



SUBMISSION BY THE
Housing Industry Association

to the
**Productivity Commission Issues Paper
Assessing Local Government Revenue Raising
Capacity**

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Assessing Local Government Revenue Raising Capacity

HIA ::

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1 Executive Summary

HIA welcomes the Productivity Commission study into local government revenue raising capacity. The study will examine the ability for local government to raise “own-source” revenue and explore the impacts on individuals and businesses. In its interpretation of the terms of reference, the Productivity Commission has excluded grants and subsidies received from other levels of government from the investigation.

In this response HIA examines two main themes around the increase in local government own-source revenue. The first is that local government revenue raising is necessary as a result of under funding from other tiers of government. Secondly HIA investigates the plethora of local regulation made through local planning and building laws, which if refined could see efficiency gains that would reduce some of the need to independently revenue raise.

1.1 Underfunding from other levels of Government

The issues paper highlights that during the past decade own-source revenue has undergone an average annual increase of 6.6% per annum. By comparison, HIA has calculated that grants and subsidies received from other tiers of government have not kept pace - rising by only 1.5% during the past 7 years.

Strong population growth and demand for new housing have both placed increased pressure on the delivery of infrastructure. In a number of instances the delivery of this critical infrastructure has fallen to local government. Yet at the same time they have received less funding for implementation. Reduced grants and subsidies payments from other tiers of government together with increasing community requirements for services and facilities, has therefore seen local government look towards their own communities to raise the necessary funding. Furthermore, funding by the federal and state government has not been tied to a target in service delivery.

As a result highly variable property taxes and development charges on new residential development have emerged as a means of meeting infrastructure liabilities. Referred to as “other income” (which is shown in the issues paper to have increased by 14% per annum in the last decade) homebuyers are being targeted through development levies to fund many of the facilities which are accessed by the community as a whole. In previous generations broad infrastructure of this nature would have been funded through general rates or the taxation base.

The affect of levies on housing affordability is dire. In 2003, HIA provided a detailed response to the Productivity Commission Inquiry into First Home Ownership demonstrating that local government revenue sources - taxes, fees and charges, represented a staggering 10.6% of the cost of a house and land package in a greenfield site in Sydney . HIA figures indicate that since this time it has risen to the current level of 17 per cent

Put simply, the lack of state and federal funding has meant that debt once incurred by all, levels of government including local government, is being transferred on to developers and ultimately homebuyers.

1.2 Local Government and Regulation

Secondly HIA's response explores implementation of operational and regulatory efficiencies within local government which can lower their need for increased revenue raising.

The proliferation of local regulations, particularly in planning schemes and permit conditions all require additional resourcing and funding.

Local government are not subject to the same level of regulatory rigour as other levels of government where a Regulatory Impact Statement (RIS) is generally required to justify any regulatory changes. As a result local laws and planning schemes are readily able to be varied to override the national or state consistency of the state planning laws and the Building Code of Australia to introduce more stringent requirements. If productivity gains are to be made by Councils, efforts must be made to overcome the delays and confusion over layers of locally based planning requirements, planning permit conditions and building local laws.

1.3 Summary

To summarise the main points in this submission:

- Increases in local government own-source revenue relate to shortfalls in funding from other levels of government. Unless the Productivity Commission examines all sources of income relating to local government, it is unlikely to receive a full picture of the need for increases in local government own-source revenue.
- The trend for local government to raise revenue under "other income" sources therefore relates to the increase in development levies to fund items of infrastructure which would have traditionally been paid for using the rate base, general taxation measures or state and federal grants and subsidies. State debt is therefore being transferred to the private purse with the result being an artificial increase in both house prices and land prices.
- The problem is ongoing as preliminary and conservative estimates indicate local and state governments will together be confronted with a \$71 billion shortfall (in today's dollars) between expenditure requirements and revenue over the next 10 years.¹

¹ This number is based on a projection of the 'fiscal gap' between revenue and expenditure of state and local governments. ABS Government Financial Statistics Data was the basis for the projection work.

- Councils are not subject to the same regulatory rigour as other levels of government. A proliferation of local planning and building requirements has led to increased cost to business and the need to increase revenue to administer the cumbersome requirements.

1.4 Key Recommendations

HIA recommends that:

- Growth in “other income” at a local government level needs to be curtailed. Infrastructure deficiencies should be funded through further federal and state government general revenue bases or covered by higher local rate charges across the broader community not through the application of development levies.
- Local government levies should not be permitted to apply to community services and infrastructure which is not directly related to facilitating the development of land for residential purposes.
- The Federal Government needs to urgently consider its nation building responsibilities with the provision of ongoing tied grants to local government as a means of addressing severe infrastructure backlogs.
- In addition, a Federal funded community infrastructure fund should be established to offset the cost of urban infrastructure required to develop new housing. The establishment of a pool of federal funds should be:
 - Administered by an independent Federal agency and accessed by local government so that they can be reimbursed for the cost of infrastructure – particularly required to facilitate housing for a growing population.
 - Provide for investment in community and social infrastructure of up to \$60,000 per dwelling/allotment for more affordable housing solutions.
- Funding would be tied to a report of local and state governments to:
 - Reduce local and state government taxes and charges on retail land prices;
 - Demonstrable efficiency dividends and savings from the abolition of regulation, reduction in timeframes or cost of complying with existing planning and development regulations;
 - Other measurable efficiency dividends that ensure a reduction in the price of retail land and development costs;
 - A fast tracking release of land required for the development of affordable dwellings.

- The Federal Government should establish a Local Government Review Board to act as a “watchdog” to ensure infrastructure provision and service delivery is undertaken equitably between local governments across the country.
- As opposed to rate pegging, local governments should continue to raise revenue through general rate increases over and above development levies which are targeted at new homebuyers and represent a significant hurdle for the purchase of a first home.
- State governments upgrade their planning systems to provide greater efficiencies and reduced costs for applicants.
- In jurisdictions where development levies are not relied on for infrastructure provision, HIA advocates for no change.
- Where development levies are entrenched and imposed, they should:
 - be transparent, justified and subject to scrutiny;
 - adhere to the principles of nexus and accountability;
 - be identified by the authority early in the process without significant variation;
 - provide certainty and consistency
- Other funding alternatives that should be first considered by state and local governments should include recouping costs through:
 - the property rates base;
 - local government borrowings; and
 - private public partnerships
- More emphasis needs to be placed on council annual rates as a source of revenue for social and community infrastructure provision, probably associated with an increased use of public sector borrowing to enable its timely provision.
- Local governments should demonstrate that the benefit arising from the levy is absolutely essential to the immediate well being and functioning of the community and where it is intended to extend beyond the immediate boundary of the development greater justification and scrutiny is required prior to their further application, specifically that:
 - Any further application of levies by governments should be the subject of a public reporting mechanism and a housing affordability impact statement
 - The application of any levies should be across all land users and development, not solely residential land;
 - Development levies should be subject to an appeals process which allows a subdivision or development proposal to be progressed independent of the appeal and any decisions arising.
 - Development levies should only be applied in the context of a specific Contribution Plan that is tied to a whole-of-government Infrastructure

Coordination Plan; Contribution Plans should be prepared by the local government authority and approved by State Government with a set range of criteria including that they should only fund the minority of infrastructure provision with the majority to be funded by government and whole of community.

- Development levies must not be used to fund recurrent funding of infrastructure.
- Development levies should not be approved for the purpose of social engineering initiatives such as affordable housing quotas, or “subsidised housing” which are the responsibility of the whole community.
- Development levies should be subject to a statutory annual review of the performance of the DCP, including reporting to parliament on the outcomes.
- Expenditure of development levies should be subject to statutory timeframes to ensure that the benefit is realised by the new home buyer.

HIA recommends the following conditions should apply to Local Government fines and PIN's in planning and building:

- Where PIN's are deemed absolutely necessary alleged offenders should be given advance warning of a breach giving them the opportunity to correct a violation or discuss it prior to issuing a PIN. This implementation model could restrict or prevent authorities from issuing controversial PIN's and reduce conjecture that PIN's are a revenue raising avenue for the government, and ensure that conduct of issuing officers is not of a careless nature.
- PIN's should be issued for direct and actual breaches of regulation and not potential breaches.
- PIN's should be transferable to a second party who may be directly responsible for an offence (eg: sub-contractor).
- PIN's should only be consistent across any state so all relevant time frames and penalties are consistent.
- The system/regulations and relevant penalties must establish a clear path of escalation to eventual court proceedings, with opportunity for proof of innocence by an alleged offender at each step and to be consistent across the state.
- A comprehensive and formal review to take place following operation of the PIN regulations (eg: review after 12-24 months) in order to continue, amend or abolish the regulations.

To improve operational efficiencies of Local Government:

- Building single dwellings on land zoned for residential purposes should not require planning approval. State governments should be required to take the lead and clearly define what constitutes a valid local variation to a single set of state endorsed building standards to trigger a town planning permit.
- Local Government should be subject to similar regulatory rigour as other tiers of government to stem the tide of planning and building requirements that over ride state and national requirements. Any variations enacted are cost effective or at worst cost neutral.
- State governments should clearly set the boundaries between planning and building regulation.
- The Federal Government should cooperate with State and local governments to facilitate planning reform based upon recognised best practice.
- As an incentive to achieve this, the Federal Government should tie national competition policy payments to improvements in planning performance.

2 About HIA

The Housing Industry Association Limited (HIA) is the peak national industry association for businesses in the residential building, renovation and development industry in Australia.

With more than 42,000 members nationally HIA members include builders and building contractors (residential and commercial), consultants, land developers, major manufacturers and suppliers of building products.

HIA has a presence in all states and territories of Australia. This level of coverage facilitates broad industry participation through its' extensive volunteer committee structure and maximises the association's capacity to liaise with industry practitioners across the full spectrum of the housing industry.

The majority of HIA members are small and medium sized companies, with larger organisations from both the building and manufacturing sectors ensuring HIA represents all sectors of the housing industry. On a national basis, HIA's membership covers approximately 80 per cent of builders and trade contractors and 70 per cent of manufacturers and suppliers.

In terms of total value of building activity in Australia, HIA members account for around 90 per cent of the housing sector's total output and about 95 per cent of all housing projects.

3 Revenue

3.1 Trends in local government revenue

What are the principal factors explaining trends in revenue from councils' various sources?

Why has other income been growing at a faster rate than council rate revenues and the sales of goods and services?

Do these trends differ between States and Territories between urban, rural, remote and indigenous local governments? If so what are the primary factors explaining such differences?

Does the composition of council revenue (shares of each own source revenue - rates, fees and charges and "other") differ between States and Territories, and between urban, rural and remote local governments? If so what are the primary factors explaining such differences? Do these factors have implications for the potential revenue raising capacity across different types of councils?

3.1.1 Local Government Revenue Raising – Principal Trends

As outlined in the issues paper, local government raise revenue through various measures including general rates, sales of goods and services, "other income", interest income as well as subsidies and grants from other levels of government.²

It is noted that the principal trend in the past decade has been for Councils own source revenues to increase by an average 6.6% per annum. Over the same period expenditure grew at an average of 7.0% per annum. Councils are therefore both raising and spending more.

Whilst local government operations (and therefore the need to raise revenue) are guided through general provisions provided in state based local government acts, there are no requirements to limit own source revenues - it is simply determined by the perceived need of the community and the assessment by a Council of what they can bear to pay.

The exception of course is revenue which is governed by state based regulation for certain fees and services. For the housing industry both planning and subdivision fees fall within this category.

The trend for increasing own source revenue may be as a result of shortfalls in funding from other tiers of government - a theme explored later in this submission. Of greatest concern to the housing industry is the stated growth in "other income" which is considered to be proliferating through a lack of general oversight by state or federal government on this revenue stream.

² HIA notes the interpretation of the terms of reference to exclude grants and subsidies from the study

3.1.2 Growth in “Other Income”

The Productivity Commission notes an average annual rate of growth of over 14% in other income – which is about double the growth in all annual local government own-source revenue.³

Faced with community servicing and infrastructure requirements local governments have increased taxes and charges on new property as a means of raising additional revenue to provide for existing and future obligations within a community.

Councils are generally empowered through state government planning legislation to raise infrastructure funds through “development levies”. Upfront charging, particularly for items of community infrastructure has been favoured most strongly in NSW, but varying degrees of development levies at the hand of state and local governments have emerged in both Melbourne and Brisbane and other regional centres.

The levies are typically specified on a per allotment or per dwelling basis and cover a wide range of physical infrastructure, social and community facilities. Highly inefficient and inequitable, these levies do not apply to existing residents despite the services or facilities they may access and does not capture future residents who will benefit from the services in the longer term. Either way it is the new home buyer who loses each time as the levy must be added to land or building costs.

Whilst HIA believes the levies should be collected only after the development of a properly constituted “development contribution plan” - many local governments apply the levies in either an ad hoc manner or worse still they can become a negotiating point between developers and councils over zoning and development applications.

In Sydney local government development charges, levied under Section 94 of the Environment Planning and Assessment Act can be as high as \$40-50,000 per allotment in some council areas. Adding in state levies and servicing fees this can take the charges up to as much as \$100,000 per allotment. In fact in many new release areas of NSW, there is almost a total reliance on them to finance a broad range of facilities which extend outside the immediately locality of the new residents affected by the levies, such as school extensions and hospital upgrades. This confirms the requirements for greater federal and state government assistance.

The application of levies is not tied to the performance of Councils so in theory funds may be collected well in advance of the facilities they are to fund. Transparency then is a key issue - as it may be difficult to determine if the funds collected have been expended on the items they were collected for or expended in a timely manner to benefit the people making the contributions.

³ HIA’s policy and view on the application of development levies is included in the “Development Levies” section of this response.

3.1.3 Councils Own-Source Revenue

Several independent state based studies have recently been conducted into the viability of local governments, taking into account own-source revenue and the level of services and infrastructure development and maintenance required. The over-riding picture appears to be that own-source revenue must be raised substantially if many local governments are to remain financially viable. The alternative is for further funding to be provided from state and federal governments.

It is reported in a Western Australian Local Government Association study⁴ that on average, councils in WA registered operating deficits in 2004-05 that amounted to 4.5% of their own-source revenue. Just over one in every two councils in Western Australia require a substantial, i.e., greater than 10%, further increase in their own-source revenue to eliminate their underlying operating deficits. This assessment is made after taking into account each council's additional revenue-raising capacity on the one hand and the costs likely to be imposed if they are to address any infrastructure backlog on the other. The report concludes that under this assessment over 80 Local Governments in Western Australia are deemed to be (financially) unsustainable.

The report detailed other similar studies which have been conducted elsewhere. A South Australia Local Government Association Inquiry⁵ has found that 26 of the State's 68 councils were financially unsustainable and that a further 10 were borderline. Around 62% of the state's population are located in these councils. The study concluded that financial viability was not influenced by the size or location of a council and that large operating deficits were commonplace whilst a large backlog exists in infrastructure renewal/replacement.

Despite council amalgamations in 2004, NSW councils have also been found to be facing an infrastructure funding crisis; an inadequate revenue base, exacerbated by rate pegging; deficient federal government grants and cost shifting; skills shortages and increasing demands on local governments to deliver outcomes that would ordinarily have been managed at least at a financial level by other levels of government.

A NSW Inquiry⁶ recommended that local government funding be increased by \$900 million, through increased federal and state grants, higher rates and fees and local government expenditure savings.

3.1.4 Grants and Levies

Funding shortfalls from other tiers of governments would help explain local government's high levels of own-source revenue raising. The exclusion of grants and subsidies by the Productivity Commission is a major constraint of this study.

⁴ The report is titled Systemic Sustainability Study "In Your Hands Shaping the Future of Local Government in Western Australia" Sponsored by the Western Australian Local Government Association - August 2006. Other state data quoted in the section is sourced from the same report.

⁵ The Inquiry was titled "Rising to the Challenge - Towards Financial Sustainability of Local Government"

⁶ The Inquiry was titled "Financial Sustainability of NSW Local Governments: Are Councils Sustainable?"

Payments by the Federal Government to the states and local government have fallen below the cost for services required in relation to transport, power generation, water and other community services. As mentioned, the differential in funding and demand has forced state and local governments to rely more and more on highly variable property taxes and development charges on residential development to meet the cost of community-wide infrastructure.

Preliminary and conservative estimates indicate that the shortfalls will continue as local and state governments will together be confronted with a \$71 billion shortfall (in today's dollars) between expenditure requirements and revenue over the next 10 years. Faced with growing community service requirements and expectations local and state governments have increased taxes and charges on new property as a means of raising additional revenue to service existing and future obligations. Severe constraints on the revenue-raising capacity of state and local government mean that without Federal Government involvement the portents for housing affordability are bleak.

The severe mismatch between taxation revenue and expenditure at the Commonwealth level means the Federal Government provides funding for its priorities, which have excluded any commitment to investment in community and economic infrastructure in urban areas, where 80 per cent of Australians now live and work.

Grants and subsidies to local government from the state and federal government have not kept up and have only grown at a rate of 1.5% over the 7 years.⁷

To meet requirements for community and economic urban infrastructure a specific Federal Government contribution is required to offset the pressure of taxes and charges and increasing development contributions on new housing. The idea would be to offset some of the growing "other income" costs - namely the growing development levies burden which are besieging new home buyers.

3.1.5 HIA Recommendations

HIA recommends that:

- Growth in local government's "other income" needs to be curtailed. Infrastructure deficiencies should be funded through further federal and state government general revenue bases or covered by higher local rate charges across the broader community not through the application of development levies.
- Local government levies should not be permitted to apply to community services and infrastructure which is not directly related to facilitating the development of land for residential purposes.

⁷ The 1.5% relates to 98/99 – 05/06 growth (7 years) ABS Government Financial Statistics

- The Federal Government needs to urgently consider its nation building responsibilities with the provision of ongoing tied grants to local government as a means of addressing severe infrastructure backlogs.
 - Provide for investment in community and social infrastructure of up to \$60,000 per dwelling/allotment for more affordable housing solutions.
- Funding would be tied to a report of local and state governments to:
 - Reduce local and state government taxes and charges on retail land prices;
 - Demonstrable efficiency dividends and savings from the abolition of regulation, reduction in timeframes or cost of complying with existing planning and development regulations.
 - Other measurable efficiency dividends that ensure and reduction in the price of retail land and development costs.
 - A fast tracking release of land required for the development of affordable dwellings.
- The Federal Government should establish a Local Government Review Board to act as a “watchdog” to ensure infrastructure provision and service delivery is undertaken equitably between local governments across the country.

3.2 Capacity to Raise Own Source Revenue

What are the principal factors that determine the magnitude of the various revenue raising bases available to local governments?

How and why might they differ between local governments within and between States and Territories (for example, by council type or location and functions required of them), and over time?

What are the key determinants of the capacity and willingness of resident households, organisations and businesses to pay for services provided by their local governments?

What scope is there for local governments to augment their revenues with fees and charges collected from non-residents?

How and why might the scope to do so differ between local governments?

Do local governments have policies, which in effect, limit their own-source revenue raising? If so, what are these policies and what might be factors holding back councils from increasing their own-source revenue? What might stand in the way of changing the policies to expand the ways, and extent to which local governments raise revenues?

What strategies might be available to local governments to increase the capacity and willingness of local residents to pay for goods and services provided, and where applicable, non residents? Would any new strategies provide stable sources of revenue over time or would they be subject to variability over time?

Are there any untapped revenue sources that local governments could use to augment or change the mix of their revenue raising? Would any potential new revenue sources be stable or variable over time?

3.2.1 Rates

Rates are generally tied to property valuations and weighed up by councils around internal revenue needs.

With the exception of New South Wales, there are few restrictions on the rate amount that a council can set. In NSW rate capping was introduced in 1977 at a time of high property inflation, and has remained since. In difference to other states NSW rate limits are generally in the order of 1-3 per cent annually, although capping doesn't apply to garbage services which are separately itemised on rate bills and fully cost recovered.

Aside from rate collection, most councils are able to request special rates for specific services (new work, special garbage collection, environmental management levies etc) but are restricted in how such monies are spent and for how long a special rate may apply.

Also some services Councils charge for (e.g. planning and subdivision services) are set in state based legislation. Whilst many councils may argue that the fees for these services are not based around cost recovery, many applicants would argue that the service provided does not generally meet statutory time frames set and is one of the greatest sources of cost to the industry. Land holding costs whilst waiting for planning processes to be undertaken are costly to developers and adversely affect housing affordability for new home buyers.

4 State and Territory Regulatory Constraints

4.1 Rate Pegging

What are, or might be, the reasons for rate pegging?

To what extent does rate pegging limit the ability of local governments to raise council rate revenues?

Are local governments able to raise revenues from other sources to compensate for the potential revenue raising limits imposed by rate pegging? How, and with what consequences?

Rate pegging clearly restricts the ability of local governments to collect rates, but as is the case in NSW it has not restricted the growth in “other income i.e. development levies, which have grown to sizeable and unprecedented levels.

The inability for NSW councils to increase rates may be linked to the increase in development levies.

As operates in all other states, local residents should be able to exercise their discretion to guide the level of rates acceptable to the level of services provided by local government through the electoral process.

4.2 Setting of Fees and Charges

What are the regulatory requirements and guidelines applied to local governments for setting fees and charges?

To what extent are local governments constrained in setting fees and charges?

To what extent are the requirements and guidelines followed by local governments?

To what extent do local governments under or over recover the costs of supplying goods and services?

What scope would there be to raise additional revenue if the limits were removed?

To what extent does local government legislation or other relevant legislation explicitly provide the power to set fees and charges in excess of the cost of supply?

If powers are not explicitly provided, to what extent, if any, does this limit the ability of councils to raise revenue from introducing new fees and charges?

Some of the fees and charges applied by local government to the housing industry are regulated by state government – which does place certain limits around their revenue raising capacity in this area.

Planning fees, which local government charge for the processing of town planning applications are usually framed in state legislation and then set in regulation.

Typically structured around the value of the development application, the fees are usually uniform within each state. In addition there are a number of other items for which the state based regulations allow local government to charge for and items which state regulations are silent on allowing individual councils to set these fees and charges. As it affects housing, these may include zoning certificates, zoning applications, building approvals, plan amendments, building inspections, monitoring fees and the costs associated with advertising proposals.

Councils could argue that state based planning fees are not cost neutral and that they should be increased as there is arguably considerable time and effort spent in assessing applications that is not captured by the regulated fees. But from an industry perspective the cumbersome web of local planning schemes adds to the delays in processing of applications and considerable expense to housing project. Land holding costs must be shouldered by the developer or home buyer in the case of housing approvals, until a decision has been made. Ultimately, all of these costs are passed onto homebuyers in higher end prices.

Efficiencies in planning processes must be considered to assist in keeping costs to a minimum for housing. This is further explored later in this submission.

4.3 HIA Recommendations

HIA recommends that

- As opposed to rate pegging, local governments continue to raise revenue through general rate increases, and limited in their ability to apply development levies which are targeted at and represent a significant hurdle for the purchase of a first home.
- State governments should be required to upgrade their planning systems to provide greater efficiencies and reduced costs for applicants. This theme is further explored under “Operational efficiencies”.

5 Impacts on Individuals Organisations and Businesses

Council Rates

What would be the effects on individuals, organisations and businesses of local governments increasing council rates?

What effects might rate pegging and the choice of land valuation methods have upon individuals, organisations and businesses?

To what extent are council rate revenues used to subsidise the delivery of goods and services for which fees and charges are collected? What are the consequences?

To what extent do efficiency and equity considerations contribute to the attractiveness of council rates as a source of local government income?

Sales of goods and services

To what extent do councils cross subsidise the prices of goods and services?

If services are subsidised, are the subsidies funded by higher rates or other fees and charges? Could full cost-recovery fees and charges be collected? What would be the consequences? Are any other revenue sources used to subsidise services?

Do councils use the return on their long-lived assets (profit and depreciation) to cross subsidise services? If so, what are the consequences for the sustainable provision of infrastructure services?

What would be the principal implication for individuals, organisations and businesses of applying or removing cross subsidies?

Developer Charges and Contributions

To what extent do local governments employ developer contributions and charges to finance investments in new and upgraded assets?

Are there legislated limits to contributions that can be required or charges that can be collected?

Are there legislated constraints on the use of revenue raised from developer charges?

What are the effects on individuals, organisations and businesses of the use of developer charges and contributions?

What is the most appropriate way to recover the costs of new and upgraded assets?

5.1 Development Levies

There is a general trend towards the application of development levies as state and local governments prefer policies of low or no debt over borrowings for items of infrastructure. Consequently the reliance on development levies in many jurisdictions has grown dramatically.

State and local governments have typically imposed regulatory systems which place an emphasis on individuals at a single point in time, funding facilities and infrastructure instead of governments undertaking major infrastructure projects of broader public benefit. The levies are a highly inefficient and inequitable way to fund items of long lived infrastructure as they do not apply to existing or future residents even though they are more than likely to access and use the services or facilities the levies have funded.

This approach has eliminated the reliance upon the whole of community participation in infrastructure development and imposed significant cost on the minority new home purchasers.

Whilst HIA supports the provision of infrastructure to meet community expectation and need, there is a limit to that which individuals can bear as a single up front cost and it is essential that some government responsibility for funding items which are used by the whole community be borne.

5.2 Extent of Development Levies

Development charges are levied by both state and local governments for the items of infrastructure associated with both greenfield and infill development. The growth in levies, in some states has been solely at the control of local government, whilst in other cases it has been at the hands of state in combination with local government.

In Sydney, if a developer is charged around \$100,000 per allotment in development levies, HIA would expect up to \$40,000 of this to be a local levy with the remainder being for regional infrastructure and servicing components.

In Brisbane, a new Infrastructure Contributions Planning Scheme Policy developed by Brisbane City Council outlines plans under the state based Integrated Planning Act that will see development levies across the city increase by 40% taking the average to a total of \$25,000 per allotment.

In Victoria development levies are also set to increase with the application of both a state infrastructure levy which could amount to \$8000 per allotment in addition to locally based development levies - made under local development contribution plans. In the absence of development contribution plans local governments, through the *Planning and Environment Act 1987*, have the power to request Section 173 Agreements that are

‘negotiated’ with the developer through permit conditions on what additional off site works might be required.

In the case of NSW, the introduction of state government levies is being facilitated through the local government planning approval process. This places an additional burden on local government to participate in the development and implementation levies on behalf of the state, which may not be appropriately funded.

5.3 Legislated Limits and Constraints

Development levies are generally regulated through state and local planning laws and are specified on a per lot or per dwelling basis. They are calculated by estimating the future population of an area in combination with an arbitrary analysis of the likely facilities and services that will be necessary for new residents. The analysis is not obligated to consider the actual use of the facilities and the potential broader population that may benefit.

Development contributions can take a variety of forms including monetary payment, dedication of land or housing (eg for affordable housing) or the carrying out of specific works.

Both state and local governments have made steady progress in increasing their reliance on developers to contribute to local and state infrastructure. The Productivity Commission is correct in its assessment that the fact that local government charge for existing and sometimes adjoining neighbourhoods for infrastructure upgrades leads to an outcome whereby:

“Either way the developer recovers the cost of their contribution through land sales”.

The majority of states which levy local infrastructure charges do not apply a cap on the maximum charge, nor do they all consistently apply a limit on the types of infrastructure which can be funded through a levy scheme. This lack of oversight has enabled councils to expand the wish list of infrastructure needs for new communities and to set their own prices for that infrastructure with no resource available to the home buyer other than through legal appeal. Similarly, the time frame for the expenditure of these levies is changeable and where one does apply, it is seldom enforced or challenged.

5.4 Effect on Individuals

The impact of these levies seriously erodes housing affordability and particularly first home buyers who are levied at a time when housing affordability is at an all time low and they can least afford it.

5.5 Appropriate Ways to Finance Infrastructure

As the Productivity Commission outlines on page 22 of its issues paper, housing development requires the supply of infrastructure items both within a subdivision and external to it.

HIA does not oppose all forms of development levies, but the general reliance on levies particularly for items of community and social infrastructure, from which the whole community benefits (not just the new homebuyers who fund it) is of concern.

Councils have typically shied away from proposing rate increases as it would appear to be politically sensitive with the voting electorate. Instead they have generally preferred to opt for increasingly higher charges on the much narrower voting base of prospective new home owners who most likely do not live in the area prior to paying the levy and purchasing their home.

HIA argues that where upfront charges are not yet in place by state and local governments, the status quo should remain and other funding alternatives should continue to be sought.

A general increase in the average property rate for a municipality would negate the need to raise revenue for development levies for items of community infrastructure.

Borrowing for items of social infrastructure would fund the upfront investment and repayments could be made by ratepayers or taxpayers in line with the benefits or amount of consumption of the services obtained from the social infrastructure

Private public partnerships also provide a potential alternative source of funding for infrastructure for debt averse state and local governments. These partnerships deliver governments the same advantage as borrowing in that the cost of providing long lived infrastructure can be spread more equitably over a longer period of time.

Specific infrastructure which provides essential infrastructure and services and without which the development could not proceed are considered to be core requirements for housing development and should be legitimately provided by developers and home builders as part of the cost of development.

But broader community and social infrastructure should be borne by the whole community (existing and future home owners) and funded from general rate revenue and borrowings as appropriate. Only as a means of last resort should government have the option to impose an upfront levy for the provision of such facilities.

5.6 HIA Recommendations

In relation to revenue raising through development levies HIA recommends that:

- In jurisdictions where development levies are not relied on for infrastructure provision, HIA advocates for no change.
- Where development levies are entrenched and imposed, they should:
 - be transparent, justified and subject to scrutiny;
 - adhere to the principles of nexus and accountability;
 - be identified by the authority early in the process without significant variation;
 - provide certainty and consistency

- Other funding alternatives that should be first considered by state and local governments should include recouping costs through:
 - the property rates base;
 - local government borrowings; and
 - private public partnerships
- More emphasis needs to be placed on council annual rates as a source of revenue for social and community infrastructure provision, probably associated with an increased use of public sector borrowing to enable its timely provision.
- Local governments should demonstrate that the benefit arising from the levy is absolutely essential to the immediate well being and functioning of the community and where it is intended to extend beyond the immediate boundary of the development greater justification and scrutiny is required prior to their further application, specifically that:
 - Any further application of levies by governments should be the subject of a public reporting mechanism and a housing affordability impact statement
 - The application of any levies should be across all land users and development, not solely residential land;
 - Development levies should be subject to an appeals process which allows a subdivision or development proposal to be progressed independent of the appeal and any decisions arising.
 - Development levies should only be applied in the context of a specific Contribution Plan that is tied to a whole-of-government Infrastructure Coordination Plan; Contribution Plans should be prepared by the local government authority and approved by State Government with a set range of criteria including that they should only fund the minority of infrastructure provision with the majority to be funded by government and whole of community.
 - Development levies must not be used to fund recurrent funding of infrastructure.
 - Development levies should not be approved for the purpose of social engineering initiatives such as affordable housing quotas, or “subsidised housing” which are the responsibility of the whole community.
 - Development levies should be subject to a statutory annual review of the performance of the DCP, including reporting to parliament on the outcomes.
 - Expenditure of development levies should be subject to statutory timeframes to ensure that the benefit is realised by the new home buyer.

5.7 Penalty Infringement Notices

What are the effects on individuals, businesses and organisations of fines and other pecuniary penalties and increases in them?

What measures are there in place to protect against the possibility that local governments might view fines as a revenue raising instrument more than as an appropriate deterrent?

If conflicts of interest arise between deterrence and revenue raising, is there any evidence of the effects on individuals, organisations and businesses?

Penalty Infringement Notices (PINs) provide local government with a relatively new avenue of revenue creation. Local government officers are authorised under a number of Acts to issue PINs which relate to breaches of either local laws or planning conditions, planning schemes and/or building permit conditions. Many PINs are issued for what could be considered minor or in some cases inadvertent breaches - for example the case where a volume builder could be fined for accidental littering as a result of building materials being scattered during a period of high wind activity on a greenfield estate, or similarly tree planting which is non-compliant with a landscape plan.

The situation and severity of PINs varies between states and territories. In Victoria, for example, a responsible authority may serve a PIN if it has reason to believe that a person has committed an offence relating to the contravention of a planning scheme, a planning permit or a particular section 173 agreement. In this instance PINs may impose a fine on individuals or for a body corporate or require steps to be taken to rectify an offence without going to a Court or tribunal (VCAT) (section 130 PE Act).

A newly consolidated *Planning and Development Act 2005* (PD Act) in WA is introducing the ability for the Department for Planning and Infrastructure (DPI) and Local Governments to issue Planning Infringement Notices (PIN) for breaches of planning permits and planning schemes.

In NSW, both the Environmental Planning & Assessment Act and the Protection of the Environment Operations Act create a framework which permits local council staff to issue PINS.

Under the POEO Act cleanup notices for pollution incidents and then issue on the spot fines for these incidents. The Act also permits Council to collect a fee in addition to the PIN for the administration of the penalty. In essence, the Act permits a local council to issue a clean up notice for the potential to pollute as well as an actual pollution incident. The definition of pollution includes “there is likely to be” a risk of pollution. In this circumstance, there is evidence that some councils may be “double dipping” by issuing a PIN for non compliance with the development consent under the Environmental Planning & Assessment Act 1979 for not maintaining sediment & erosion controls and issuing a PIN under the POEO Act for a potential pollution risk.

HIA believes that many councils report their fines to the elected representatives each month and the revenue collected by these PINs is often seen as a cost recovery program to fund the staff members who issue the fines. The majority of monies arising from a council issue PIN are returned to council.

HIA has no objection to councils having the appropriate powers to enforce the legislation they are responsible for. However their conduct in issuing the fines is the question and the severity of the breaches and reasonableness of their application. Very limited advice is generally available about the preferred practice of issuing PINs – meaning councils appear to have a high degree of autonomy in issuing them.

5.7.1 HIA Recommendations

The introduction of PINs to an already complex and detailed planning framework could only operate effectively and without backlash if a degree of flexibility and understanding is shown by an issuing authority. In relation to planning and building matters, which directly affect the housing industry, it is generally considered that the breaches which can be subject to a PIN are too broad, in particular the tendency to “preventative” penalties, rather than limiting penalties to actual breaches of the law is considered inappropriate. HIA recommends the following conditions should apply to PINS for alleged planning and building breaches:

- Where they are deemed absolutely necessary alleged offender should be given advance warning of a breach giving them the opportunity to correct a violation or discuss it prior to issuing a PIN. (this implementation model could restrict or prevent authorities from issuing controversial PIN's and reduce conjecture that PIN's are a revenue raising avenue for the government, and ensure that conduct of issuing officers is not of a careless nature.)
- PIN's should be issued for direct and actual breaches of regulation and not potential breaches.
- PIN's should be transferable to a second party who may be directly responsible for an offence (eg: sub-contractor).
- PIN's should only be consistent across any state so all relevant time frames and penalties are consistent.
- The system/regulations and relevant penalties must establish a clear path of escalation to eventual court proceedings, with opportunity for proof of innocence by an alleged offender at each step and to be consistent across the state.
- A comprehensive and formal review to take place following operation of the PIN regulations (eg: review after 12-24 months) in order to continue, amend or abolish the regulations.

6 Factors influencing expenditure and revenue raising

6.1 Operational Efficiencies of Local Government

To what extent is there scope for local governments to reduce the unit costs of their operations? If so, how might they most effectively reduce their costs?

What effect would such cost reductions have upon their revenue raising requirements?

How and to what extent have structural reforms, such as boundary changes of local governments and service sharing arrangements, affected operational efficiency?

Local governments can increase operational efficiencies by cutting back on their own level of regulation through fragmented policy making and through considering the opportunities for privatisation of components of their operations.

In relation to the delivering of new land and housing, where regulation has been flagged or made through the Building Code of Australia (BCA), particularly in the areas of sustainability, social housing development or accessible housing, local government planning schemes often seek to override and extend these new agendas either in advance of the BCA or to gain political benefit.

Whilst Federal and State Governments are generally required to conduct a Regulatory Impact Statement prior to implementing change, local government are not subject to the same processes. This provides local government with unfettered ability to introduce local development and building regulations which

Reigning in state and local governments on planning and building regulatory matters is considered to be an essential part of the solution to minimising revenue raising and unnecessary red tape at the same time.

Over the last decade, there has been a move away from single approval processes for single dwellings on residential zoned land. Primarily this has been as a result of local government increasing the matters for consideration for all types of development including homes. However, there appears to have been little real change or benefit to the final built form from this increase in planning controls. For local government, this shift has also led to an increased demand for professional staff to carry out assessments of planning applications which were previously not necessary.

Operational costs in building services have been reduced by the use of private certification. Applicants in all states (except WA) have the ability to select between using the services of Council or employing a private certifier to manage the permit process and issue a permit. The high uptake of this initiative indicates that there are substantial gains

to be made by employing a private certifier over and above the generally slower services of Council.

There is significant potential for Councils to allow private certification of planning services and therefore achieve similar productivity gains. Planning delays and inefficiencies are one of the greatest sources of cost to HIA members and adversely affect housing affordability.

Certification of some aspects of the planning process at a local level has a great deal of potential to assist Councils lift their planning performances which would have a great cost saving to the development industry and to new homebuyers.

Many elements of the planning process are well suited to certification including issues that do not require discretionary decisions such as neighbour notification procedures, pre-lodgement assessment work or approval decisions for routine, low-impact development types. Successful use of certification in planning would mean that council planners could channel their resources into administering planning schemes and focus on the merit elements of development proposals.

In the long term planning certification would lead to potentially quicker assessment processes for minor, routine, and low-impact development proposals whilst freeing up Council staff to concentrate on the more strategic elements of the planning process, and operational efficiencies such as increasing their output on more complex applications.

6.1.1 HIA Recommendations

To improve operational efficiencies:

- Building single dwellings on land zoned for residential purposes should not require planning approval. State governments should be required to take the lead and clearly define what constitutes a valid local variation to a single set of state endorsed building standards to trigger a town planning permit.
- Local Government should be subject to similar regulatory rigour as other tiers of government to stem the tide of planning and building requirements that over ride state and national requirements. Any variations enacted are cost effective or at worst cost neutral.
- State governments should clearly set the boundaries between planning and building regulation.
- The Federal Government should cooperate with State and local governments to facilitate planning reform based upon recognised best practice.
- As an incentive to achieve this, the Federal Government should tie national competition policy payments to improvements in planning performance.

6.2 Incentive effects of grants and subsidies

What grants and subsidies are provided to local government by State and Territory governments? What is the value for each category of grant? Are there any terms and conditions attached to these grants? Do these terms and conditions distort the incentives of local governments to raise their own revenue? If so, how and why?

What grants and subsidies are provided by the Australian Government? What is the value of each category of grant? Are there any terms and conditions attached to these grants? Do these terms and conditions distort the incentives of local governments to raise their own revenue? If so, how and why?

HIA's comments on grants and subsidies from other levels of government are provided earlier in this response.