Criteria to request a higher s7.12 Percentage

UDIA NSW Response

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ABOUT THE UDIA

Established in 1963, the Urban Development Institute of Australia (UDIA) is the leading industry group representing the property development sector. Our 500 member companies include developers, engineers, consultants, local government, and utilities. Our advocacy is focussed on developing liveable, affordable, and connected cities.

EXECUTIVE SUMMARY

The Urban Development Institute of Australia – NSW (UDIA) welcomes the opportunity to make a submission on the discussion paper Criteria to request a higher s7.12 percentage (the Discussion Paper). We bring a high-level of industry knowledge and experience to development under the existing s7.12 contributions plans. We welcome the greater transparency that the proposed criteria for requests for a higher s7.12 percentage provides.

UDIA has always said that the development industry needs to pay its fair share toward the cost of infrastructure and a section 7.12 is one way in which this can occur. While in most cases a 1% section 7.12 cap is appropriate, we recognise that in some locations a higher levy might be appropriate.

However, levies higher than 1% begin to affect development feasibility and should be subject to additional scrutiny. While the criteria in the Discussion Paper are a good start, we believe a simpler and more rigorous process could be achieved by triggering an IPART review of levies above 1%. This would apply an essential works list (tailored to s7.12 development areas), reasonable cost, nexus, apportionment, and public consultation to these higher levies.

To this end, the UDIA makes the following recommendations in response to the Discussion Paper:

Recommendation 1:	Section 7.12 levies above 1% should trigger review by IPART, which includes an essential works list, reasonable cost, nexus and apportionment and public consultation. IPART resourcing should be commensurately augmented to respond to any increased workload.
Recommendation 2:	Limit consideration for a higher maximum levy to strategic centres and remove reference to 'local centres' and 'economic corridors'.
Recommendation 3:	Include an additional principle requiring a delivery program for the infrastructure in the plan.
Recommendation 4:	Strategic centres must support at least 30% more new jobs than additional residents and 35% more employment opportunities than currently available.
Recommendation 5:	Adapt the relevant proposed criteria for a maximum levy up to 2% into the terms of reference for IPART review of these levies.
Recommendation 6:	Clarify the distinction between 'district-level' infrastructure under a Section 7.12 levy and infrastructure in a Special Infrastructure Contributions Plan.

HOW THE S7.12 FIXED RATE LEVY OPERATES

UDIA commends Department of Planning, Industry and Environment (DPIE)'s efforts to improve the infrastructure contributions system, however it is very clear that structural reform of the fundamental infrastructure charging system in NSW is needed. For over two years, UDIA has been advocating for interim and long-term reforms that would ensure infrastructure is delivered at an affordable price. UDIA is closely engaged with the NSW Productivity Commissioner's Infrastructure Contributions Review and we are hopeful this review will lead to the reform that is needed in NSW.

Section 7.12 levies are one of several mechanisms available to local councils to fund local infrastructure. A Section 7.12 levy at 1% of development cost provides balance between flexibility for councils and certainty/affordability for developers.

The flexibility for councils derives from not being required to identify the nexus between development and the infrastructure that will be funded by the Levy. The Discussion Paper makes the point that it is often difficult to measure demand arising from non-residential development, and as such it can be more efficient and effective to collect contributions through a s7.12 fixed levy.

The certainty for developers derives from being able to account for infrastructure contributions as a fixed proportion of their costs, allowing them to ensure the project is financially feasible.

However, UDIA believes that this balance begins to be lost at rates above 1%, in that these higher levies raise costs and begin to make development unfeasible. We believe, therefore, that s7.12 levies above 1% warrant additional scrutiny. UDIA supports the Discussion Paper's intent to maintain the standard 1% flat levy on development costs and welcomes the greater rigour/additional requirements to strengthen the conditions for requests for a higher Levy rate.

We propose that s7.12 levies above 1% be subject to the same IPART review process as s7.11 plans that exceed the threshold for IPART review. In other words, s7.12 levies above 1% should be an additional trigger for the IPART review process that already exists for s7.11 plans.

While not perfect, the IPART review process does provide independent scrutiny where costs are high. The benefits of the review process include, the requirement to comply with an essential works list, the tests of reasonable costs, nexus and apportionment, and an additional opportunity for the industry and community to comment on the proposed Levy.

Should our suggestion be supported we request that IPART be given additional resources, or assistance by the DPIE, to ensure that any additional workload imposed upon it does not come at the expense of responsiveness.

UDIA concedes the essential works list for s7.12 levies would likely be different to that for s7.11 plans. The works list in the Discussion Paper is a good start but needs to be more detailed than is currently proposed. Often ad hoc collections of works are proposed for s7.12 funding, so the essential works list needs to provide logical nexus while also promoting and rewarding innovation and flexibility.

We also note that UDIA has made a separate submission on the discussion paper 'Improving the review of local infrastructure contributions plans' and our recommendations in that submission would also apply to any IPART review process for s7.12 levies.

RECOMMENDATION 1: SECTION 7.12 LEVIES ABOVE 1% SHOULD TRIGGER REVIEW BY IPART, WHICH INCLUDES AN ESSENTIAL WORKS LIST, REASONABLE COST, NEXUS AND APPORTIONMENT AND PUBLIC CONSULTATION.

PRINCIPLES FOR A HIGHER MAXIMUM LEVY

The Discussion Paper proposes three foundation principles as the basis on which higher maximum percentage levies are set:

- Identified in a strategic plan
- Significant employment growth
- Local planning controls will need to support growth

UDIA is supportive of these three principles to guide where higher maximum percentage levies might be contemplated, with the precautionary overlay that the objective should be to encourage and catalyse jobs growth – not stifle job creation through cost prohibitive development contributions.

The Discussion Paper notes that these principles are instrumental in determining whether it is appropriate to consider "an identified centre" for a higher s7.12 maximum percentage levy. This signals that higher maximum percentage levies are only intended/appropriate for commercial/retail cores/town centres.

UDIA supports this direction and notes the application of higher levies on greenfield employment lands is likely to stifle development and should be prohibited. Accordingly, UDIA supports the inclusion of strategic centres, but not 'local centres' and 'economic corridors' as areas which can be considered for a higher maximum percentage levy. The grounds for this are:

- 'Economic corridors' are not adequately defined in the Discussion Paper and could be subject to broad and potentially inappropriate application.
- 'Local Centres' primarily provide local services (and jobs) to serve local residents. Employment activity in local centres does not, therefore, in itself create any quantifiable increase in demand for infrastructure above that generated by residents (existing and new). A clear distinction must be made between additional jobs for local residents who create minimal demand for additional infrastructure and additional jobs for regional residents who, by visitation to the centre, add to the demand for infrastructure.

We therefore recommend removing reference to economic corridors and local centres and direct the intent to appropriately identified centres with significant growth potential.

In the interests of predictability and transparency UDIA supports the stipulation within the Discussion Paper that local planning controls need to clearly set the boundary of the contributions area for the strategic centre. We would add that the s7.12 levy needs to be supported by a delivery plan for the infrastructure funded by the levy, including the timing for delivery. While this should be provided for all Section 7.12 levies, it is especially important in areas under a higher maximum levy.

One of the failings of s7.12 plans to date has been that the intent to encourage employment in designated locations has not been supported by a clear program for what will be delivered and when. S7.12 plans are often applied in areas where the future land uses are unknown and operate to capture a base levy for future apportionment. This often results in Councils playing catch-up when development marches ahead and place-based infrastructure has not been appropriately designated, meaning development is inadequately serviced.

RECOMMENDATION 2: **LIMIT CONSIDERATION FOR A HIGHER MAXIMUM LEVY TO STRATEGIC CENTRES AND REMOVE REFERENCE TO 'LOCAL CENTRES' AND 'ECONOMIC CORRIDORS'.**

RECOMMENDATION 3: **INCLUDE AN ADDITIONAL PRINCIPLE REQUIRING A DELIVERY PROGRAM FOR THE INFRASTRUCTURE IN THE PLAN.**

CRITERIA FOR A MAXIMUM LEVY UP TO 2%

The Discussion Paper proposes nine criteria for a maximum levy up to 2%. UDIA broadly support the intent of each of these criteria and offers the following comments.

C1.1 The area must be identified in the relevant strategic plan

The inclusion of the area for a higher Levy being included in a region plan or district plan as a significant growth node is critically important, to ensure s7.12 levies are only applied in strategic locations.

C1.2 The strategic plan must include a 'significant' employment growth target for the centre

The principle of 'joined-up' strategic planning is important, and as such local authority developed employment strategies need to align with district and regional strategic plans for employment growth. The implementation of strategic plans to deliver employment growth is harder than the creation of the vision and frameworks, therefore strategic plans need to have a clear set of implementation actions set out for strategic centre growth.

UDIA supports the 25-year temporal span for the Strategic Plan, however recommends the guidance be at least 30% more new jobs than the number of additional residents planned to be accommodated in the contribution area, and 35% more employment opportunities than currently available. More than ever NSW currently needs significant job creation and strategic and local centres need to play a key role in facilitating employment growth across Greater Sydney and regional NSW. Accordingly, a higher stretch target for jobs growth is appropriate.

C1.3 Local planning controls must reflect relevant strategic direction and targets for the centre

UDIA supports this requirement.

C1.4 The contributions plan should focus primarily on delivering quality place-based community infrastructure and improvements that enhance amenity of the centre

UDIA supports this direction but notes there should be an essential works list for s7.12 levies above 1%. Locally appropriate community infrastructure can vary significantly between types of places, (such as between commercial cores and industrial precincts) and thus an essential works list that facilitates innovation is favoured.

C1.5 Plan administration cost must not exceed 0.2% of total value of the contributions plan

UDIA supports this limit on administration costs.

C1.6 The contributions plan should clearly set out the relationship between the expected types of development in the area and the demand for additional public amenities and services.

UDIA acknowledges that s.7.12 plans are often applied in areas where the final composition of land uses and employment generating functions is not clearly understood. However, we support this requirement for s.7.2 levies above 1%. Our recommendation that these Levies be subject to IPART review, would also addresses this test of demand and nexus.

C1.7 Demonstrate that s7.11 has been considered and why it is not appropriate in this area

UDIA supports this clause and contends that in the vast majority of cases if a rate higher than 1% is required, then a s7.11 contributions plan would be more appropriate.

C1.8 Include a financial analysis that demonstrates a 1% fixed levy is insufficient and forecast the revenue outcomes for a higher percentage levy.

UDIA supports this clause.

C1.9 Changes to the works schedule require approval from the Minister.

Our recommendation that these levies be reviewed by IPART would mean that changes to the plan would also be subject to IPART review.

RECOMMENDATION 4: **STRATEGIC CENTRES MUST SUPPORT AT LEAST 30% MORE NEW JOBS THAN ADDITIONAL RESIDENTS AND 35% MORE EMPLOYMENT OPPORTUNITIES THAN CURRENTLY AVAILABLE.**

RECOMMENDATION 5: **ADAPT THE RELEVANT PROPOSED CRITERIA FOR A MAXIMUM LEVY UP TO 2% INTO THE TERMS OF REFERENCE FOR IPART REVIEW OF THESE LEVIES.**

ADDITIONAL CRITERIA FOR A MAXIMUM LEVY UP TO 3%

The Discussion Paper proposes two additional criteria for a maximum levy up to 3% (in addition to the criteria for a maximum levy up to 2%). UDIA broadly support the intent of each of these criteria and offers the following comments.

C2.1 The contribution plan must include funding and delivery of district-level infrastructure, representing at least 10% of total value of the contribution plan.

UDIA seeks greater clarity on what constitutes ‘district-level’ infrastructure and how this relates to Special Infrastructure Contributions Plans. We do not support a situation where the industry is funding regional infrastructure under two separate levies.

C2.2 The works schedule must be prepared in consultation with the Department to identify potential district level infrastructure.

UDIA supports this consultation between local and State government but again notes this has the potential to blur the line between local and SIC infrastructure levies. Having the DPIE involved in the preparation of the Section 7.12 levy would also make it even more important to have IPART review the Levy independently.

RECOMMENDATION 6: CLARIFY THE DISTINCTION BETWEEN 'DISTRICT-LEVEL' INFRASTRUCTURE UNDER A SECTION 7.12 LEVY AND INFRASTRUCTURE IN A SPECIAL INFRASTRUCTURE CONTRIBUTIONS PLAN.

CONCLUSION

UDIA NSW supports a higher level of scrutiny being applied to s7.12 levels above 1%. This is necessary to ensure a balance is achieved between flexibility for councils and certainty for developers. We believe that it would be appropriate for section 7.2 levies above 1% to be reviewed by IPART in the same way as section 7.11 plans, noting the terms of reference and essential works list would need to be tailored to the section 7.2 levy system.

UDIA looks forward to working with DPIE and IPART in promoting certain and fair contributions for the development industry. We believe the recommendations in this submission will allow strong growth in strategic centres that is supported by appropriate infrastructure.

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