

1 March 2011

Mr Sam Haddad  
Director-General  
Department of Planning  
GPO Box 39  
Sydney NSW 2001

Dear Mr Haddad,

**Re: Special infrastructure contributions in Western Sydney, the Lower Hunter and the Illawarra**

The Department of Planning recently finalised and gazetted a ministerial direction and determination in relation to Western Sydney.

On 21 January 2011, the Department of Planning also released the public consultation documents for a proposed levy on new homes in the Lower Hunter (said to be \$8,800 per lot) and a levy on new homes in the southern Illawarra (said to be \$6,200 per lot). The Department is also proposing a \$42,100 levy on each hectare of new Lower Hunter industrial land, and a \$29,000 levy on each hectare of Illawarra industrial land.

We have urgent and serious concerns in relation to all of the above documents. As they overlap, we have set out some of the most alarming concerns here in a single letter.

**1. Levy amounts, as presented, are too high but the Department's definition of "net developable area" make them utterly indefensible**

**The levies as they are presented by the Department are too high** (i.e. the proposed per lot and per hectare levies in the Hunter and the Illawarra, and the post June 2011 levies in Western Sydney).

According to the Department, the per lot levy in Western Sydney is presently \$12,000 and will increase to \$18,000 each home, effective on July 1 this year. The Lower Hunter levy, which the Department claims is a \$9,000 per lot, is a significant disincentive to develop in the region.

However, **the true burden of the levies is utterly indefensible.**

The Department of Planning has made a serious error in assuming that 15 lots per hectare can be developed in Western Sydney or that 12 lots can be generally realised per net developable hectare in the Lower Hunter.

The figures are fictional, because the definition of "net developable hectare" is, in truth, a definition of gross developable hectare. It will end up including land that is not developable for reasons such as the presence of:

- acid sulphate soils (usually occurring in low-lying parts of coastal floodplains, rivers and creeks);
- bushfire hazard;
- steep slopes;
- soil subject to a high degree of erodibility and instability (for example, fine-grained sediment may be a problem on steep slopes near creek lines);

- wetlands;
- flood risk;
- archaeological sites;
- areas of scenic value;
- riparian corridors (a watercourse - which may only flow infrequently - and its vegetated buffer zone); and
- particular flora or fauna.

To give one example: if actual yields in the Lower Hunter are six lots per “net developable hectare” the levy jumps from just under \$8,800 per lot to \$17,600 per lot. However, in some instances, such as the “large lot residential” zone, the cost in the Lower Hunter could range between large lot residential \$35,000 to \$52,000 a lot.

**The Department’s statements to the public about the “per lot” impact of these levies are wrong, given its new definition of “net developable area”.**

## **2. Crucial information has been omitted from the exhibition documents**

There is a broad-brush 25 year horizon for the Lower Hunter, and an even more relaxed 40 year horizon for the Illawarra. No time limit is specified for Western Sydney. The documentation directs the reader to ‘Budget Paper No. 4’ to see the government’s firm commitments, but this document does not even mention most of these projects.

No scope of works is presented or defined for named projects. Some descriptions are very generic, so it will be difficult to hold the government to account.

The government has disclosed how much of each infrastructure project it thinks should be recovered through levies, but it has not disclosed the full cost of many of these items. This means, in most cases, it’s not possible to tell how the cost of the project has been apportioned between existing residents and new residents.

Financing costs have been built into the figures - apparently to take into account the fact that some infrastructure will be delivered prior to the receipt of levies. However no information has been presented as to which infrastructure has what financing component. Nothing is said about how much is to be borrowed, the applicable interest rate and the expected pay-back period, or anticipated take-up rates.

If this methodology were adopted by a council in relation to their section 94 contributions plan, they would be rightly condemned.

## **3. The Hunter Expressway should not be included**

The NSW Government is proposing to fund \$81 million of its \$200 million contribution to the Hunter Expressway through these new levies.

It is surprising that nearly half of the NSW Government’s \$200 million announced commitment to the \$1.65 billion Hunter Expressway would be financed via the proposed levy on home buyers. (The Federal Government is paying the remaining \$1.45 billion for the project.)

The state government has trumpeted its commitment to the Hunter Expressway on numerous occasions, but never previously revealed that new home buyers would actually be picking up the tab.

**Hunter home buyers will be paying for the Hunter Expressway twice, once through the general taxes, like the rest of us, and again, through an extra \$1,000 added on to the cost of their new home.** That particular grab for cash is plainly unjustifiable.

#### **4. "Industrial land" includes a wide range of non-industrial land uses**

**The definition of "industrial land" makes a mockery of the assertion that only residential and industrial lands are being levied.**

That's because many of the dominant land uses in zone B5 ("Business Development") and zone B7 ("Business Park") will not be "industrial" at all. These zones can also be about offices, business premises and large floor plate retail establishments. The government has previously claimed that development of this kind would be exempt from special infrastructure levies. They are now to be subject to a levy through the back-door.

#### **5. The exemptions from the levy defy logic and must be broader**

##### **Schools**

Levies are to be imposed on non-government schools and educational facilities, but not on government schools or TAFEs.<sup>1</sup>

**All schools, not just government ones, should be exempt from the levy.**

##### **Health services facilities**

Levies will not be imposed on health services facilities owned or operated by a public authority,<sup>2</sup> but they will be imposed on such facilities operated by a non-government entity, such as the Sisters of Charity and Sisters of Mercy.

**All health services facilities, not just government ones, should be exempt from the levy.**

##### **Neighbourhood shops and shop top housing**

Development for the purposes of neighbourhood shops is (appropriately) exempt from the levy. However an artificially narrow definition is given to this phrase under planning instruments. This means that a special infrastructure levy will be payable if the shop's purpose is to sell large grocery items, clothing, music, home-ware or electrical goods. Premises to be used by real estate agents, hairdressers, beauty salons, chiropractors, doctors surgeries and conveyancers will be subject to the levy, while chemists, tobacconists, mini-supermarkets will be exempt. A dedicated bank, dry cleaner or post office will be subject to the levy, while a general store that includes these services as an ancillary part of its offer, will be exempt.

**All development for the purposes of "retail premises" and "business premises" (as well as shop top housing) should be exempt from the special infrastructure contribution.**

#### **6. Deed of charge may conflict with landowners' obligations to their first or second mortgagees**

A deferral mechanism was supposed to be introduced in order to overcome the financing difficulties faced by developers having to fund large cash levies to the government before receipts from the sale of finished lots were available. The mechanism was intended to allow the payment of the levy to be deferred at the time a subdivision certificate is issued, and instead paid when an actual lot is finally sold to a buyer.

However, under the determination, the deferred payment arrangement is made contingent on a registered charge over land or a bank guarantee lodged by the developer. As a result, the utility of the deferred payment arrangement is significantly reduced, if not nullified.

To the extent that any charge is required, it would better if it arose directly under legislation, in the same way as unpaid land tax, rather than as an instrument that is registered on the title in its own right.

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<sup>1</sup> Draft Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011, cl 4(2).

<sup>2</sup> Draft Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011, cl 4(2).

In almost all cases, land will be subject to a first, and in some cases, second mortgage. These lenders are unlikely to agree to surrender their priority over the land, in favour of the charge without a commensurate reduction in percentage of land value, that they are willing to lend (assuming that they are prepared to stand behind the charge at all). In effect, developers will be back exactly where they started, because they will be trying (unsuccessfully) to convince lenders to confidence both development costs and development levies.

**Any deed will need to:**

- recognise pre-existing mortgages and charges will take priority; and
- oblige the government to consent, in the event that a pre-existing mortgages and charge is assigned to another party.

**7. Requiring a deferred payment to be made 21 days before settlement will create financing problems**

The new requirement for payment of a deferred special infrastructure contribution to be made 21 working days from settlement on the sale of a subdivided lot will create a new financing problem.<sup>3</sup>

Furthermore, it is inconsistent with the Government's announcement of December 2008, when the government said that:

We have also changed the timing of the payment of the reduced levies – they will no longer be charged up front and will now be charged when the lot is sold.<sup>4</sup>

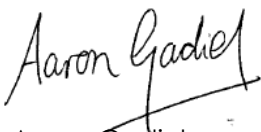
**Deferred levies should be payable when a subdivided lot is sold, as per the Government's public announcement, not 21 days beforehand.**

It is clear that this requirement has only been introduced to prevent lot purchasers becoming aware that they are, in truth, paying a levy to the government when purchasing a new lot.

This is just a sample of the problems we have identified. Our full submission to the Department of Planning is attached for your information.

We would also welcome an opportunity to meet with you to further discuss these matters once you have had a chance to consider them.

Yours sincerely  
**Urban Taskforce Australia**



Aaron Gadiel  
Chief Executive Officer

Encl.

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<sup>3</sup> Draft Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011, cl 18.

<sup>4</sup> Office of the Premier of NSW, "Premier announces plan to kick-start housing construction", Media Release, 17 December 2008.