

**Position Paper:
Best Practice in Value Capture**

November 2016

Prepared for Inner West Council by Judith Stubbs and Associates

Published by Inner West Council
Email: council@innerwest.nsw.gov.au
<http://www.innerwest.nsw.gov.au/>

Copyright © Inner West Council 2016

ALL RIGHTS RESERVED

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form by any means electronic, mechanical, photocopying, recording or otherwise without the prior consent of the publishers.

This document was amended on 28 March 2017.

Table of Contents

1	Purpose of Position Paper	4
1.1	Summary of Findings	4
1.1.1	What is Land Value Capture	4
1.1.2	Key Considerations in Land Value Capture	5
1.2	Council’s Obligations, Opportunities and Constraints under Relevant Legislation	5
1.3	Estimating Land Value Uplift	6
1.3.1	Relevant methods	6
1.3.2	JSA’s method of calculation	7
1.4	The Model Applied to Inner West LGA	9
2	Housing Affordability Context	10
3	Overview of Land Value Capture	11
3.1	What is Land Value Capture?	11
3.2	Key Considerations in Land Value Capture	13
3.3	Implications for Council’s Policy	14
4	Approaches to Land Value Capture	15
4.1	Overview	15
4.2	General Review of Approaches to LVC	15
4.2.1	‘Cost Recovery’ Approaches in the NSW Context	15
4.2.2	Capturing a Share of ‘Unearned Land Increment’ in the NSW Context	16
4.3	Examples of Land Value Capture in Practice in NSW and Other Jurisdictions	17
4.3.1	Overview	17
4.3.2	Examples of Cost Recovery Mechanisms	17
4.3.3	Capturing a Share of Uplift in the NSW Context	18
5	Overview of Council’s Obligations, Opportunities and Constraints under Relevant Legislation	22
6	Estimating Land Value Uplift	24
6.1	Overview	24
6.2	Methods Used in Calculations	24
6.2.1	Waverley Case Study	24
6.2.2	Parramatta City Council Case Study	24
6.2.3	Leichhardt Council Case Study	25
6.2.4	Byron Shire Council Case Study	25
6.3	The JSA Value Capture Model	26
7	Assessment of Value Uplift and Land Value Capture in Inner West LGA	30
7.1	Overview	30
7.2	Change of planning controls related to permissibility, height and FSR	30
7.2.1	Overview	30
7.2.2	Modelling (Redevelopment)	33
7.3	Marginal uplift from increased height and/or density	40
7.3.1	Overview	40
7.3.2	Modelling (Additional Saleable Floor Area)	40

- 8 Testing the Feasibility of Contribution Rates42**
- 8.1 Rationale and considerations in setting a contribution rate 42
- 8.2 Effect of levy on viability 42
 - 8.2.1 Overview of Findings..... 42
 - 8.2.2 Likely impact on development of 15% target..... 43
 - 8.2.3 Likely impact on development of 5% target..... 45
- 8.3 Conclusion 46
- Appendix A: Opportunities and Constraints of Principal Legislation and Related Policies ...47**

1 Purpose of Position Paper

This *Position Paper: Best Practice in Land Value Capture* has been developed to support the development of an evidence-based policy by Inner West Council toward the application of value capture approaches related to redevelopment in existing urban areas, or within the six major urban renewal precincts in the Sydenham to Bankstown Urban Renewal Corridor and in the Parramatta Road Transformation Corridor.

In particular, it seeks to explore the issue of land value capture with a practical focus on mechanisms that would be most applicable to the LGA in the NSW planning context.

The *Paper* first provides a definition of and framework within which to consider land value capture relevant to the NSW planning context, and outlines relevant approaches and a range of local and international examples of the way in which land value mechanisms have been implemented.

Drawing on this framework, as well as the review of relevant NSW legislation in *Appendix A*, the *Paper* then provides an overview of mechanisms most relevant in the Inner West development context. This is followed by examples of broad methods of calculation by other inner city and regional NSW Councils, and sets out JSA's preferred method of calculation with reference to best practice considerations.

Finally, this approach and method of calculation is applied to precincts or areas within Inner West LGA, with this section reproduced from the *Affordable Housing Policy Background Paper* (JSA 2016).

This *Position Paper* should be read in conjunction with Council's *Affordable Housing Policy: Background Report* (JSA 2016 c), and the former Marrickville Council's (2015) *Housing Profile*.

1.1 Summary of Findings

1.1.1 What is Land Value Capture

Land value capture is talked about in various ways by different authors in various jurisdictions.

In the NSW planning context, Taylor (2016) provides a useful working definition, noting that,

In the broadest terms, value capture in relation to urban land development involves a planning authority, such as local council in NSW, capturing for the community benefit some of the land value increase accruing to a parcel of land from planning activities of the authority which increase the development potential of the land and hence its value.¹

Walters usefully identifies two broad approaches to LVC, these being, 'approaches intended to **recover the cost of infrastructure investments** and broader approaches intended to capture some

¹ Taylor, L. 2016. 'Value Capture through Voluntary Planning Agreements Part 1, in *In Focus*, Lindsay Taylor Lawyers.

share of the unearned increment in private land values [emphasis added], with the first exemplified by s94 approaches that seek to internalise the costs or impacts of the development; and the second found in mechanisms such as voluntary planning agreements under s93F of the Act.

Taylor (2016) goes on to distinguish land value capture arising from government planning actions from taxation in the following way:

In contrast, the fundamental purpose of value capture is not internalisation or taxation but rather ‘*clawback*’, that is, to capture increased land value for the community on the basis of a legitimate claim by the planning authority to share what is commonly referred to as ‘*unearned increment*’ of land value uplift.²

1.1.2 Key Considerations in Land Value Capture

Taylor (2016) also sets out some key considerations when implementing value capture schemes, which could be considered as best practice in the development of related policy.³ These include the following:

- **Justification** – where the planning authority has or will increased the value of land through its actions, and the community is entitled to a share of the resulting uplift;
- **Entitlement** – the proper objective of which is to identifying the *unearned increment* in land value uplift resulting from any planning proposal and to decide the community’s legitimate claim to a share of it;
- **Calculation** - how the land value increase should be calculated for value capture purposes, noting that a residual land value analysis should generally apply;
- **Development feasibility** – that the implementation of value capture should not adversely impact on development feasibility by denying the developer a reasonable share of development profit;
- **Timing** - in consideration of reasonableness and equity, the value capture requirement should apply to land acquired for redevelopment after a nominated date related to the implementation of the policy.

1.2 Council’s Obligations, Opportunities and Constraints under Relevant Legislation

Appendix A sets out a review of the legislative obligations, opportunities and constraints for local government in the creation of affordable housing through the planning system, with a particular focus on land value capture mechanisms that either seek ‘cost recovery or internalisation of costs’ (principally under s94 of the Act), or through ‘capturing or sharing a reasonable proportion of

² Taylor, L. 2016. ‘Value Capture through Voluntary Planning Agreements Part 1, in *In Focus*, Lindsay Taylor Lawyers.

³ Taylor, L. 2016. ‘Value Capture through Voluntary Planning Agreements Part 2, in *In Focus*, Lindsay Taylor Lawyers.

unearned increment' of uplift created through the planning system (principally under s93F, and also through s94F).

In accordance with the review of NSW legislation and policy set out in Appendix A to this *Paper*, there are two main mechanisms through which Council can legitimately capture a reasonable proportion of uplift from planning actions, with these most likely to apply to large redevelopment sites, including those precincts within the Sydenham to Bankstown Urban Renewal Corridor and Parramatta Road Urban Transformation Area.

- Council has the **opportunity** to enter into voluntary planning agreements that include the dedication of land free of cost, the payment of a monetary contribution, or provision of any other material public benefit, or any combination of them, to be used for or applied towards a public purpose, including 'affordable housing' under s93F of the Act, noting that nexus requirements do not apply;
- As an alternative to the use of planning agreements, Council *could* levy for a contribution toward affordable housing under s94F of the Act where there is a demonstrated need for affordable housing and another requirement of the section is met, including where the development is likely to reduce availability of affordable housing, create a need for affordable housing, etc.

However, Councils is currently constrained in the use of this provision as it is not included within SEPP 70. An **opportunity** exists to advocate to State Government for inclusion within this provision, given the level of need and nexus described in the *Background Paper* (JSA 2016) and *Housing Profile* (Marrickville Council 2015). This also would involve relevant amendments to the LEP, which would need to set out areas of inclusion, the quantum and basis of calculations, etc, like those in City of Sydney and Willoughby.

- Alternately, a separate contributions plan *could* be developed and/or approved by the State Government in relation to a major redevelopment precinct under s94F of the Act, most likely within the Sydenham to Bankstown Urban Renewal Corridor or Parramatta Road Urban Transformation Area, like that developed in relation to the *Redfern Waterloo Authority Affordable Housing Contributions Plan 2006*. However, this would require legislative support like that which supported the *Redfern Waterloo Authority Affordable Housing Contributions Plan 2006* (s30 of the *Redfern-Waterloo Authority Act 2004* (see Appendix A for detail)).

1.3 Estimating Land Value Uplift

1.3.1 Relevant methods

The contributions plans made under s94F of the *Environmental Planning and Assessment Act 1979* and s30 of the *Redfern Waterloo Authority Act 2004* **do not appear to be explicit with regard to the**

rationale or calculations used as a basis for the contributions levied. Also, the levies are quite low by the standards in other inter-state and overseas jurisdictions.

Likewise, many voluntary planning agreements made under s93F of the Act are quite general with regard to contributions that may be required, and do not appear to set out a consistent method of calculation, or are unclear with regard to their rationale or other best practice considerations. Where such calculations are explicit in examples provided, JSA's method of calculation is reasonably consistent and also builds in best practice considerations including those set out by Taylor above.

1.3.2 JSA's method of calculation

The JSA value capture model estimates the likely value of a planning change to a land owner based on changes in property values as a result of the development, taking into consideration the costs of development and a normal level of profit to the developer, and assumes that value uplift is shared equally with the community and with the landowner or developer.

The JSA model also embeds best practice considerations from Taylor (2016) above, including justification or entitlement regarding the creation of an unearned land increment through planning actions, a residual land value analysis,⁴ equity and impacts upon development feasibility.

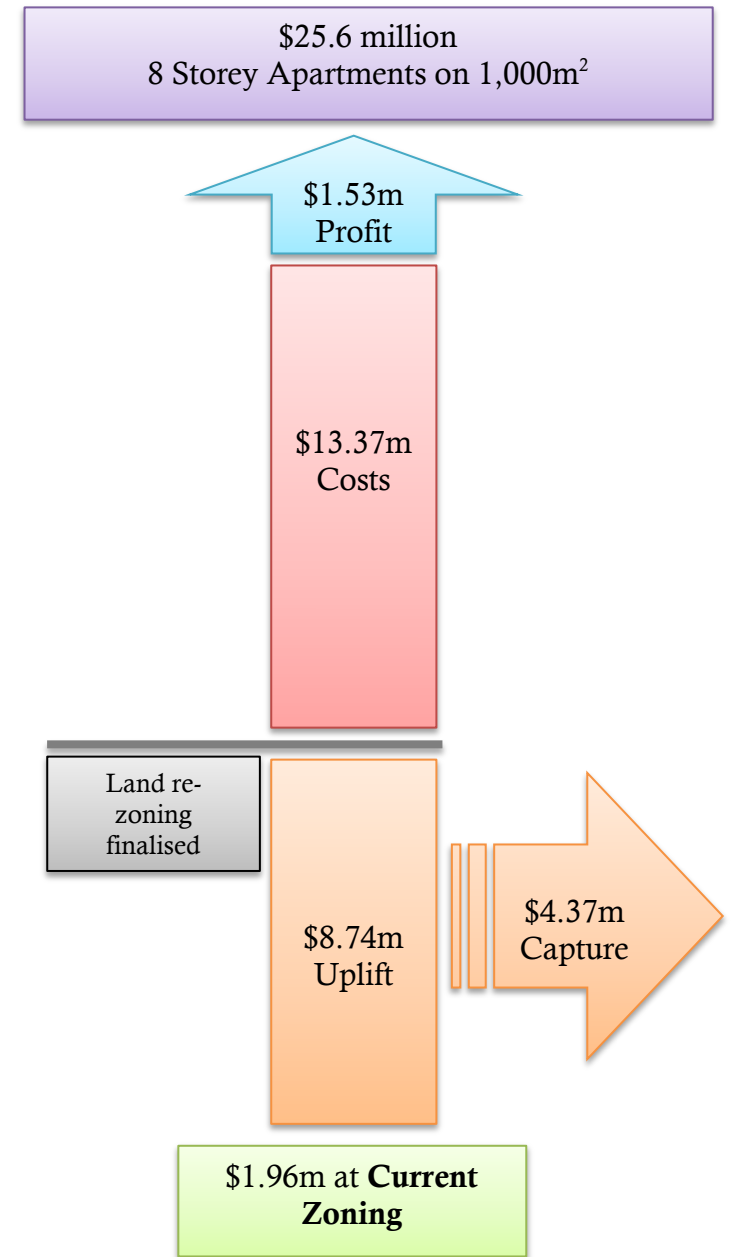
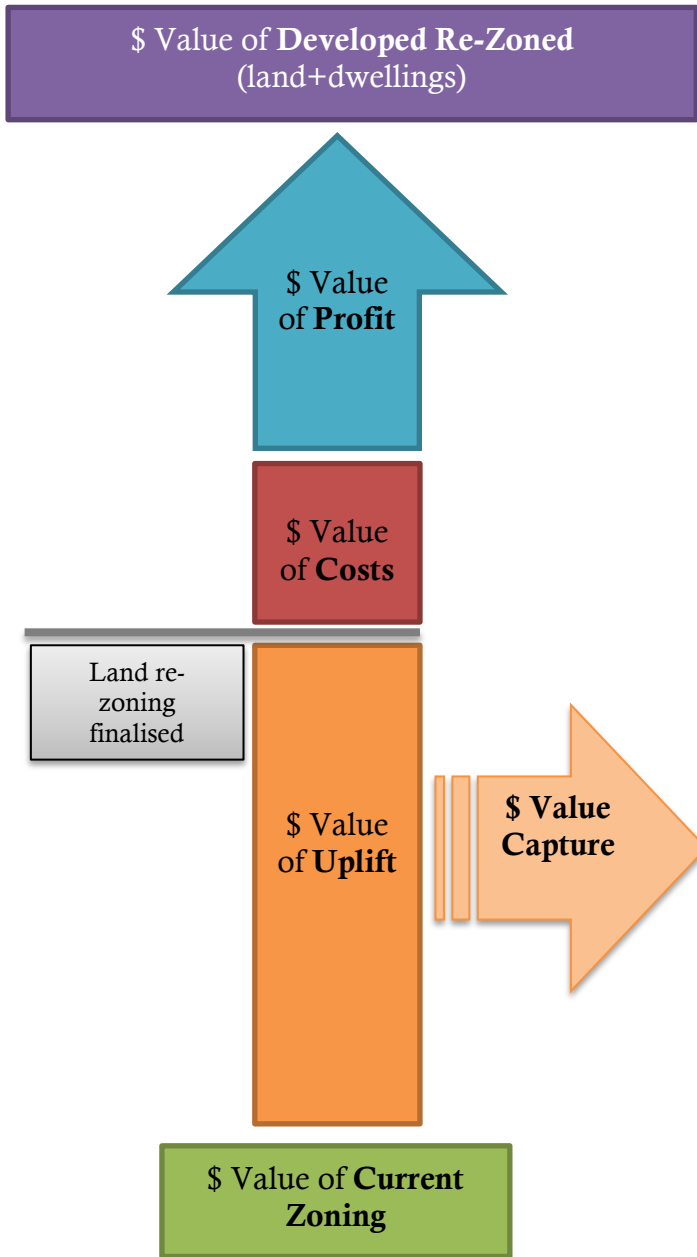
The model estimates the value uplift as:

- The value of the developed land, estimated using likely yield in apartments for the land multiplied by the market price of apartments based on recent sales data; less
- The cost of construction of the apartments, estimated using cost planning data from Rawlinson's Australian Construction Handbook; less
- The cost of purchase of the land, estimated using recent sales data; less
- A normal profit or return on investment of 10%.

Expressed another way, residual land value = value of completed development *less* development costs *less* [normal] profit; whilst uplift (or unearned land increment) = the difference between the residual land value and the market price of the land under the existing planning regime.

This is described in more detail in **Section 6.3** below.

⁴ That is, residual land value = value of completed development *less* development costs *less* [normal] profit; noting that uplift (or unearned land increment) = the difference between the residual land value and the market price of the land under the existing planning regime.



1.4 The Model Applied to Inner West LGA

Section 7 of this *Paper* provides an economic analysis of the likely value uplift associated with redevelopment in various areas within the LGA, and with rezoning in key urban renewal precincts; and with additional Gross Floor Area that may be negotiated through Voluntary Planning Agreements. This provides a rationale for strong intervention through the planning system.

The findings provide evidence for significant value uplift associated with redevelopment of existing industrial land and housing for higher density development throughout the LGA, including value uplift associated with up-zoning of the three relevant precincts within the Sydenham to Bankstown Urban Renewal Corridor and within Parramatta Road Urban Transformation Area.

Land Value Capture as a proportion of saleable floor area is shown in Table 7-1. Values are calculated for each of the fifteen post codes within Inner West LGA; for up-zoned land consisting of separate houses, three storey walk-up apartments and industrial land; and for height and FSR allowing three, six, eight and 14 storey construction. Land Value Capture varies markedly across these variables, ranging from Nil to 23% depending on the particular scenario.

Similarly, there is significant value uplift associated with increases in Gross Floor Area that may be negotiated through Voluntary Planning Agreements.

Land Value Capture as a proportion of additional saleable floor area is shown in Table 7-2; varying between 19% and 29% of additional saleable floor area.

These findings provide a strong justification for value capture associated with incentive-based or voluntary planning agreement approaches in association with redevelopment, as well as for mandatory contributions or inclusionary zoning within the Urban Renewal Corridor and the Parramatta Road Urban Transformation Area.

The *Background Paper* (JSA 2016) and Council's *Housing Profile* also provide a strong rationale related to affordable housing need and nexus related to the capture of unearned land increment arising from planning actions if mechanisms through s94F are pursued.

2 Housing Affordability Context

It is widely acknowledged that there is a major shortfall in affordable housing in most cities and many regional and rural communities across Australia.⁵ The most severe and lasting impacts are experienced by very low and low income households in unaffordable private rental accommodation, who do not gain the benefits that accrue to home purchasers, including long-term capital gains and a decreasing debt to household income ratio over time,⁶ and for whom social rental is increasingly inaccessible.⁷

The *Affordable Housing Background Paper* (JSA 2016) indicates that there are particularly serious and worsening affordability issues for key target groups in Inner West LGA, including significant gentrification, displacement of lower income historical populations and an inability to accommodate low income **workers**.

Some people achieve 'affordable' purchase or rental through moving to outer suburbs far from employment, or to an increasingly remote urban fringe or regional areas, but such locations can increase costs to households, socially or economically, through increased travel time, transport costs,⁸ and decreased access to services and employment.⁹ However, even these areas are increasingly unaffordable, particularly with regard to rent for key target groups.¹⁰

Amid increasing housing costs, decreasing affordability and stagnating expenditure on social housing, addressing the growing need for affordable housing through the planning system becomes increasingly important. In particular, there is an increasing focus on land value capture as a way of meeting the growing need for affordable housing in an increasingly expensive housing market where gentrification and ongoing displacement of lower income households and workers is occurring.

The following section sets out a working definition and key considerations of land value capture, with a particular focus on its relevance to NSW. This is followed by a review of the NSW planning context and the legal opportunities currently available in this jurisdiction.

⁵ Darcy, M. and Stubbs, J. 2005. 'Housing and Contemporary Social Work Practice', in Alston, M. & McKinnon, J. (eds) *Social Work Fields of Practice*, Oxford University Press, UK.

⁶ Burke, T. and Hulse, K. 2010. 'The Institutional Structure of Housing and the Sub-prime Crisis: An Australian Case Study', in *Housing Studies*, Vol. 2. No. 6, 821-838, November 2010.

⁷ NSW Government (2016) Future Directions for Social Housing in NSW, accessed online: <http://www.socialhousing.nsw.gov.au/>

⁸ Kellett, J. Morrissey, J. and Karuppanan, S. 2012. 'The Impact of Location on Housing Affordability', *Presentation to 6th Australasian Housing Researchers Conference*, 8-10 February 2012, Adelaide, South Australia.

⁹ Burnley, I. and Murphy, P. 2004. *Sea Change: Movement from Metropolitan to Arcadian Australia*, UNSW Press, Sydney; Burke, T. and Hulse, K. 2010. 'The Institutional Structure of Housing and the Sub-prime Crisis: An Australian Case Study', in *Housing Studies*, Vol. 2. No. 6, 821-838, November 2010.

¹⁰ See for example, JSA (2013) *Background Paper: Housing Affordability*, Wyong Shire Council.

3 Overview of Land Value Capture

3.1 What is Land Value Capture?

Land value capture is talked about in various ways by different authors in various jurisdictions. This section focuses on the definitions and considerations put forward by several authors that appear to be more relevant to the NSW planning context, described later.

Looking first at some relevant definitions or frameworks within which to consider land value capture in the NSW context, Walters notes that,

In the fields of urban public finance and international development, the concept of land value capture (LVC) has become a standard argument for implementing or reforming taxes based on land. Often the value of privately held land increases as a result of public investments in infrastructure, publicly approved changes in land use, or broader changes in the community such as population growth. Proponents of LVC argue that governments should use taxes and fees to collect some share of this increase in value for public purposes, including funding infrastructure and service improvements.¹¹

Walters then goes on to identify two approaches to LVC. These are:

...approaches intended to **recover the cost of infrastructure investments** and broader approaches intended to capture some **share of the unearned increment** in private land values [emphasis added].

Reflecting on the latter (unearned increment in private land values), Johnston (2014) reflects that the idea of value capture is a 'simple one', that is,

... if the value of a piece of land increases as a result of an action initiated by someone other than the landowner, then the value of that increase should not necessarily all go to the landowner. In urban policy, examples given are along the lines of: if a railway station is built near your land or if the development controls are changed to allow for denser development on it, or if marginal farming land on the city fringe is rezoned to residential, all these changes being initiated or implemented by government, then some of the increase in value of the land should be shared between the landowner (who can sell their land at a higher price) and the government (whose action enabled the increased value).¹²

Johnston notes that this sort of argument 'has a consistent history in classical economics, as developed in the eighteenth and nineteenth centuries in Europe and America'.¹³

¹¹ Walters, L (2013) Land Value Capture in Policy and Practice, *Journal of Property Tax Assessment & Administration* 10.2 : 5-21, page 5.

¹² Johnston, C. 2014. Capital Value Uplift and Affordable Housing, *Shelter Updates*, p 1.

¹³ Johnston, C. 2014. Capital Value Uplift and Affordable Housing, *Shelter Updates*, p 1.

In this way, the author notes that, rather than conceptualising the mechanisms that seek a proportion of the uplift created through the provision of infrastructure or the rezoning of land to higher uses as ‘capture’, it can be more reasonably be thought of as a ‘share’ of the increased land value arising from government actions between the developer and the community. This also helps to distinguish between the ‘tax like’ connotations of such mechanisms and what is more accurately considered as being ‘mutually beneficial’.¹⁴ As discussed later, considerations of ‘nexus’ (links between, or direct and indirect costs arising from, a development) also support such a distinction.

Aspects of Walters’ ‘cost recovery’ aspect of value capture (or share) is also evident, noting that the provision of infrastructure adds value, as well as being part of a cost recovery or recoupment regime.

In the NSW planning context, Taylor (2016) notes that,

In the broadest terms, value capture in relation to urban land development involves a planning authority, such as local council in NSW, capturing for the community benefit some of the land value increase accruing to a parcel of land from planning activities of the authority which increase the development potential of the land and hence its value.¹⁵

He notes that value capture contributions need are typically used to fund public infrastructure and other community benefits, but need to be ‘distinguished conceptually’ from other the more traditional forms of developer contributions under s94 and s94A (fixed development consent levies) under the *Environmental Planning and Assessment Act 1979 (NSW)*.

In contrast to Walters, cited above, Taylor distinguishes the ‘cost internalisation’ mechanism of s94 (ensuring that the cost of infrastructure, for example, is not borne by the community at large) from the ‘claw back’ mechanism that underpins value capture mechanism enacted under s93F of the Act (voluntary planning agreements). He further distinguishes s94 as being more ‘akin to a development tax’ with the purpose again being to ensure that costs are properly ascribed (similar to the Community Infrastructure Levy that is used in the UK).

Taylor goes on to distinguish land value capture in the following way:

In contrast, the fundamental purpose of value capture is not internalisation or taxation but rather ‘clawback’, that is, to capture increased land value for the community on the basis of a legitimate claim by the planning authority to share what is commonly referred to as ‘unearned increment’ of land value uplift.¹⁶

Clarifying the legal basis or legitimacy of this approach amid the general presumption of property rights in western democratic systems, Taylor notes,

¹⁴ Johnston, C. 2014. Capital Value Uplift and Affordable Housing, *Shelter Updates*, p2-3.

¹⁵ Taylor, L. 2016. ‘Value Capture through Voluntary Planning Agreements Part 1, in *In Focus*, Lindsay Taylor Lawyers.

¹⁶ Taylor, L. 2016. ‘Value Capture through Voluntary Planning Agreements Part 1, in *In Focus*, Lindsay Taylor Lawyers.

...the legislation of the EPA Act involves confiscation of the development rights of landowners under the general law and the reallocation of such rights, usually conditionally, under and in accordance with the applicable legislation...¹⁷

Taylor notes that the reallocation aspect of is important as ‘planning legislation typically re-orders development rights to achieve maximum community welfare’ and thus creates ‘distributional inequities’ - significantly decreasingly the value of land for some, and creating ‘windfall profits’ for others. As such,

Where land values increase through planning activities (as districts from the enterprise of landowners), a land value subsidy in the form of unearned increment can be said to exist and it is this which provides the focus for value capture.¹⁸

The author notes that, in NSW, value capture typically occurs through voluntary planning agreements under s93F of the Act in association with planning proposals, where a land owner seeks to vary the planning controls applying to a particular lot or precinct, thus increasing its development potential. If approved, the Minister will generally make a local environmental plan varying the planning controls. As discussed later, no specific nexus is required for agreements made under this section of the Act.

3.2 Key Considerations in Land Value Capture

A second paper by Taylor is useful in setting out some key considerations when implementing value capture schemes.¹⁹

The first consideration relates to **justification**. Reflecting the above discussion, he notes that the basic justification for value capture is that the planning authority has or will increase the value of land through its actions, and the community is entitled to a share of the resulting uplift. This is reflected in the NSW Department of Infrastructure, Planning and Natural Resources (2005) *Practice Note on Planning Agreements*, which states that,

The provision of planning benefits to the wider community through planning agreements necessarily involves capturing part of the development profit for that purpose. The value of the planning benefit should always be restricted to a reasonable share of development profit.²⁰

A second consideration in that of **entitlement**. This relates to the extent of the planning authority’s value capture in any particular case, and fundamentally, the proper objective of ‘identifying the **unearned increment** in land value uplift resulting from any planning proposal

¹⁷ Taylor, L. 2016. ‘Value Capture through Voluntary Planning Agreements Part 1, in *In Focus*, Lindsay Taylor Lawyers.

¹⁸ Taylor, L. 2016. ‘Value Capture through Voluntary Planning Agreements Part 1, in *In Focus*, Lindsay Taylor Lawyers.

¹⁹ Taylor, L. 2016. ‘Value Capture through Voluntary Planning Agreements Part 2, in *In Focus*, Lindsay Taylor Lawyers.

²⁰ Infrastructure, Planning and Natural Resources. 2005. *Practice Note on Planning Agreements*, DIPNR.

and to decide the community's legitimate claim to a share of it' [emphasis added].²¹ Related considerations include property market conditions, land values, existing and future proposed planning controls, and the redevelopment scheme proposed.

A third consideration relates to **calculation**, that is, how the land value increase should be calculated for value capture purposes, noting the author's view that 'a residual land value analysis should generally apply'.²² Such an analysis is generally performed prior to rezoning to understand the implications of land use regulation and/or development potential. Clearly, for re/development to occur, the residual land value under a redevelopment scheme will be higher than the market value of land in its current state.

A fourth consideration is that of **development feasibility**. As noted by Taylor, 'the implementation of value capture should not adversely impact on development feasibility by denying the developer a reasonable share of development profit. In other words, the policy should be 'fair and reasonable' in the individual circumstances. As such, any value capture policy should 'make provision for testing development feasibility'.²³

A final consideration is that of **timing**. In terms of reasonableness and equity, a satisfactory policy approach is for the value capture requirement to apply to land acquired for redevelopment after a nominated date related to the implementation of the policy.²⁴

Taylor reviews a number of planning agreement policies currently in force in NSW, and finds them lacking with regard to several of these elements that he regards as best practice.

3.3 Implications for Council's Policy

JSA's approach to the development of relevant value capture policy seeks to ensure legality within the NSW legislative framework, discussed below and in more detail at Appendix A, as well as engage with best practice issues related to justification, entitlement, calculation and development feasibility, outlined above.

This is discussed further later in this paper.

²¹ Taylor, L. 2016. 'Value Capture through Voluntary Planning Agreements Part 2, in *In Focus*, Lindsay Taylor Lawyers.

²² That is, residual land value = value of completed development less development costs less [normal] profit.

²³ Taylor, L. 2016. 'Value Capture through Voluntary Planning Agreements Part 2, in *In Focus*, Lindsay Taylor Lawyers.

²⁴ Taylor, L. 2016. 'Value Capture through Voluntary Planning Agreements Part 2, in *In Focus*, Lindsay Taylor Lawyers.

4 Approaches to Land Value Capture

4.1 Overview

In accordance with the definitions and conceptual framework set out above, this section first provides examples of approaches to land value capture in general terms. It then provides a range of examples of land value capture mechanisms used in NSW, with a particular focus on affordable housing.

4.2 General Review of Approaches to LVC

4.2.1 'Cost Recovery' Approaches in the NSW Context

The first approach related to **cost recovery** is commonly seen in NSW in **s94 contribution plans**, whereby local government provides a range of public amenities or public services and recovers that cost from developers, who in turn offset the cost through improvements in the value of the land; or where developers provide required services or amenities in lieu of contributions. As noted, the concept of 'nexus' is a key consideration in the application of such cost recovery mechanisms, with the direct cost and cost apportionment related to the need or demand likely to be generated by a development factored into the s94 levy payable for a wide range of services and amenities.

Importantly, the broad provisions of s94 does not provide for affordable housing contributions, although this has been addressed in subsequently amendments. In relation to **s94F**, under which three NSW councils are permitted to levy specifically for affordable housing, such nexus considerations include that the development is likely to reduce availability of affordable housing, or to create a need for affordable housing.²⁵

Whilst the *direct cost* of the need generated is thus considered, implicitly these considerations also include *externalities* associated with the loss and non-replacement and/or failure to provide affordable housing, or the *indirect costs* to the whole of the community. As such, contributions under s94F may also be considered as an offset to such externalities, for example, the cost to the whole community of homelessness or economic loss associated with inability to house very low to moderate workers, including in an incremental or cumulative sense from the non-replacement of lower cost housing in a gentrifying housing market.

²⁵ Environmental Planning and Assessment Act 1979, c94F(1).

4.2.2 Capturing a Share of ‘Unearned Land Increment’ in the NSW Context

Overview

The second approach, which seeks to **capture a share of the unearned increase in the value of land created through rezoning or other planning actions**, is reflected in both market (optional) and non-market (or mandatory) approaches in the NSW context.

Market Approaches

Market approaches allow for negotiation between the consent authority and a developer. The advantage of such approaches is that they are economically efficient and they are discretionary, with the developer deciding whether to opt in or opt out.

There are a number of mechanisms used worldwide for market approaches to land value capture. For example, in some South American jurisdictions, **development rights are auctioned** as a way of capturing land value uplift. Such approaches are said to be quite successful, with some mixed results.²⁶

In NSW, as noted, there are a number of planning mechanisms available for market approaches to land value capture.

Division 1 of **SEPP (Affordable Rental Housing)** provides a mechanism for a developer to obtain additional floor space ratio in selected areas in return for providing a proportion of the development as affordable housing (as defined in the SEPP) for a period of ten years.

The market approach is also reflected in NSW in the development of **voluntary planning agreements** under s93F of the Act, where a developer offers a cash or in-kind contribution for use as a public purpose, which can include affordable housing, in exchange for something of value (increased development rights through up-zoning, variations to planning controls, density bonuses, etc.). When combined with **SEPP 1 Development Standards**, there is an opportunity for developers and planning authorities to negotiate an outcome acceptable to both parties.

As noted above, this is a legal mechanism in NSW for all councils, *without* the need to demonstrate nexus.

Non-Market (or Mandatory) Approaches

A non-market or mandatory approach to the capture of land value uplift has been operationalised in NSW under **s94F of the Act using SEPP 70 and individual contributions schemes** such as that relating to Redfern Waterloo, described above and in Appendix A. In NSW this is generally supported by a requirement to demonstrate the need for affordable housing in an area, and nexus between a development and a reduction in the availability of affordable housing or creation of a need for affordable housing within the area,²⁷ including in a cumulative sense.

²⁶ Walters *op cit*, page 10.

²⁷ See Environmental Planning and Assessment Act 1979, c94F(1)(a) and (b).

Other Australian and overseas jurisdictions also refer to such approaches as ‘inclusionary zoning’,²⁸ with some authors citing gentrification and displacement of low income households as a rationale for inclusionary zoning.²⁹ Again, economically, displacement can be seen as an externality of gentrification, and inclusionary zoning can be seen as a way of internalising that externality to the development itself, thus creating a nexus between this mechanism and affordable housing created.

Authors such as Padilla³⁰ also identify a number of arguments in support of land value capture as a funding strategy for affordable housing including equity, viability, reduced commuting, preservation of a component of affordable housing in an area, and other social outcomes. Many of the costs identified are thus related to externalities created by the development, and again seek to offset or internalise these real costs to the community.

Examples of the way in which approaches have been implemented in NSW and other jurisdictions is discussed below.

4.3 Examples of Land Value Capture in Practice in NSW and Other Jurisdictions

4.3.1 Overview

This section applies the above framework for considering ways of capturing an increase in land values or uplift, either through cost recovery mechanisms or through capturing a share of unearned land value increment or uplift.

4.3.2 Examples of Cost Recovery Mechanisms

All NSW councils have a s94 Contributions Plan which levies development for a range of services and facilities. Marrickville Council Section 94 Contributions Plan 2004 levies contributions for Open Space, Park Infrastructure and Sports Facilities, Public Libraries and Community Recreation Facilities, Traffic Management, Road Works and Plan Administration.

²⁸ Inclusionary zoning is a planning mechanism that seeks to ensure affordable housing is not excluded from a particular location because of environmental-planning controls or market forces (dwelling costs). It does this by requiring contributions from land developers as a condition of development consent, with the contributions being either units of affordable housing or an equivalent monetary amount (<http://www.sheltersnsw.org.au/publications-new/factsheets-new/urban-policy-fact-sheets/423-what-is-inclusionary-housing-longer-discussion/> file accessed 26 May 2016).

²⁹ See for example Williams, P. (2000) ‘Inclusionary zoning and affordable housing in Sydney’ in *Urban Policy and Research*, Vol. 18, Issue. 3, 2000.

³⁰ Padilla, L. (1995) Reflections on Inclusionary Zoning and a Renewed Look at its Viability, *Hofstra Law Review*: Vol. 23: Iss.3, Article 1, pp 26 ff.

Western Sydney Growth areas have a contribution plan under s94ED collecting contributions for a range of services and facilities including Roads, Bus, Education, Health, Emergency, Open Space and Conservation and Planning and Delivery³¹

4.3.3 Capturing a Share of Uplift in the NSW Context

Examples of Market (Opt In-Opt Out) Mechanisms

As noted above, market approaches to the provision of affordable housing (or any other public purpose) allow for negotiation between the consent authority and a developer.

In NSW, **voluntary planning agreements** under s93F of the Act are a common mechanism for capturing an agreed proportion of land value uplift, where a developer offers a cash or in-kind contribution for use as a public purpose in exchange for something of value to them, generally in the form of increased development rights through up-zoning, variations to planning controls, density bonuses, etc. The establishment of nexus is not necessary.

Just under half of the 27 NSW councils reviewed by Johnstone (2014) included 'affordable housing' as a public purpose for which a contribution may be sought in their voluntary planning agreement. However, a minority had actually entered into an agreement that included affordable housing. Examples include:

- **Waverley Council** operated a 'density bonus' scheme from the mid-1980s, where additional FSR was provided in exchange for a contribution toward affordable housing in perpetuity which is understood to have yielded around 150 dwellings of affordable housing over this period. Waverley Council currently has a planning agreement policy under s93F of the Act, with the contribution determined via a valuation of the marginal uplift in value from the additional floor space granted.
- **Canada Bay Council** reported 5 such agreements and a total of 24 dwellings offered (data to 18 April 2013).
- **Marrickville Council** currently uses such approaches, with a recent example being a development consent for 78-90 Old Canterbury Road Lewisham where the voluntary planning agreement delivered a range of public purposes including four affordable housing units and bicycle and pedestrian connectivity. Other items were also delivered under the VPA but as an offset to s94 contributions.

Johnstone (2014) notes a number of reasons why local government planning agreements have often not involved affordable housing contributions, including that:

- the mechanism is more suited to large developments;
- the mechanism was introduced at a time when State Government was more hostile to councils taking local action on affordable housing (in marked contrast to the late 1990s);
- there was a period from mid-2009 to mid-2011 when the *State Environmental Planning Policy (Affordable Rental Housing) 2009* provided an alternative mechanism for developers to obtain development concessions for housing developments; and

³¹

http://growthcentres.planning.nsw.gov.au/Portals/0/docs/Regional_Infrastructure_Determination_Schedules.pdf accessed 8 June 2016.

- local councils have generally given a higher priority to economic infrastructure in such agreements.³²

The State Government has also been involved in a number of voluntary planning agreements that have an affordable housing contribution as a component, although many have been made with respect to a range of other public purposes.³³ These are all in Sydney, including at:

- **Barangaroo:** 2.3% of the residential developable gross floor area in the South Precinct is to be provided as ‘key worker’ housing;
- The former **Carlton United Brewery site**, Chippendale: a monetary contribution equivalent to 2.7–3.1% of total project costs (valued at about \$32 million) is to be given for affordable rental housing provided offsite;
- **Rouse Hill:** 3% of residential lots (about 39) will be given for the purposes of development of affordable housing;
- **Sydney Olympic Park:** 3% of dwelling units will be given to the Land and Housing Corporation;
- **The former ADI site, St Marys:** 3% of residential lots (about 150) will be given for the purposes of development of affordable rental housing.

State Environmental Planning Policy (Affordable Rental Housing) and State Environmental Planning Policy (Housing for Seniors or People with a Disability) both provide mechanisms whereby variations to planning controls are available for the provision of particular types of housing or provision of housing to particular groups such as older people or lower income households.

Examples of Non Market (Mandatory) Mechanisms

NSW Examples

As noted, in NSW there is an opportunity for a consent authority to impose a mandatory levy for affordable housing under s94F of the Act, or under s94ED of the Act.

In the case of the former, there are four mandatory contributions schemes in NSW. Three local authorities are permitted to impose an affordable housing levy under s94F of the Act and in accordance with SEPP 70. Each of the three local councils has operationalised this mechanism in different ways.

- City of Sydney (incorporating the former South Sydney LGA) identifies three areas in c7.13 of *Sydney LEP 2012*. Contributions are 3% of residential area and 1% of non-residential area for land in Green Square and southern employment land; and 0.8% of residential area and 1.1% of non-residential area in Ultimo-Pyrmont.
- *Willoughby LEP 2012* c6.8 requires a contribution of 4% of total floor space for development in designated areas, with the exception of boarding houses, public housing, community housing, group home and hostels.

³² Johnstone (2014) *op cit* p. 19.

³³ Reported on Johnstone (2014) p. 19.

- *Leichhardt LEP 2013* does not contain affordable housing provisions.

The fourth scheme was imposed under the *Redfern Waterloo Authority Affordable Housing Contributions Plan 2006*, supported by s30 of the *Redfern Waterloo Authority Act 2004* rather than a SEPP (SEPP 70), as discussed earlier. The contributions plan provides for a contribution equivalent to 1.25% of total gross floor area of development in Redfern Waterloo Operational Area. The contribution rate is paid at \$68.00 per m² in 2010 dollars.

The *Redfern Waterloo Authority Affordable Housing Contributions Plan 2006* sets out a broad nexus statement, noting that, since the 1980s, the Operational Area has ‘experienced rapid gentrification which has a polarising effect on the community and has led to the creation of pockets of disadvantage and advantage. This has resulted in the loss of low cost private housing as rents and house prices have increased’. Related objectives seek to address these issues.³⁴

As discussed later, there is often no explicit calculation related to how the share of land value uplift was determined in relation to the required affordable housing levy.

In the case of the latter, mandatory contributions under s94ED of the Act, applicable areas listed in Schedule 5A are large new growth areas within the LGAs of Liverpool, Camden, Blacktown, The Hills, Hawkesbury and Wyong. To date, there does not appear to be a contributions plan related to affordable housing in these areas, and the *Special Infrastructure Contribution Practice Note (Growth Centres Commission 2008)* does not include a contribution to affordable housing.

Examples from Other Jurisdictions

Although mandatory mechanisms to capture a proportion of land value uplift are relatively minor and used in only a few areas of NSW, many jurisdictions have inclusionary zoning requirements or mandatory contributions schemes that are relatively well developed and more robust. Requirements are typically of the order of 15%, although again we have not been able to find an explicit rationale for this figure in any jurisdiction.

Within Australia, South Australia has an affordable housing target of 15% to be provided through the planning system.³⁵ The Urban Development Authority of Queensland has a minimum target of 15% of dwellings across designated urban development areas.³⁶ The intent to secure 15% affordable housing was also announced in 2008 by the Minister for Land and Housing in the Northern Territory.³⁷

Internationally, Massachusetts set a goal for 10% of housing to be affordable, and where the target has not been met through other mechanisms such as the market or direct funding; local

³⁴ *Redfern Waterloo Authority Affordable Housing Contributions Plan 2006*, p 9.

³⁵ Milligan, V., Gurrán, N., Lawson, J., Phibbs, P. and Phillips, R. (2009) *Innovation in affordable housing in Australia: bringing policy and practice for not-for-profit housing organisations together*, AHURI, p. 47.

³⁶ Milligan, V., Gurrán, N., Lawson, J., Phibbs, P. and Phillips, R. (2009) *Innovation in affordable housing in Australia: bringing policy and practice for not-for-profit housing organisations together*, AHURI, p. 50.

³⁷ Milligan, V., Gurrán, N., Lawson, J., Phibbs, P. and Phillips, R. (2009) *Innovation in affordable housing in Australia: bringing policy and practice for not-for-profit housing organisations together*, AHURI, p. 47.

zoning laws may be by-passed to provide affordable housing.³⁸ The City of Boston required 15% of market rate units to be set aside for affordable housing.³⁹ San Francisco similarly required 15% of units to be affordable, and 20% if constructed off-site.⁴⁰ Targets for affordable housing were 50% of new housing in London, increasing from previous levels of inclusionary zoning of 25%.⁴¹ Galway specified 20% to be transferred for affordable housing.⁴²

Such requirements may be supported by planning bonuses, tax incentives and government funding to provide an offset to some of the contribution to affordable housing with wide variations across jurisdictions.⁴³

Similar approaches in California USA have established a nexus by estimating the number of jobs required to supply the demand created from the new households in a development, then estimating the number of workers in those jobs who are in very low, low and moderate income households, estimate the shortfall in housing affordability for those households and levy for affordable housing accordingly.⁴⁴

³⁸ Gurran, N., Milligan, V., Baker, D., Bugg, L. and Christensen, S.. (2008) *New directions in planning for affordable housing: Australian and international evidence and implications*, AHURI, p. 66.

³⁹ Gurran, N., Milligan, V., Baker, D., Bugg, L. and Christensen, S.. (2008) *New directions in planning for affordable housing: Australian and international evidence and implications*, AHURI, p. 69.

⁴⁰ Gurran, N., Milligan, V., Baker, D., Bugg, L. and Christensen, S.. (2008) *New directions in planning for affordable housing: Australian and international evidence and implications*, AHURI, p. 71.

⁴¹ Gurran, N., Milligan, V., Baker, D., Bugg, L. and Christensen, S.. (2008) *New directions in planning for affordable housing: Australian and international evidence and implications*, AHURI, p. 87.

⁴² Gurran, N., Milligan, V., Baker, D., Bugg, L. and Christensen, S.. (2008) *New directions in planning for affordable housing: Australian and international evidence and implications*, AHURI, p. 90.

⁴³ AHURI Research and Policy Bulletin, Issue 105 July 2008, p. 2.

⁴⁴ Faber, A. (2014) *Inclusionary Housing Requirements: Still Possible?* Paper presented to 2014 League of California Cities Annual Conference.

5 Overview of Council’s Obligations, Opportunities and Constraints under Relevant Legislation

Appendix A sets out a review of the legislative obligations, opportunities and constraints for local government in the creation of affordable housing through the planning system, with a particular focus on land value capture mechanisms that either seek ‘cost recovery or internalisation of costs’ (principally under s94 of the Act), or through ‘capturing or sharing a reasonable proportion of unearned increment’ of uplift created through the planning system (principally under s93F, and also through s94F).

In summary, the following is noted as relevant to the development of policy.

- Council has an **obligation** to engage with the issue of affordable housing in accordance with Object 5(a)(viii) as a matter in the public interest under s79C(1)(e) of the Act, and under the head of consideration provided under s79C(1)(b) of the Act;
- Council has an **opportunity** to enter into voluntary planning agreements that include the dedication of land free of cost, the payment of a monetary contribution, or provision of any other material public benefit, or any combination of them, to be used for or applied towards a public purpose, including ‘affordable housing’ under s93F of the Act;
- Council also has the **opportunity**, in consideration of Object 5(a)(viii) and s94F(5) of the Act to impose a development consent making any other conditions relating to the provision, maintenance or retention of affordable housing; and to seek to increase the supply of affordable housing through the planning and development process (e.g. incentive based schemes, requirements for lower cost or affordable housing types as part of multi-unit developments, etc), with the most likely areas being large redevelopment sites including the three precincts within the Sydenham to Bankstown Urban Renewal Corridor, as well as high value precincts where density bonus type-schemes could be viable.
- Council *could* levy for a contribution toward affordable housing under s94F where there is a demonstrated need for affordable housing and another requirement of the section is met (e.g. where the development is likely to reduce availability of affordable housing, create a need for affordable housing, etc), but is **currently constrained** in the use of this provision as it is not included within SEPP 70. An **opportunity** thus exists to advocate to State Government for inclusion within this provision, given the level of need and nexus described in the *Background Paper* (JSA 2016) and *Housing Profile* (former Marrickville Council 2015), with the most likely areas being large redevelopment sites including the six precincts within the Sydenham to Bankstown Urban Renewal Corridor and the

Parramatta Road Urban Transformation Area. This also would involve relevant amendments to the LEP, which would need to set out areas of inclusion, the quantum and basis of calculations, etc, like those in City of Sydney and Willoughby.

- A separate contributions plan *could* be developed and/or approved by the State Government in relation to a major redevelopment precinct under s94F of the Act, most likely within the Sydenham to Bankstown Urban Renewal Corridor and the Parramatta Road Urban Transformation Area, like that developed in relation to the *Redfern Waterloo Authority Affordable Housing Contributions Plan 2006*. However, this would require legislative support like that which supported the *Redfern Waterloo Authority Affordable Housing Contributions Plan 2006* (s30 of the *Redfern-Waterloo Authority Act 2004* (see Appendix A for detail)).

The reader is referred to Appendix A of this paper for more detail.

6 Estimating Land Value Uplift

6.1 Overview

The contributions plans made under s94F of the *Environmental Planning and Assessment Act 1979* and s30 of the *Redfern Waterloo Authority Act 2004* **do not appear to be explicit with regard to the rationale or calculations used** as a basis for the contributions levied. The levies are quite low by the standards in other jurisdictions, as discussed above.

Likewise, many voluntary planning agreements made under s93F of the Act are quite general with regard to contributions that may be required, and do not appear to set out a consistent method of calculation, or are unclear with regard to their rationale or other best practice considerations as set out in Section 3.2 above.

In some cases, however, these calculations are explicit, and have the ability to be applied consistently and transparently. The following provides some examples of planning agreements or policies that have more explicit methods from Johnstone (2014) and other information reviewed by JSA. This is followed by JSA's preferred method of calculation, which contains some elements of those below.

6.2 Methods Used in Calculations

6.2.1 Waverley Case Study

Under Waverley Council Planning Agreement Policy 2014, Appendix 1, marginal value uplift is estimated on a case by case basis and shared equally between the council and the developer. The marginal value is taken as the sale price of the additional floor area arising from the planning variation, less the construction cost of the additional floor area. The sale price is to be estimated by a valuer, while the construction cost is to be estimated by a quantity surveyor. The approach taken is similar in principle to that taken by JSA.

6.2.2 Parramatta City Council Case Study

Parramatta City Council has published a document titled *Parramatta CBD Planning Strategy* (2015), which expresses the Council's value capture policy in the following terms:

A4.2.1 Value Uplift Sharing – That additional higher FSR controls than those proposed in this Strategy can only be achieved by sharing the value of the uplift. That is any additional new FSR is to be purchased by landowners based on 50% of the nominated dollar value per sqm of GFA. The dollar value is to be scheduled to provide certainty and reviewed annually. Such a system would apply for residential uses only, not employment uses. Further, the system would operate in addition to any section 94A contributions payable.

6.2.3 Leichhardt Council Case Study

The former Leichhardt Council produced a *Voluntary Planning Agreements Policy* (2015) which contains an explicit value capture policy in the following terms:

36.10 Generally, in negotiating a voluntary planning agreement the Council will seek to value the uplift in value of the applicant's land based upon a valuation of the land at the current zoning or pre VPA standard; and compare this with the valuation of the land in the event that the post VPA change in instrument or planning control is allowed, less any additional costs the applicant may incur in realising the increased value. This exercise will be carried out by a valuer who meets the criteria specified in clause 16 of this Policy.

36.11 The same before and after comparison will apply whether the applicant seeks a value uplift derived from a floor space increase; an increase in a height limitation; or a zoning change which increases the land's value.

36.12 Council on behalf of the community will generally seek 50% of the uplift value derived in that manner.

6.2.4 Byron Shire Council Case Study

Byron Shire Council's policy on planning agreements, 'Planning Agreements Policy' (March 2009) (prepared by JSA), indicates that planning agreements may be negotiated for the provision of affordable housing, and identifies affordable housing as one of the purposes for which it would be 'most likely' to negotiate an agreement.

In most councils' planning agreement where affordable housing is mentioned, it is mentioned as one of a number of community benefits that could be negotiated; while Byron council's does this too, it elaborates how the affordable housing contribution could be delivered, in some detail.

The policy states that in existing areas the Council would accept an offer of a dedication of affordable housing in return for a request for additional floor space ratio ('density bonus'). The dedication would be 50% of the additional private benefit gained by the developer in getting additional floor space.

In greenfield sites and brownfield sites under investigation for rezoning or where a rezoning is proposed by a developer, the contribution could take the form of one plot of land for each 10 plots created within each subdivision stage with the area of the plot being no less than 95% of the average area of plots within the subdivision stage, and with a sale price of at least the median for plots within the subdivision stage; or it could take the form of an equivalent monetary contribution; or it could take the form of dedicated dwellings units assessed as of equivalent market value.

At large sites, already zoned for urban purposes, the contribution could be one plot for each 20 plots or part thereof created within each subdivision stage, with the area of the plot being no less than 95% of the average area of plots within the subdivision stage, and with a sale price of at least the median for plots within the subdivision stage; or it could take the form of an equivalent

monetary contribution; or it could take the form of dedicated dwellings units assessed as of equivalent market value.

At large sites with a yield of 20 or more dwellings or an area of at least 4,000 m², that are already zoned for urban purposes, or are located in zones where multi-unit housing is permitted, negotiations could commence during pre-lodgement meetings for development applications.

In greenfield sites and brownfield sites under investigation for rezoning or where a rezoning is proposed by a developer, and at larger sites, the council would accept an offer of a dedication of affordable housing in return for a request for additional floor space ratio ('density bonus'). The dedication would be 50% of the additional private benefit gained by the developer in getting additional floor space.

6.3 The JSA Value Capture Model

One of the central difficulties with LCV approaches is the assessment of the change in value. As stated by Walters:⁴⁵

LVC assumes that land values increase as a result of some community change. Unless land markets function reasonably well, it is not clear whether such changes will be reflected in higher land prices. Further, even when land prices increase as a result of public action, if tax officials lack the information and expertise to accurately identify such price changes and incorporate them into taxable value, LVC cannot succeed.

The JSA value capture model estimates the likely value of a planning change to a land owner based on changes in property values as a result of the development, taking into consideration the costs of development and a normal level of profit to the developer, and assumes that value uplift is shared equally with the community and with the landowner or developer.

The JSA model also embeds best practice considerations from Taylor (2016) above, including justification or entitlement regarding the creation of an unearned land increment through planning actions, a residual land value analysis,⁴⁶ equity and impacts upon development feasibility.

The model estimates the value uplift as:

- The value of the developed land, estimated using likely yield in apartments for the land multiplied by the market price of apartments based on recent sales data; less
- The cost of construction of the apartments, estimated using cost planning data from Rawlinson's Australian Construction Handbook; less
- The cost of purchase of the land, estimated using recent sales data; less
- A normal profit or return on investment of 10%.

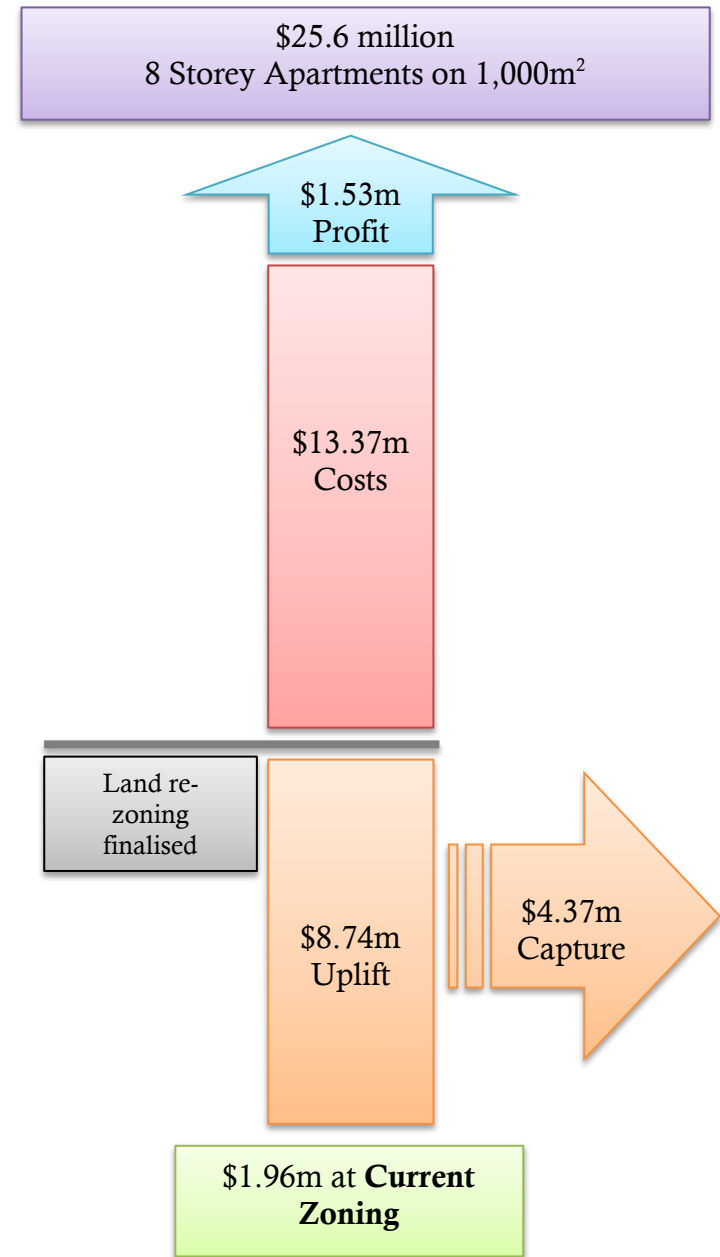
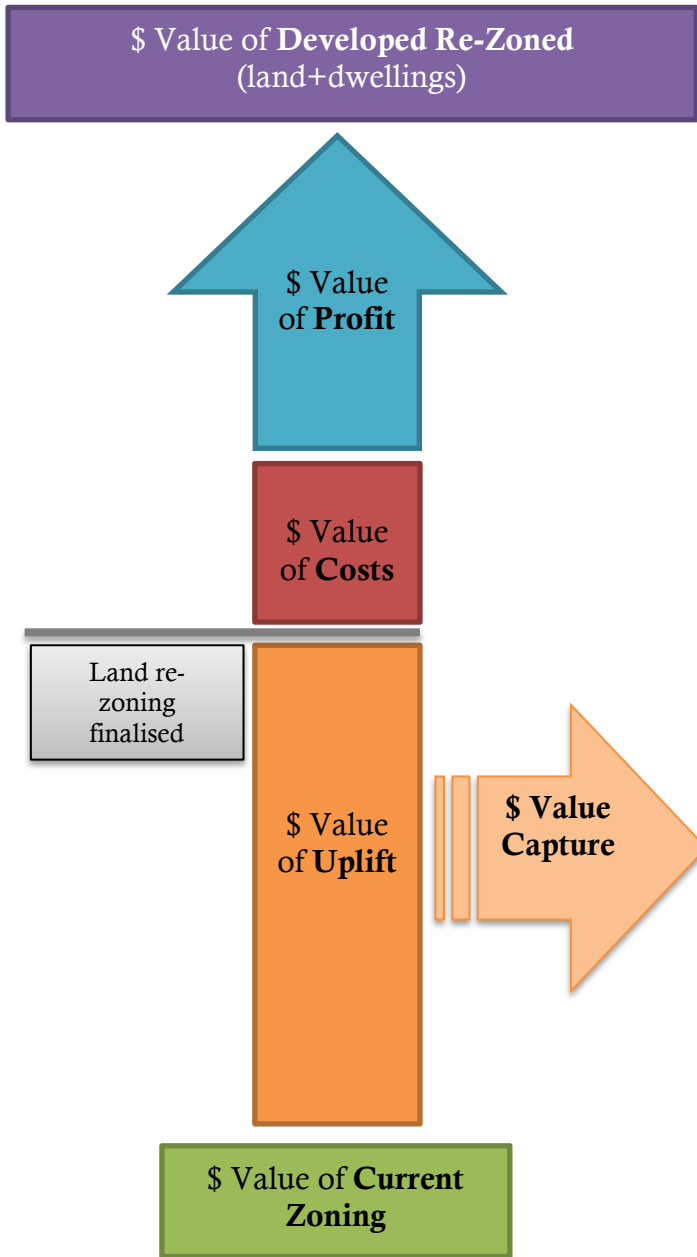
⁴⁵ Walters *op cit*, page 19.

⁴⁶ That is, residual land value = value of completed development *less* development costs *less* [normal] profit; noting that uplift (or unearned land increment) = the difference between the residual land value and the market price of the land under the existing planning regime.

Expressed another way, residual land value = value of completed development *less* development costs *less* [normal] profit; whilst uplift (or unearned land increment) = the difference between the residual land value and the market price of the land under the existing planning regime.

The model is shown graphically in the diagram below along with an example of the estimation of value uplift and value capture for a 1,000 square metre block of industrial land which has been rezoned to allow for eight storey apartments.

The approach can be used on a universal basis by using area averages and known construction costs to estimate value uplift as a proportion of dwellings in the final development, or can be used on a case by case basis with input from valuers and quantity surveyors as is currently the policy in Waverley Council.



The underlying assumption is that once planning changes take place, developers will bid up the price of property to a point where they can just make a normal profit.

The strength of the approach is that it relies on data from areas where strong markets exist, including construction and sales of property, giving a high degree of certainty regarding the assessment of value uplift.

The value of the developed land as apartments can be estimated to a high degree of certainty, with hedonic price analysis of strata dwellings⁴⁷ incorporating strata area and postcode accounting for 85% of the variation in price in suburbs in the former Marrickville LGA. More accurate pricing for a specific development can be obtained through recourse to land valuers.

Similarly the cost of construction can be estimated with a high degree of certainty, with the major area of assumption being the apartment size and yield in the absence of preliminary architectural drawings, and with published construction rates available such as Rawlinsons Australian Construction Handbook. More accurate costing can be obtained through preparation of preliminary architectural drawings and recourse to quantity surveyors.

The value of the undeveloped land can also be estimated to a high degree of certainty, with hedonic price analysis of separate houses incorporating number of bedrooms, bathrooms, parking, land area and post code accounting much of the variation in price and hedonic price analysis of industrial land incorporating land area accounting for two thirds of the variation in price. More accurate pricing can be obtained through recourse to land valuers.

Normal profit is taken as 10%, with this based on *ABS 5676.0 Business Indicators, Australia, Table 22: Business gross operating profits/sales ratio, Current prices*. This table shows average profit for Construction over the last five years as 9%. By way of further comparison, the 2015 annual report for Mirvac, a property development company, shows profit of \$628 million (after interest and before taxation) for a total asset base of \$6,462 million, a return on investment of 9.7%.

The alternative approach is to estimate the difference between the value of the land prior to the planning changes and after the planning changes. This is likely to be difficult to establish, as there would need to be a number of sales of land in a particular area, followed by sales of land following the rezoning, where the land has not be redeveloped.

⁴⁷ Refer analysis in Affordable Housing Policy: Background Paper, section 3.4.

7 Assessment of Value Uplift and Land Value Capture in Inner West LGA

7.1 Overview

This section is reproduced from the Affordable Housing Background Report (JSA 2016), and applies JSA's preferred methodology to the calculation of land value uplift and potential land value capture to selected areas within Inner West LGA.

7.2 Change of planning controls related to permissibility, height and FSR

7.2.1 Overview

Much of the land in the former Marrickville LGA is zoned R2, IN1 and IN2. Residential land in the LGA typically has FSR 0.60 and height of 9.5 metres with some areas of greater height in and around town centres. Industrial land typically has FSR 0.95 with no height restriction. Most of this industrial land is in Marrickville and St Peters.⁴⁸

Land in the former Ashfield LGA is mostly zoned R2, R3 and B4. Residential land typically has FSR 0.50-0.70 and height of 8.5-12.0 metres with some areas of greater height in and around town centres and along Parramatta Road.

Land in the former Leichhardt LGA is mostly zoned R1 and B2. Residential land typically has FSR 0.50-0.60. Heights are generally not controlled, but are likely to be limited by FSR.

Preliminary modelling has been carried out to understand the economics of redevelopment in Inner West LGA using current sales data and construction cost data, so as to understand the likely land value uplift associated with changes to planning controls and to assess a reasonable land value capture for council to use for a public purpose. Land value uplift has been calculated as the value of developed land less the cost of existing land, construction costs and a normal level of profit and we have assumed council would capture 50% of the land value uplift for a public purpose. The land value capture has been calculated as a proportion of gross floor area to facilitate universal application, however should council wish to negotiate to receive some of the land value capture in cash or in kind other than apartments, the proportion can be converted into cash through using the estimated sale price of apartments in the development. It would be a matter for council to decide the proportion of the land value capture to use for affordable housing, compared to other public purposes council may wish to progress.

Detailed results of modelling are shown in Table 4-1 below.

⁴⁸ Marrickville Local Environment Plan 2011, inspection of maps.

The most favourable economics, and hence opportunities for land value capture, relate to the rezoning of industrial land to allow construction of residential flat buildings, to redevelopment of separate housing for residential flat buildings in the former Ashfield and Leichhardt LGAs and to redevelopment of existing three storey walk-ups in Postcodes 2041 (Balmain, Balmain East, Birchgrove), 2040 (Leichhardt, Lilyfield) and 2039 (Rozelle).

Modelled profitability for industrial land ranges from 15-50% for three storey redevelopment to 80-90% for 14 storey development, suggesting that there will be a significant uplift in land value as a result of such zoning changes. Many of the lots are quite large and in single ownership, facilitating redevelopment. Estimated land value capture ranges from 2% for three storey redevelopment in Post Code 2038, to 21% for 14 storey redevelopment in Post Code 2044.

Levels of profitability are generally lower for redevelopment of existing separate houses for residential flat buildings and vary across suburbs. Three storey construction is likely to be profitable and with opportunities for value capture in Post Codes 2131 (Ashfield), 2045 (Haberfield), 2040 (Leichhardt, Lilyfield), 2039 (Rozelle) and 2130 (Summer Hill). Six storey construction is likely to be profitable and with opportunities for value capture in Post Codes 2044 (St Peters/Sydenham/Tempe), 2049 (Lewisham/Petersham), 2203 (Dulwich Hill), 2204 Marrickville, 2038 (Annandale), 2041 (Balmain, Balmain East, Birchgrove) and 2132 (Croydon). Eight storey construction is likely to be profitable and with opportunities for value capture in Post Codes 2048 (Stanmore) and 2050 (Camperdown); while Post Code 2042 will require 14 stories to be profitable. Lot sizes are generally quite small (averaging 250 m² but 470 m² in Ashfield and 650 m² in Haberfield) and so redevelopment will require consolidation of land which is likely to reduce opportunities. Estimated land value capture ranges from 1% for six storey redevelopment in Post Code 2050, to 28% for 14 storey redevelopment in Post Code 2039.

The economics of redevelopment of existing three storey residential flat buildings are generally less favourable although some areas show good profitability. Modelled profitability ranges from 4-31% for six storey construction up to 37-100% for 14 storey construction. Existing residential flat buildings are likely to be on larger lots, again facilitating redevelopment however purchase will be required from individual strata owners, making consolidation difficult. Estimated land value capture ranges from 1% for six storey redevelopment in Post Code 2045, to 23% for 14 storey redevelopment in Post Code 2039.

There are three proposed redevelopment areas under the *Sydenham to Bankstown – draft Urban Renewal Corridor Strategy*. These are discussed below.

Proposed changes in **Sydenham** include shop top housing and medium to high rise housing in areas currently zoned B5, B7, IN2 and IN1. Existing FSRs and height are 0.95 in the industrial zoning with no height restriction and 1.75 in the business zoning with height of 14.0 metres (four stories). Existing development is 2-3 storey factories and showrooms.⁴⁹ The economics of redevelopment appear quite favourable and there is likely to be considerable opportunity for value capture in this precinct, in line with modelling related to the rezoning of industrial land.

⁴⁹ Using Google Street View.

Proposed changes in **Marrickville** include medium to high rise housing (including the Carrington Road Precinct) in areas currently zoned R1, R2, IN2 and IN1. Existing FSRs and height are 0.95 in the industrial zoning with no height restriction and 0.60 in the residential zoning with height of 9.5 metres (two stories) with some pockets of greater height and density.

Existing development is 2-3 storey factories in the industrial areas and generally single storey separate housing in the residential areas. Existing residential flat buildings are typically three storey walk-ups.⁵⁰ The economics of redevelopment of the industrial land are likely to be quite favourable, with considerable opportunity for value capture. The economics of redevelopment of existing separate housing is less favourable, and is likely to require quite liberal controls allowing six storey construction or higher for redevelopment to occur. Opportunities for value capture range from 7% for six stories to 15% for 14 stories. The economics of redevelopment of existing flat buildings will also require quite liberal controls, with redevelopment likely to require a minimum of eight stories to be viable, and opportunities for value capture ranging from 1% for eight stories to 10% for 14 stories.

Proposed changes in **Dulwich Hill** include medium to high rise housing and shop top housing in areas currently zoned R1, R2, R3, R4, B2 and B4. Existing FSRs and height are 2.2 and 14-17 metres (4-5 stories) in the business zoning and 0.60 in the residential zoning with height of 9.5 metres (two stories) with some pockets of greater height and density.

Existing development is two storey shopfronts in the business zoned areas and generally single storey separate housing in the residential areas with some residential flat buildings. Existing residential flat buildings are typically three storey walk-ups.⁵¹

There is insufficient data available to assess the redevelopment of existing commercial areas, but values are likely to reflect those for existing separate housing. The economics of redevelopment of existing separate housing is relatively favourable, but is likely to require quite liberal controls allowing six storey construction or higher for redevelopment to occur. Opportunities for value capture range from 10% for six stories to 17% for 14 stories. The economics of redevelopment of existing flat buildings will also require quite liberal controls, with redevelopment likely to require a minimum of eight stories to be viable, and opportunities for value capture ranging from 3% for eight stories to 11% for 14 stories.

There are four proposed redevelopment areas under the *Parramatta Road Urban Transformation Strategy*. These are part of the **Kings Bay Precinct** at Croydon, currently zoned B6 (Enterprise Corridor) and R2 (Low Density residential); **Taverners Hill Precinct**, currently zoned a mixture B2 (Business Centre), R2 (Low Density Residential), R1 (General Residential); **Leichhardt Precinct** currently zoned B2 (Business Centre) and R1 (General Residential); and the **Camperdown Precinct** currently zoned B2 (Business Centre), R2 (Low Density Residential), R1 (General Residential), and IN2 (Light Industrial). The exhibited draft Parramatta Road Urban Transformation Strategy, which is currently under review by Urban Growth NSW, included development scenarios for these four precincts that envisaged residential flat buildings ranging from three/four stories up twelve stories in height.

⁵⁰ Using Google Street View.

⁵¹ Using Google Street View.

Based on our modelling, and depending on the final details of planning controls, construction of residential flat buildings of three storeys and over are likely to be profitable in Camperdown, as are construction of six storeys in Leichhardt in B2 zoning and construction of three stories in Leichhardt in areas of separate housing. Consequently, opportunities for value capture would be expected, ranging from 2% to 20% for Camperdown, 3% to 18% in areas of Leichhardt currently zoned B2 (Leichhardt Precinct) and 3% to 23% in areas of Leichhardt currently zoned R1 (Taverners Hill Precinct).

7.2.2 Modelling (Redevelopment)

Overview

The modelling assumes the development of a block of land of 1,000 m², assumed to be 25 metres wide by 40 metres deep. Based on the setbacks of 6.0 metres in the apartment design guide, the developable area is 28 metres by 13 metres, or 364 m².

Three scenarios have been considered for the land purchase, that is the value of the land prior to the uplift in land values as a result of changes to planning controls.

In the first, it is assumed that separate housing consisting of a median priced house on a median sized block of land is amalgamated to achieve the developable block, and that a median price is paid, that is existing housing is purchased and demolished to enable high density residential flat development. The purchase price is calculated as:

$$\text{Median house price} \times 1,000 / \text{median lot size}$$

In the second scenario, it is assumed that existing three storey residential flat buildings are demolished to enable high density residential flat development and that the purchase price is the median for two bedroom strata for the area. A footprint of 0.33 of the lot is assumed, giving around 4.5 70 m² two bedroom apartments per floor, or 14 apartments in total. The purchase price is calculated as:

$$\text{Median two bedroom strata price} \times 14$$

In the third scenario, the land cost is taken as an average price for an industrial zoned lot of 1,000 m² in Marrickville LGA as estimated using recent sales data;⁵² and an average price per square metre for recent sales of industrial land in Camperdown.⁵³

The cost of construction has been estimated using rates from *Rawlinsons Australian Construction Handbook 2012*, multiplied by 1.5 to allow for GST, professional costs, inflation and financing costs. The estimate assumes five 70m² apartments per floor, based on the developable area of 364 m², and 1.2 underground car spaces per unit. The rates used were for underground parking and for lifted multi storey medium standard apartments.

Profit has been estimated as Sales price less land purchase and construction cost, and has been estimated as a percentage of land purchase and construction cost.

⁵² Linear Regression Analysis for industrial zoned land for Marrickville LGA for the last year, $R^2 = 0.64$, Price = \$1,087,800 + \$870 x area (m²)

⁵³ 102/1179398 23/9/14 \$3,293/m²; 1/53921 1/12/15 \$4,764/m²; 1/169441, 1/655185, 43/792615, 4/9/14 \$4,975/m².

Profit in excess of a normal profit percentage of 10% has been treated as a windfall profit and hence the likely land value uplift, and a land value capture contribution has been calculated based on a 50:50 split of the land value uplift between the developer and/or landowner and a contribution for a public purpose. The land value capture contribution has been shown as a proportion of gross floor area and is shown as LVC% in the table. While this has been shown as a proportion of GFA (or its equivalent in dwellings), all or some proportion of this could be taken in cash rather than as apartments, if council wished to redirect a proportion of the value capture to another public purpose.

Modelling has been carried out for three stories (FSR 1.1, height 12.0 metres), six stories (FSR 2.2, height 21.0 metres), eight stories (FSR 2.9, height 27.0 metres) and fourteen stories (FSR 5.1, height 45.0 metres).

The results of the modelling are shown in the table below.

Table 7-1: Potential Redevelopment Scenarios for Selected Post Codes

Scenario 1 (\$ ' 000,000)

Suburb	Land purchase Scenario 1	Construction cost three stories	sale price	profit	profit %	LVC %	Construction cost six stories	sale price	profit	profit %	LVC %
2042 (Enmore/Newtown)	\$8.75m	\$5.01m	\$9.53m	-\$4.23m	-31%	Nil	\$10.02m	\$19.05m	\$0.28m	2%	Nil
2044 (St Peters/ Sydenham/ Tempe)	\$4.55m	\$5.01m	\$10.45m	\$0.88m	9%	Nil	\$10.02m	\$20.90m	\$6.32m	43%	12%
2048 (Stanmore)	\$6.48m	\$5.01m	\$9.44m	-\$2.06m	-18%	Nil	\$10.02m	\$18.87m	\$2.36m	14%	2%
2049 (Lewisham/Petersham)	\$5.73m	\$5.01m	\$10.58m	-\$0.17m	-2%	Nil	\$10.02m	\$21.15m	\$5.39m	34%	9%
2050 (Camperdown)	\$9.22m	\$5.01m	\$10.78m	-\$3.46m	-24%	Nil	\$10.02m	\$21.56m	\$2.31m	12%	1%
2203 (Dulwich Hill)	\$4.23m	\$5.01m	\$9.90m	\$0.66m	7%	Nil	\$10.02m	\$19.80m	\$5.55m	39%	10%
2204 (Marrickville)	\$5.02m	\$5.01m	\$9.60m	-\$0.43m	-4%	Nil	\$10.02m	\$19.20m	\$4.16m	28%	7%

Suburb	Land purchase Scenario 1	Construction cost eight stories	sale price	profit	profit %	LVC %	Construction cost 14 stories	sale price	profit	profit %	LVC %
2042 (Enmore/Newtown)	\$8.75m	\$13.37m	\$25.40m	\$3.29m	15%	2%	\$23.39m	\$44.45m	\$12.31m	38%	10%
2044 (St Peters/ Sydenham/ Tempe)	\$4.55m	\$13.37m	\$27.86m	\$9.94m	56%	15%	\$23.39m	\$48.76m	\$20.81m	75%	18%
2048 (Stanmore)	\$6.48m	\$13.37m	\$25.16m	\$5.31m	27%	7%	\$23.39m	\$44.03m	\$14.15m	47%	13%
2049 (Lewisham/Petersham)	\$5.73m	\$13.37m	\$28.20m	\$9.10m	48%	13%	\$23.39m	\$49.35m	\$20.23m	70%	18%
2050 (Camperdown)	\$9.22m	\$13.37m	\$28.74m	\$6.15m	27%	7%	\$23.39m	\$50.30m	\$17.68m	54%	14%
2203 (Dulwich Hill)	\$4.23m	\$13.37m	\$26.40m	\$8.81m	50%	13%	\$23.39m	\$46.20m	\$18.58m	67%	17%
2204 (Marrickville)	\$5.02m	\$13.37m	\$25.60m	\$7.21m	39%	10%	\$23.39m	\$44.80m	\$16.39m	58%	15%

Suburb	Land purchase Scenario 1	Construction cost three stories	sale price	profit	profit %	LVC %	Construction cost six stories	sale price	profit	profit %	LVC %
2038 (Annandale)	\$7.66m	\$5.01m	\$10.99m	-\$1.69m	-13%	Nil	\$10.02m	\$21.98m	\$4.29m	24%	6%
2131 (Ashfield)	\$3.31m	\$5.01m	\$10.20m	\$1.87m	23%	5%	\$10.02m	\$20.40m	\$7.06m	53%	14%
2041 (Balmain, Balmain East, Birchgrove)	\$10.46m	\$5.01m	\$14.81m	-\$0.66m	-4%	Nil	\$10.02m	\$29.63m	\$9.14m	45%	12%
2132 (Croydon)	\$3.57m	\$5.01m	\$8.97m	\$0.39m	5%	Nil	\$10.02m	\$17.94m	\$4.34m	32%	8%
2045 (Haberfield)	\$3.05m	\$5.01m	\$11.88m	\$3.82m	47%	13%	\$10.02m	\$23.76m	\$10.69m	82%	20%
2040 (Leichhardt, Lilyfield)	\$5.94m	\$5.01m	\$12.87m	\$1.91m	18%	3%	\$10.02m	\$25.74m	\$9.77m	61%	16%
2039 (Rozelle)	\$7.97m	\$5.01m	\$16.73m	\$3.74m	29%	7%	\$10.02m	\$33.45m	\$15.45m	86%	20%
2130 (Summer Hill)	\$4.29m	\$5.01m	\$10.73m	\$1.42m	15%	2%	\$10.02m	\$21.45m	\$7.14m	50%	13%

Suburb	Land purchase Scenario 1	Construction cost eight stories	sale price	profit	profit %	LVC %	Construction cost 14 stories	sale price	profit	profit %	LVC %
2038 (Annandale)	\$7.66m	\$13.37m	\$29.30m	\$8.27m	39%	11%	\$23.39m	\$51.28m	\$20.22m	65%	17%
2131 (Ashfield)	\$3.31m	\$13.37m	\$27.20m	\$10.52m	63%	16%	\$23.39m	\$47.60m	\$20.90m	78%	19%
2041 (Balmain, Balmain East, Birchgrove)	\$10.46m	\$13.37m	\$39.50m	\$15.67m	66%	17%	\$23.39m	\$69.13m	\$35.27m	104%	23%
2132 (Croydon)	\$3.57m	\$13.37m	\$23.92m	\$6.98m	41%	11%	\$23.39m	\$41.86m	\$14.90m	55%	15%
2045 (Haberfield)	\$3.05m	\$13.37m	\$31.68m	\$15.27m	93%	22%	\$23.39m	\$55.44m	\$29.00m	110%	24%
2040 (Leichhardt, Lilyfield)	\$5.94m	\$13.37m	\$34.32m	\$15.01m	78%	19%	\$23.39m	\$60.06m	\$30.73m	105%	23%
2039 (Rozelle)	\$7.97m	\$13.37m	\$44.60m	\$23.27m	109%	24%	\$23.39m	\$78.05m	\$46.69m	149%	28%
2130 (Summer Hill)	\$4.29m	\$13.37m	\$28.60m	\$10.94m	62%	16%	\$23.39m	\$50.05m	\$22.37m	81%	20%

Scenario 2 (\$ ' 000,000)

Suburb	Land purchase Scenario 2	Construction cost three stories	sale price	profit	profit %	LVC %	Construction cost six stories	sale price	profit	profit %	LVC %
2042 (Enmore/Newtown)	\$8.89m	\$5.01m	\$9.53m	-\$4.38m	-32%	Nil	\$10.02m	\$19.05m	\$0.14m	1%	Nil
2044 (St Peters/ Sydenham/ Tempe)	\$9.75m	\$5.01m	\$10.45m	-\$4.32m	-29%	Nil	\$10.02m	\$20.90m	\$1.12m	6%	Nil
2048 (Stanmore)	\$8.81m	\$5.01m	\$9.44m	-\$4.38m	-32%	Nil	\$10.02m	\$18.87m	\$0.04m	0%	Nil
2049 (Lewisham/Petersham)	\$9.87m	\$5.01m	\$10.58m	-\$4.31m	-29%	Nil	\$10.02m	\$21.15m	\$1.26m	6%	Nil
2050 (Camperdown)	\$10.06m	\$5.01m	\$10.78m	-\$4.29m	-29%	Nil	\$10.02m	\$21.56m	\$1.47m	7%	Nil
2203 (Dulwich Hill)	\$9.24m	\$5.01m	\$9.90m	-\$4.35m	-31%	Nil	\$10.02m	\$19.80m	\$0.54m	3%	Nil
2204 (Marrickville)	\$8.96m	\$5.01m	\$9.60m	-\$4.37m	-31%	Nil	\$10.02m	\$19.20m	\$0.22m	1%	Nil

Suburb	Land purchase Scenario 2	Construction cost eight stories	sale price	profit	profit %	LVC %	Construction cost 14 stories	sale price	profit	profit %	LVC %
2042 (Enmore/Newtown)	\$8.89m	\$13.37m	\$25.40m	\$3.14m	14%	2%	\$23.39m	\$44.45m	\$12.17m	38%	10%
2044 (St Peters/ Sydenham/ Tempe)	\$9.75m	\$13.37m	\$27.86m	\$4.74m	21%	4%	\$23.39m	\$48.76m	\$15.61m	47%	13%
2048 (Stanmore)	\$8.81m	\$13.37m	\$25.16m	\$2.99m	14%	2%	\$23.39m	\$44.03m	\$11.83m	37%	10%
2049 (Lewisham/Petersham)	\$9.87m	\$13.37m	\$28.20m	\$4.96m	21%	5%	\$23.39m	\$49.35m	\$16.09m	48%	13%
2050 (Camperdown)	\$10.06m	\$13.37m	\$28.74m	\$5.31m	23%	5%	\$23.39m	\$50.30m	\$16.84m	50%	13%
2203 (Dulwich Hill)	\$9.24m	\$13.37m	\$26.40m	\$3.79m	17%	3%	\$23.39m	\$46.20m	\$13.57m	42%	11%
2204 (Marrickville)	\$8.96m	\$13.37m	\$25.60m	\$3.27m	15%	2%	\$23.39m	\$44.80m	\$12.45m	39%	10%

Suburb	Land purchase Scenario 2	Construction cost three stories	sale price	profit	profit %	LVC %	Construction cost six stories	sale price	profit	profit %	LVC %
2038 (Annandale)	\$10.26m	\$5.01m	\$10.99m	-\$4.28m	-28%	Nil	\$10.02m	\$21.98m	\$16.95m	8%	Nil
2131 (Ashfield)	\$9.52m	\$5.01m	\$10.20m	-\$4.33m	-30%	Nil	\$10.02m	\$20.40m	\$8.55m	4%	Nil
2041 (Balmain, Balmain East, Birchgrove)	\$13.83m	\$5.01m	\$14.81m	-\$4.02m	-21%	Nil	\$10.02m	\$29.63m	\$5.78m	24%	6%
2132 (Croydon)	\$8.37m	\$5.01m	\$8.97m	-\$4.41m	-33%	Nil	\$10.02m	\$17.94m	-\$0.46m	-3%	Nil
2045 (Haberfield)	\$11.09m	\$5.01m	\$11.88m	-\$4.22m	-26%	Nil	\$10.02m	\$23.76m	\$2.65m	13%	1%
2040 (Leichhardt, Lilyfield)	\$12.01m	\$5.01m	\$12.87m	-\$4.15m	-24%	Nil	\$10.02m	\$25.74m	\$3.70m	17%	3%
2039 (Rozelle)	\$15.61m	\$5.01m	\$16.73m	-\$3.90m	-19%	Nil	\$10.02m	\$33.45m	\$7.82m	31%	8%
2130 (Summer Hill)	\$10.01m	\$5.01m	\$10.73m	-\$4.30m	-29%	Nil	\$10.02m	\$21.45m	\$1.42m	7%	Nil

Suburb	Land purchase Scenario 2	Construction cost eight stories	sale price	profit	profit %	LVC %	Construction cost 14 stories	sale price	profit	profit %	LVC %
2038 (Annandale)	\$10.26m	\$13.37m	\$29.30m	\$5.68m	24%	6%	\$23.39m	\$51.28m	\$17.63m	52%	14%
2131 (Ashfield)	\$9.52m	\$13.37m	\$27.20m	\$4.31m	19%	4%	\$23.39m	\$47.60m	\$14.69m	45%	12%
2041 (Balmain, Balmain East, Birchgrove)	\$13.83m	\$13.37m	\$39.50m	\$12.31m	45%	12%	\$23.39m	\$69.13m	\$31.91m	86%	20%
2132 (Croydon)	\$8.37m	\$13.37m	\$23.92m	\$2.18m	10%	Nil	\$23.39m	\$41.86m	\$10.10m	32%	8%
2045 (Haberfield)	\$11.09m	\$13.37m	\$31.68m	\$7.23m	30%	8%	\$23.39m	\$55.44m	\$20.96m	61%	16%
2040 (Leichhardt, Lilyfield)	\$12.01m	\$13.37m	\$34.32m	\$8.94m	35%	9%	\$23.39m	\$60.06m	\$24.66m	70%	18%
2039 (Rozelle)	\$15.61m	\$13.37m	\$44.60m	\$15.62m	54%	14%	\$23.39m	\$78.05m	\$39.05m	100%	23%
2130 (Summer Hill)	\$10.01m	\$13.37m	\$28.60m	\$5.22m	22%	5%	\$23.39m	\$50.05m	\$16.65m	50%	13%

Scenario 3 (\$ ' 000,000)

Suburb	Land purchase Scenario 2	Construction cost three stories	sale price	profit	profit %	LVC %	Construction cost six stories	sale price	profit	profit %	LVC %
2044 (St Peters/ Sydenham/ Tempe)	\$1.96m	\$5.01m	\$10.45m	\$3.48m	50%	13%	\$10.02m	\$20.90m	\$8.91m	74%	18%
2204 (Marrickville)	\$1.96m	\$5.01m	\$9.60m	\$2.63m	38%	10%	\$10.02m	\$19.20m	\$7.22m	60%	16%
2038 (Camperdown)	\$4.50m	\$5.01m	\$10.99m	\$1.48m	16%	2%	\$10.02m	\$21.98m	\$7.45m	51%	14%

Suburb	Land purchase Scenario 2	Construction cost eight stories	sale price	profit	profit %	LVC %	Construction cost 14 stories	sale price	profit	profit %	LVC %
2044 (St Peters/ Sydenham/ Tempe)	\$1.96m	\$13.37m	\$27.86m	\$12.54m	82%	20%	\$23.39m	\$48.76m	\$23.41m	92%	21%
2204 (Marrickville)	\$1.96m	\$13.37m	\$25.60m	\$10.28m	67%	17%	\$23.39m	\$44.80m	\$19.45m	77%	19%
2038 (Camperdown)	\$4.50m	\$13.37m	\$29.30m	\$11.43m	64%	16%	\$23.39m	\$51.28m	\$23.38m	84%	20%

Limitations of modelling

The modelling is necessarily general in nature using median prices and broad estimates, and outcomes for a particular site will depend on the details of the site and the details of the proposed development. The modelling assumes that the economics of redevelopment of low rise commercial sites will be similar to redevelopment of existing residential flat buildings, as there is little data available for commercial sites and commercial sites vary widely in size.

Assumptions have been made with regard to development controls and dwelling yield, and preliminary architectural design would be required to confirm these assumptions. Similarly, cost estimates on preliminary architectural design would be required to confirm estimates of construction cost.

The economics are likely to be much better for redevelopment of brownfield sites, and likely worse for relatively new two storey commercial premises, although as noted, consideration would need to be given to any remediation required for industrial sites.

Nonetheless, the modelling gives insight into likely sensitivities of development and broad insight into likely profit associated with uplift, and where such strategies are most likely to be effective in the context of housing markets within Inner West LGA.

7.3 Marginal uplift from increased height and/or density

7.3.1 Overview

In many cases, developers will offer to enter into a voluntary planning agreement that allows for additional saleable Gross Floor Area through LEP clause 4.6 variations related to height or FSR. Where such variations are found to have merit in their own right, and so warrant approval, Council may wish to capture some of the associated value uplift. Assessment may be made on a case by case with value uplift estimated by land valuers and quantity surveyors or can be assessed on a proportional basis using averages. An assessment on a proportional basis using averages is set out below.

The analysis is conducted on a marginal basis, that is only the additional costs and additional value are considered. As such the purchase cost of the land, site costs and the like are ignored.

Where a Voluntary Planning Agreement results in an increase in saleable floor area, land value capture of 21% to 34% of the *additional* saleable floor area obtained as a result of the Voluntary Planning Agreement is warranted.

7.3.2 Modelling (Additional Saleable Floor Area)

The modelling below assesses the marginal value uplift and hence value capture from additional saleable floor area as a proportion of floor area, represented as apartments where value uplift in excess of a normal profit of 10% is shared 50:50 with the developer and a public purpose. The

land value capture is shown as a proportion of saleable floor area to allow for universal application.

The modelling uses assumptions as set out above in section 7.2.2.

Table 7-2: Potential Marginal uplift for Selected Post Codes

Marginal uplift (\$ ' 000,000)

Suburb	Construction cost per floor	sale price	Uplift	Uplift %	LVC %
2042 (Enmore/Newtown)	\$1.67m	\$3.18m	\$1.50m	90%	21%
2044 (St Peters/ Sydenham/ Tempe)	\$1.67m	\$3.48m	\$1.81m	108%	24%
2048 (Stanmore)	\$1.67m	\$3.15m	\$1.47m	88%	21%
2049 (Lewisham/Petersham)	\$1.67m	\$3.53m	\$1.85m	111%	24%
2050 (Camperdown)	\$1.67m	\$3.59m	\$1.92m	115%	24%
2203 (Dulwich Hill)	\$1.67m	\$3.30m	\$1.63m	98%	22%
2204 (Marrickville)	\$1.67m	\$3.20m	\$1.53m	92%	21%
2038 (Annandale)	\$1.67m	\$3.20m	\$1.53m	92%	21%
2131 (Ashfield)	\$1.67m	\$3.66m	\$1.99m	119%	25%
2041 (Balmain, Balmain East, Birchgrove)	\$1.67m	\$3.40m	\$1.73m	104%	23%
2132 (Croydon)	\$1.67m	\$2.99m	\$1.32m	79%	19%
2045 (Haberfield)	\$1.67m	\$3.96m	\$2.29m	137%	27%
2040 (Leichhardt, Lilyfield)	\$1.67m	\$4.29m	\$2.62m	157%	29%
2039 (Rozelle)	\$1.67m	\$5.58m	\$3.90m	234%	34%
2130 (Summer Hill)	\$1.67m	\$3.58m	\$1.90m	114%	24%

8 Testing the Feasibility of Contribution Rates

8.1 Rationale and considerations in setting a contribution rate

The purpose of this discussion paper is to provide a rationale for a contribution rate that will deliver appropriate levels of affordable housing but will not be so high as to stifle development. With regard to the latter, it should be noted that there are likely to be other brakes on development. These are most likely to be the need for lot consolidation and the quality of existing development (e.g. demolition of older timber housing is likely to be more favoured than demolition of good quality offices).

It should be noted that the modelling is general and based on medians and averages. Larger lots and lots with greater heights and density would be expected to support higher levies.

There is no clear pattern for differentiating the proposed levy using broader geographical areas. If a differentiated levy was proposed a calculator approach would be best, with the inputs to the calculator being the post code, the previous zoning and the likely height.

8.2 Effect of levy on viability

8.2.1 Overview of Findings

The tables below show the impact of Affordable Housing levies of 15% and 5% on development viability in terms of existing zoning, post code and height.

The impact of a 15% levy compared to a 5% levy is most marked in the case of existing units and better value commercial property. There is some impact on the redevelopment of separate housing at lower densities, but with reduced impact at higher densities. There is little predicted impact for industrial land and poorer value commercial property, except at densities likely to be much lower than expected planning controls.

While separate housing could be rezoned to allow higher densities, viability will be affected by the need to consolidate property, and this may be difficult given the generally small lots sizes across the LGA. The most likely areas where this type of redevelopment could take place are Haberfield, Rozelle and Ashfield, all with typically larger lots.

Due to lot size and the need for consolidation, redevelopment in areas of separate housing is likely to be smaller developments, and this could be exempted from the levy through having a threshold such as 10 or 20 dwellings.

A similar argument can be put forward for redevelopment of existing low rise residential flat buildings, and in any case quite high densities would be required to support redevelopment.

The highest profits are associated with rezoning of industrial land, and a 15% levy is generally supportable across these areas.

Considering recent development in inner Sydney, most redevelopment is taking place on rezoned industrial land, due to its lower value as industrial land and the larger lot sizes available.

The other major area of development is mixed use developments in commercial zonings. We have not modelled commercial zoning due to the wide range in prices depending on the nature of existing development, however in similar work done previously in the Arncliffe area there were two broad prices for commercial land, a higher price similar to Scenario 2 (redevelopment of existing low rise residential flat buildings) for better value properties such as 2-3 storey offices; and a lower price similar to our Scenario 3 (redevelopment of industrial land) for lower value properties such as car yards and older smaller single storey premises with areas of undeveloped land such as car parks and hard stand.

8.2.2 Likely impact on development of 15% target

Table 8-1: Redevelopment of separate housing:

Stories	Post Codes not viable	Post Codes not viable with levy	Post Codes viable with levy
3	2042, 2048, 2049, 2050, 2204, 2038, 2041	2044, 2203, 2131, 2132, 2045, 2040, 2039, 2130	
6		2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2041, 2132, 2130	2045, 2040, 2039
8		2042, 2048, 2049, 2050, 2203, 2204, 2038, 2132	2044, 2131, 2041, 2045, 2040, 2039, 2130
14		2042, 2048, 2050	2044, 2049, 2203, 2204, 2038, 2131, 2041, 2132, 2045, 2040, 2039, 2130

Table 8-2: Redevelopment of existing units (also likely to be similar for better value commercial property such as office buildings)

Stories	Post Codes not viable	Post Codes not viable with levy	Post Codes viable with levy
3	2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2041, 2132, 2045, 2040, 2039, 2130		
6	2132	2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2041, 2045, 2040, 2039, 2130	
8		2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2041, 2132, 2045, 2040, 2039, 2130	
14		2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2132, 2130	2041, 2045, 2040, 2039

Table 8-3: Redevelopment of industrial land (also likely to be similar for poorer value commercial property such as car yards)

Stories	Post Codes not viable	Post Codes not viable with levy	Post Codes viable with levy
3		2044, 2204, 2038	
6		2038 (viable at 14%)	2044, 2204
8			2044, 2204, 2038
14			2044, 2204, 2038

8.2.3 Likely impact on development of 5% target

Table 8-4: Redevelopment of separate housing:

Stories	Post Codes not viable	Post Codes not viable with levy	Post Codes viable with levy
3	2042, 2048, 2049, 2050, 2204, 2038, 2041	2040, 2130	2044, 2203, 2131, 2045, 2039
6		2042, 2048, 2050	2044, 2049, 2203, 2204, 2038, 2131, 2041, 2132, 2045, 2040, 2039, 2130
8		2042	2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2041, 2132, 2045, 2040, 2039, 2130
14			2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2041, 2132, 2045, 2040, 2039, 2130

Table 8-5: Redevelopment of existing units (also likely to be similar for better value commercial property such as office buildings)

Stories	Post Codes not viable	Post Codes not viable with levy	Post Codes viable with levy
3	2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2041, 2132, 2045, 2040, 2039, 2130		
6	2132	2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2045, 2040, 2130	2041, 2039
8		2042, 2044, 2048, 2203, 2204, 2038, 2131, 2132	2049, 2050, 2038, 2041, 2045, 2040, 2039, 2130
14			2042, 2044, 2048, 2049, 2050, 2203, 2204, 2038, 2131, 2041, 2132, 2045, 2040, 2039, 2130

Table 8-6: Redevelopment of industrial land (also likely to be similar for poorer value commercial property such as car yards)

Stories	Post Codes not viable	Post Codes not viable with levy	Post Codes viable with levy
3		2038	2044, 2204
6			2044, 2204, 2038
8			2044, 2204, 2038
14			2044, 2204, 2038

8.3 Conclusion

Redevelopment is most likely to take place in older industrial areas and areas of low quality commercial development. Our modelling suggests that a levy of 15% is likely to be sustainable for developments of six stories and above in such areas, particularly given the order of accuracy of the modelling and the relatively conservative assumptions used.

Development in areas of separate housing is likely to be limited due to small lot sizes and the need to assemble land. High densities are likely to be necessary to support such redevelopment and a 15% levy is generally sustainable for 8-14 storey development, again within the accuracy of the modelling. Three storey development, avoiding the separation requirements of the Apartment Design Guide, is generally not likely to be viable, and where it is viable would probably result in smaller developments due to smaller lot sizes. For example a three storey development on a double block in Ashfield would be expected to yield ten dwellings. The viability of smaller developments is most likely to be affected by a levy, and setting a minimum sized development to attract the levy is one way of addressing this. This can be done either as a minimum number of dwellings or as a minimum GFA. The latter is preferred, as a criterion based on number of dwellings could lead to construction of larger dwellings within the development envelope in order to avoid the levy. Appropriate thresholds could be 20 dwellings or GFA of 1,700 m².⁵⁴

Similarly, redevelopment of existing low rise residential flat buildings and better quality commercial is unlikely to occur due to the quite high densities required to ensure viability, and where it does occur will probably be on larger lots with development economics more favourable than those modelled, and hence able to support the levy.

⁵⁴ 20*70 m² (two bedroom apartment minimum size)*1.2 (allowance for corridors etc) = 1,680 m².

Appendix A: Opportunities and Constraints of Principal Legislation and Related Policies

In NSW, objects and a range of related provisions have been progressively included in the *Environmental Planning and Assessment Act 1979 (NSW)* since 1999, including **section 5(a)(viii)** which provides that an objective of the Act is the ‘maintenance and provision of affordable housing’.⁵⁵ There are likewise definitions and benchmarks related to ‘affordable housing’ in core legislation and related policy, though there are practical differences in affordable housing outcomes due to differences in affordable housing definitions in different instruments.⁵⁶

Importantly, it is a requirement of the Act that a consent authority take into account the *social and economic impacts* of a development application as part of a merits assessment under s79C(1)(b). This has obvious applicability to development applications that may result in the loss of affordable or low cost housing, such as low cost flats, Boarding Houses and caravan parks, as well as the assessment of the benefits of an application involving the creation of affordable housing, particularly where this is balanced against other factors as part of the merits assessment. The ability to seek mitigation for loss of affordable housing as part of conditions of consent is also possible under this head of consideration. A growing body of case law in the NSW Land and Environment Court related to social impacts is also relevant.

Likewise, a consent authority is required to consider whether a proposed development is in the *public interest* under s 79C(1)(e), and a growing body of case law has likewise determined that it is in the public interest to give effect to the objectives of relevant legislation. It is relevant in this regard that the Act has as an objective ‘*the maintenance and provision of affordable housing*’ (s5(a)(viii)).

As such, on the face of it, local government has a role and indeed a statutory **obligation** to seek to preserve and create affordable housing through the planning and assessment process. However, there are also limitations to local government’s power under the Act, particularly in relation to the levying of mandatory contributions for affordable housing, though arguably its

⁵⁵ In December 1999, the Act was amended to make the provision of affordable housing a specific objective of the Act; add a definition of affordable housing; and make explicit that environmental planning instruments could include provisions to provide for, maintain and regulate matters relating to affordable housing.

⁵⁶ *State Environmental Planning Policy No 70 (Affordable Housing)* and *State Environmental Planning Policy (Affordable Rental Housing) 2009* each have different benchmarks and definitions which lead to quite different practical outcomes for ‘affordable housing’. *SEPP 70* defines ‘very low-income’ households as those on less than 50% of median household income; ‘low-income’ households’ as those on 50-80% of median household income, and ‘moderate-income’ households as those on 80-120% of median household income for Sydney SD. Under *SEPP ARH*, affordable housing is defined as housing that is rented to very low, low and moderate income households for no more than 30% of their gross income; or as housing that complies with rents and eligibility criteria under the National Rental Affordability Scheme (NRAS), with the latter based on discount market rents and income eligibility limits. In some markets, the second criterion can result in households paying more than 30% of gross household income in rent (and sometimes substantially more) so that, while the housing must be rented to relevant target groups, it will not be ‘affordable’.

constraints are not as great as some would perceive, and there are examples of schemes where this has occurred.

Dealing first with **mandatory contributions**, in June 2000, further amendments were made to the Act in relation to affordable housing to provide consent authorities with the specific power to require, as a condition of consent, the dedication of land free of charge or the payment of a monetary contribution for affordable housing in certain circumstances. *Sections 94F and 94G* were introduced⁵⁷ to provide consent authorities with the express power to impose such conditions ‘if a State Environmental Planning Policy (SEPP) identifies that there is a need for affordable housing within an area’ and certain other conditions are met.⁵⁸

The relevant SEPP for this purpose is *SEPP 70 Affordable Housing (Revised Schemes) (SEPP 70)*, which amends relevant local and regional environmental planning instruments to enable the levying of development contributions to provide for affordable housing. *SEPP 70* provides guidance regarding the requirements for assessing housing need, setting contribution levels, apportionment, administration and accountability, and specifies relevant income and rental criteria.⁵⁹

⁵⁷ The 2000 amendment to the EP&A Act was gazetted in direct response to the effective invalidation of Amendment 6 of South Sydney Council’s LEP (on Green Square). Significantly, this had resulted from a successful challenge to Council’s affordable housing provisions by Meriton Apartments in the NSW Land and Environment Court. The action was taken in relation to Green Square, a ‘brownfields’ redevelopment site on the old ACI Glass Factory site at Waterloo-Zetland. Green Square lies within the boundaries of South Sydney Council (SSC), and is affected by the SSC Local Environmental Plan 1998 (Amendment No. 2) – Green Square. The subject site was also affected by the Green Square Affordable Housing Development Control Plan (DCP), under which SSC aimed to include a component of housing affordable for low and very low incomes earners, who had traditionally lived in SSC area and were being rapidly displaced by gentrification. Despite the fact that the DCP provided for only 3% of residential and 1% of commercial floor space (equivalent) to be dedicated to affordable housing as defined in the DCP. Meriton mounted and was successful in having upheld, a Land and Environment Court (LEC) challenge that rendered the provision of the DCP invalid (*Meriton Apartments v Minister for Urban Affairs and Planning (2000) NSW LEC 20 – Decision 18 February 2000*). The decision of Justice Cowdry in this matter (*Meriton Apartments v Minister for Urban Affairs and Planning (2000), NSW LEC 2000*) relied partly on an inconsistency between South Sydney Council’s Local Environmental Plan (LEP) and DCP, and partly because it represented a ‘fundamental interference with property rights’ at common law (p.383). The NSW LEC decision on Green Square referred to had the effect of potentially invalidating all local government Development Control Plans (DCPs) that provided for the inclusion of affordable housing, including those who were attempting to deal with increasing gentrification through capturing some public benefit from the rezoning and redevelopment of existing sites, and had far reaching effects for other local planning schemes.

⁵⁸ Councils may only use these provisions if a SEPP identifies that there is a need for affordable housing within its area, and a Regional Environmental Plan (REP) or a local environmental plan (LEP) has been made in accordance with the relevant requirements for affordable housing provision set out in the SEPP, and if the Council has a developer contributions scheme set out or adopted in such a plan. The consent authority must be satisfied that that the development in respect of which the contribution is required will result in a reduction of affordable housing, will increase the need for affordable housing, or is in accordance with relevant regulations or zoning.

⁵⁹ *SEPP 70* defines ‘very low-income’ households as those on less than 50% of median household income; ‘low-income’ households’ as those on 50-80% of median household income, and ‘moderate-income’ households as those on 80-120% of median household income for Sydney SD.

On the face of it, this gives effect to what a number of Councils had been doing for some time under the pre-2000 provisions of s94 (development contributions including for community facilities). However, the provisions of s94F and s94G are operationalised and limited in practice by *SEPP 70*, which applies to a very limited number of housing schemes including Ultimo-Pyrmont, Willoughby and Green Square, and to only three Council areas – Sydney, Leichhardt and Willoughby Councils. This would appear to preclude other Councils from imposing a mandatory levy, at least under s94F and s94G, although some Councils have done so unchallenged.⁶⁰ Despite lobbying from Councils throughout NSW where affordable housing is increasingly a serious issue,⁶¹ the State Government has to date maintained the limited application of s94F and 94G of the Act.

This mechanism is supported by provisions of the relevant local environmental plans.

- In the case of City of Sydney, c7.13 of the Sydney Local Environmental Plan 2012 sets out affordable housing contributions. These are 3% of residential floor area and 1% of other floor area for development in Green Square or on southern employment land; and 0.8% of residential floor area and 1.1% of other floor area for development in Ultimo-Pyrmont.
- In the case of Willoughby Council, c6.8 of the Willoughby Local Environmental Plan 2012 sets out affordable housing contributions amongst other considerations. These are 4% total floor space of areas identified as Area 3 on the Special Provisions Map.

There have also been other areas that have been subject to specific contributions plans, for example, *Redfern Waterloo Authority Affordable Housing Contributions Plan 2006*, where affordable housing contributions were collected by the NSW State Government under S94F of the Act, with a Regulation supporting the development of a contributions plan for this State Significant Development. The *Contributions Plan* is required by s32 of the *Redfern-Waterloo Authority Act 2004* to authorise relevant conditions of consent or contributions. Such contributions may be imposed by virtue of s30 of the *Redfern-Waterloo Authority Act 2004*, which removes the requirements under s93F(1) and s93F(3)(b) of the *Environmental Planning and Assessment Act 1979* included in a SEPP (noting that other schemes where such contributions apply come under SEPP 70).

Other express provisions are also contained within the Act to further its affordable housing object.

⁶⁰ For example, Wollongong and North Sydney Councils levied for a contribution to affordable housing to offset the loss of low cost flats, units and Boarding Houses from around 1987 under s94 of the Act on a per bedspace basis as well as using the provisions of the then SEPP 10 - Retention of Low Cost Rental. Wollongong discontinued its policy from around 1992, although North Sydney Council has continued to use s94 to levy for the loss of low cost accommodation until recently. The lack of LEC challenge was likely due to the relatively low levy per bedspace lost compared with the profit from strata subdivision or redevelopment.

⁶¹ Thorpe, D., Miers, S., Stubbs, J., Richardson, R. and Berryman, C. 2004, *Enhancing the Role of Local Government in Affordable Housing: Options for Improving Our Planning System*, Affordable Housing Network, Shelter NSW.

S93F of the *Act* provides for the making of a **voluntary planning agreement** in relation to a proposed amendment to a planning instrument or development application. Under such a planning agreement, the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose. ‘Affordable housing’ as defined in the Act is one of the listed ‘public purposes’.

A planning agreement is generally advertised in conjunction with the development or rezoning application to which it relates, and forms part of the conditions of consent. A planning agreement is registered and runs with the title to the land, and is binding on, and enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement. The provisions also provide for administrative, reporting, review and other accountability requirements like other forms of development contributions, and may be used in place of or as well as levies with respect to other infrastructure under normal development contributions provisions of the Act. Importantly, a planning agreement does not have to demonstrate nexus between the development and the public purpose for which it was made.

Other powers in relation to levying for affordable housing are provided for the NSW State Government in amendments to the Act in relation to ‘**Special Infrastructure Contributions**’, which expressly include ‘affordable housing’ as a form of special infrastructure. This includes the provision, extension and augmentation of (or the recoupment of the cost of providing, extending or augmenting) public amenities or public services, **affordable housing** and transport or other infrastructure relating to land [emphasis added]; and the funding of recurrent expenditure in relation to the above, or any studies or other support required (*s94ED*).

Special Contributions Areas are set out in Schedule 5A to the Act, and currently include areas within Wyong, Liverpool, Camden, Blacktown, The Hills and Hawkesbury LGAs. Such contributions are not limited to the provision of infrastructure within a ‘special contributions area’, although such contributions are not to be required unless the provision of infrastructure ‘arises as a result of the development or class of development of which the development forms part’ (*s94EE(2)(c)*) (for example, in relation to district level infrastructure).

Reasonable discretion appears to be provided for under *s94EE(3)*, which states that, despite the limitations of other provisions, ‘the Minister may...determine the level and nature of development contributions in the form of a levy of a percentage of the proposed cost of carrying out development or any class of development’. Further, the Minister will determine what part (if any) a development contribution will be ‘for the provision of infrastructure by a Council’ (*s94EE(3A)*). It is noted that, in determining the level and nature of contributions, the Minister will, as far as practicable make the contribution ‘reasonable with regard to the cost’ of infrastructure in relation to the development (*s94EE(2)(a)*).

Finally, it is noted that Councils often assume greater limitations to their powers than necessary since the gazettal of the 2000 amendments.⁶² However, *s94F(5)* makes it clear that ‘nothing in

⁶² See for example, Stubbs, J. 2003. *Battle for the Right to the City*, Faculty of the Constructed Environment, RMIT (PhD thesis).

this section prevents the imposition on a development consent or other conditions relating to the provision, maintenance or retention of affordable housing'. This, and s5(a)(viii) and other relevant provisions discussed above, appear to provide sufficient latitude for Councils to engage in, for example, negotiating agreements with developers, identifying circumstances in which it is appropriate to provide for planning incentives through relevant EPIs, mandating diversity or affordability through developing performance criteria or targets in relevant plans (e.g. Masterplan DCPs), requiring social impact assessments to mitigate the loss of affordable housing, or other planning or procedural mechanisms apparently available to further the objects of the Act. A range of more active Councils are engaged in some or all of these activities at present, and these types of activities appear to be legal.

The gazettal of *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPPARH)* aimed to provide a consistent planning regime to encourage and enable the provision of different types of affordable housing to various target groups. In particular, the SEPP aims to facilitate the provision of affordable housing through zone liberalisation, the provision of incentives for delivery of new affordable rental housing including close to places of work, facilitating the retention and mitigation of the loss of existing affordable rental housing, and the development of housing for special needs groups including social housing, Boarding Houses and supportive accommodation.