Size does matter!: Negotiating development levies and infrastructure charges tied to development in New South Wales, Victoria and Queensland

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Abstract
There is growing concern about the financial impact of government regulations and charges relating to the development process on the cost and affordability of housing in Australia (RDC 2006a, UDIA 2007). With escalating housing unaffordability, this concern has stimulated serious discussion within the housing industry on the impact of the planning process on housing costs, including the costs of complying with building and design controls, time taken to secure approval, and fees and charges for administration, infrastructure or other public services associated with development. While there is a growing body of research addressing the indirect impacts of the planning system on the land and housing market (Barker 2006, Bramley 2007, Evans 2004), there remains considerable uncertainty over the nature of these costs and their impact in different locations and on different developers.

The impact of these charges on developers and first purchasers is far from universal. Drawing on interviews with developers of various sizes and employees of local councils and state agencies from New South Wales, Victoria and Queensland undertaken as part of a recent Australian Housing and Urban Research Institute (AHURI) funded project, this paper argues that large developers are both more able and willing to incorporate development regulations/charges. In contrast, small developers are less supportive of state based infrastructure charges and development regulations as they are seen to have a greater impact on the development margin and the financial viability of a project. Further, it is found that large developers are in a more powerful position to negotiate the type and timing of contributions. In particular, this comes through significant ‘in-kind’ works and negotiated development and infrastructure plans with approval authorities (local councils or state agencies). This paper challenges the assertion that state charges and levies are passed first purchasers in all cases.
Introduction
Public and industry concern about housing affordability in Australia focuses largely on the costs of buying a new home. Housing (un)affordability is the outcome of a complex interaction of a multiplicity of factors and variables. As such, it is difficult to attribute a single cause for decreasing housing affordability. This paper explores one of the increasingly cited drivers of decreasing affordability – growing state based fees, charges and infrastructure levies. Despite calls from the development industry, this aspect of housing policy has been relatively neglected in academic and policy research, particularly in Australia. These concerns are echoed on an international level. In the United Kingdom and parts of Europe, where systemic undersupply of new housing relative to demand has been linked to escalating affordability problems, there has been much scrutiny of the capacity and efficiency of the planning system to deliver sufficient new housing (Barker 2006, Lawson and Milligan 2007). Similarly, in the United States, the relationship between housing costs and planning regulations, charges, and procedural requirements has been an issue of national concern since at least the mid 1990s (HUD 2005).

This paper is drawn from a large research project funded by the Australian Housing and Urban Research Institute (AHURI) which sought to quantify the impacts of planning regulations on the cost of housing in Australia’s three most populous states – New South Wales (NSW), Victoria (VIC) and Queensland (QLD) (Gurran et al., 2008; 2009a). While there has been much international research exploring the impact of planning on the market price of land and, by extension, housing (see for example Anthony 2003, Barker 2006, Bramley and Leishman 2005, Evans 2004, Quigley and Raphael 2004, Quigley and Rosenthal 2005), there has been far less scholarly research to quantify the direct and indirect costs to housing production that stem from planning or other government requirements. Nevertheless, while quantifying the costs associated with development was the central aim of the larger research project, the interactions and negotiations surrounding developer contributions were also explored. It is these relationships and negotiations which form the centre of this paper. In particular, this paper explores the experience and opinions of developers and state employees over issues of affordability, the growing use of a user-pays funding model, the role of the market in driving sales price and the capacity to pass these costs to purchasers.

Housing Unaffordability and the Impacts of Planning and Infrastructure Charges
Government regulations and charges associated with the development process can affect the cost of housing in many ways. Urban planning controls and requirements all have a direct impact upon housing affordability. These impacts might relate to the location and release of residential land; the configuration and design of residential development; the costs of contributing to local infrastructure through development levies and charges; the cost of obtaining development approval; and the strategic policies governing urban renewal and redevelopment. The effect of ‘developer contributions’ as a particular method of funding local infrastructure (referred to as ‘impact fees’ in the US and ‘planning gain’ in the UK) has been an area of recent research interest (for instance, see Burge et al. 2007). It is argued that the infrastructure and services represent a benefit to the house purchaser without imposing significant costs, because if the impact fee obligation is known in advance, it should reduce the purchase price of the land (Been 2005). Indeed, Mathur et al. (2004a) in their study of the effect of impact fees on the price of new
single family homes in the US found that fees are not added directly to the price of homes. Nevertheless, more recent studies have suggested that these fees could have a higher overall price effect, particularly in certain high value markets (Been 2005; Mathur, 2007).

Planning controls also impact on housing affordability in more indirect ways. Firstly, such controls contribute to the creation and protection of an attractive and well-functioning living environment, which impacts on the relative value of housing within the private market (Quigley and Raphael 2004). Secondly, the indirect costs associated with obtaining planning approval add to the development process. One example is the time taken for a proposal to be assessed. Studies in the United States and the United Kingdom suggest that difficulties and delays in obtaining planning approval affect developer behaviour and reduce the amount of development activity in an area, leading to longer term supply constraints that have implications for the price of housing (Monk and Whitehead 1999). Costs associated with lengthening approval times were also identified as an issue in Australia during the national housing strategy process in the early 1990s, and later, the Productivity Commission inquiry into first home ownership (NHS 1991, PC 2004). In addition to the costs associated with obtaining planning approval, other government taxes or charges that have an impact on the price of housing in Australia include the Federal Goods and Services Tax (GST) charge on construction costs and State government stamp duty tax on property transactions. Taken together, this range of taxes, charges, controls, regulations, requirements and processes all add to the costs of housing. While taxes and delays are extremely important in mediating housing cost, the focus of this paper is on developer contributions/infrastructure charges.

Different infrastructure funding regimes can be used to achieve different urban policy objectives (Neutze 1997). Australian governments have shifted away from the traditional model of funding urban infrastructure through a revenue stream that is generated by taxation, borrowing or, at the local government level, through rate revenue. User pays funding and development contributions represent two additional approaches. User pays models shift the costs of infrastructure or services to the end user (existing or new residents), but a source of up front capital funding is still needed. If the private sector provides this up-front funding, they will need a charging regime that enables them to recoup their investment plus profits. If the public sector provides the up front funds, the imperative to recoup investment through charging may be less — however, a source of up front revenue will still be required. A third approach is through public-private partnerships, where costs and risks are shared, but the private sector seeks the profit (associated with the revenue generated from a user pays charging regime).

The terminology used to describe the payments made to planning authorities by developers during the planning process differs between jurisdictions. The generic term ‘development contributions’ is used in this paper to describe payments made by a developer to a planning authority to contribute to shared local (or regional) infrastructure, facilities or services. Development contributions may include levies (calculated per dwelling or as a proportion of development value), or impact fees (calculated to recognise the actual impact of the proposal on particular local infrastructure or amenities). Development contributions are set as part of the planning process and their payment becomes a condition of final planning approval. The payment itself may be a monetary amount, land, buildings, or works in kind. Development contributions were first introduced in Australia by developers eager to roll out the shared infrastructure needed to support the massive housing construction boom following the Second World War (Nuetze 1995). Parameters for planning authorities to levy contributions from developers as a condition of planning approval have since become incorporated within State and Territorial planning legislation, with approaches differing significantly across jurisdictions (Gurran 2007). Compulsory development contributions are determined and collected in different ways in Australia, with one result being that the impact of these contributions on the costs of housing production and house prices is likely to vary significantly. Thus, it is likely that the actual costs of planning will differ from place to place, due to the administrative and legislative differences that characterise planning requirements and processes across jurisdictions.

In relation to Australia it has been argued that a combination of direct and indirect costs associated with the planning process contributes significantly to the cost of purchasing a new home. Both sectors
of the Australian housing industry – land developers and house builders – have expressed considerable concern about the impact of planning regulation on the cost of residential development in recent years. Following a series of reports released since 2003, four main industry concerns regarding the impact of planning on the cost of development/affordability have emerged:

1) Perceived restrictions on the release of new Greenfield land, particularly in metropolitan areas, and consequent inflationary pressures on land prices;
2) The related issue of delays and uncertainty in processing applications for rezoning or subdivision, even if these applications are ultimately approved;
3) The increasing complexity of planning requirements, the costs associated with demonstrating compliance (eg. consultant reports), and increased costs associated with meeting new environmental requirements governing site preparation and remediation, building design and materials; and,
4) High infrastructure contribution requirements in certain jurisdictions (particularly NSW and Queensland), and the rapid escalation of these charges. (see Gurran et al., 2009a; b)

For example, the Residential Development Council argues that planning related costs have increased overall by around 300 per cent over five years (RDC 2007, p.1). Estimates of increased costs within particular jurisdictions include 600 per cent in Redlands (Queensland), over 300 per cent for Perth, Adelaide and the Gold Coast, 200 per cent in North West Sydney and Canberra and 150 per cent in Melbourne over five years (RDC 2006). Further, the Housing Industry of Australia estimates such costs at between 25 and 35 per cent of the price of new houses, averaging $67,000 per house depending on jurisdiction (HIA 2003). Other industry reports claim costs have reached about $139,000 per house in certain areas such as the growth centres of Sydney’s North and South West (UDIA 2007).

This paper focuses primarily on point 4); however, all these claims are intertwined and should not be viewed in isolation. The UDIA estimates that infrastructure charges frequently increase in the order of between $5,000 and $40,000 per lot in the time taken to receive development approval, which, when compounded with the holding costs associated with delays, might amount to around $100,000 per lot (UDIA 2007, p.18). Despite the theoretical potential to pass charges back to the land seller in a lower sale price, the industry has found this to be unworkable when requirements are not known in advance: “the lack of transparency and the rapid increases in such charges have not allowed these charges to be adequately considered at the time of conducting feasibility studies and purchasing land, leaving little option but to raise house and land prices” (UDIA 2007, p.18).

**State Planning Frameworks**

Many states (including NSW, Victoria, and Queensland) define the provisions for specifying development contribution requirements in their local plans. These are called Priority Infrastructure Plans (PIPs) in Queensland, and ‘S94 Contributions Plans’ in NSW. There are usually provisions to appeal the amount of contribution required by the planning authority. In most jurisdictions, there are provisions to vary contribution requirements in certain circumstances, often for development that is in the public interest (such as a school or non-profit community centre). In recent years, several states have embarked on broader planning reform processes intended to simplify planning requirements in the name of affordability (Milligan et al., 2009). This section provides a brief overview of the legislation directing developer contributions in NSW, VIC and QLD.

**New South Wales**

Contributions for local facilities and services have been incorporated in local development control processes in NSW since the late 1940s. The passage of the state *Environmental Planning and Assessment Act* (EP&A Act) in 1979 included provisions for development contributions. These provisions were reviewed in the late 1980s under the ‘Simpson Inquiry’. The Simpson Inquiry was generally supportive of levying infrastructure contributions but recommended that council prepare ‘development contributions plans’ to make the process more transparent. The *EP&A Act* was amended to regulate contributions under what became known as “section 94 Contributions Plans”.

The framework for developer contributions under section 94 was explicitly justified on the basis that it is economically efficient for charges to be levied on those people responsible for the development in
question so that infrastructure costs are taken into consideration when decisions are made (Barnes and Dollery, 1996). It was seen as a way of increasing local government income to meet the additional costs associated with new urban growth, without increasing the rates of existing residents. Underpinning the rationale for section 94 contributions is an argument that existing communities should not bear the financial burden of development – through the need to provide infrastructure – through increased rates (Barnes and Dollery 1996). Alternatively, funds for infrastructure in NSW may be determined through voluntary ‘planning agreements’, between planning authorities and a developer. A council may choose to exclude the application of s94 developer contributions under a planning agreement.

The Minister for Planning has the power to levy infrastructure charges in identified contribution areas, such as the Sydney North West and South West Growth Centres as a contribution towards the funding of regional infrastructure. Following a series of changes, current levies are around $23,000 per lot in the Growth Centres (on top of local section 94 requirements), calculated to enable cost recovery of 75 per cent of regional infrastructure items including railway lines and bus services, as well as land for police stations, hospitals, and schools. In November 2007 the State Government foreshadowed a ‘Rezoning Infrastructure Contribution’ (also known as a ‘staged State contribution’) to be paid either at the time of rezoning or at the time of sale. The approach recognised that contributions justified by uplift in land value must be levied at the time the uplift is realised, if the contribution is to be passed back to owner of the land. However, this approach has been abandoned in the final package of reforms to developer contributions in NSW, due to “the existing market conditions” (NSWDOP 2008, p. 2). Recent legislation adopted in NSW limits the amount of local development contributions to $20,000 per lot.

**Victoria**

Prior to the 1990s, developer contributions were levied by local authorities in an ad hoc fashion by attaching conditions requiring contributions to planning permits. In 1995 the *Planning and Environment Act 1987 (P&E Act)* was amended ‘to make development contributions plans the sole means…for obtaining development contributions in Victoria’, however the new system proved to be ‘complex, unclear and impractical’ (VCEC, 2005, p. 403). Accordingly, a review of the system was carried out in 1999 and the recommended reforms implemented through gazettal of the *Planning and Environment (Development Contributions) Act* in December 2004 (VCEC, 2005).

The current system for the levying of developer contributions comprises three distinct parts, the use of development contributions plans and consent conditions and the negotiation of voluntary agreements under the *P&E Act*, as well as the requirement for contributions to open space under the *Subdivision Act 1988*. Contributions may be provided through the planning scheme amendment process, through a planning permit process, or through a building permit process (DSE 2007, p.4). The Act distinguishes between “community infrastructure” and “development infrastructure”. Development infrastructure includes the acquisition of land for roads, public transport corridors, public open space, public transport infrastructure, including “fixed rail infrastructure. Railway stations, bus stops and tram stops”, improvements to open space, drainage works, and “buildings and works for or associated with the construction of maternal and child health centres, child care centres, kindergartens, or any centre which provides these facilities in combination” (DSE 2007, p.17). “Community infrastructure” includes construction for all other community or social buildings and facilities.

Levies for development infrastructure projects are collected through conditions on planning permits. There is no maximum levy for development infrastructure in the *P&E Act*. Community infrastructure contributions are collected before building permits are issued. The maximum levy is “$450 for each dwelling to be constructed, and 0.25 cents in the dollar of the cost of the building work in any other case” (DSE 2007, p.18). Local councils may prepare a development contributions plan under the *P&E Act* (ss46H-46QC). If made, DCPs form part of the local council planning scheme and identify infrastructure to be provided under the plan, and so require ministerial endorsement as an amendment to the planning scheme. They are implemented through an overlay zone shown in the planning maps, and do not have to apply to the whole of a municipality. DCPs may provide for new infrastructure, or
an upgrade, extension or total replacement of an existing item of infrastructure. DCPs are implemented through conditions attached to development approvals.

**Queensland**

The *Integrated Planning Act 1997 (IP Act)* provides for Infrastructure Charges Plans (ICPs) to levy contributions for “development infrastructure” including urban water supply, drainage, water quality, transport infrastructure; and infrastructure for local community purposes such as public recreation predominantly serving a local area (DIP 2008). The plans are intended to identify “a network of development infrastructure [and] the desired standard of service for the network” (Walton 2001, p.6). Changes to the *IP Act* in 2004 mean that councils must now prepare Priority Infrastructure Plans (PIPs) their local planning schemes of they intend to define their own infrastructure charges (s2.1.3(1)(d) *IPAct 1997*, as amended). Through a PIP councils identify where growth is expected to occur; the nature and scale of this growth; and the plans and desired service standards for the trunk (bulk) infrastructure necessary to service the growth.

The next step is to prepare an Infrastructure Charges Schedule (ICS) (previously an Infrastructure Charges Plan), under which councils may specify charges for water management (e.g. water supply, sewerage and drainage); transport infrastructure (e.g. roads, traffic control devices and cycle ways); and local community purposes (e.g. public recreation land and land for community purposes).

Should a local council fail to, or decide not to, complete a PIP by June 2008, a standard infrastructure charges schedule developed by the state government will apply. Local councils may elect to adopt the standard schedule prior to this date.

Despite different legislative frameworks, the capacity to collect contributions is challenged in each state by developers claiming these charges increase costs and drive down affordability. Before exploring these opinions in more detail, the following section briefly explores the methods employed in this study.

**Methodology**

The larger research from which this paper used a multi-method approach to explore both cost data on individual developments and more qualitative information regarding the development process. Overall, case studies were used to examine development processes and outcomes across three State jurisdictions (NSW, Queensland and Victoria, which have been a particular focus of concern over their development contribution regimes). In total 23 case study developments were identified across the three states (9 in NSW, 5 in VIC and 9 in QLD). The developments ranged in size from small, inner city renewal developments to large Greenfield fringe developments. Developer participants were asked to complete a standard fee schedule outlining the common/required fees, charges and building regulations in each state, referring to their specific case study projects (see Gurran et al., 2008). A summary of indicative fees and charges for Greenfield developments in Sydney, Melbourne and Brisbane is provided in table 1. While it is obvious that level of fees and charges differs considerably across state, it is vital to recognise that many of the developers were either unable or unwilling to provide detailed costs data.

**Qualitative**

Interviews with developers were conducted to provide an insight into their approaches to the planning process, using the 23 case study developments as a specific point of reference. In addition to validating cost data provided, the interviews also explored the extent to which fees and charges are negotiable or flexible and the strategies developers use to influence the level of fees charged to their development. It is recognised that with such a limited number of interviews it is difficult to extrapolate findings to the industry as a whole; however, this research provides an insight into the actions and process of developers when negotiating infrastructure levies and development charges with council. The research team recognises the difficulties in interviewing development actors over issues of planning systems and infrastructure fees and levies, given the likelihood that interviewees will present bias views seeking to advance their own agenda. Thus, in an effort to balance these potential biases, interviews

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were also conducted with senior council officers from 12 local government areas and members of state government departments responsible for setting or collecting developer contributions.

Table 1: Indicative fees and charges Greenfield developments, Brisbane, Melbourne, Sydney, 2008 (per lot) (Gurran et al., 2009b).

<table>
<thead>
<tr>
<th>Charges</th>
<th>Brisbane</th>
<th>Melbourne</th>
<th>Sydney (NW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning application fees</td>
<td>$400</td>
<td>$250</td>
<td>$10,000</td>
</tr>
<tr>
<td></td>
<td>4%</td>
<td>0.2%</td>
<td></td>
</tr>
<tr>
<td>Local development contributions</td>
<td>$9,000</td>
<td>$7,000</td>
<td>$45,000</td>
</tr>
<tr>
<td></td>
<td>86%</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>State/regional contributions</td>
<td>n/a</td>
<td>$20,000</td>
<td>$45,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>29%</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>n/a</td>
<td>$32,000</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td>47%</td>
<td></td>
</tr>
<tr>
<td>Subdivision/development certificates</td>
<td>$1,050</td>
<td>$450</td>
<td>$400</td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>1%</td>
<td></td>
</tr>
<tr>
<td>Referral fees</td>
<td>n/a</td>
<td>$5,000</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7%</td>
<td></td>
</tr>
<tr>
<td>Licenses (e.g., utilities, special permits)</td>
<td>n/a</td>
<td>$3,500</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>Other compulsory charges</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees for review/appeal</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$11,500</td>
<td>$68,200</td>
<td>$107,200</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

State Charges and Levies: reflections on affordability, profitability and feasibility

This section explores the reflections of developers (and senior council staff) on the impact and applicability of infrastructure charges and levies. The purpose of this section is to provide an overarching picture of the opinions and experiences of development actors, rather than provide a detailed reflection of the legislative frameworks of each State. The discussion is broken down into four broad areas: defining affordability; the user pays system; the capacity to pass on charges to purchasers; and, the impact of size of a developer or development on mediating the impacts of fees and charges on the profitability of development.

Affordability

The affordable (or more accurately, unaffordable) nature of many of Australia’s cities is high on the political agenda (Gurran et al., 2008). Generally, affordability is measured as the capacity of purchasers to make repayments within incomes thresholds (i.e. paying more than 30% of household on house repayment is considered to be unaffordable) – although simple measures such as this have been critiqued (Milligan et al., 2009). Further, the discourse of affordability has often been mobilised by the development industry as a tool arguing against policy reforms and charges which impact upon their capacity to develop at particular locations and at particular times. It should be recognised that these industry conceptions and mobilisation of the affordability discourse can potentially have significant impacts on shaping public debate and policy on the issue (Gurran et al., 2008). Following broader industry views, individual developers involved in this project also identified affordability as a major issue confronting their developments:

*In the last five years the affordability scale has moved so high that the average Joe Blow just can’t get into the market.* (Large Developer – NSW)

However, contrary to concerns over the capacity of households to pay mortgages, development conceptions of affordability centre (unsurprisingly) on the capacity to sell dwellings and make a profit. Under this understanding, something is affordable if it sells – a rather simplistic conception which pays little heed to the characteristics or long-term position of the purchaser:

*We don’t sell it if it’s not affordable. We’re here to make a profit. We only make a profit if we sell.* (Large Developer – NSW)
A developer’s not going to go in there and try and make it work when at the end the customer can’t afford to pay for it. (Large Developer – NSW)

Echoing the series of industry publications cited above, the majority of developers engaged in this research identified increased state and local government fees and infrastructure contributions as one of the major factors driving falling housing affordability across all states:

*They’re trying to push the infrastructure charges up, which will put the end price up, which then affects the affordability of a product. (Large Developer – QLD)*

Unsurprisingly, local councils and state government departments challenge the view that infrastructure charges and fees increase the sales price:

*We did some work a few years back on what the costs of infrastructure charges were on development and we came up with about six per cent. (Council – QLD)*

*We’ve had countless studies to the contrary, that it’s a really small proportion of the total land and house package, that’s made up of the upfront charges. It’s probably a bit of political play to drive their own cause. (State Agency – QLD)*

These perspectives on the impact of charges on house prices sit within a broader debate over the implementation of a ‘user-pays’ financial management system increasingly being implemented across the Australian public sector (Neutze 1997; PC 2004).

**User Pays**

Development contributions in Australia represent a ‘user pays’ model where those using the infrastructure or services are required to pay. In the case of residential development, developers/purchasers are required to pay for (or at least contribute towards) those new infrastructure generated by the development. Under this model, developers claim that councils in all States seek to achieve full cost recovery on infrastructure:

*Councils try and make sure they don’t lose money. So they’re trying to charge the appropriate amount of money. (Large Developer – QLD)*

*[Council] are pretty forthright in the fact that they need all the money they can get and all the help they can get. They don’t apologise for that. (Large Developer – VIC)*

Nevertheless, it is recognised by developers that councils are generally in a weak position to fund infrastructure and services in their area, given reduced capacity to charge rates on residents (e.g. rate capping in NSW) or through reduced direct funding from higher tiers of government. A position equally recognised by some state government agencies:

*The states and the federal government have gradually weaned their way out of delivering local services ... a lot of the services that local government end up providing and have got to be covered. (Medium Developer – VIC)*

*At the end of the day, you need to understand that there’s a severe limitation to the funding sources available to local governments. (State Agency – QLD)*

In this context, developers (according to them) have been positioned as the ‘cash cow’ of infrastructure provision, increasingly expected to pay contributions to services and infrastructure located beyond the immediate site of development. This is not to say that all developers challenge the need for them to make contributions, rather the issue is the level and applicability of these contributions:
The economic rationalist in me says that land should meet the marginal cost of the infrastructure. That’s fine if you see everyone under the same rules. (Large Developer – NSW)

Further to overall concern of the adoption of a user pays system, one of the main concerns raised by developers is the ad hoc, spurious or secretive method for establishing the level of contributions for each development. Despite claims from councils and state governments that the level of contributions are easily accessible through planning documents and are transparent in their calculations developers argue that in many cases they are unable to include accurate estimates into their development feasibility models:

Development contributions have been dealt with in a very ad-hoc manner. There just doesn’t seem to be a consistent standard applied. For X amount of people you need X amount of open space or Y amount of … whatever it might be. So you get varying levels of service and varying levels of cost. They just seem to be ramping up where the expectations from various sections within councils are going through the roof. (Medium Developer – VIC)

And one developer in the catchment area paid a million bucks, another developer didn’t pay because it wasn’t enforced or a different local authority. (Industry – QLD)

The fixity of the levels of contributions is also a major concern raised by developers. Where contributions and fees are known (issues of applicability and calculation aside) developers are able to include these costs in their feasibility model (i.e. identify them as a cost which needs to be paid); however, when the levels of contributions shift or where new fees and charges are implemented, developers are especially vocal in their opposition. Developers argue that these new fees and charges change the financial viability of their project, given that they were not taken into consideration at the outset:

The worst thing … is shifting goalposts. You bought it with an assumption of headworks at X and that turns to X plus 50 or X plus 100. (Large Developer – QLD)

The uncertainty lies in that you start looking at a project in one year but when you go through all of the planning processes you don’t actually pay the infrastructure charges until many years down the track and from the time that you set a budget until the time that you actually pay it the costs do escalate. The uncertainty is how much that escalation is, you never know from one year to another what the cost is going to be. (Small Developer – QLD)

Shifting fees and contributions are a particular problem for small developers who are often operating at a smaller margin than larger developers. In contrast, while large developers may have more lots, and therefore, higher contributions, they are potentially in a position to negotiate these fees and spread the new costs over more product and over a longer development/sales period (see below).

In contrast, a user pays system is positioned by state and local councils as a fair and equitable funding arrangement which has the capacity to provide services and infrastructure to new residents. Further, councils argue that a user pays system removes the burden for existing residents to pay for services generated by new development through rates (this is the overt objective of section 94 contributions in NSW):

The question is, which funding source are you going to get it from? What we’re saying is that user pays is a fair system. You’re going to use that and if you can define what you’re going to use as opposed to someone else, it’s probably fair to say pay for what you intend to use. (State Agency – QLD)

Importantly, developers (following industry comment) offer an alternative discursive spin on this position, by arguing that the user pays system places new residents at a disadvantage given that they need to fund new infrastructure (which had previously been provided through consolidated revenue/rates), which, in turn, artificially increase sales price. Here developers argue that new
residents are cross-subsidising existing residents who will benefit from the new infrastructure and services, while not having to contribute to their cost:

*Reality is that there won’t just be people in that release who will have the benefit from [the infrastructure]. It will be a much bigger catchment but they’re running the line user pays – you’re creating the need. To me that’s wrong, it’s unfair.* (Medium Developer – NSW)

*[New residents] are being hit three times for a cost that should be a community benefit.* (Medium Developer – NSW)

This argument mirrors claims of ‘intergenerational inequity’ put forward by industry advocates (HIA. 2003; RDC, 2006; 2007; UDIA, 2007). Ideally, many developers believe that the cost of provisions should be distributed across the life of the infrastructure:

*User pays is fine, but it might be the user over the period of a hundred years pays for it. Not the initial up-front user, ‘cause I think you’re just expanding the price abnormally.* (Large Developer – QLD)

*The people with the second-hand properties are going to get the benefit from it.* (Small Developer – NSW)

Further, developers argue that these fees are often used for services located away from the development site itself, where the establishment of ‘nexus’ is difficult or at a significant delay in delivery:

*We make a number of district contributions which are probably a bit beyond our impact.* (Large Developer – NSW)

*These contributions might be paid but you may have 15 years –especially for transport – before meaningful transport is delivered.* (Large Developer – VIC)

Despite claims by many developers that infrastructure charges/contributions add significantly to the cost of land/dwellings, the majority of councils suggested that their levels of fees and contributions were extremely low and only covered a small proportion of the cost on providing these infrastructure (hence a preference for developers to provide the infrastructure themselves – see below). In these instances, council argue that, in fact, the broader community is contributing to the costs through rates. This low level of historical contributions has also been used by council to justify recent increases in council charges:

*They were incredibly cheap. We brought them up to 50 per cent. That’s a massive increase. Well, it’s a massive increase ’cause no one had touched them for like ten years. So they’ve been getting a bloody windfall for ten years.* (Council – QLD)

*So what we’ve had in Queensland, until recently, a very high subsidy of infrastructure to new development, by the general rate-payers, and to some extent, through grants provided by the State. And that hasn’t been readily apparent, no-one’s really seen those costs until recently, where we’ve started to do the proper infrastructure planning.* (Council – QLD)

Interestingly, a number of developers recognise that they (as an industry) are partly responsible for the rapid increase in fees and charges now levied by the various levels of government. In particular, developers highlight their failure to react or challenge the implementation of many of these charges in period of ‘boom’ in the early 2000s. In this period, the increased fees could have easily been incorporated in the sale of land/dwellings given significant levels of demand and high prices:

*So we’ve got a lot to blame ourselves because [we were] happy to accept it, roll with the punches because times were good. All of a sudden the market shits itself we’re all going ‘why*
It is recognised that, despite the curtailing of levies in some states (see NSW), these fees and charges are now a standard part of the process and have a more significant impact in ‘bust’ periods when both demand and price have decreased. Here, the notion of the ‘housing market’ as an independent price setting mechanism is emphasised.

Philosophically, developers position the need to fund local and state infrastructure through up-front contributions as incompatible with new government initiatives aimed at increasing housing affordability (RDC, 2006; 2007). On the surface, this does not appear to be such an outlandish position; however, given the role of an arbitrary market mechanism in setting the sales price of dwellings (discussed below), this position is less convincing:

\[ \text{Government’s position is} \] you’re going to get a benefit from it therefore you should pay something towards it. I don’t … have an issue with that but where I do get quite amused is when they then get on their horse about affordability …the concepts are mutually exclusive. (Large Developer – QLD)

Nevertheless, following the discussion at the beginning of this paper, the objective of all developers is to pass as much of the cost of construction forward to the first home purchaser, plus maximum profit (or to pass obligatory costs back the initial land owner through reduced purchase price).

‘Passing the Buck’
Ideologically, many of the developers who participated in this study echoed the position of industry advocates (HIA. 2003; RDC, 2006; 2007; UDIA, 2007), by suggesting that all costs of development (including fees and charges) were passed directly to the first home purchaser. Here, the argument is that the developers actually pay nothing themselves:

All we do is gather up all the costs and put a margin on it and then pass it on. It still staggers me that politicians stand up and say the developers should pay. We actually don’t pay for anything. The end purchaser will ultimately pay for it. (Large Developer – QLD)

Returning to the argument in the preceding section, this passing of costs to purchasers effectively reduces affordability:

So I do think the developer should pay, and the only downside to us paying for every single thing, is that the price of land goes up because we’re a commercial corporation, we’re in a capitalist society and we’re entitled to make money. Which is where all the councils get the shits because they think we shouldn’t make so much money. (Large Developer – QLD)

While this position is perhaps what we would expect, the capacity of developers to pass infrastructure charges and fees to the first purchasers is far from simple. Overwhelmingly developers identified difficulties in passing entire costs of (including fees and charges) forward to purchasers. Rather, the capacity to pass fees and charges to purchasers is set by a (somewhat arbitrary) housing market which sets sales prices independent (to a large degree) from the development feasibility model established by the developer. In other words, the price at which dwellings sells are almost never that expected by developers at the beginning of a project:

That depends on the market at the time of the sale. (Large Developer – NSW)

There’s swings and roundabouts in how much profit we make, because if the market’s not selling very well your prices are down and you might be a lot closer to your construction costs. If the market’s booming along, you’ll easily be able to accelerate your prices because the market will be scrambling (Large Developer – QLD)
Indeed, given the role of the market in setting the price, the introduction of new fees and charges in the life of a development are a major concern as these new fees come (at least in the first instance) directly from the developers margin, rather than being added to the sales price:

... they don’t necessarily get added to the purchase price of the dwelling. The purchase price of the residential product is a product of the market and over time it does eventually get included in the price. Now water tanks were introduced on the 1st January last year, now you can bet that the cost of dwellings did not jump by $5,000 straight away. A lot of developers would have absorbed that cost and later on when the market picks up the price will increase. (Small Developer – QLD)

Developers identify themselves as ‘price takers’ rather than ‘price setters’. This is especially the case given that new stock accounts for a relatively small proportion of sales in any year:

Over 90 per cent of sales in Sydney are existing house products. New product has to meet the market. Developers have been held up as being price setters. They’re not; they’re price takers. The market sets the price. (Medium Developer – NSW)

If they came out with another state levy state-wide for another 20-grand per lot, it’s not as if I could just ring up the agent and go, those blocks of 350, bump them up to 370, I’ve just been slugged for 20-grand. If they’re not selling at 350 so they’re not going to sell for 370. (Medium Developer – NSW)

Importantly, the recognition of developers as ‘price takers’ rather than ‘price setters’ unsettles conceptions of affordability and debates centred on in the impact of fees and charges outlined above. Here it should be recognised that if the sales price of a dwelling is not set by the developers, it is incongruous to state that fees and charges are simply added to the sales price of a lot/dwelling, thereby decreasing affordability. Arguments could perhaps be made that these fees work at a metropolitan/macro scale by artificially increasing the whole housing market, but again, the relatively small proportion of new dwellings coming onto the market also make this a rather ambitious claim.

It should be recognised that the ‘price taker’ position of developers is a double-edge sword, with developers willing and able to increase sales price in line with general market increases in times of ‘boom’. Indeed, a number of developers interviewed as part of this research suggested that parts of the market were currently experiencing a mini-boom (despite an overall down-turn). In these sectors of the market – ironically that segment identified as affordable by the developer below – prices can be increased beyond expected profit and beyond any fees and charges originating from councils or state governments:

In Victoria anyway, it’s being snapped up fairly quickly at the affordable bottom end of the market. So all that does is, from the developer’s point of view, maybe allow them to creep the prices up a little bit. (Medium Developer – VIC)

What becomes apparent throughout this research is a time lag in the impact of fees and charges. For example, while the cost of water tanks discussed above does not immediately get passed onto purchasers, this becomes a cost added into the feasibility of new projects, a cost which will need to be covered by the market price of the time. It is suggested by some developers that, in times of market down-turn, they are likely to hold off on development until the market picks up again and is able to cover the new charge and the required developer profit:

The developer is just going to say, piss off, not until it meets my margin. (Medium Developer – NSW)

Importantly, the capacity to ‘hold off’ is dependant on, to a large extent, the size of the developer in question.
‘Size does matter’

While it becomes clear that infrastructure levies and other fees and charges are not simply added to the sales price, this is not to say that they do not keep sales price high and limit the capacity of developers to respond to the market by reducing price. In other words, developers keep sales prices high (despite the fact that there may be no demand at this price point) in an effort to maintain their required margin:

If I had no development contributions I’d discount it by whatever I needed to move them quickly because if it was 30-grand less per lot, I’d take that off the price to clear the bloody things. (Medium Developer – NSW)

In these instances, if contributions and charges were decreased, developers would be more willing to reduce sales price – ensuring a sale – while maintaining their required profit. One of the most significant differences between large and small developers is the capacity to offer discounts or rebates. Large developers in each state identified the tendency to offer rebates on purchases in period of market down-turn, and a few linked these rebates directly to the Commonwealth First Home Owners Grant:

If you have a look at the packages offered by builders at the moment, this is a once in a lifetime situation … [some have] doubled the government grant, you’ve got other developers … saying okay you’ve got your $26,000 grant and we will put $20,000 worth of upgrades. (Medium Developer – VIC)

These discounts effectively decreased the developer’s margin on development – something which was possible given the strong financial position of many large developers:

So you start factoring in the circumstances of the company, the financial standing of that company, as to how motivated they are to continue offering rebates … So it’s about the particular circumstances of the developer. (Large Developer – QLD)

Given the financial strength of many of these companies, in times of extreme market down-turn, large developers also have the option of holding stock for extended periods. Here developers wait until the market return increase and project margin can be ensured:

If the market conditions are such that we can’t develop a block to bring it on to sell it to make a profit, we’re more likely to just shut down and sit on it. But that, again, it comes down to the individual circumstances are how long will developers sit on it. So we know there’s some smaller guys who’ve been sitting on stuff and can’t handle it much longer. But the bigger guys will sit on it until the cows come home. (Large Developer – QLD)

In contrast, small developers are much more sensitive to increases in contributions. Due to the relatively small number of dwellings, small developers are both working to a lower margin than larger (especially Greenfield) developers and more sensitive to decreases in market price because of their reduced capacity to hold onto completed stock for extended periods (due to interest on debt finance used to fund many of the projects):

You try and add it on to the price. We are not making a profit, because they can’t put it on to the price. (Small Developer – NSW)

This is a particular issue for small developers, who argue they can facilitate development more cheaply than larger developers (contrary to arguments of economies of scale):

[S]mall developer] do it much cheaper than what the big boys. They keep their overheads down on minimum, they work 20 hours a day and they don’t get paid for 20 hours a day. (Small Developer – NSW)

Alternatively, larger developers are in a less precarious position. Further to the size of development mediating the capacity to reduce sales price or hold stock undeveloped for extended periods, large
developers are also in an advantageous position in terms of negotiating contributions. Large developers, or developers of large projects, are more likely to have access to council and state government agencies. In many cases, these large projects offer a number of advantages in terms of contributions. In particular, they represent an opportunity to prepare large precinct plans, with associated planning agreements for infrastructure provision on the development site. The process for preparing these plans facilitates interaction between developers, council and various state government agencies to agree on the services and infrastructure provided:

We entered into a planning agreement. We won’t be charged (local contributions) because we have got an offset agreement with council. We will deliver the infrastructure as per the planning agreement and in turn we don’t pay any planning contributions. (Large Developer – NSW)

Large developers – often through the preparation of precinct plans – have a greater capacity to provide the infrastructure themselves as works in kind, in lieu of monetary contributions.

The direct provision of infrastructure (in kind works) can benefit large developers. First, the cost of contributions is effectively fixed (after the signing of precinct plans/planning agreements). In most cases new infrastructure charges implemented after sign-off do not affect the development. Second, the provision of infrastructure on-site is seen to offer large developers a distinct marketing advantage – they can illustrate to purchasers the amenities and services that are in place, rather than potentially waiting for council (or other state agencies) to provide them at a future date. Finally, the provision of infrastructure is seen as an advantage by large developers as it ensures that their contribution is spent at the site of development rather that distributed across the local government area:

So we control when we want things to happen. I would also say we spend considerably more on the things than the amounts put in the schedules. But saying that we also gain marketing advantage …we could also say then that we can sell land for a bit higher than other areas, if we make it more appealing and give it more amenity. (Large Developer – VIC)

I prefer that model of us doing the work because it gives us that level of control. One of my concerns would be just handing over a cheque to council or whatever so that it can be invested or held in trust or something. (Large Developer – VIC)

[We were] lucky to cut a deal with the Department of Planning … that way we could make sure that it was spent on the site. (Large Developer – NSW)

We will try and build whatever we can on site. You want to offer as much to your community as you can and sometimes you’ll pay the money and still deliver this sort of stuff. From a marketing perspective, from a brand building perspective to make sure your community has all the facilities that you think they deserve. It’s much more beneficial for us to do that. (Medium Developer – VIC)

Together, these factors mean that large developers are better positioned when it comes to infrastructure contributions, particularly those imposed by local authorities. While many large developers argue that their (negotiated) contributions actually exceed the local standard, the certainty of the level of contribution and the capacity to control delivery are seen to outweigh potential negatives.

This is not to say that the capacity to provide large-scale infrastructure themselves does not put some large developers at a disadvantage. Many large developers identified an ‘initiator penalty’. In cases where large-scale infrastructure is needed to facilitate development (e.g. the provision of large trunk sewage systems or significant road works), some developers choose to provide these ‘out of order’ so they can proceed with development. When large developers provide contributions beyond the mandatory standard, to enable development to proceed, many jurisdictions enable them to later claim ‘credits’ against future contributions (although debate remains as to whether these credits equate to the true cost of provision, including interest on money spent). It also means that subsequent developments
are at a potential advantage as they are required to provide neither the infrastructure (although they do need to make contributions) nor wait until the infrastructure are in place:

Providing a cable … that’s going to be there for the next hundred years and the developer who puts it in has to pay for that cable on day one. That’s a bit steep. (Large Developer – NSW)

If we put in a new substation we’ll be using 10% of it, therefore it’s a shared asset. You guys have got to stump-up something to get this going as well …they wanted us to pay 50% of it. We’re not in the business of subsidising [other] developers. (Medium Developer – NSW)

It should be recognised that many councils involved in this project equally championed the in kind infrastructure provision model. From the perspective of local councils, this model (implemented through precinct plans and or planning agreements) represented a more efficient outcome. Many council representatives suggested that developers were in a position to provide the infrastructure at a lower cost. Councils also preferred this model as it shields them from cost blow outs – where the cost of providing the infrastructure exceeded the funds allocated and collected for the project. This funding shortfall was identified by local government representatives as a frequent occurrence:

It is definitely better to get works in kind because the costs always do blow out. But in theory, it would be great to get all the development contributions and then schedule when the works would occur and council to be in control of that schedule. But we are not in control of the developers’ staging schedules. (Council – VIC)

Again, it should be recognised that from a council perspective, the process of bringing forward out of order development can also lead to significant costs, where agreements do not require full funding from private developers:

They pay – the Queensland approach is to pay a bring-forward. Now, the bring-forward is typically a component. In this case it was only 20 per cent. That means council has effectively agreed to provide the rest without actually budgeting for it. (Council – QLD)

Unsurprisingly, small (and even medium) developers have limited capacity to negotiate with council or state agencies regarding the level, type or timing of contributions offered in kind. Rather, small and medium developers have little choice but to pay standard contributions to council or state agencies:

We haven’t had any projects that involve state government levies. (Medium Developer – NSW)

Conclusion
This paper provides a number of insights to the opinions and experiences of developers in relation to increasing infrastructure charges and developer contributions in NSW, Victoria and Queensland. Perhaps the most important finding is that the industry position, which unequivocally equates increased developer contributions with increasing sales prices and decreasing affordability, is challenged. The majority of developers engaged in this research recognised that the final sales price of their product was largely driven by the market. This market mechanism means that developer contributions, including new charges, cannot be simply passed on to home purchasers. Developers recognised that they are only able pass the proportion of fees or charges that the market could bear. This was identified as especially the case during market down-turn, where developers were required to reduce development margins to achieve sales.

Second, the paper highlighted the differences between types of developers. We argued that large developers are in a better position to deal with developer contributions through their capacity to negotiate with planning authorities regarding the type, level and timing of infrastructure provision in the context of planning agreements and precinct plans. These vehicles provided large developers a level of certainty in term of the contributions required, while also allowed them to present a more ‘complete’ development to the market, giving them a marketing advantage over other, smaller
developers. Further, large developers were identified as being more insulated from market down-turns, and therefore less dependent on high sales prices to recover development costs and achieve a margin. Large developers, through economies of scale, could offer discounts and reduce sales price in times of market bust, while still maintaining an acceptable margin. Large developers can also delay development until the market picks up. Small developers are in a position to do neither of these and are forced to pay standard (and shifting) contributions and to sell product as soon as possible to cover debt finance.

To conclude, this paper challenges industry discourse on the role of planning and development contributions in driving house price inflation and housing unaffordability. It is clear that these charges are rarely simply incorporated in sales price as a component of production cost. Rather, development contributions should be positioned as just one aspect of a larger system, in which particular planning settings and regimes influence, but do not determine house prices. They are certainly not the sole cause of housing unaffordability. Nevertheless, if the case against development contributions may have been overstated by the housing industry, a number of important concerns remain. Amongst these are the long term implications of uncertain and escalating charges for future investment in housing development in Australia, alongside a growing funding deficit for local and regional infrastructure provision.

References


Victorian Department of Sustainability and Environment (DSE) (2007). Development Contributions Guidelines, Melbourne, DSE.


Size does matter! Negotiating development levies and infrastructure charges tied to development in New South Wales, Victoria and Queensland


