> <p>The LIPP would be exhibited at the same time as the rezoning plan / precinct plan and land contributions plan. It will put a council in a delivery focussed state to plan for local infrastructure within 0-5, 5-10 and 10+ year timeframes based on state agency input.</p> <p>Council would review the LIPP on an annual basis with key stakeholder inputs. The LIPP would also contain a cashflow to closely align infrastructure delivery with LVC land dedication, LVC cash contributions and future Section 7.11/7.12 developer contributions.</p>
<p><b>Recommendation 2.9</b> Council to allow for temporary solutions to be developed to resolve potential development conflicts in a precinct.</p>	<p>Developer interfaces typically occur during construction, especially with the need to comply with development consent conditions covering stormwater management (temporary detention basins). This can result in potential conflicts and delayed development outcomes.</p> <p>To resolve these and still achieve the orderly development of a precinct, a council may have to allow for temporary solutions (funded under the LCM process) to address conflicting developer interfaces and compliance requirements covering roads, stormwater detention and raingardens.</p>
<p><b>Recommendation 2.10</b> Council to focus on land dedications over land acquisitions to provide public purpose land in a LVC precinct.</p>	<p>Land dedication is a simpler process with less conflict than land acquisition via the JTC Act or via a negotiated settlement.</p> <p>The LCM works best when timely land dedications for public purpose land occur, as opposed to a council acquiring land using accumulated LCM funds for a public purpose.</p> <p>This is especially the case for public purpose sites with high development potential and minimal physical constraints. Typically, these require a lot of process administration under the JTC Act. These sites require a high maintenance input to transact and will require a credit management system (Refer to Recommendation 2.5) to allow for a</p>

Recommendation	Justification
	<p>dutiable transaction of accumulated land contribution funds to a developer.</p> <p>In accordance with Section 3 Land Use Planning, UDIA considers that “efficient design” through the rezoning and precinct planning process should be a priority to achieve a more seamless transition of private land to public land for a future public purpose.</p>
<p><b>Recommendation 2.11</b> Council to initiate developer working groups for a precinct.</p>	<p>At times developers are not included in a council led precinct planning process leading to poor planning outcomes.</p> <p>Close interaction between a local council and developers in a precinct, through working groups will yield more successful and integrated efficient design outcomes. It can help keep council abreast of key issues and development interfaces, changing community trends and buyer needs (Refer to Appendix B).</p> <p>It will also help a council become responsive to change to set new delivery pathways to achieve the orderly development of a precinct.</p>
<p><b>Recommendation 2.12</b> Allow for changes to an approved precinct plan without amending the rezoning plan.</p>	<p>A developer should be able to seek change to an adopted precinct plan without having to amend the rezoning plan, which can take an inordinate amount of time.</p> <p>UDIA supports changes to the precinct plan, to occur via a developer led master plan process, like that proposed by DPIE to amend the Aerotropolis SEPP, where a developer can amend the SEPP and precinct plan etc. via a master planning process, endorsed by an appointed technical assurance panel.</p> <p>The master plan would be based on key studies and inputs via a technical advisory panel (state and local agencies). Council would then exhibit a draft master plan before finalisation (endorsement of Council and support from the panel). This approach could allow better planning outcomes response to change.</p>
<p><b>The Involvement of the NSW Government in the Land Contribution Process</b></p>	
<p><b>Recommendation 2.13</b> Early in the process, councils should engage with the NSW Government to determine the future requirements for regional infrastructure, to achieve the orderly development of a precinct.</p>	<p>As further identified in Section 3, housing supply may be held up due to a critical update piece of enabling infrastructure. By achieving state agency support of a precinct plan prior to public exhibition, it will achieve the integrated delivery of state and local infrastructure for a precinct to support growth.</p>



Recommendation	Justification
<b>Further testing of the Land Contribution Process</b>	
<p><b>Recommendation 2.14</b> Further testing to properly account for changes in value of land over time and how this may affect funds needed to deliver future infrastructure.</p>	<p>Land values typically increase over time, which could affect the amount of funds that a council needs to accumulate to deliver infrastructure.</p> <p>This could be mitigated by undertaking further testing of a contributions plan to track changes in land value, especially on the locational attributes of urban areas but also on impacts of englobo lot sizes and their ability to immediately develop.</p>
<b>The need to integrate key NSW legislation as part of the LVC process</b>	
<p><b>Recommendation 2.15</b> The draft Regulation, Ministerial Directions, and guidelines for the LVC must integrate with existing NSW legislation.</p>	<p>Without the integration of key legislation, including the LG Act, the JTC Ac, the <i>Conveyancing Act 1919</i>, and the <i>Valuation of Land Act 1916</i> (the VL Act), attempting to develop a LCM based land dedication pathway could be undermined.</p> <p>DPIE should integrate all existing legislation prior to implementation of the Reform Package by mid-2022.</p>
<b>Need for mandated timeframes to ensure accountability</b>	
<p><b>Recommendation 2.16</b> DPIE mandates timeframes for key steps in the planning process to ensure accountability on behalf of state and local government working on a land contribution model precinct.</p>	<p>UDIA has identified that it could take over 2 years to get a precinct rezoned under the Reform Package. However, there are no mandated timeframes to ensure that a council works efficiently once they have resolved to undertake a land dedication process.</p> <p>Mandated timeframes could allow for increased stakeholder support and industry confidence that the land contributions can work to result in development being delivered in a growth precinct.</p> <p>DPIE should provide mandated timeframes to achieve the following key milestones:</p> <ul style="list-style-type: none"> <li>• Public exhibition of key plans following declaration of a LVC precinct in Stage 1 (<b>Figure 1</b>); and</li> <li>• Finalisation of a rezoning plan etc. after public exhibition.</li> </ul>
<p><b>Recommendation 2.17</b> DPIE implements the following key PC recommendations to support LCM:</p> <ul style="list-style-type: none"> <li>• <i>Recommendation 2.1 – Introduction of system objectives and refinement of existing principles to make the contributions system more efficient and cost reflective.</i></li> </ul>	<p>Without the implementation of key PC recommendations, the success of the LCM land dedication process would fail. We support the PC recommendations 2.1, 4.1, 4.8 and 6.1, 4.9, and 6.4 being implemented by DPIE with any land dedication process.</p>

Recommendation	Justification
<ul style="list-style-type: none"> <li>• <i>Recommendation 4.1 – Infrastructure contribution plans to be developed; Recommendations 4.8 and 6.1 – All infrastructure contributions plans required to be made through the new online digital tool on the NSW Planning Portal;</i></li> <li>• <i>Recommendation 4.9 – Pooling of contribution funds is permitted by default upfront as part of the zoning process/ and</i></li> <li>• <i>Recommendation 6.4 – A new exemptions policy that is simple, clear, and standardised.</i></li> </ul>	
<p><b>Recommendation 2.18</b> DPIE to address our LVC Policy Paper (August 2021) recommendations which have not been covered in the Exhibition Paper, including:</p> <ul style="list-style-type: none"> <li>• <i>Recommendation 1. The LVC regulations should continue to be developed in collaboration with the development industry to increase the chances of a successful reform.</i></li> <li>• <i>Recommendation 2. The NSW Government should collaborate with the development industry during the bedding in phase of the reform so that any unintended consequences or unforeseen issues can be constructively resolved.</i></li> <li>• <i>Recommendation 13. DPIE to assess the option to allow a contingency fund within the LVC contributions to accommodate additional acquisitions in exceptional circumstances post rezoning.</i></li> <li>• <i>Recommendation 14. Set up a co-ordinating body before re-zoning to manage the delivery of a land contribution model covering both local and regional infrastructure.</i></li> <li>• <i>Recommendation 15. Create a clear and effective path of escalation for managing land contribution co-ordination issues including at cabinet sub-committee level.</i></li> <li>• <i>Recommendation 17. Develop a communication program to explain the land contribution system to landowners and developers.</i></li> </ul>	<p>DPIE has not addressed key issues that we raised in our LVC Policy Paper – August 2021. We therefore urge DPIE to assess our previous Policy Paper recommendations (Nos, 1, 2, 13, 14, 15, and 17) to improve the land dedication process based on our LCM approach.</p>

Recommendation	Justification
<p><b>Recommendation 2.19</b> DPIE addresses other matters which we have identified as a result of developing the LCM process, including:</p> <ul style="list-style-type: none"> <li>• <i>The land holder who claims hardship as soon as the rezoning occurs;</i></li> <li>• <i>The land holder who holds out and will not dedicate</i></li> <li>• <i>The timing of the dedication or sale of land;</i></li> <li>• <i>Fluctuations in market prices year to year and/or an unusually small number of transactions in any year;</i></li> <li>• <i>Distortion in sale price affects refund amounts</i></li> <li>• <i>How will residual land be dealt with?</i></li> <li>• <i>Potential land swaps between state and local agencies to achieve efficient design outcomes; and</i></li> <li>• <i>Developers' rights of appeal.</i></li> </ul>	<p>We have identified other issues embedded within the land LCM land dedication process that should be addressed by DPIE to further enhance the final Reform Package before it is released in July 2022.</p> <p>UDIA believes that the issues are not insurmountable but further assessment could improve the potential of a land dedication process.</p>

## FOCUS #3: LAND USE PLANNING

### 3.1. Introduction

This section covers our feedback with the land use planning part of the Infrastructure Contributions reform covering:

1. *Environmental Planning and Assessment (Local Infrastructure Contributions – Planning Proposals) Direction 2022;*
2. *Environmental Planning and Assessment (Housing, Infrastructure and Urban Development – Dual and shared use of open space and public facilities) Direction 2022; and*
3. *Contribution Plans and Planning Proposals October 2021 (the Draft Practice Note).*

UDIA supports the proposed process to require a council to prepare a local contributions plan at the planning proposal stage, especially with rezonings that involve a more intensive land use and require public purpose land within an identified precinct. We also recognise that this proposed change is tantamount to the success of the LVC concept.

Overall, we believe that the faster delivery of infrastructure will occur following the rezoning of a precinct primarily due to a council being able to plan and deliver more effectively by having a broader view of the capability of a precinct to accommodate growth and the infrastructure needed. It can also achieve “efficient design” outcomes with councils working in concert with industry to achieve agreed outcomes.

Efficient design is more achievable under the new process by removing the separation between planning staff working on a rezoning and other planning / infrastructure staff working on a contributions plan. This separation can often result in a mismatch between the contributions plan and rezoning / precinct plan. The new process should produce:

- Better alignment with the key plans;
- The more orderly development of a precinct; and
- Time savings of up to 18 months.

### 3.2. Recommendations

Table 4 provides more details on our concerns presented above with the Draft Practice Note and our recommendations.

**Table 4**

Recommendation	Issue and explanation
<b>Recommendation 3.1.</b> DPIE to confirm the role of the IPART in the review of local contribution plans “under exceptional circumstances,” as well as the specified timeframe covering their involvement.	<p>The Practice Note states the following:</p> <p><i>“In the exceptional case, under the infrastructure planning reforms, where a local contributions plan is referred to IPART, this process should be undertaken post exhibition of the local contributions plan and planning proposal”</i></p> <p>Whilst it is recognised that the reform proposes to lessen the role of IPART in the review of contribution plans, the Practice Note provides little advice on what plans should be referred to them under exceptional circumstances.</p>

Recommendation	Issue and explanation
	<p>DPIE should provide clear examples within the Practice Note on when, or if, a draft contributions plan should be referred to IPART and where in the process it should occur (prior to public exhibition of the planning proposal or post public exhibition but prior to rezoning) and to minimise delays, the time it should take.</p> <p>This will provide clarity to a Council as to what might be deemed acceptable to be included in a contributions plan and what Section 7.11/7.12 charges they can apply. It will also help a council better develop an infrastructure delivery program tied-in with future intensification of a precinct.</p>
<p><b>Recommendation 3.2.</b> DPIE to amend the <i>Contribution Plans and Planning Proposals Practice Note</i> be amended to encourage developer led planning proposals (and associated studies and plans) and the preparation of contribution plans.</p>	<p>We see benefits in developer led planning proposals and drafting of contribution plans. A developer, especially for a large site release area, is in a better position to kick-start the precinct rezoning process by ensuring the key local infrastructure (roads and parks) are provided at key stages of the release to achieve greater amenity for an incoming population. A developer led proposal can also deliver substantial time savings in the release of a precinct.</p> <p>Under this option, a council would focus on the assessment of the key plans, without having to front-load their resources.</p> <p>However, it is recognised that the key plans are public. Therefore, a council would still need to undertake all the legislative requirements (i.e., gateway determination and public exhibition) for each of the plans.</p> <p>Under this scenario, we recommend a council should:</p> <ul style="list-style-type: none"> <li>• Report to the elected council at key stages;</li> <li>• Assess the proponent studies and plans and liaise with DPIE;</li> <li>• Arrange the public exhibition of relevant documentation in accordance with the Regulation; and</li> <li>• Complete these steps prior to rezoning, either under delegation or through their own approval pathway.</li> </ul>
<p><b>Recommendation 3.3.</b> DPIE to amend the <i>Contribution Plans and Planning Proposals Practice Note</i> be amended to stipulate that a council should achieve state agency buy-in prior to the public exhibition of the planning proposal / draft contributions plan.</p>	<p>The role of the NSW Government is critical to achieve the successful release of a precinct, especially with the provision of key regional roads and water and wastewater facilities.</p> <p>A state agency could also potentially own land within a precinct identified for release or could be a concurrence authority once a Development application (DA) is lodged.</p> <p>Industry experience suggests that without in-principal support for a release area from the NSW Government, the chances for a successful release of a precinct (for example, the experience with South Creek) including the opportunity to align a precinct with a Section 7.11 contributions plan are reduced.</p> <p>Whilst this will be difficult to achieve, UDIA believes that a council working on a precinct plan must engage with state agencies prior to</p>

Recommendation	Issue and explanation
	<p>public exhibition of a planning proposal and precinct plan / draft contributions plan to better align the regional and local infrastructure requirements.</p> <p>This should be a mandated requirement in the Practice Note.</p> <p>Whilst it will be difficult for a council to compel state agencies to become involved and invested in the process, UDIA contends that this key step is vital for:</p> <ul style="list-style-type: none"> <li>• Increasing industry confidence in the development potential of a precinct;</li> <li>• Preparing a robust Local Infrastructure Implementation Plan (Refer to Section 2);</li> <li>• Optimising infrastructure delivery to support growth;</li> <li>• Reducing the potential for delayed assessment times; and</li> <li>• Reduce conflicts about how a precinct should be developed.</li> </ul>
<p><b>Recommendation 3.4.</b> DPIE to amend the <i>Contribution Plans and Planning Proposals Practice Note</i> be amended to contain provisions that allow for a seamless and efficient process that is clear and leads to shorter timeframes.</p>	<p>UDIA contends that there are too many steps in the best practice process in the Practice Note. The process requires multiple back and forth communications between developers, councils, and agencies. This is not efficient. UDIA suggests that the best practice process should be:</p> <p>Pre-gateway</p> <ol style="list-style-type: none"> <li>1) Master plan land use layout alternatives workshopped.</li> <li>2) Infrastructure schedule for each option prepared, including costs.</li> <li>3) Assess infrastructure life cycle costs of layout alternatives / select option with best value for money.</li> <li>4) Multi agency buy-in to preferred layout and infrastructure need.</li> </ol> <p>Gateway</p> <ol style="list-style-type: none"> <li>5) Adjust schedule to reflect essential works list.</li> <li>6) Prepare draft contributions plan.</li> <li>7) Exhibit draft contributions plan.</li> <li>8) IPART review by exception: criteria TBC.</li> <li>9) Adopt contributions plan.</li> </ol>
<p><b>Recommendation 3.5.</b> DPIE to amend the <i>Contribution Plans and Planning Proposals Practice Note</i> should include best practice guidelines that demonstrate:</p> <ul style="list-style-type: none"> <li>• How a council should respond to change following the rezoning and approval of a contributions plan;</li> <li>• Ongoing engagement with the development industry;</li> <li>• The bi-annual review of the LIPP in response to change.</li> </ul>	<p>The delivery of a precinct can occur over 10 years (for example Lowes Creek Maryland). During this time, there could be:</p> <ul style="list-style-type: none"> <li>• Changes in design standards;</li> <li>• Innovation in infrastructure delivery;</li> <li>• Changes in development patterns; and</li> <li>• Changes in community demand and expectations.</li> </ul> <p>These changes can impact on the delivery program as prescribed in the LIPP and undermine the maximum potential growth of precinct contributions. By encouraging a council to work closely with the development industry, a more agile and responsive working relationship can occur that will enable both parties to better deliver for communities.</p> <p>The proposed LIPP should be reviewed bi-annually, with industry input, to better respond to potential change.</p>

Recommendation	Issue and explanation
<p><b>Recommendation 3.6.</b> Increase the public disclosure of a council's infrastructure delivery thresholds for a future population to assist the development industry in drafting developer led contributions plans.</p>	<p>Further to Recommendation 3.2, UDIA contends that it will be difficult for a developer to prepare a contributions plan because there is a lack of disclosure about how a council is progressing with infrastructure delivery, servicing, population mandates, thresholds, etc.</p> <p>This needs to be made publicly available and able to be tested as a separate process. It should also include water and sewer where a regional council is the responsible authority.</p>

## FOCUS #4: LEGAL CONCERNS

This section provides commentary on the legal aspects of the reforms as set out in the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* (the **Bill**) (which is currently before the NSW Parliament), the draft *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021* (the **Draft Regulation**), which is currently on public exhibition, and other material which is currently on public exhibition. Our review focuses on three key areas:

### 4.1 Need for revision and further consultation

UDIA believes significant changes should be made to aspects of the Bill and the Draft Regulation. These will be necessary to address UDIA's comments in the other sections of this submission. We have not proposed legal drafting, because we think the concepts should be addressed before detailed wording is considered.

For this reason, it is very important to ensure that DPIE consults with UDIA and other key stakeholders on a revised Reform Package of material, including proposed changes to the Bill and a revised Draft Regulation before the reforms are progressed in Parliament.

These reforms are complex, and they have significant consequences for the future of development and housing supply in NSW. It is worth taking the time (including through ongoing engagement) to get the reforms right.

Most of the engagement with DPIE on the reforms has been very collaborative and constructive and we would like to see that continue until the reforms are bedded in. However, consultation on the legislation has been less effective and we would like to see that rectified in the months ahead.

**Recommendation 4.1** DPIE continues to engage collaboratively with the development industry throughout the reform development and implementation process including working with us on the legislation.

### 4.2 Need for checks and balances

UDIA has repeatedly emphasised the need for checks and balances in the legislation to ensure fairness in the implementation of the reforms.

The Bill is drafted in very high-level terms, and leaves most of the critically important detail to regulations, SEPPs, or Ministerial Directions. Additionally, the draft Regulation do not provide sufficient details on several key aspects of the reforms (e.g., the transport project component of the RIC).

While UDIA appreciates that this approach allows flexibility in implementation, it also reduces clarity, predictability, transparency, and accountability - all vital aims of the reforms. In particular, the use of Practice Notes is problematic due to the lack of enforceability.

One area in which stronger checks and balances are needed is the delivery of enabling infrastructure. Most of the reforms focus on inputs (i.e., requiring and providing contributions), but there is insufficient provision for outputs (i.e., the infrastructure delivery). Additional mechanisms to facilitate delivery are proposed, including the pooling of resources and recovery of interest charges, but there is very little legislative imperative to use those mechanisms to deliver enabling infrastructure in a timely way. If the reforms are to succeed, there must be more legislative emphasis on this side of the infrastructure equation.



If the reforms are to succeed, the legislation must be clearer and more specific about how it works and what controls there will be:

- to minimise the risk of excessive and unfair contribution requirements; and
- to ensure timely delivery of enabling infrastructure via the mechanisms which the reforms will provide.

**Recommendation 4.2** That DPIE incorporates measures within the proposed legislation to achieve the accountability of key stakeholders on fairness in contribution requirements and the timely delivery of enabling infrastructure.

### 4.3 Specific comments on the Bill and the Draft Regulation

We have set out in Table 5 below more specific comments on the Bill and the Draft Regulation. These are in addition to our comments elsewhere in the UDIA submission, many of which will also need to be addressed in the Bill and the Draft Regulation. Consequently, the comments in Table 5 are not a complete set of comments on the Bill and the Draft Regulation, instead, they are intended to assist with the revision of these documents.

**Recommendation 4.3** DPIE responds to the key areas of legal concern we have identified in Table 5 of this submission.

**Table 5**

Reference	Issue	Solution
<b>Infrastructure Contributions Bill</b>		
s.7.11(1)	<p>It is not clear what kind of contributions can be required under s.7.11(1).</p> <p>A s.7.11 condition should require only the dedication of land free or cost or the payment of a monetary contribution, consistent with the existing s. 7.11.</p> <p>More specifically, a contribution condition should not require works or other forms of contribution. Allowing a consent authority to require works as a s.7.11 contribution has significant potential for imposing excessive obligations in cost, time, and development co-ordination. That should be reserved for a VPA, which needs the agreement of the relevant developer.</p>	<p>Amend s.7.11(1)(a)(i) so that it refers to a reasonable contribution "towards the cost of providing".</p> <p>Amend both s.7.11(1)(a) and (b) so that they state that a condition can require the dedication of land free or cost or the payment of a monetary contribution.</p>
s.7.11(3) and s.7.16C	<p>These sections suggest that a VPA cannot be used to satisfy a LVC.</p> <p>Note that with our LCM process a VPA could be used to satisfy a monetary component of the UDIA proposed LCM but not for a land dedication because the land must be dedicated to make the LCM work.</p>	<p>Amend these sections to make it clear that the monetary contribution component of an LVC can be satisfied with a VPA.</p> <p>UDIA's submission proposes that an LVC should include an obligation to dedicate identified public purpose land. A VPA should not be used to satisfy that obligation unless it includes the dedication of that land.</p>

Reference	Issue	Solution
s.7.17	The Minister should be able to make directions in relation to LVCs.	Amend s.7.17 to allow this.  However, as per UDIA's submission on the LVC, the Minister should not be able to direct a cap on an LVC (Refer to Recommendation 3.1).
s.7.23(4) and s.7.28	<p>A <b>RIC</b> should only be collected for:</p> <ul style="list-style-type: none"> <li>Infrastructure in that region; or</li> <li>Infrastructure outside that region which benefits that region.</li> </ul> <p>A RIC should be spent:</p> <ul style="list-style-type: none"> <li>In the region in which it was collected; or</li> <li>If the RIC is collected for regional infrastructure outside the region, then only on that infrastructure.</li> </ul>	Amend s.7.23(4) and s.7.28 accordingly.
s.7.23	<p>One of the kinds of "regional infrastructure" for which a RIC can be imposed is "transport infrastructure". The scope of this term is extremely important because it could very easily lead to excessive contribution requirements, including double dipping with other components of a RIC and with the LVC.</p> <p>UDIA notes that the definition of "regional infrastructure" also separately includes "State and regional roads".</p> <p>UDIA's concerns about the "transport infrastructure" component are set out in more detail in the section 1 of this submission, which focuses on the RIC.</p>	Provide a statutory definition of "transport infrastructure", which makes it clear that the term relates only to large scale State infrastructure (e.g. metro stations).
<b>Draft Infrastructure Contributions Regulation</b>		
cl.25DA	<p>There should be no requirement for public exhibition of minor amendments to a VPA.</p> <p>The existing Regulation does not require "public notice" for a minor amendment. The proposed move to "public exhibition" instead of "public notice" should not change this.</p>	Amend cl.25DA to provide exceptions like those in existing cl.32(3) and add a change in the parties to a VPA to the list of exceptions.
cl.25O	<p>The LVC proposal in the draft Regulation relies on the land value of each landholding in a rezoned precinct as "most recently determined by the Valuer-General in accordance with the VL Act.</p> <p>Our specific comments on the LVC oppose this and instead propose an alternative LCM, which is based on market transactions as opposed to statutory valuations. Key problems with the use of VL Act:</p>	<p>The most effective solution is to adopt the alternative model for the LVC as outlined in the UDIA submission on the LVC and remove the use of the VL Act valuations.</p> <p>If that is not done, then the effectiveness of the LVC will be significantly reduced.</p>

Reference	Issue	Solution
	<ul style="list-style-type: none"> <li>• Even though the VL Act requires values to be set on 1 July each year, they are based on area-wide valuations (which are not specific to a rezoned precinct, let alone individual properties) and are not done every year.</li> <li>• Although councils (as rating authorities) can request updates to the VL Act valuations, this can only be done after a rezoning, which will lock in a time lag in value uplift.</li> <li>• Valuations under the VL Act are based on a specific statutory concept of "land value", which does not necessarily reflect market value.</li> <li>• Valuations under the VL Act are subject to objection and appeal rights for each landholding, creating the potential for further delay in the implementation of an LVC and inconsistent approaches to valuation across a precinct. In addition, there is no provision in the Bill or the Draft Regulation for adjustments to LVCs paid based on a Valuation Act valuation which has subsequently revised on objection or appeal.</li> </ul> <p>The use of these valuations will perpetuate the lag between land values for contributions and actual land values for council acquisitions, which the LVC is intended to resolve.</p>	<p>That outcome can be softened if the Bill and the Draft Regulation are amended so that:</p> <ul style="list-style-type: none"> <li>• A council can request a precinct-specific valuation as part of the preparation of a contributions plan, so that the valuation is done as at (or as close as possible to) the date of rezoning;</li> <li>• A council can request updated valuations to keep pace with post-rezoning market values (though, inevitably, this will involve a lag and undervaluation for the LVC);</li> <li>• The valuation is based on market value as defined in the JTC Act, which provides a truer reflection of market value;</li> <li>• There is an LVC adjustment mechanism (which may include credits, for example) to account for changes in the valuation based on objections and appeals.</li> </ul> <p>Other changes may also be necessary to reduce the adverse impact of the LVC mechanism as currently proposed in the Bill and the Draft Regulation.</p>

Reference	Issue	Solution
cl.25T	<p>Levies for commercial and industrial development will be based on “levied gross floor area.”</p> <p>There is no definition of “gross floor area.” It should match the Standard Instrument which excludes plant and equipment, access, loading etc.</p> <p>Where the building is being “altered,” a levy of 50% of the usual levy will apply to that part of the GFA being “altered”. It is unclear whether this is meant to apply to additions and alterations. It seems to be either.</p> <p>If it is additions, this is reasonable. If it is alterations where there are no additions, the rate of 50% is too high, especially where the changes to the building may be minor (e.g., for heritage buildings which cannot rely on exempt development provisions).</p> <p>A change of use also triggers a full levy. It should apply only to changes which result in increased demand for local infrastructure.</p>	<p>Amend cl.25T accordingly.</p> <p>Provide a Practice Direction to give guidance to Councils on setting an appropriate rate for levies.</p>
cl.271A	<p>It appears this new provision will replace the “satisfactory arrangements” clauses in the Regulation and in planning instruments.</p> <p>It prevents a development application (DA) being determined until a contributions plan has been approved for the land to which it relates, with three exceptions (DA of a “minor nature,” developer has entered into a VPA, “relevant period” has expired).</p> <p>There should also be exceptions for:</p> <ul style="list-style-type: none"> <li>• A concept DA;</li> <li>• A DA which will not result in any material increase in demand for public amenities or services; and</li> <li>• Where the developer has offered to enter into a VPA, and the development consent will include a condition requiring the developer to enter into a VPA in the terms of that offer (consistent with s.7.7(3) of the Act).</li> </ul>	<p>Amend cl.271A(3) accordingly.</p>
	<p>The proposed reforms (especially the RIC and the LVC) will cover the same ground as "satisfactory arrangements" clauses in planning instruments. When those clauses were introduced, they were intended only as a "stop gap" measure if there was insufficient provision for a SIC or local contributions for a particular area of land.</p> <p>If the proposed reforms are implemented and "satisfactory arrangements" clauses are not removed, there will be a significant risk of a double dip for contributions.</p>	<p>If the proposed reforms are implemented, "satisfactory arrangements" clauses should be removed from planning instruments.</p>

Reference	Issue	Solution
Sch.4	It is a positive that a planning certificate will indicate whether a RIC applies. It should also indicate whether an LVC applies.	Amend Sch.4 accordingly.
Savings and transitional provisions	There are none (except a general proposal for the continuation of existing SICs in some situations). A Drafting Note states that savings and transitional provisions "will be drafted after consultation".	Draft savings and transitional provisions should be provided for consultation with key stakeholders.

## CONCLUSION

Infrastructure Contributions Reform is a critical component in fixing the NSW planning system and tackling the Housing and Affordability crisis the state faces. A successful reform will focus steps in the process on the outcomes that are trying to be achieved, especially the timely and efficient delivery of infrastructure to enable housing supply.

UDIA supports the infrastructure contributions reforms but there is still a long way to go to develop a workable system that achieves the objectives of the NSW Government and works for all stakeholders. The following key issues should be addressed to provide a workable system:

- 1) **The timely provision of infrastructure to support growth.** The current proposals do not focus enough on ensuring the delivery of infrastructure in a timely way. Historically, funding has been only one of the barriers to providing infrastructure. It is essential that these other barriers, such as appropriate prioritisation on behalf of delivery agencies and co-ordination between state and local governments is built into these reforms.
- 2) **Further development of key proposals and reducing risks.** Several sections of the Reform Package are lacking in detail, along with appropriate checks and balances to prevent abuse. In particular, the Transport Project Component (TPC) and the Strategic Biodiversity Component (SBC) charges require more detail and legal protections needed to be put in place to prevent the misuse of RIC funds and excessive rate increases over time.

In addition, the feasibility work undertaken by DPIE, highlights the significant risks to housing supply from a too hasty implementation of the RIC, especially as several of the assumptions in the feasibility study are, in our view too optimistic.

- 3) **A focus on land dedication over land valuation.** The current proposals for the Land Value Contribution (LVC) are unworkable. The focus on land valuation as opposed to land dedication (as recommended by the PC) is unworkable, providing little incentive for landowners to participate in the process.

Our Taskforce has developed a Land Contribution Method (LCM) as an alternative, which applies to all precinct landowners with costs shared equally, providing a fairer system that will achieve early dedication of public purpose land to provide infrastructure, with less reliance on the drawn-out processes under the JTC Act. We have already discussed this alternative model with DPIE and we welcome the collaborative approach they are taking.

If taken forward, our recommendations would deliver an infrastructure contributions system that achieves a better alignment of infrastructure delivery to support housing supply and tackle housing affordability and help to achieve the \$12 billion in productivity benefits to the NSW economy proposed by the NSW Productivity Commissioner.

We look forward to continuing to collaborate with the NSW Government to refine the current proposals and provide an infrastructure contributions system that supports the delivery of great places that the people of NSW can benefit from for many years to come.

# APPENDIX A – UDIA OFFSETS PAPER ON THE DELIVERY OF STATE INFRASTRUCTURE

## UDIA NSW President's Taskforce on Infrastructure Contributions Reform

### Policy Issue Paper

#### Review of Processes for State Funded Growth Infrastructure

#### Executive Summary

The current infrastructure contributions reforms being undertaken by the NSW Government as recommended by the NSW Productivity Commissioner, provide an opportunity to solve several funding challenges impeding the delivery of growth infrastructure. However, the bottleneck to the timely provision of growth infrastructure is not just a funding problem. The NSW Government should take this opportunity to make additional changes:

##### **1 – Speed up the delivery of Tier 3 and Tier 4 growth infrastructure projects**

For lower risk infrastructure projects, known as Tier 3 and Tier 4, the current costs and time delays from Assurance Processes is adding years to the delivery of some infrastructure projects.

The NSW Government can significantly improve Assurance Processes without increasing risk to deliver growth infrastructure projects, in both a timelier and more cost-effective way. These improvements include how business cases are used and created, speedier land acquisition and more efficient governance arrangements.

##### **2 - Align growth infrastructure with agency capital plans**

Historically, growth infrastructure has been severely delayed in NSW by a failure to integrate growth priorities with agency capital plans. The creation of Regional Infrastructure Contributions (RIC) should be used as an opening to re-visit these integration processes and fix the issues.

##### **3 – Modernise the Business Case Creation Process**

The creation of business cases has always largely been a manual process. Digital tools are now available that offer the promise of business cases that are both quicker and cheaper to produce, without a significant loss of quality.

If the NSW Government takes on these opportunities to improve their processes, UDIA believes that, in combination with infrastructure contributions reforms, we can see a significant improvement in the timely delivery of growth infrastructure, crucially facilitating an increase in housing supply and improving affordability.

#### Key Recommendations

**Recommendation 1 – The NSW Government in consultation with Councils should undertake a review of the Assurance and governance around Tier 3 and Tier 4 growth infrastructure projects that should include consideration of a range of options that streamline Assurance processes including, following the advice of iNSW for Tier 4 projects (no Assurance reviews required), in some circumstances going straight to Gate 3 Assurance, the merging of the two stages of the business process and using lighter touch business cases.**

**Recommendation 2 – As part of the review, the NSW Government should consider reducing the onerous reporting arrangements and delegation responsibilities on projects that have highly capable delivery agencies.**

**Recommendation 3 – The NSW Government should undertake a review into whether its current policy for land acquisition for Tier 3 and 4 projects has provided the best value for money and if this is not the case, make changes to allow for earlier land acquisition.**

**Recommendation 4 – The NSW Government continues to pursue place-based business cases and Assurance processes.**

**Recommendation 5 – The NSW Government implements processes to prioritise growth infrastructure at both departmental and cabinet sub-committee levels.**

**Recommendation 6 – The NSW Government should begin trialing the creation of digital business cases.**

## **Introduction**

The funding and delivery of growth infrastructure is a critical part of the urban development process to deliver new housing and employment space.

UDIA's 2021 Building Blocks reports identified over 70 enabling infrastructure projects across the Sydney Mega Region needed to support greenfield housing supply and improve affordability whilst UDIA's Greenfield Housing Supply Pipeline – May 2021 shows that 80% of all greenfield housing sites still required enabling infrastructure to enable delivery over the next decade. Historically, enabling infrastructure has been held up by both funding constraints and delivery processes.

The current review into infrastructure contributions means that state Special Infrastructure Contributions (SIC) will be replaced by RIC that will generate funding for itemised infrastructure across a region, rather than for special contribution areas. RIC has the potential to significantly reduce the funding constraints on growth infrastructure. However, it will only optimise the timeframes for infrastructure delivery, if it is also implemented alongside other reforms.

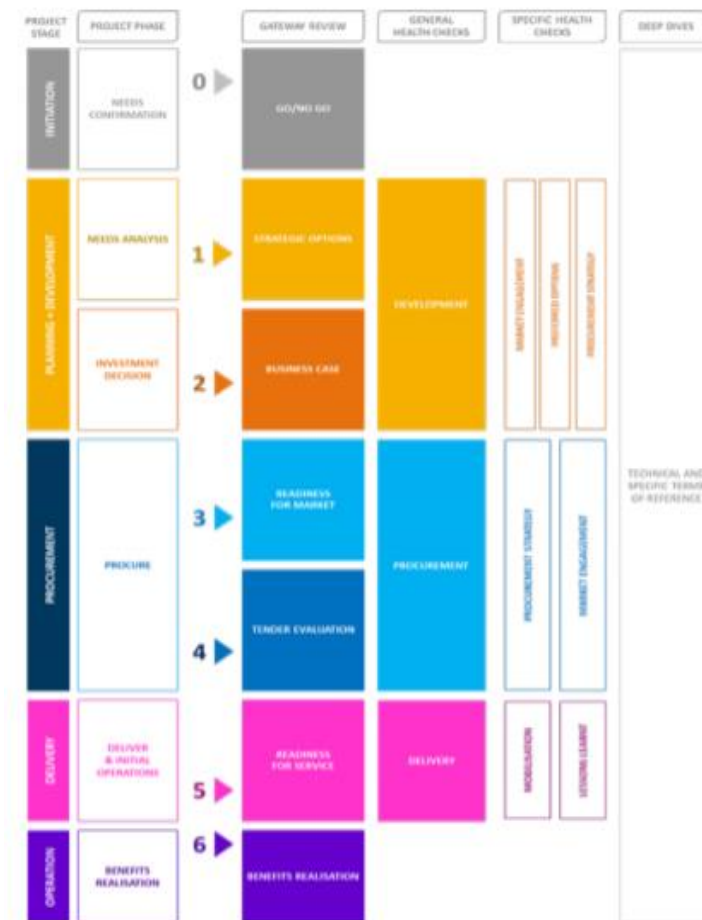
## **The NSW Infrastructure Assurance Process**

The NSW Infrastructure Investment Assurance Framework (IIAF) applies a risk-based Assurance framework to try and ensure that state funded infrastructure projects are delivered on time and on budget. The IIAF is typically applied to all state funded infrastructure projects with a capital cost exceeding \$10 million. The key gateway steps are provided in Figure 1.

Under the IIAF, at Gate 0, iNSW puts projects into one of four categories based on their risk profile. This ranges from High-Risk / High-Profile projects such as major highways and railways, which are categorized as Tier 1 / Tier 2, to minor projects categorised as Tier 3, which still require assurance reviews and Tier 4 projects, which do not require an assurance review.



**Figure 1 -Key Assurances Gateway Steps**



iNSW is the Assurance agency for Tier 1 / 2 projects and does not get involved in lower risk projects. It is left to delivery agencies to arrange an independent Assurance review. This paper focuses on the following IIAF gates:

- 1) Gate 0 – Confirms the need for the project and allocates a project tier.
- 2) Gate 1 - Needs Analysis and preparation of a Strategic Business Case (SBC) with options assessment.
- 3) Gate 2 - Investment Decision and preparation of a Final Business Case (FBC), Benefit Cost Ratio (BCR), planning approval and detailed cost estimate (known as a P90).

Some departments and agencies within the NSW Government have required Tier 3 and 4 projects to undertake Assurance through Gate 0 - Project Justification, Gate 1 - SBC, and Gate 2 - FBC. This is contrary to the iNSW requirements, which states that Tier 3 projects only need to undertake Assurance for Gate 0 with Assurance for other gates being optional and Tier 4 projects requiring no Assurance reviews.

By comparison, the Accelerated Infrastructure Fund (AIF) round two (a policy championed by UDIA to deliver a 'double dividend' investment in jobs for enabling infrastructure leading directly to new housing supply) takes a very different approach to assurance. The process to obtain AIF funding involves a simple nomination form and preparation of a delivery agreement. The nomination process is short, and a council does not have to commit significant resources at the nomination stage.

Further there is no Assurance process for a nominated project, provided that the project is listed in a contributions plan, has some design rigor, stakeholder endorsement and is generally low risk. The AIF

potentially could fund infrastructure projects (roads and stormwater) costing over \$30 million, including the Water Lane at Box Hill, which was identified in the UDIA 2021 Building Blocks Greater Western Sydney report.

AIF 2 is now open to Western Sydney growth councils and provides insight into how infrastructure can be delivered within a quicker timeframe to support communities and achieve growth.

## Opportunities

UDIA has had reports that the delivery processes being implemented by the NSW Government for SIC and Housing Acceleration Fund (HAF) projects was far from optimal. In discussions with government agencies, Councils, consultants and UDIA members knowledge, we have identified three major opportunities for the NSW Government to improve the delivery of growth infrastructure.

### ***Opportunity 1 – Speeding up the delivery of Tier 3 and Tier 4 growth infrastructure projects***

Under SIC and HAF, Tier 3 and Tier 4 regional road projects have been taking ten years to deliver. A summary of the key milestones and durations to deliver a SIC or HAF Tier 3 road is provided in **Table 1**.

**Table 1 – General Timeframe for a SIC / HAF Funded Regional Road**

Task	Timeframe									
	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10
Nomination preparation	→									
Gate 0 – Go/No Go and approval of business case funding	★									
Gate 1 – Strategic Business Case		→	★							
Gate 2 – Final Business Case				→	★					
Gate 4 – Procure and capital funded provided						★				
Gate 5 – Deliver and Initial Operations						→	★			
Gate 6 – Benefits Realisation								→	★	★

This process highlights several issues. Firstly, from the beginning of nomination through to the sign off of the FBC is around 5 years. An example of this is Hambledon Road North.

Hambledon Road North is a proposed four-lane, 4-kilometre sub-arterial road, which is classified as Tier 3. After nomination in 2017, DPIE provided business case funding to Blacktown City Council. Part of the funding for land acquisition was provided in early 2021. The Council now needs to proceed through a two-year process of land acquisition and a three-year construction period.

For a Tier 3 project and therefore deemed low risk, this process is excessively long. Unfortunately, this is not a one-off.

In 2020, the City of Shoalhaven Council received HAF funding for a proposed roundabout on Moss Vale Road to support the Nowra-Bomaderry Urban Release Area, that has a potential total yield of 9,000 housing lots. With a capital cost of just \$2 million and only one possible location for the roundabout to be placed, Council was directed by the NSW Government to undertake an Assurance process to confirm a BCR.

Despite concerns about the worth of the Assurance process from the Council, the NSW Government insisted that it continued. It has so far taken 12 months.

Blacktown City Council obtained business funding for Railway Terrace (Tier 4) at Richmond but were still required to go through an Assurance process. They now have delivery funding, after four years of project development for a low-risk project.

It is extremely doubtful that the costs and time taken to undertake Assurance for these projects has been worthwhile.

**Recommendation 1 – The NSW Government in consultation with Councils should undertake a review of the Assurance and governance around Tier 3 and Tier 4 growth infrastructure projects that should include consideration of a range of options that streamline Assurance processes including following the advice of iNSW for Tier 4 projects (no Assurance reviews required), in some circumstances going straight to Gate 3 assurance, the merging of the two stages of the business process and using lighter touch business cases.**

Given the examples above (and they are not the only ones), UDIA believes that the NSW Government needs to undertake a review of the Assurance and governance around Tier 3 and Tier 4 projects. Given the clear need for an integrated approach, this should involve iNSW, DPIE and Treasury as well as the delivery agencies. It would make sense to have representatives from Councils involved as well.

As part of the review, the NSW Government should consider the different conditions that determine how projects come into the Assurance processes. For example, for projects that already have approval in a precinct plan, a detailed design and a derived BCR, it is unlikely that they would benefit from a business case process and so could potentially go straight to Gate 3 - *Readiness for Market*.

This review should also consider a number of other options to streamline the process including:

- Aligning the assurance of Tier 3 and Tier 4 projects with iNSW current processes, i.e. no assurance is required for Tier 4 projects.
- The merging of the strategic and final business cases into one document.
- The use of light touch business cases, similar to an investment decision document.

**Recommendation 2 – As part of the review, the NSW Government should consider reducing the onerous reporting arrangements and delegation responsibilities on projects that have highly capable delivery agencies.**

Presently, there is a strong oversight of delivery agencies working on Tier 3 and 4 projects. This involves monthly reporting by a delivery agency and a lack of decision making delegated to delivery agencies. For low-risk projects being delivered by agencies that are assessed as being highly capable, this is unlikely to be an efficient way of operating.

**Recommendation 3 – The NSW Government should undertake a review into whether its current policy for land acquisition for Tier 3 and 4 projects has provided the best value for money and if this is not the case, make changes to allow earlier land acquisition.**

A significant part of the time taken to deliver a project is eaten up by the need for land acquisition. Currently, land acquisition usually only begins once Gate 3 is completed. As well as delaying the delivery of the infrastructure and therefore critically housing supply, the cost of the land (which often makes up around 50%

of the cost of a project), has often escalated quite substantially. For projects that have a high likelihood of progressing and where landowners are willing to sell early, the NSW Government is highly unlikely to be obtaining the best value for money, using the current approach.

The Quakers Link Road at Quakers Hill project provides a good example of this. In 2017, DPIE provided Blacktown City Council with SIC grant funds to acquire land for a proposed road at Quakers Hill (Tier 4). For three years the Council was prevented from undertaking the compulsory acquisition of land owned by the University of Western Sydney until the final business case was signed off.

TfNSW already recognizes the benefits of undertaking land acquisition for infrastructure projects at very early stages in the process to speed-up project delivery and reduce costs. These processes should be explored further for all tiered projects, due to the potential land cost savings.

**Recommendation 4 – The NSW Government continues to pursue place-based business cases and assurance processes.**

Many growth areas require several pieces of infrastructure to enable growth. Traditionally, each piece of infrastructure was required to undertake its own business case and Assurance process in isolation. This does not make sense when planning places and adds unnecessary time and cost to the delivery of growth infrastructure. UDIA understands that the NSW Government is currently undertaking work to look at place-based business cases and Assurance processes. UDIA believes that this is a step in the right direction and should continue.

***Opportunity 2 - Aligning growth infrastructure with agency capital plans***

**Recommendation 5 – The NSW Government implement processes to prioritise growth infrastructure at both departmental and cabinet sub-committee levels.**

Historically, SIC and HAF growth infrastructure projects have struggled to get on to agency capital plans, significantly slowing their delivery. The creation of RIC as part of the infrastructure contributions reforms provides an opportunity to change this dynamic. RIC is projected to provide in the vicinity of \$600m of capital to be put towards growth infrastructure. UDIA's understanding is that, given the sums of money involved, delivery agencies are expected to want to access these funds and so will bid to get funding for projects and put them on their capital plans, solving the historical issues. UDIA agrees that this would be a desirable outcome. However, this is a mindset change for delivery agencies and given that most growth infrastructure projects will only be partially funded by RIC with the balance often coming from delivery agencies existing capital funds, we are concerned that this will not in isolation deliver the changes required. Therefore, UDIA would like to see some additional processes put in place in the way the NSW Government operates, until this approach is embedded. In particular, we would like a cross-departmental committee that focuses on the prioritisation of growth infrastructure that makes recommendations to the relevant sub-committees of cabinet to make decisions about the growth infrastructure to be delivered.

### ***Opportunity 3 – Modernising the Business Case Creation Process***

#### **Recommendation 6 – The NSW Government should begin trialing the creation of digital business cases.**

The creation of business cases is largely a manual process that has not fundamentally changed since the concept of a BCR was first developed. Consequently, they are costly and time consuming. There are now digital tools, such as Urban Pinboard UDP (pioneered by UDIA), that UDIA believes can deliver a rapid assessment of the infrastructure options and the associated costs and benefits in a fraction of the time and money currently spent to deliver a traditional business case.

UDIA recognises that going from today's labor-intensive business cases to a digital approach is a big step to take. Therefore, UDIA believes that the NSW Government should begin by running both approaches in parallel so that it can test the quality of the digital approach and get comfortable with the results produced. The best place to begin this process would be in low-risk Tier 3 and Tier 4 growth infrastructure projects.

### **Conclusion**

The NSW Government's Infrastructure Contributions Reforms focuses on improving the productivity of the state through the more rapid delivery of growth infrastructure. However, there are a number of other barriers beyond infrastructure contributions that hold up the delivery of growth infrastructure.

UDIA believes that the NSW Government should look at the three opportunities outlined within this paper to improve the delivery of Tier 3 and Tier 4 growth infrastructure:

1. Speeding up the delivery of growth infrastructure through reform of Assurance processes.
2. Aligning growth infrastructure priorities with agency capital plans.
3. Modernising the business case creation process.

If these opportunities are taken up and combined with the infrastructure contribution reforms, NSW can look forward to greater productivity, with faster and more cost-effective delivery of growth infrastructure and an increase in housing supply, helping to improve affordability.

## APPENDIX B – UDIA POLICY ON IMPROVEMENTS TO THE DELIVERY OF STATE INFRASTRUCTURE

### *Developer delivery of private infrastructure at Wentworth Point*

#### **Bennelong Bridge at Rhodes**

In 2014, Billbergia (lead developer) and the NSW Government entered into a State VPA to deliver the Bennelong Bridge to support a new housing development at Wentworth Point. There were three other landowners that contributed to the delivery of the bridge to offset their regional contributions.

This major piece of privately funded community-connecting infrastructure has been lauded by the NSW Government and industry and well received by the local community. Without the bridge, which was not on the State's infrastructure priority list, the development of Wentworth Point would have been significantly delayed. The area now has a population exceeding 7,000 people who enjoy access to open space, mixed retail and education, and community facilities, all within proximity to public transport (Ferry and Rhodes Station interchange).

The bridge was delivered quicker and cheaper than government processes, helping to deliver additional housing supply on a redundant industrial precinct. The bridge also provided a significant uplift in value for redundant NSW Government land which has since been sold to Sekisui House for a new apartment development.

This delivery process, which involved multiple landowners contributing to the bridge as an offset to their contributions, is not allowed under the proposed Infrastructure Contributions Reform Package which only allows credits to be used for regional infrastructure where one developer is doing a multi-stage development.

Quite simply, a Bennelong Bridge would not have been built under the proposed changes to infrastructure contributions in NSW.

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