Urban Taskforce
AUSTRALIA

26 November 2008

Mr. Michael Schur
Deputy Secretary
NSW Treasury
L27, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Mr Schur

Re: Developer Levies

We believe one of the most pressing issues the NSW Government currently faces is the dire state of property development in NSW. Developers are rapidly exiting NSW as they wind-up local projects and commence new projects in other states, such as Victoria. This is no hyperbole. The Australian Bureau of Statistics (ABS) figures speak for themselves.

The most recent figures from the Australian Bureau of Statistics show that approvals for new homes in NSW are at an all time low. In the 12 months to July 2008 only 31,000 new home approvals were issued. This is the lowest figure ever recorded for NSW by the ABS.

For the 12 months to June 2008, construction started on just under 31,000 new homes in NSW – well below the State's seven year average of 39,000. By comparison, construction commenced on 44,000 Queensland homes in the 2007/2008 financial year, well above its seven year average of 40,000 a year. In Victoria the figure was 42,000, only just under its seven year average of 43,000 homes a year.

In NSW, anti-development sentiment and higher development costs have meant a more rapid fall-off in investment than in other states.

In the most recent seasonally adjusted estimate for new home approvals (September) home approvals in NSW fell by 26 per cent, along with a 4 per cent fall in Victoria. In contrast, Queensland home approvals increased by 3 per cent. In September the number of houses approved in NSW fell by 8 per cent. Approvals for apartments and townhouses plummeted by 48 per cent. Less NSW home approvals were issued in September than in any other month since the ABS began keeping records in 1983.

In the first three months of this financial year (July – September 2008) the value of new residential building approvals was 9 per cent lower than in the same period last year ($2.1 billion compared with $2.3 billion). The apartment and town house sector has taken the biggest blow with a 30 per cent decline in the value of approved projects ($519 million compared to $742 million). The value of approved non-residential building has also been hit hard – 26 per cent lower in the first three months of this financial year compared to the same period last year ($3.5 billion to $4.1 billion).

Without a strong supply of new housing, rents will continue to sky rocket and first home buyers will struggle even more to save a deposit for a home of their own. Only this month the Department of Housing revealed that there was a 15 per cent increase in rents for three bedroom homes and a 13 per cent increase for two bedroom homes in the 12 months to September 2008.

The development industry is a key source of employment that NSW cannot do without. Each year property development creates 709,000 direct jobs across Australia. While the new administration has taken steps to improve confidence in the planning system, action is also required in the area of taxes, charges and levies.

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1. The burden of levies

Those that argue for levies are mistaken if they believe that either the developer or original land holder ultimately bears the costs of new or increased developer charges.

Modern capital is very mobile. It flows to wherever it gets the best return. A local developer will not be able to secure capital for a NSW development if he/she cannot offer the rate of return that is available for investments of a similar risk profile in other states or countries. In order to ensure that a market rate of return is still achieved, a developer will either reduce the amount of money he or she pays for undeveloped land, or increase the price paid by the home buyer.

It is not often possible, in practice, to pay less for undeveloped land for several important reasons. Many developers have already acquired the land and factored in all the charges known about at the time of purchase – in these cases it is too late to adjust the price paid to landowners for new or increased charges, yet the development cannot proceed unless the necessary rate of return can be earned.

There is also a natural floor to land price, below which the owners of undeveloped land will not accept. This floor does, in part, reflect the opportunity cost for other uses of the land – such as rural lifestyle blocks (in greenfield) or low density housing (in brownfield). The floor is also driven by the long-held expectations of those land holders. Even though those expectations may not be realisable in the short term, these land holders are very patient, hold minimal debt and often originally acquired the land at very low prices. They tend to have no difficulty in waiting for prices to rise to the level consistent with their expectations.

In this debate, economic purists tend to overlook the disproportionate market power given to the landowners by planning laws. For this reason landholders are often able to resist developers' efforts to pass the cost of development charge onto them through a lower land acquisition cost. Land owners enjoy disproportionate market power because appropriately zoned land (both in greenfield and brownfield areas) tends to be drip fed by the planning system into the market.

This generally means there is only one party left who must pay for an increased developer charge – the home buyer (or commercial/retail/industrial end user). However, often a home buyer cannot afford a new or increased levy. That's because there is a ceiling on the price that home buyers are able to pay, i.e. their borrowing capacity. The maximum amount that home buyers are able to borrow is, in turn, based on their income. Without increases in income, home buyers are unable to pay more for new homes. As a result, any project which cannot be delivered at a price home buyers currently can afford simply doesn't get built. An increase in costs from a new developer charge can't be passed onto a home buyer until home buyers' borrowing capacity increases enough to pay for the levy.

That's why, in part, the supply of new houses in Sydney has almost completely dried up. State, local council charges of up to $70,000 to $90,000 for each home lot in the growth centres cannot be afforded by anyone – land owners, developers or home buyers. So the homes simply don't get built and no money is actually raised.

2. Two year moratorium

The NSW economy will need the construction sector to lead it out of the current slow-down in economic activity. NSW is not like Queensland or Western Australia, who can rely on the resources sector to lead a recovery. Without a recovery in NSW construction activity, there will not be a recovery in the broader state economy.

For this reason, in addition to the long-term reforms we have set out in this submission, it's crucial that the state government introduce a two year moratorium on the payment of any state infrastructure contribution. The moratorium would apply to in relation to any land for which an application for a subdivision certificate is made within two years of the policy announcement of the government (provided that the application is eventually granted, even if this occurs after the two year period).

A shorter moratorium will not allow sufficient time for industry to react and make additional investments in time to benefit from it. A moratorium for any period less than two years will only benefit those who already were planning on making the relevant investments.

It will be pointless to introduce a moratorium of this kind, if the state government does not also accompany it with a funding commitment to ensure the infrastructure is provided for the housing and other development built under the moratorium.

3. Long term reform of state infrastructure contributions scheme

There is ultimately a market price for housing, commercial, retail and industrial property that is set with regard to similar properties in the vicinity and elsewhere. If the costs imposed by a rigid formula, and flat dollar fee per lot or hectare, are too high land production is sterilised.

The viability of any land release effort may be seriously undermined by an infrastructure charge that is set in isolation of market conditions and the final sale price of land. Additionally the existing system of flat charges is not related either to the actual cost of infrastructure in a particular region or the capacity of the land to bear the charge.

Greenfield sites would be better served by a percentage levy on the final sale price of land. This will ensure that in areas where the market price is lower, the burden of the charge is proportionally lower.

A flat charge artificially exaggerates the cyclical nature of the market. When property prices fall, a fixed dollar (flat) charge does not fall (unlike some other costs, such as marketing and some construction costs). This leads to a more rapid fall-off in investment. Conversely when property prices are rising, development activity will be higher than normal. Government taxes and charges should not accentuate the boom and bust of the property cycle, but should act in a stabilising way to get a more even spread of economic activity over time.

A major difficulty with the existing system of charges is that payment is required too early in the development process. Even when the charges are affordable, the timing of the payment makes financing very difficult. The developer does not have sufficient real estate available to secure the debt made necessary by the charges. The financing distortion can be removed if the charges that are payable only fall due when the developer actually receives final payment for the developed land from the end-user.

The legal burden for the payment of the percentage levy will fall on the developer, and the payment will be paid on the transfer of title (that is, at settlement). This arrangement takes advantage of the government's existing revenue collection machinery. The developer will pay the levy amount to the Office of State Revenue and the purchaser will pay the stamp duty owed. The levy will only be paid once on each parcel of land sold (i.e. no further levy will be payable on subsequent re-sales). Where a home or other building has been constructed on the land prior to sale, the sale amount will be discounted by the construction cost of the building. Land sales between developers prior to the issue of a subdivision certificate will not attract the levy (i.e. it will only be payable once lots are actually subdivided and sold individually).

The actual dollar amount raised by any percentage greenfield level needs to be a great deal lower than the current $23,000 per home lot in the growth centres. The ability of the market to sustain a given revenue target should also be factored into decisions about the percentage level, rather than just the costs of the infrastructure.

It is also important that the new scheme has the conventional checks and balances. This means any percentage rate set by the government should either be set under a regulation that is subject to parliamentary review and (potential) disallowance, or independent oversight of the Land and Environment Court. Additionally, a requirement to pay a particular state infrastructure contribution should be able to be disallowed or amended by the Land and Environment Court on appeal because it is unreasonable in the particular circumstances of that case.

For each region/sub-region/area (however defined) to be levied there should be a requirement for a publicly available plan, akin to the current section 94 contributions plans required of councils.

4. Defacto state infrastructure contributions

Since October last year the NSW Government has been progressively introducing a new defacto state infrastructure contribution regime outside of the growth centres.[1] These new local environment plan provisions grant rezonings, but make the rezonings less meaningful because a new arbitrary power is created for the Department of Planning to impose infrastructure charges without even the threadbare safeguards of the existing state infrastructure contribution statutory framework.

For example, the new requirements mean that development approval for a rezoned land use cannot be given by the local council unless the Department of Planning signs off on a financial contribution to transport, education, health and emergency services normally provided by the state. [2]

By using local environment plans (LEPs) to impose compulsory infrastructure levies, key provisions of the existing scheme are circumvented, in particular:

- The Minister is not obliged to make a determination of the level of development contributions up-front. Instead the Director-General of the Department of Planning makes a decision on compulsory charges specific to each individual development application. This reduces the transparency and certainty. The lack of up-front information acts as a disincentive to invest.
- There is no obligation on the government to publicly exhibit the proposed charges or consult with land owners or other relevant stakeholders. Again this increases the perception that charges are arbitrary.
- There is no obligation for the contribution to be “reasonable”.
- There is no obligation to identify a special contributions area or any similar area to which the contributions relate.
- There is no requirement that the funded infrastructure be within a particular area.
- There is no requirement for the decision on the quantum of charges to be made publicly available.

We ask the government to commit to implementing its system of compulsory infrastructure charges through express provisions in the *Environmental Planning and Assessment Act*, rather than LEPs. This should involve adopting the percentage-based framework set out above in addition to the accountability provisions extended for by the statutory framework for state infrastructure contribution levies and section 94 contributions.

5. Local council infrastructure charges (section 94)

In NSW a major source of funding for local government are the rates and charges. The amount that can be raised fundamentally impacts on local government’s ability to provide infrastructure and services. Since 1977, council rates in NSW have been regulated by the state government based on a philosophy that was to encourage restraint and exercise control over expenditure. This approach relied upon state government regulation that “pegged” rates each year to a maximum amount.

Local councils are being asked to do more with less funding, councils across the state are being forced to make some very hard decisions when it comes to service and infrastructure provision. Without appropriate funding local councils are either forced to leave existing infrastructure to

[1] For example see: *Camden Local Environmental Plan No 74—Harrington Park* cl 38; *Hawkesbury Local Environmental Plan 1989* cl 55; *Maitland Local Environmental Plan 1993* cl 55; *Parry Local Environmental Plan 1987* cl 41; *Tamworth Local Environmental Plan 1996* cl 55; *Wyong Local Environmental Plan 1991* cl 42G.
[2] *Parry Local Environmental Plan 1987* cl 41.

deteriorate, not provide additional services and/or facilities or seek an alternative source of funds.

Finding an alternate source of funding has been the preferred option of local councils and unfortunately, the "cash-cow" has been the developer (and therefore the people who ultimately purchase property assets produced by developers). Developer contributions are being relied upon to fund a significant proportion of local infrastructure and services. In some cases, the provision of local infrastructure is being provided entirely by developer contributions of some type. This type and level of taxation on development has without doubt caused a slowing of development activity, particularly in the residential sector, which has contributed to the current collapse in NSW property development.

It has been widely reported that

> without the extra income the councils will have to let rundown facilities deteriorate further, or appeal to federal and state governments to bail them out.[3]

There are already numerous councils who are carrying an infrastructure backlog that far exceed their ability to fund. Council rates don't come close to providing the funds needed to meet current service and infrastructure needs, let alone meeting future needs.[4] The additional funding from the upper tiers of government has not been forthcoming and the ability to raise additional funds through rate increases has been constrained, local governments have sought private funding for public infrastructure.[5]

The Federal Government's independent economic advisor, the Productivity Commission, prepared a report titled *Assessing Local Government Revenue Raising Capacity*. It revealed that Baulkham Hills Shire Council, Mosman Municipal Council and Willoughby City Council had each admitted that rate pegging creates an incentive to increase fees and charges as an alternative source of revenue to rates.[6] We have heard the same admission on many occasions in our discussions with council representatives.

There is no denying it: rate pegging has made councils reliant on developer contributions to supplement income for the provision of infrastructure and services.

This is most obvious in the growth areas of Sydney where pressure for additional infrastructure and services is at its greatest. For example, the recent section 94 plan exhibited for the North Kellyville proposed a contribution of up to $50,700 per dwelling. Contributions have been used by some councils to stop development in an area by imposing massive taxes that make it impossible for projects to make a commensurate return on risk.

Regretfully, in NSW there is a very broad basis to councils to recover their costs through developer charges. The Productivity Commission has found that:

> New South Wales and Victoria appear to have the most flexible legislative arrangements for accessing developer contributions, with legislative scope to levy for a broad range of economic and social infrastructure needs (such as public transport, child care centres, libraries, community centres, recreation facilities and sports grounds) beyond basic infrastructure. Other jurisdictions may not have scope to apply a levy for these facilities.[7]

The recent "reforms" to section 94 contributions do little to narrow the scope of the projects that can be funded by these charges. In fact, more than 90 per cent of the funds currently raised by these charges will continue to be raised under the new regime. Any (limited) savings are not being passed back to developers – instead councils are simply increasing the contribution required for those matters that are permissible.

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3 Grennan, H. *Sydney Morning Herald July 29, 2008* accessed from http://www.smh.com.au/articles/2008/07/28/1217097148488.html

4 Dollery, B., Wallis, J. & Allan, P. (2006) The Debate that Had to Happen But Never Did: The Changing Role of Australian Local Government, *Australian Journal of Political Science,41:4,553 — 567*

5 Cannadi, J. & Dollery, B. (2005) An Evaluation of Private Sector Provision of Public Infrastructure in Australian Local Government. Australian Journal of Public Administration. 64 (3): 112-118.

6 Productivity Commission (2008) *Assessing Local Government Revenue Raising Capacity*: *Productivity Commission Research Report April 2008* 112

7 Productivity Commission (2008) *Assessing Local Government Revenue Raising Capacity*: *Productivity Commission Research Report April 2008* 172.

Local council levies in infill/brownfield areas should be capped to a fixed percentage of construction costs (1 per cent).

In greenfield areas, local councils should be prohibited from imposing any charge themselves and instead their infrastructure works should be funded by the state, drawing on the revenue it received from the percentage-based levy state infrastructure contribution proposed above.

In the event that this is unacceptable to the government, the next best solution is for local council levies in greenfield areas to be capped by the state government, at a very significant discount to the $30,000 a home lot currently imposed for Oran Park. This levy would still only be payable on the final sale of land along with any state infrastructure contribution. The payment could be made to the Office of State Revenue by the developer, who would in turn, pass it onto the council.

Again, as per our proposal for the state infrastructure contribution, the levy will only be paid once on each parcel of land sold (i.e. no further levy will be payable on subsequent re-sales). Land sales between developers prior to the issue of a subdivision certificate will not attract the levy (i.e. it will only be payable once lots are actually subdivided and sold individually).

Councils should be given greater freedom to use their broader rate base to fund the costs of infrastructure and population growth. This will require either the abolition of, or relaxation of, rate pegging.

While we strongly support council amalgamations, we do not think that un-amalgamated councils should be denied the benefits of this reform. Local communities are unlikely to support council amalgamations if it's linked to a relaxation of rate-pegging and higher rates.

In October 2007 the NSW government promised that the Minister for Planning or his/her delegate would approve section 94/section 94A plans and amendments to plans.[8] The government has failed to deliver on this commitment. Instead it has only required the Minister to approve items that do not fall into a very broadly defined list. In practice very few councils will need ministerial approval for their contributions plans.

We continue to be disappointed that this clear commitment by government has not been implemented. **As local environment plans need to be signed off by the Minister or delegate, local council contributions plans need a similar check and balance**, otherwise the intent of a local environment plan can be too easily defeated by a punitive contributions plan.

6. <u>Utilities charges (including section 73 charges)</u>

IPART's stated objectives for these water utility developer charges are to:

- provide water agencies with a source of revenue to ensure that the provision of infrastructure to new development areas is financially viable;
- ensure that those who impose additional costs on the system bear those costs, rather than imposing those costs on the general customer base; and
- signal the cost of service provision in a particular location to facilitate efficient resource allocation decisions.

Our analysis of these points is equally applicable to both water and energy utilities.

In relation to the first point, we concur with Sydney Water that the developer charges are not necessary to ensure the financial viability of servicing growth.[9] In the event that some or all of the funds raised by developer charges can no longer be raised in this way, the shortfall will be made up by the contribution of water ratepayers generally.

The second point refers to "those who impose costs on the system". The need for the growth in metropolitan dwelling numbers is not a private commercial issue for a few developers; it is an

[8] See the NSW Treasury presentation to stakeholders, October 2007 and the Department's own planning circular released in November 2007.
[9] Sydney Water submission to IPART Review of developer charges for metropolitan water agencies of 21 December 2007, 3.

important public interest objective of government policy. The reasons why this growth is essential to the public interest are in the state government's key urban planning strategies.

Developers (and the people who purchase the property made available by developers) are not "imposing costs on the system". Rather, they are fulfilling an important public policy goal. The "system" actually needs to be designed in such a way that there are sufficient incentives for private actors such as developers and property purchasers to make profitable decisions in their own interest, which in turn fulfils a public interest.

An economic purist will scoff at this suggestion and say that the public interest is best served by least cost outcomes being achieved and the best way to achieve least cost outcomes is to remove cross-subsidies. This argument may be worth debating if there was anything close to a free market operating in the property market, but the market is so heavily constrained by regulatory and bureaucratic controls that the argument is almost meaningless.

The leads to the third point which says the water utility charge is there to signal the cost of service provision in a particular location to facilitate resource allocation decisions. Frankly, this is nonsense. Like it or not, resource allocation decisions are made as a consequence of the rezoning process – a regulatory, rather than market process. The costs of obtaining a rezoning dwarf the water utility developer charges. If there was no such thing as "rezoning" and the decisions to proceed to develop a land could be entirely market and cost driven, these principles would have more relevance.

Sydney Water says their developer charges alone are not likely to have a great influence on where development occurs.[10] We agree with one qualification. Under current policy, the relative differences in the charge from area to area, is unlikely to influence the decision by an individual developer to develop in one area over another. However, the presence of the charge can influence the decision to proceed, if the presence of the charges makes the difference between an acceptable rate of return for the developer's capital and risk.

Sydney Water says that they receive an average of around $50 million per year in developer charges.[11] They also say that:

> [i]f Sydney Water had not received any developer charges since 2000-01, annual prices for water and wastewater would be around two per cent higher than presently charged. Because of the relationship between developer charges and the RAB [regulatory asset base], Sydney Water is financially neutral to the form of cost recovery applied to new developments.[12]

We agree with some of the key points Sydney Water has publicly made:

- The developer charge is not effective at signalling the cost of servicing new developments.[13]
- The costs of administration of the current regime may be disproportionate to the revenue raised by the scheme.[14]
- Higher developer charges reduce the regulatory asset base and hence annual water and wastewater prices. The overall effect is to transfer costs from existing properties to new developments.[15]

The system of uniform 'postage stamp pricing' is supposed to ensure that all consumers who use the same quantity or amount of services pay the same water and sewage charges irrespective of the location of their properties. However the imposition of water utility developer charges has one of two possible impacts.

Firstly, it will prevent the production of new housing in greenfield areas – possibly impacting adversely on home affordability generally.

If this does not occur, then it will increase the cost of housing in the growth centres to home buyers. This means that they have to borrow more to purchase the property, which effectively

[10] In page 4 of their submission to the IPART.
[11] Sydney Water Submission to the IPART Review of developer charges for metropolitan water agencies, 7.
[12] Ibid 8.
[13] Ibid 17.
[14] Ibid 17.
[15] Ibid 21.

means they are paying, on an ongoing basis, a lot more for their water supply than residents in established housing.

For example, the water developer charge per lot in North Richmond is $3,646 and the corresponding sewerage charges are $7,194. If a homebuyer was able to afford to borrow the extra $10,840 then they will have to repay an extra $30,600 in loan repayments over the life of the loan, or an extra $85 a month.[16] The so-called 'postage stamp' water rate is equal to $40 a month. So effectively, this homebuyer will be paying three times as much for their water usage, when compared to a home owner in established housing.

The concept of 'postage stamp pricing' effectively does not apply to homebuyers in greenfield areas, while it does apply to homebuyers of established housing in higher income areas. Given that this person is likely to be in a lower socio-economic status than many people in established housing, it is hardly equitable pricing of an essential service.

We note that Sydney Water itself admits the likelihood of this outcome where it says:

> To the extent that developer charges are passed on to the owners of new dwellings, higher charges therefore increase the disparity between existing owners (who pay uniform prices for water and wastewater) and new dwelling owners that pay both the water and wastewater prices and developer charges.[17]

The Urban Taskforce recently commissioned BIS Shrapnel to prepare the report: *Life's Essentials: Water and New Homes for the Hunter*.[18] The report examined Hunter Water's proposal to slug homebuyers with a new levy to raise $251 million to fund 60 per cent of the costs of building Tillegra Dam.

Among other things, the report found that the dam will hit Hunter retirees hardest. It concluded that taxing new home construction was unfair for infrastructure linked to population growth, because population growth does not directly relate to new home construction. In particular it said:

- The ageing population will be the dominant force for population growth and housing demand over the next twenty years.
- More than 100,000 established houses in the Hunter are currently occupied by just one or two people.
- As Hunter residents retire many will choose to downsize – by selling their existing homes to younger people and moving into newly built medium and high density homes.
- If a development levy is used to fund the dam, these retirees would be forced to pay for additional water infrastructure. These retirees aren't to blame for population growth – yet they will be forced to pay for Tillegra Dam twice. They'll pay once through their regular water charges and then again through a levy on their new home.
- Younger families moving into a retiree's existing house would account for the new population, but would not pay any development levies.

The findings of BIS Shrapnel in relation to Hunter Water's proposed increase developer charges are equally relevant to other parts of NSW, including Western Sydney.

All water, sewage and energy developer charges should be abolished, and the costs of providing utilities up to the boundary of a master planned site (or an urban infill site) **should be met by the boarder customer base of the utility concerned.**

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[16] Calculated assuming an interest rate of 8.67 per cent and a 30 year repayment period. If the home buyer borrows $450,000 the monthly repayment would be $3,515 a month with a total nominal value of repayments of $1,265,400 over the life of the loan. If they borrowed $460,840 the monthly repayment rises to $3,600 a month, with total nominal repayments being $1,296,000.

[17] On page seven of its submission to IPART.

[18] The report is available on the internet here: http://www.urbantaskforce.com.au/attachment.php?id=1989.

7. "Voluntary" planning agreements

"Voluntary" planning agreements have become another means of legalised extortion by public authorities when a developer is endeavouring to secure a rezoning.

The original policy rationale for voluntary planning agreements remains sound. Planning agreements are designed to be a mechanism by which a developer can address a planning authority's legitimate infrastructure concerns. Prior to the introduction of legislative provisions for planning agreements there was no easy mechanism for developers to volunteer to pay for infrastructure vital to securing a value-creating rezoning. The policy rationale for such agreements is not changed by the proposal for a percentage-based state infrastructure contribution.

Nonetheless, voluntary planning agreements are being increasingly misused by local councils intent on revenue raising. In particular:

- Development standards (floor space ratios, height, etc) are being kept artificially low, so as to force a rezoning (or application of SEPP 1) as a routine process. This creates an opportunity to demand the signing of "voluntary" planning agreements.
- Land owners are punished for not agreeing to planning agreements by the imposition of low value zones. For example – the imposition of a primary production zone, when surrounding land has been rezoned or urban purposes.
- Permissible uses are being kept narrow in scope in some areas, again, to force rezonings and create a need for developers to enter into "voluntary" planning agreements.

There must be a credible right of appeal on spot re-zoning decisions, possibly involving a regional panel, **when a proponent is able to argue that the re-zoning is consistent with a published strategy**. This is necessary to avoid the use of planning agreements to extort disproportionately high 'voluntary' levies from developers prior to rezoning decisions being made.

In the event that the government rejects this proposal there is a more limited alternative option. This involves prohibiting a planning authority from agreeing to or requiring agreement to a voluntary planning agreement prior to a gateway determination being issued under the new plan-making framework. Under this option, **where a gateway determination has been made giving approval for a rezoning to proceed, but the matter does not progress further because of a disagreement over the terms of any voluntary planning agreement, the joint regional planning panels would be empowered to resolve the issue.**

8. Affordable housing levies

We are concerned at any suggestion that there should be more widespread use of levies under *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)* (SEPP 70). It would be a mistake to believe that the planning system can encourage affordable housing by introducing any kind of new levy. In fact, the presence of levies does not solve housing affordability problems - it creates them.

Lack of affordability is caused by a systemic mismatch between the demand for and supply of medium and high density housing. Planning laws have been contributing to this problem by:

- preventing or limiting the construction of new medium and high density housing in areas where it is most in demand;
- restricting the availability of greenfield land for development and imposing massive charges on the land that is made available;
- failing to take full advantage of the location of readily accessible public transport by providing for high and medium density development within a fifteen to twenty minutes walk (1.5 kilometres) of transit points ; and/or
- imposing inflexible NSW specific design requirements that prevent developers from supplying apartments adapted to the needs of home buyers.

The hypocrisy of levies and inclusionary zoning policies is this: developers (and ultimately home buyers) are forced to "pay" to have density restrictions relaxed, however developers would seek to develop more market-rate units if those rights could be had without cost.

Levies and inclusionary zoning are not able to increase the supply of housing above the levels that the market will sustain. As long as pre-existing zoning requirements prevent the market levels of density from being achieved, the best public policy approach would be to lift the existing controls, rather than impose new ones.

In short, **SEPP 70 should be amended to prohibit the imposition of any new so-called "affordable housing" levies.**

Thank you for the opportunity to provide a submission to the government's decision making processes.

A summary of our key recommendations is attached.

We remain available to discuss this matter with you at any time.

Yours sincerely
Urban Taskforce Australia

Aaron Gadiel
Chief Executive Officer

Summary of key recommendations from the Urban Taskforce on developer levies

- In addition to the long-term reforms we have advocated, the state government should introduce a two year moratorium on the payment of any state infrastructure contribution.
- In relation to the state infrastructure contribution, greenfield sites would be better served by a percentage levy on the final sale price of land. The legal burden for the payment of the percentage levy will fall on the developer, and the payment will be paid on the transfer of title. The actual dollar amount raised by any percentage greenfield level needs to be a great deal lower than the current $23,000 per home lot in the growth centres.
- We ask the government to commit to implementing its system of compulsory infrastructure charges through express provisions in the *Environmental Planning and Assessment Act*, rather than LEPs.
- Local council levies in infill/brownfield areas should be capped to a fixed percentage of construction costs (1 per cent).
- In greenfield areas, local councils should be prohibited from imposing any charge themselves, and instead, their infrastructure works should be funded by the state, drawing on the revenue it received from the percentage-based levy state infrastructure contribution proposed above.

  In the event that this is unacceptable to the government, the next best solution is for local council levies in greenfield areas to be capped by the state government, at a very significant discount to the $30,000 a home lot currently imposed for Oran Park. This levy would still only be payable on the final sale of land along with any state infrastructure contribution.
- Councils should be given greater freedom to use their broader rate base to fund the costs of infrastructure and population growth. This will require either the abolition of, or relaxation of, rate pegging.
- As local environment plans need to be signed off by the Minister or delegate, local council contributions plans need a similar check and balance (as per the government's promise of October 2007).
- All water, sewage and energy developer charges should be abolished, and the costs of providing utilities up to the boundary of a master planned site (or an urban infill site) should be met by the boarder customer base of the utility concerned.
- There must be a credible right of appeal on spot re-zoning decisions, possibly involving a regional panel, when a proponent is able to argue that the re-zoning is consistent with a published strategy. This is necessary to avoid the use of planning agreements to extort disproportionately high 'voluntary' levies from developers prior to rezoning decisions being made.

  In the event that the government rejects this proposal there is a more limited alternative option. This involves prohibiting a planning authority from agreeing to or requiring agreement to a voluntary planning agreement prior to a gateway determination being issued under the new plan-making framework. Under this option, where a gateway determination has been made giving approval for a rezoning to proceed, but the matter does not progress further because of a disagreement over the terms of any voluntary planning agreement, the joint regional planning panels would be empowered to resolve the issue.
- SEPP 70 should be amended to prohibit the imposition of any new so-called "affordable housing" levies.